No. 18-1230

In the Supreme Court of the United States

JUAN ZAMUDIO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the affidavit submitted in support of the warrant to search petitioner's residence established probable cause to believe that evidence of drug trafficking would be found in that residence.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (S.D. Ind.):

United States v. *Jose Zamudio et al.*, No. 1:16-cr-251-TWP-MJD (Mar. 7, 2018) (order granting motion to suppress)

United States Court of Appeals (7th Cir.):

United States v. *Juan Zamudio*, No. 18-1529 (Nov. 20, 2018)

United States v. *Reynold De La Torre*, No. 18-2009 (oral argument scheduled for Sept. 6, 2019) (appeal of co-defendant)

United States v. *Christian Chapman*, No. 18-2218 (oral argument scheduled for Sept. 6, 2019) (appeal of co-defendant)

United States v. *Jeffrey Rush*, No. 18-2286 (oral argument scheduled for Sept. 6, 2019) (appeal of co-defendant)

United States v. *Maria Gonzalez*, No. 18-3303 (oral argument scheduled for Sept. 6, 2019) (appeal of co-defendant)

United States v. *Jose Zamudio*, No. 18-3361 (oral argument scheduled for Sept. 6, 2019) (appeal of co-defendant)

United States v. *Adrian Bennett*, No. 19-1299 (oral argument scheduled for Sept. 6, 2019) (appeal of co-defendant)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Cases—Continued: Page

Constitution, statutes, and rule:

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-9a) is reported at 909 F.3d 172. The order of the district court (Pet. App. 10a-29a) is reported at 291 F. Supp. 3d 855.

JURISDICTION

The judgment of the court of appeals was entered on November 20, 2018. On February 8, 2019, Justice Kavanaugh extended the time within which to file a petition for a writ of certiorari to and including March 21, 2019, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Petitioner was indicted in the United States District Court for the Southern District of Indiana for conspiracy to distribute and to possess with intent to distribute controlled substances, including methamphetamine and

cocaine, in violation of 21 U.S.C. 841(a)(1) and 846; possession with intent to distribute methamphetamine, in violation of 21 U.S.C. 841(a); possession of ammunition by an alien illegally or unlawfully in the United States, in violation of 18 U.S.C. 922(g)(5)(A); and conspiracy to commit money laundering, in violation of 18 U.S.C. 1956 (2012 & Supp. V 2017). Third Superseding Indictment 1-4, 6, 9; see also Fourth Superseding Indictment 1-3, 5, 7-8. Before trial, the district court granted petitioner's motion to suppress 11 kilograms of methamphetamine and other evidence seized during the execution of a search warrant at petitioner's home. Pet. App. 10a-28a. The government filed an interlocutory appeal, and the court of appeals reversed and remanded for further proceedings. *Id.* at 1a-9a.

1. In February 2016, the Federal Bureau of Investigation (FBI) began investigating a large-scale drug-trafficking organization run by petitioner's brother, Jose Zamudio. Pet. App. 2a, 11a; D. Ct. Doc. 762-1 (Warrant Appl.) ¶¶ 7, 88, 121-129 (Feb. 28, 2018). After several months of surveillance, the government applied for a warrant to search 35 locations, including petitioner's residence, for evidence relating to the organization's drug trafficking. Pet. App. 2a, 11a; Warrant Appl. 2-3, 39-41. In support of its application, the government submitted an 84-page affidavit by FBI Special Agent Timothy Bates. Pet. App. 2a, 11a; Warrant Appl. ¶¶ 1-194. The affidavit described, among other evidence, three drug sales involving petitioner. Pet. App. 2a-4a, 11a-15a; Warrant Appl. ¶¶ 88-95, 100, 125-126, 138.

