EXHIBIT A

Court of Appeals of the State of New York

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

– against –

ERIC IBARGUEN,

Defendant-Appellant.

ON APPEAL FROM THE APPELLATE DIVISION, SECOND DEPARTMENT
APL-2019-00224

BRIEF OF AMICUS CURIAE NEW YORK CIVIL LIBERTIES UNION

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DISCLOSURE STATEMENT PURSUANT TO RULE 500.1(f)

The New York Civil Liberties Union hereby discloses that it is a non-profit, 501(c)(4) organization, and is the New York State affiliate of the American Civil Liberties Union.

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PRELIMINARY STATEMENT

The home is the central sphere of privacy that the Fourth Amendment seeks to protect from unwarranted governmental intrusion. New Yorkers invite family members and friends into their homes to have dinner, watch sporting events, celebrate birthdays, and generally enjoy the intimacies of social bonding. A finding from this Court that these social guests lack the ability to contest unlawful searches of their hosts' homes undermines the privacy rights of homeowners and likely chills the important activity of inviting guests to one's home for a short duration. As *amicus curiae*, the New York Civil Liberties Union submits a brief urging this Court to recognize that short-term social guests have standing under the Fourth Amendment to contest searches of their hosts' homes.

The reasoning of two Supreme Court cases— *Minnesota v. Olson* (495 US 91 [1990]) and *Minnesota v. Carter* (525 US 83 [1998])— requires a finding that social guests have a reasonable expectation of privacy in their hosts' homes and thus have standing. Numerous federal and state courts, including the Second Circuit, have long recognized that all social guests have standing regardless of their intention to stay at a searched house overnight.

Additionally, the caselaw establishes the outer limits of standing. A casual visitor with a tenuous connection to the intruded upon property will not have standing under the Fourth Amendment. While the Second Department correctly understood this principle, it misapplied it to Mr. Ibarguen case where, on all accounts, he was a social

guest. Thus, the Second Department erroneously relied upon this Court's decision in *People v. Ortiz* (83 NY2d 840 [1994]), a case involving a factual finding that a defendant was a *casual visitor* and not a *social guest*, two distinct categories that have been treated differently in Fourth Amendment jurisprudence. *Ortiz* has no bearing on the legal question of social guest standing.

INTEREST OF AMICUS CURIAE

The New York Civil Liberties Union ("NYCLU") is the New York State affiliate of the American Civil Liberties Union. The NYCLU is a nonprofit, nonpartisan organization with tens of thousands of members across the State. The NYCLU is committed to the defense and protection of civil rights and civil liberties, including the constitutional rights of people convicted of criminal offenses. In particular, the NYCLU frequently engages in advocacy and litigation defending the right to be free from unlawful searches and seizures. (*See, e.g., People v. Weaver*, 12 NY3d 433 [2009]) (holding that the placement of GPS tracking devices, and subsequent monitoring, constituted a search); *Ligon v. City of New York*, 925 F Supp 2d 478 [SD NY 2013] (granting preliminary injunction in challenge to widespread practice of unlawful stops and searches of individuals at private apartment buildings by police officers); *Dinler v. City of New York*, 2012 WL 4513352 [SD NY 2012] (challenging mass arrests of protesters at 2004 Republican National Convention in New York City). As this case presents an important issue regarding privacy and the protections against unreasonable police intrusion

provided by the Fourth Amendment and New York law, it is of great interest to the NYCLU.

ARGUMENT

Given the developments of United States Supreme Court caselaw in *Minnesota v. Olson* (495 US 91 [1990]) and *Minnesota v. Carter* (525 U.S. 83 [1998]), this Court should update its Fourth Amendment standing jurisprudence to clearly reflect that short-term social guests have standing to contest unlawful searches of their hosts' homes.[1] Such a result would be consistent with other jurisdictions' interpretations and with the Fourth Amendment's goal of protecting citizens from unlawful police intrusion.

In *Olson,* the Supreme Court held that overnight guests have standing to challenge searches of their hosts' homes. (*See* 495 US at 98). A few years later, in *Carter*, the Court would explain that the capacity to challenge the search of another's home exists on a continuum from casual visitors merely legitimately at a home who lack standing, to overnight social guests, who have standing. (*See* 525 US at 90). In concurrence, Justice Kennedy declared that as "a general rule, social guests will have an expectation of privacy in their host's home" and have standing. (*Id.* at 101-02 [Kennedy, J., concurring]). The Second Circuit and numerous federal and state jurisdictions have interpreted *Olson* and *Carter* to require a finding that both overnight and short-term social guests have standing.