First, in October 2016, petitioner's brother Jose asked petitioner to contact co-defendant Jeffrey Rush about a potential sale of methamphetamine. Pet. App. 3a, 13a-14a; Warrant Appl. ¶¶ 100, 125. In the ensuing

series of text messages between petitioner and Rush, Rush expressed interest in purchasing two pounds of methamphetamine, and petitioner arranged to meet him in a grocery-store parking lot. Pet. App. 3a, 13a-14a; Warrant Appl. ¶¶ 100, 126. When petitioner and Rush met, surveillance officers saw Rush enter petitioner's car and then exit with a "basketball-sized red box." Pet. App. 3a (quoting Warrant Appl. ¶ 100); see also *id.* at 13a-14a; Warrant Appl. ¶¶ 100, 126.

Second, the following week, surveillance officers observed Rush and another co-defendant, Jeremy Perdue, enter the residence of petitioner's brother and exit a few minutes later. Pet. App. 3a, 11a-12a; Warrant Appl. ¶ 89. Rush and Perdue then went to a restaurant across the street from petitioner's workplace and met with a third co-defendant, Joseph Coltharp. Pet. App. 3a, 12a; Warrant Appl. ¶¶ 89-92, 95. After Coltharp left the restaurant, police pulled him over for a traffic violation and found a package of narcotics on the vehicle's floorboard. Pet. App. 3a, 12a; Warrant Appl. ¶ 93. Meanwhile, in a phone call intercepted by investigators, petitioner told his brother that the drug sale had been completed and that he had collected $15,000 from Rush and Perdue. Pet. App. 3a, 12a; Warrant Appl. ¶ 95.

Finally, in early November 2016, petitioner arranged, on behalf of his brother, to supply marijuana and methamphetamine to another co-defendant, Adrian Bennett. Pet. App. 3a, 15a; Warrant Appl. ¶ 138. Using his brother's phone, petitioner instructed Bennett to come to his brother's house to complete the transaction, and Bennett agreed. Pet. App. 3a-4a, 15a; Warrant Appl. ¶ 138.

Although the affidavit did not specifically identify any drug-distribution activity that had occurred at petitioner's home, Pet. App. 4a, it stated that petitioner

was distributing controlled substances both "at [his brother's] direction" and "to his own customer base." Warrant Appl. ¶ 121; see Pet. App. 4a. And it described how other people involved in the drug conspiracy stored drugs obtained from petitioner's brother in their homes or garages for future distribution. Warrant Appl. ¶¶ 30, 57, 63-64, 80-81, 85, 88. The affidavit identified petitioner's address as 64 N. Tremont Street, explaining that petitioner was responsible for paying for utilities at that address and that his car was routinely parked outside the residence overnight. Pet. App. 4a; Warrant Appl. ¶ 184.

Agent Bates additionally averred in the affidavit that, based on his years of experience and training, drug traffickers "generally" "store their drug-related paraphernalia" and "maintain records relating to their drug trafficking activities" in "their residences or the curtilage of their residences." Warrant Appl. ¶ 152; see *id.* ¶¶ 2-4; Pet. App. 4a. He further stated that it is "a common practice" for drug traffickers "to conceal large sums of money, either the proceeds from drug sales or monies to be used to purchase controlled substances, at their residences." Warrant Appl. ¶ 153. And he explained that, "[t]ypically, drug traffickers possess firearms and other dangerous weapons at their residences to protect their profits, supply of drugs, and themselves from others who might attempt to forcibly take the trafficker's profits or supply of drugs." *Id.* ¶ 154; see also Pet. App. 4a.

A United States magistrate judge issued the requested warrant. Pet. App. 11a. When agents executed the search warrant at petitioner's home, they discovered approximately 11 kilograms of methamphetamine and a loaded gun, in addition to other evidence. *Id.* at 1a-2a.

2. A grand jury in the Southern District of Indiana charged petitioner with conspiracy to distribute and to possess with intent to distribute controlled substances, including methamphetamine and cocaine, in violation of 21 U.S.C. 841(a)(1) and 846; possession with intent to distribute methamphetamine, in violation of 21 U.S.C. 841(a); possession of ammunition by an alien illegally or unlawfully in the United States, in violation of 18 U.S.C. 922(g)(5)(A); and conspiracy to commit money laundering, in violation of 18 U.S.C. 1956 (2012 & Supp. V 2017). Third Superseding Indictment 1-4, 6, 9; see also Fourth Superseding Indictment 1-3, 5, 7-8. Before trial, petitioner moved to suppress the evidence seized from his residence during the execution of the search warrant. Pet. App. 10a.

The district court granted petitioner's motion. Pet. App. 10a-28a. The court took the view that the affidavit in support of the search warrant presented "absolutely no evidence" linking petitioner's "presence or his drug dealing activity" to his home, and stated that the affidavit failed to establish probable cause to believe that "contraband" would be found at petitioner's residence. *Id.* at 22a; see also *id.* at 24a-25a. And although the government had not separately raised it, the court also rejected application of the good-faith exception to the exclusionary rule, declaring that a reasonably well-trained officer would have known that the search was illegal despite the magistrate judge's authorization. *Id.* at 25a-27a.

3. The government filed an interlocutory appeal, and the court of appeals reversed and remanded the case for further proceedings. Pet. App. 1a-9a. The court determined that the search-warrant affidavit contained "sufficient information suggesting a 'fair probability' that

evidence of a crime would be found at [petitioner's] home." *Id.* at 6a. The court noted that petitioner had "conceded" that the affidavit established "a reasonable probability" that petitioner had engaged in a drug-trafficking operation. *Ibid.* And the court found that the magistrate judge who issued the warrant "reasonably drew the inference that indicia of drug-trafficking would be found at [petitioner's] home." *Id.* at 7a. The court explained that the affidavit established, based on Agent Bates's "years of experience in investigating narcotics traffickers and how they conduct their business," *id.* at 8a, that drug traffickers "generally store their drug-related paraphernalia and maintain records relating to their drug-trafficking at their residences"; "commonly store large sums of drug money and evidence of financial transactions from drug sales in their residences"; and "typically possess firearms at their residences to protect their profits and drug supplies," *id.* at 7a.

The court of appeals explained that probable cause does not "require direct evidence linking a crime to a particular place," Pet. App. 5a (quoting *United States* v. *Anderson*, 450 F.3d 294, 303 (7th Cir.), cert. denied, 549 U.S. 1010 (2006)), and that "issuing judges may draw reasonable inferences about where evidence is likely to be found based on the nature of the evidence and the offense," *id.* at 5a-6a (citing *United States* v. *Orozco*, 576 F.3d 745, 749 (7th Cir. 2009), cert. denied, 559 U.S. 916 (2010)). "In the case of drug dealers," the court observed, "evidence is likely to be found where the dealers live." *Id.* at 6a (quoting *United States* v. *Lamon*, 930 F.2d 1183, 1188 (7th Cir. 1991)). But the court explicitly disavowed the proposition that its ruling upholding the warrant in this case would "endorse" a "categorical approach" whereby probable cause to search a drug

trafficker's residence would exist "in every case where a drug trafficker is involved." *Id.* at 8a. "We have repeatedly rejected that approach," the court stated, "and we do again now." *Ibid.*

Because the court of appeals found that the affidavit established probable cause to search petitioner's residence, it declined to address the government's contention that reversal of the suppression order was warranted based on the good-faith exception to the exclusionary rule. Pet. App. 8a-9a; see Gov't C.A. Br. 21-23.

ARGUMENT

Petitioner contends (Pet. 12-27) that the court of appeals erred in its determination that the affidavit submitted in support of the warrant to search his residence established probable cause to believe that evidence of his drug trafficking would be found in that residence. The court's fact-bound decision is correct and does not conflict with any decision of another court of appeals or state court of last resort. In addition, this case would be an unsuitable vehicle for reviewing the question presented because the good-faith exception to the exclusionary rule provides an independent basis for reversing the district court's suppression order. Further review is unwarranted.