[1] This brief will use "short-term guest" to mean a guest of a limited duration who does not intend to stay at the residence overnight.

In Mr. Ibarguen's case, both the hearing court and the Second Department committed serious errors in interpreting this caselaw. The hearing court erred by holding that as a matter of law short-term social guests lack standing. However, the Second Department wrongly equated the legally distinct categories of "casual visitors" and "social guests," misapplying this Court decision in *People v. Ortiz* (83 NY2d 840 [1994]), a case that has no bearing on the legal status of social guests. (*People v. Ibarguen*, 173 AD3d 1207 [2d Dept 2019]). The Second Department's holding requires reversal.

I. A SHORT-TERM SOCIAL GUEST HAS A REASONABLE EXPECTATION OF PRIVACY IN THEIR HOSTS' HOME AND THUS HAS STANDING TO CHALLENGE AN UNLAWFUL SEARCH OF THAT HOME.

A. Social Guests Have Standing In Their Hosts' Homes Regardless of Their Intention to Stay Overnight.

Mr. Ibarguen alleged he was a dinner guest at his friends' home when the police broke down the hosts' door and arrested him. (A10, A15-16, A26, A32-34, A37).[2] He also claimed to have received mail previously at the searched residence. *Id.* These allegations plainly established that Mr. Ibarguen was at his friends' home for a social purpose. *See* (A16-17) (the prosecution's acknowledgment that Mr. Ibarguen was alleging he was a social guest).

Therefore, when the hearing court summarily denied Mr. Ibarguen's omnibus motion for "fail[ing] to sufficiently allege standing to challenge the search of the subject

[2] Citations to "(A)" refer to the appellant's appendix.

premises," it wrongly concluded that non-overnight social guests do not have standing as a matter of law. (A44). This holding conflicted with *Minnesota v. Olson* (495 US 91 [1990]) and *Minnesota v. Carter* (525 U.S. 83 [1998]) and should have been reversed by the Second Department.

1. *Minnesota v. Olson and Minnesota v. Carter established that all social guests have a legitimate expectation of privacy in their hosts' homes.*

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." To contest a search or seizure under the Fourth Amendment, a defendant must have standing, given that "Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted." (*Alderman v. United States*, 394 US 165, 174 [1969]; *see also Simmons v. United States*, 390 US 377, 389 [1968]). A defendant has standing to contest governmental searches of areas where they have a legitimate expectation of privacy. (*Olson*, 495 US at 95-96; *Byrd v. United States*, 138 S.Ct 1518, 1527 [2018]).

While the narrow holding of *Olson* was that overnight guests have standing, its reasoning applies broadly to all social guests regardless of their intention to stay overnight. (495 US at 97-98). In *Olson*, the defendant was found hiding in a friend's apartment where he was staying overnight yet was never left alone nor given a key to the residence. (*Id.* at 94, 99). Minnesota's Supreme Court held that the defendant did not have a reasonable expectation of privacy in that apartment. (*Id.* at 94).

On appeal, the United States Supreme Court rejected Minnesota's twelve-factor test for standing, calling it "needlessly complex." (*Id.* at 96). Instead, it held that the defendant's status as an "overnight guest [wa]s alone enough to show that he had an expectation of privacy in the home that society is prepared to recognize as reasonable." (*Id.* at 96–97). For the Court a holding that overnight guests have standing, "merely recognize[s] the everyday expectations of privacy that we all share [because] [s]taying overnight in another's home is a longstanding social custom that serves functions recognized as valuable by society." *Id.*

Going further, the Court reasoned that standing was appropriate because "society recognizes that a *houseguest has a legitimate expectation of privacy in his host's home*." (*Id.* [emphasis added]). The Court explained that our everyday expectations of privacy accord with the notion that "*hosts will more likely than not respect the privacy interests of their guests*, who are entitled to a legitimate expectation of privacy despite the fact that they have no legal interest in the premises and do not have the legal authority to determine who may or may not enter the household." (*Id.* at 99–100 [emphasis added]). This broad language plainly applies to all guests.

Several years later, in *Carter,* the Court held that because individuals in commercial properties have a vastly diminished expectation of privacy, short-term guests using residences for commercial purposes, like packaging narcotics, do not have a legitimate expectation of privacy in those spaces. (*See* 525 US at 90). The Court created a dichotomy between short-term business guests who lack standing and social guests,

i.e., houseguests who are friends with a host or use property for non-business purposes. (*Id*).