1. As the court of appeals correctly determined, Agent Bates's affidavit gave the magistrate judge a substantial basis to find probable cause that evidence of drug trafficking would be found at petitioner's home.

a. The Fourth Amendment provides in part that "no Warrants shall issue, but upon probable cause." U.S. Const. Amend. IV. Probable cause "is 'a fluid concept' that is 'not readily, or even usefully, reduced to a neat set of legal rules.'" *District of Columbia* v. *Wesby*, 138 S. Ct. 577, 586 (2018) (quoting *Illinois* v. *Gates*,

462 U.S. 213, 232 (1983)). Instead, "probable cause 'deals with probabilities and depends on the totality of the circumstances,'" *ibid.* (quoting *Maryland* v. *Pringle*, 540 U.S. 366, 371 (2003)), including "the factual and practical considerations of everyday life," *Pringle*, 540 U.S. at 370 (citations omitted). Accordingly, a probable-cause determination "does not deal with hard certainties," and evidence "must be seen and weighed * * * as understood by those versed in the field of law enforcement," who are entitled to "formulate[] certain common-sense conclusions about human behavior." *Gates*, 462 U.S. at 231-232 (quoting *United States* v. *Cortez*, 449 U.S. 411, 418 (1981)).

The probable cause standard "is not a high bar." *Wesby*, 138 S. Ct. at 586 (quoting *Kaley* v. *United States*, 571 U.S. 320, 338 (2014)). To the contrary, probable cause "requires only the kind of fair probability on which reasonable and prudent people, not legal technicians, act," *Kaley*, 571 U.S. at 338 (brackets, citations, and internal quotation marks omitted). It "does not require the fine resolution of conflicting evidence that a reasonable-doubt or even a preponderance standard demands." *Gerstein* v. *Pugh*, 420 U.S. 103, 121 (1975); see also *Gates*, 462 U.S. at 235.

In the context of a search warrant, the probable-cause standard requires a magistrate judge to conduct a "totality-of-the-circumstances analysis" to determine whether the affidavit in support of the warrant application establishes a "fair probability that contraband or evidence of a crime will be found in a particular place." *Gates*, 462 U.S. at 238. In making that determination, the magistrate judge may draw "reasonable inferences" from the evidence described in the affidavit. *Id.* at 240. And a reviewing court will uphold the magistrate

judge's determination so long as the magistrate judge had a "substantial basis" for finding probable cause. *Id.* at 242 (citation omitted).

b. The court of appeals correctly determined that the facts set forth in Agent Bates's affidavit, combined with reasonable inferences based on those facts, gave the magistrate judge a substantial basis for finding probable cause to search petitioner's residence for evidence of drug-trafficking crimes.

The affidavit described three occasions in October and November 2016 when petitioner personally participated in drug sales, including at least one sale of multiple pounds of methamphetamine. See Pet. App. 2a-4a, 11a-15a; Warrant Appl. ¶¶ 88-95, 100, 125-126, 138. The court of appeals correctly determined that those allegations established "a reasonable probability" that petitioner was involved in a large-scale drug-trafficking operation in Indianapolis. Pet. App. 6a. Accordingly, petitioner does not dispute (Pet. 21) that "the search warrant affidavit provided probable cause that [he] engaged in drug trafficking." Accord Pet. App. 4a (petitioner "conceded at oral argument that Agent Bates's affidavit was sufficient to indicate probable cause that he was engaged in a drug-trafficking operation").

The affidavit described several instances in which other co-conspirators stored drugs obtained from Jose Zamudio in their homes or garages for future distribution, see Warrant Appl. ¶¶ 30, 57, 63-64, 80-81, 85, 88, indicating that storing drugs in the dealers' residences was consistent with the organization's modus operandi. The affidavit also contained Agent Bates's detailed descriptions of practices common among drug dealers. See Pet. App. 6a-8a; Warrant Appl. ¶¶ 152-154. Agent Bates explained that, based on his training and years of

experience investigating drug-trafficking crimes, he knew that drug dealers generally keep drug-related paraphernalia, drug money, and other evidence of drug-related financial transactions in their residences. Pet. App. 7a; Warrant Appl. ¶¶ 152-153. He also explained that drug dealers typically possess firearms at their residences to protect their profits and drug supplies. Pet. App. 7a; Warrant Appl. ¶ 154. Finally, the affidavit established that petitioner lived at the 64 N. Tremont Street residence, explaining that petitioner paid for utilities at that address and that petitioner's car was regularly parked outside the home overnight. See Pet. App. 4a; Warrant Appl. ¶ 184.