In a concurring opinion, Justice Kennedy clarified that, while the Court did not directly address the issue of non-overnight social guests, he "would expect that most, if not all, social guests legitimately expect that, in accordance with social custom, the homeowner will exercise her discretion to include or exclude others for the guests' benefit." (*Id.* at 101–02 [Kennedy, J., concurring). Justice Kennedy reasoned that the logic of *Olson* applied broadly to all social guests, declaring "as a general rule, social guests will have an expectation of privacy in their host's home." (*Id.* at 103).[3] He contrasted such social guests with the defendants in *Carter* who had "established nothing more than a fleeting and insubstantial connection with [the host's] home." (*Id.* at 102).

In sum, while the holding in *Olson* was focused on overnight guests, its reasoning applies to all guests regardless of their intention to stay overnight. *Carter* further clarified that these guests must be social in nature rather than business guests to have a legitimate expectation of privacy in the intruded upon area.

[3] In dissent, Justice Ginsburg agreed with Justice Kennedy that the logic of *Olson* applied to guests of a shorter duration. *Id.* at 109-10 (Ginsburg, J., dissenting). Ultimately, a tally of the dissenting justices and Justice Kennedy reveals that five justices would have held that all social guests have standing.

2. *The Second Circuit, and numerous jurisdictions have read Olson and Carter to require standing for short-term social guests.*

Even before the *Carter* concurrence, in *United States v. Fields*, the Second Circuit recognized that even short-term social guests have standing. (*See* 113 F3d 313, 321 [2d Cir 1997]). In *Fields*, the defendants were arrested in an apartment that one rented for selling drugs and where they "occasionally drank beer and watched television." (*Id.* at 317–18). The non-paying co-defendant "did not possess a key to the apartment . . . did not pay [rent] . . . [and] . . . [a]lthough [he] spent the night in the apartment on one occasion, no evidence indicate[d] he planned to do so on the night of the arrests." (*Id.* at 321).

On appeal, the Second Circuit held that the lower court's ruling that the non-paying defendant was a "transient visitor" with no expectation of privacy conflicted with *Olson*. *Id.* The Second Circuit recognized that while *Olson* only explicitly addressed overnight guests, its holding was not dependent upon whether a guest had spent the night. *Id* (citing 5 Wayne R. LaFave, Search and Seizure § 11.3(b), at 137 [3d ed. 1996]).

Instead, *Olson* "st[ood] for the proposition that any guest, in appropriate circumstances, may have a legitimate expectation of privacy when he is there 'with the permission of his host, who is willing to share his house and his privacy with his guest.'" (*Id* [citing *Olson*]). For the Second Circuit, a social guests' standing is based on society's recognition of "the legitimacy of privacy expectations held by guests who . . . have been

invited to the premises by their host for an extended visit, the defendant as an invited guest had standing." *Id.*

More recently, in *Figueroa v. Mazza*, the Second Circuit overruled a District Court's holding that "because [a defendant] 'was about to leave the apartment' when he was arrested, he did not qualify as an 'overnight guest' and thus could not claim a legitimate expectation of privacy in the property." (825 F3d 89, 110–11 [2d Cir 2016]).

On appeal, the Second Circuit cited *Olson* and *Carter* in holding that while the intent to stay overnight is one factor analyzed, it is not a necessary condition for the determination that a defendant has standing. *Id.* The dispositive inquiry is "whether the host has so liberally shared his own privacy interest with his guest that it shelters the guest against unreasonable government intrusion." (*Id.* at 109). When a defendant's visit is social nature, the host's privacy interest has been liberally shared. (*See also Santagata v. Diaz*, 2020 WL1536347 at *9 [ED NY 2020]) (recognizing a short-term social guest's standing under the Fourth Amendment).

Similarly, the Courts of Appeals of the Sixth, Fifth, and Tenth Circuits have held that under *Olson* and *Carter* short-term social guests have a reasonable expectation of privacy in the homes of their hosts, and thus standing. (*See United States v. Pollard*, 215 F3d 643, 647 [6th Cir 2000] (holding that the defendant had standing to contest the search where he was friends but only stayed at the home earlier in the week); *United States v. Phillips*, 382 F3d 489, 496 [5th Cir 2004] ("*Olson* stands for the proposition 'that any guest, in appropriate circumstances, may have a legitimate expectation of privacy

when he is there 'with the permission of his host, who is willing to share his house and his privacy with his guest.'"); *United States v. Rhiger*, 315 F3d 1283 [10th Cir 2003].)

The *Rhiger* case is particularly enlightening because in it the Tenth Circuit interpreted *Carter* to create a dichotomy between "business guests" as a category of individuals who lack standing and "social guests" who have standing to contest searches of their hosts' homes. (*See* 315 F3d 1283, 1286 [10th Cir 2003]). Referring to *Carter*, the Tenth Circuit held that "although the [Supreme] Court did not specifically decide the issue we face, a close reading of the opinion persuades us that a social guest's expectation of privacy is constitutionally protected." *Id.*

Likewise, the high courts of Kansas, West Virginia, South Dakota, South Carolina, Iowa, Hawaii, and the District of Columbia have recognized that the reasoning of *Olson* and *Carter* applies beyond the cases' narrow holdings. (*See State v. Talkington*, 301 Kansas 453, 455–56 [2015] (holding "[e]ven social guests who do not stay the night have a reasonable expectation of privacy in the host's home and may therefore challenge a search of the home on Fourth Amendment grounds"); *State v. Dorsey*, 234 West Virginia 15, 24–25 [2014] (holding "a guest in a home must be welcomed by his host at the time of the government intrusion in order to have a reasonable expectation of privacy"); *State v. Tullous*, 692 NW2d 790, 794 [SD 2005] (holding that the defendant "was a regular 'social guest' . . . and therefore had a reasonable expectation of privacy in the home that society is willing to honor"); *State v. Missouri*, 361 South Carolina 107, 115 [2004] (holding that "by choosing to share the

privacy of their home with [the defendant] on several occasions in the past and on the occasion in question . . . [the hosts and the defendant] demonstrated a subjective expectation of privacy"); *State v. Lovig*, 675 NW2d 557, 564 [Iowa 2004] (holding that a defendant had an objective reasonable expectation of privacy because of her "regular, fixed status as a social guest"); *State v. Cuntapay*, 104 Hawaii 109, 116 [2004] (holding that "'when a homeowner chooses to share the privacy of her home' 'with a short term guest' . . . 'the two fold requirement' of a subjective expectation of privacy and a reasonable expectation of privacy 'have been satisfied'"); *Morton v. United States*, 734 A2d 178, 182 [DC 1999]).

Even in the narrowest reading of *Olson* and *Carter*, the Supreme Court never held that *only* overnight social guests have a legitimate expectation of privacy in their hosts' home. (*See Figueroa*, 825 F3d at 110) (rejecting the argument that the defendant did not establish that he had standing as a matter of because he did not claim to be an overnight guest). On the contrary, various federal and state courts have read *Olson* and *Carter* to establish that all social guests have standing regardless of their intent stay overnight.

B. Casual Visitors That Are Merely Legitimately on Premises Lack Standing.

On appeal, the Second Department held that Mr. Ibarguen "failed to establish a reasonable expectation of privacy in the apartment at which he was merely a *casual visitor*, and thus he lacked standing to challenge the warrantless entry and subsequent search of the premises." (*Ibarguen*, 173 AD3d at 1207) (emphasis added). The decision failed

to discuss, or even cite, *Olson* and *Carter* while erroneously equating the caselaw's treatment of *casual visitors* with *social guests*.

As opposed to social guests, a casual visitor with a tenuous connection to a searched residence does not have a reasonable expectation of privacy in that home. (*See Rakas v. Illinois*, 439 US 128, 142 [1978]). In *Rakas*, the Supreme Court abandoned its previous standard that anyone legitimately on a searched premise had standing. (*See Id*). In rebuking this standard, the Court set the *casual visitor* as the type of defendant who it would not recognize has standing under the Fourth Amendment. (*See Id*).

> [The "legitimately on the premises" standard] permit[s] a *casual visitor* who has never seen, or been permitted to visit, the basement of house to object to a search of the basement if the visitor happened to be in the kitchen of the house at the time of the search. Likewise, a *casual visitor* who walks into a house one minute before a search of the house commences and leaves one minute after the search ends would be able to contest the legality of the search. The first visitor would have absolutely no interest or legitimate expectation of privacy in the basement, the second would have none in the house, and it advances no purpose served by the Fourth Amendment to permit either of them to object to the lawfulness of the search.

Id. (emphasis added).