That constellation of case-specific evidence and general law-enforcement expertise provided a substantial basis for the magistrate judge's determination that a fair probability existed that petitioner kept evidence of his drug-trafficking crimes—such as drugs or cash from drug sales—in his home, a location that would be both safe and readily accessible to him. See, *e.g.*, *Wesby*, 138 S. Ct. at 587 (basing probable cause determination on "common-sense conclusions about human behavior") (citation omitted); see also *Texas* v. *Brown*, 460 U.S. 730, 742-743 (1983) (plurality opinion) (relying in part on officer's testimony that, in his experience, "balloons tied in the manner of the one possessed by [the defendant] were frequently used to carry narcotics"). Consistent with this Court's precedent, the courts of appeals have routinely relied on similar evidence and inferences to uphold warrants to search drug traffickers' residences. See, *e.g.*, *United States* v. *Feliz*, 182 F.3d 82, 87-88 (1st Cir. 1999) (relying on agent's statements regarding drug traffickers' practices in sustaining warrant to search drug trafficker's home), cert. denied, 528 U.S.

1119 (2000); *United States* v. *Luloff*, 15 F.3d 763, 768 (8th Cir. 1994) (upholding warrant to search drug trafficker's residence based primarily on agent's averment that "drug traffickers often keep in their residences records of their illicit activity"); *United States* v. *Angulo-Lopez*, 791 F.2d 1394, 1399 (9th Cir. 1986) ("A magistrate is entitled to draw reasonable inferences about where evidence is likely to be kept, based on the nature of the evidence and the type of offense. In the case of drug dealers, evidence is likely to be found where the dealers live."); *United States* v. *$149,442.43 in U.S. Currency*, 965 F.2d 868, 874 (10th Cir. 1992) (search warrant issued based on agent's affidavit that "drug records are commonly kept where dealers have ready access to these documents").

c. Petitioner contends (Pet. 24-27) that the magistrate judge should not have issued the warrant to search his residence, asserting that the affidavit failed to provide a "particularized" (Pet. 12) or "specific" "nexus" (Pet. 2) between his drug-trafficking activities and his home, such as direct evidence that "criminal activity occurred at or around [the] home" (Pet. 3). But the Fourth Amendment does not impose a one-size-fits-all requirement under which evidence of the sort petitioner proposes is invariably required in all circumstances. Rather, the question is whether the totality of circumstances described in the warrant affidavit established a fair probability that evidence of petitioner's crimes would be found at his home. The court of appeals correctly determined that the affidavit in this case satisfied that standard, and that fact-bound determination does not warrant this Court's review.

Petitioner errs in asserting (Pet. 24-25) that the court of appeals' decision permits law enforcement to

obtain "general warrants for all locations that may be remotely connected to the subject of a drug investigation." Pet. 24. The court expressly "*rejected*" petitioner's suggestion that its decision "endorse[d] a categorical approach" that would support "a finding of probable cause to search [a] drug trafficker's residence" in every drug-trafficking case. Pet. App. 8a (emphasis added). Rather, the court decided only the question before it, *i.e.*, whether Agent Bates's affidavit established probable cause to believe that petitioner's home contained evidence of his drug-trafficking crimes. Contrary to petitioner's suggestion (Pet. 24), therefore, the decision below does not authorize magistrate judges to issue search warrants for any location that is "remotely connected to the subject of a drug investigation." It instead adheres to the principle that probable cause always "depends on the totality of the circumstances." *Wesby*, 138 S. Ct. at 586 (citation omitted).