The Court would later explain that defendants' standing claims exist on a continuum from the overnight social guest in *Olson*, who typify those with standing in the homes of others to the casual visitor described in *Rakas* who typifies a category of people without standing. (*See Carter*, 525 US at 91). Both the Second and Sixth Circuits have recognized the distinction between a mere casual visitor to a property and a social

guest. (*See United States v. Harris*, 255 F3d 288, 294–95 [6th Cir 2001] ("overnight guest may possess a legitimate expectation of privacy in a residence being searched, a temporary visitor to a residence may claim no such protection"); *United States v. Agapito*, 620 F2d 324, 334 [2d Cir 1980](holding that a defendant did not have standing to contest the search of a hotel room where he was a "mere visitor").

By characterizing Mr. Ibarguen as a "casual visitor," the Second Department failed to grasp that casual visitors and social guests are two distinct categories with different legal statuses under the Fourth Amendment. There was no basis in the record below for the Second Department to characterize Mr. Ibarguen as a casual visitor given that he had declared that he was a dinner guest at his friends' apartment and the hearing court never made a factual finding that Mr. Ibarguen was a casual visitor as opposed to a social guest. (A44).

Therefore, the Second Department's reliance on *People v. Ortiz* (83 NY2d 840 [1994]) was misplaced. In *Ortiz*, this Court made no pronouncements about whether social guests of a limited duration have standing in their hosts' homes as a matter of law. This Court only held that because there was some factual record to support the hearing court's determination that the defendant in that case was a "casual visitor" and did not have a reasonable expectation of privacy in the host's home, the hearing court's finding "c[ould not] be disturbed on [ ] review." (*Id.* at 842–43; *see People v. Shabazz*, 99 NY2d 634, 636 [2003] (a finding that a defendant has a reasonable expectation of privacy involves a mixed question of law and fact)).

More recently, in *People v. Leach*, this Court came to the same conclusion that it could not reach the legal question of standing due to its limited powers of review, stating, "[w]hile a contrary finding might also have been reasonable under these circumstances, we cannot say there was no record support for the lower courts' determination that defendant failed to establish a legitimate expectation of privacy in the guest bedroom." (21 NY3d 969, 972 [2013]).

Ortiz and *Leach* merely stand for the proposition that in those cases there were sufficient factual records to support the lower courts' determinations that those defendants were casual visitors lacking standing. Because of the hearing court's summary dismissal, there was no such factual record in this case. These cases do not preclude a finding from this Court that short-term social guests have standing.

II. A RULING RECOGNIZING THAT ALL SOCIAL GUEST HAVE STANDING IS CONSISTENT WITH THE UNDERLYING PRINCIPLES OF THE FOURTH AMENDMENT.

A holding that short-term social guests have standing is consistent with caselaw from the United States Supreme Court, Second Circuit, and numerous jurisdictions that have reached the issue. Such a holding also advances the Fourth Amendment's interests of protecting citizens from unlawful governmental intrusion into their homes and intimate associations while providing a workable, bright-line rule for officers to use in the field.

Unlawful governmental intrusion into the home is the "chief evil" that the Fourth Amendment seeks to protect against. (*Payton v. New York*, 445 US 573, 585

[1980]; *New York v. Burger*, 482 US 691, 699 [1987] (finding no reasonable expectation of privacy in a business that is heavily regulated)). This Court has reaffirmed the importance of the home to Fourth Amendment analysis by holding that individuals in public restroom stalls have reasonable expectations of privacy because, like the home, a stall is designed to keep its inhabitants shielded from public view. (*People v. Mercado*, 68 NY2d 874, 876 [1986]).

The ability to exclude unlawfully obtained evidence from trial is supposed to strengthen the Fourth Amendment's protections of the home by deterring such unlawful intrusion. (*See United States v. Leon*, 468 US 897, 916 [1984] ("[T]he exclusionary rule is designed to deter police misconduct . . . ."); *People v. Martinez*, 37 NY2d 662, 669–70 [1975] ("This court stands steadfastly prepared to condemn bad police conduct and any abuse of constitutionally acceptable standards, as well as to preserve the integrity of the judicial process from investigatory methods which violate constitutional limitations . . . [t]he exclusionary rule remains a primary tool for accomplishing this task.")).

A holding from this Court that short-term social guests lack standing would undermine the Fourth Amendment's chief privacy protection by incentivizing police intrusion into the homes of innocent homeowners. Under such circumstances, officers surveilling a suspect would only need to wait until their target went inside of a friend or family member's home to conduct an invasive search, knowing that the suspect would have no ability to contest a search of that home. For example, a grandmother could host her grandson, who happens to be the subject of a police investigation, for

Thanksgiving dinner and the police could barge into her home without a warrant and search through her intimate belongings in an effort to acquire information about the suspect. While such a search would likely need to be preceded by a warrant that complies with the requirements of the Constitution if it was performed in the suspect's home, if guests lack the ability to contest searches of their social hosts' homes there need not be any such warrant and limitations. (*See, e.g.*, *Coolidge v. New Hampshire*, 403 US 443, 467 [1971] (explaining that search warrants must particularly state the area to be searched)). Any unlawfully invasive actions would fall outside of the exclusionary rule's deterrent effect, creating an increased risk that innocent homeowners would have their privacy compromised by the police for merely inviting a guest to their home.

Additionally, this added risk of unlawful intrusion could have a chilling effect on a valuable social activity like inviting guests over for dinner or to a book club or any other non-overnight event. (*See* Kenneth L. Karst, *The* Freedom *of Intimate Association*, 89 Yale L.J. 624, 630 [1980] (detailing the ways that intimate associations are both societally and personally valuable)). The United States Supreme Court has long acknowledged that "because the Bill of Rights is designed to secure individual liberty, it must afford the formation and preservation of certain kinds of highly personal relationships a substantial measure of sanctuary from unjustified interference by the State." (*Roberts v. U.S. Jaycees*, 468 U.S. 609, 618 [1984]). Intrusive police activities have the ability to chill the exercise of such protected activities. (*See Socialist Workers Party v. Attorney Gen. of U. S.*, 419 US 1314, 1319 [1974] (explaining how police surveillance can

chill First Amendment rights)). A holding from this Court failing to recognize that all social guests have standing may discourage people from forming intimate associations by inviting neighbors, friends, and family members to their homes if such invitations could lead to searches not protected by the Fourth Amendment. Such a holding would undermine the personal liberty at the core of our formation of intimate associations.

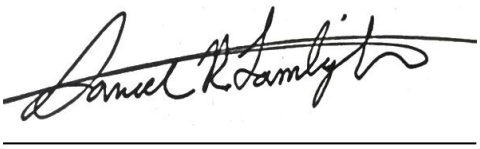
Finally, a general rule that all social guests have standing under the Fourth Amendment creates a workable bright-line that will aid lower courts and police officers in the field. In its Fourth Amendment jurisprudence, this Court has "sought to provide and maintain 'bright line' rules to guide the decisions of law enforcement and judicial personnel who must understand and implement our decisions in their day-to-day operations in the field." (*People v. P.J. Video, Inc.*, 68 NY2d 296, 305 [1986]). In *Olson*, the Supreme Court recognized the importance of bright-line rules when it rejected Minnesota's twelve-factor test for determining standing, holding that being an overnight guest alone is sufficient to establish standing. (*Olson*, 495 US at 96). In many cases assessing whether a suspect intends to stay at a residence overnight will be impossible prior to acting. However, it is much easier to determine if a surveilled suspect is visiting friends or family members. If officers ascertain that a defendant is on a social visit, they will know that they have to obtain a warrant before conducting a search of that home. A bright-line rule that all social guests have standing regardless of whether they intend to spend the night provides clear and workable guidance for officers to follow in the field. (*See People v. Garvin*, 30 NY3d 174, 187 [2017] (upholding

a warrantless arrest of a suspect in the threshold of a residence in part because the threshold rule provided a bright and workable line for officers in the field)).

CONCLUSION

This Court should vacate the Second Department's ruling and remand this matter for a hearing to determine if Mr. Ibarguen was a social guest at the time of his arrest. If so, he should have standing to contest the warrantless search of his friends' home.

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE

Pursuant to the State of New York, Court of Appeals Rules of Practice, 22 NYCRR Part 500.1 §§ (j)(l) and Part 500.13 §§ (c)(1) and (c)(1)(3), I certify that the foregoing brief was prepared on a word processor, using 14-point Garamond proportionally spaced typeface, double-spaced, with 12-point single-spaced footnotes and 14-point single-spaced block quotations. The total number of words in the brief, inclusive of point headings and footnotes and exclusive of pages containing the disclosure statement, table of contents, table of citations, certificate of compliance, and affidavit of service is 4,628.

Dated: June 15, 2020
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