Petitioner also errs in asserting (Pet. 24) the court of appeals authorized the issuance of "general warrants." "The principal evil of the general warrant was addressed by the Fourth Amendment's particularity requirement," *Ashcroft* v. *al-Kidd*, 563 U.S. 731, 742-743 (2011), which requires that search warrants contain "a 'particular description' of the things to be seized." *Coolidge* v. *New Hampshire*, 403 U.S. 443, 467 (1971). As then-Judge Alito explained in *United States* v. *$92,422.57*, 307 F.3d 137 (3d Cir. 2002), a warrant is not impermissibly general, and does not violate the particularity requirement, unless it enumerates "vague categories of items" and thereby "'vest[s] the executing officers with unbridled discretion to conduct an exploratory rummaging through [a defendant's] papers.'" *Id.* at 149 (citation omitted). Petitioner has not disputed that the search warrant in

this case satisfies the Fourth Amendment's particularity requirement, and the court of appeals thus did not address that requirement below.

At bottom, petitioner appears to seek a bright-line rule that law-enforcement expertise—in line with common-sense inferences—can never provide the sole support for a finding of probable cause to search a defendant's home for evidence of his involvement in a large drug-trafficking conspiracy. Not only would such an invariable rule have no direct application to this case (which included specific evidence about the practices of this conspiracy), but it would be inappropriate as a general matter. As this Court has explained, probable cause "'depends on the totality of the circumstances'" and "is 'not readily, or even usefully, reduced to a neat set of legal rules.'" *Wesby*, 138 S. Ct. at 586 (quoting *Pringle*, 540 U.S. at 371, and *Gates*, 462 U.S. at 232).

2. As petitioner acknowledges (Pet. 14-16), a number of courts of appeals and state courts of last resort have upheld the issuance of warrants to search drug dealers' homes without demanding the sort of evidence that petitioner's rule would invariably require. See, *e.g.*, *United States* v. *Job*, 871 F.3d 852, 864 (9th Cir. 2017); *United States* v. *Cardoza*, 713 F.3d 656, 661 (D.C. Cir. 2013); *United States* v. *Keele*, 589 F.3d 940, 943-944 (8th Cir. 2009); *United States* v. *Sanchez*, 555 F.3d 910, 914 (10th Cir.), cert. denied, 556 U.S. 1145 (2009); *United States* v. *Williams*, 548 F.3d 311, 319-320 (4th Cir. 2008), cert. denied, 556 U.S. 1172 (2009); *United States* v. *Hodge*, 246 F.3d 301, 306-307 (3d Cir. 2001); *United States* v. *Robins*, 978 F.2d 881, 892 (5th Cir. 1992); *State* v. *Yarbrough*, 841 N.W.2d 619, 623-624 (Minn. 2014). Petitioner is incorrect in assert-

ing (Pet. 13-20) that the court of appeals' decision conflicts with the precedent of the Sixth and First Circuits and of other state courts of last resort.

a. Petitioner's citation (Pet. 17-18) of *United States* v. *Brown*, 828 F.3d 375 (6th Cir. 2016), does not show any conflict between the decision below and the case law in the Sixth Circuit. In *Brown*, the Sixth Circuit concluded that a particular warrant affidavit did not establish probable cause to search the defendant's home for evidence of his alleged drug trafficking. *Id.* at 382-383. As the Sixth Circuit later explained, however, the affidavit in *Brown* did not "establish[] the defendant as an *active* drug dealer." *United States* v. *Coleman*, 923 F.3d 450, 458 (2019). In addition, in reaching its conclusion in *Brown*, the court recognized that, in other cases, the Sixth Circuit had upheld search warrants for defendants' homes based on affidavits that established that the defendants "were major players in a large, ongoing drug trafficking operation," without requiring specific and direct evidence that the residences had been used for drug trafficking. 828 F.3d at 383 n.2 (citing cases); see also *United States* v. *Davis*, 751 Fed. Appx. 889, 892 (6th Cir. 2018) ("*Brown* recognized that a suspect's status as a 'major player[] in a large, ongoing drug trafficking operation' can give rise to [a] fair probability [that drugs will be found in his home].") (citation omitted; first set of brackets in original). Although petitioner asserts (Pet. 19 n.5) that this case does not exhibit that circumstance, it is far from clear that the Sixth Circuit would agree. As described above, see pp. 9-10, *supra*, Agent Bates's affidavit here supported the inference that, in October and November 2016, petitioner was a major player in his brother's large-scale drug-trafficking organization.

In addition, since *Brown*, the Sixth Circuit has recognized that "a magistrate issuing a search warrant 'may infer that drug traffickers use their homes to store drugs and otherwise further their drug trafficking'" in light of "the reality that, 'in the case of drug dealers, evidence is likely to be found where the dealers live.'" *Coleman*, 923 F.3d at 457 (citations omitted). The Sixth Circuit also observed that its cases "have long established that 'probable cause generally exists to search for the fruits and instrumentalities of criminal activity at the residence of a drug dealer with continual and ongoing operations.'" *United States* v. *McCoy*, 905 F.3d 409, 417 (2018) (citation omitted). "Under this continual-and-ongoing-operations theory," the court explained, "we have at times found a nexus between a defendant's residence and illegal drug activity with no facts indicating that the defendant was dealing drugs from his residence." *Id.* at 418.

Furthermore, in another recent case, the Sixth Circuit declined to rule on the validity of a warrant to search a drug dealer's home and instead applied the good-faith exception to uphold the admission of the seized evidence based on a warrant affidavit that contained no direct evidence connecting the defendant's drug activities to his home. See *United States* v. *Ardd*, 911 F.3d 348, 352 (2018) (affidavit established that an active drug dealer lived at the residence in question and that, in the affiant's experience, "drug dealers often keep evidence of their criminal activity at their homes"), cert. denied, 139 S. Ct. 1611 (2019). Taken together, the Sixth Circuit's recent decisions thus provide further reason to doubt that it would require suppression of the evidence seized from petitioner's home in this case. And to the extent that any internal tension exists among the

Sixth Circuit's cases, such intracircuit inconsistency would not warrant this Court's review. See *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam).

b. Similarly, petitioner's reliance on *United States* v. *Bain*, 874 F.3d 1 (2017), cert. denied, 138 S. Ct. 1593 (2018), fails to show that the First Circuit would have reached a different result on the facts of this case. As petitioner notes, the First Circuit stated in *Bain* that it had previously "expressed skepticism that probable cause can be established by the combination of the fact that a defendant sells drugs and general information from police officers that drug dealers tend to store evidence in their homes." *Id.* at 23-24 (citing *United States* v. *Ribeiro*, 397 F.3d 43, 50-51 (1st Cir. 2005), and *Feliz*, 182 F.3d at 87-88). But neither *Bain* nor the earlier cases adopted a bright-line rule that such information can never be sufficient on its own to establish probable cause. Indeed, in each of those cases, the court of appeals *declined* to suppress evidence seized pursuant to a warrant to search a drug dealer's residence. See *id.* at 24 (applying good-faith exception without deciding whether the affidavit also established probable cause); *Ribeiro*, 397 F.3d at 49-51 (determining that affidavit established probable cause); *Feliz*, 182 F.3d at 87-88 (same); accord *United States* v. *Rivera*, 825 F.3d 59, 66 (1st Cir.) (cited at Pet. 19), cert. denied, 137 S. Ct. 522 (2016).

The First Circuit's expression of "skepticism" in *Bain* thus does constitute a holding that might give rise to a circuit conflict, much less one warranting this Court's intervention. Furthermore, even if *Bain*'s expression of skepticism amounted to a holding, it would not conflict with the decision below because Agent Bates's affidavit did not establish probable cause based

only on "the combination of the fact that a defendant sells drugs and general information from police officers that drug dealers tend to store evidence in their homes." 874 F.3d at 23-24. It instead included information about the specific practices of this particular conspiracy. See pp. 9-10, *supra*. *Bain* thus does not indicate that the First Circuit would suppress the evidence seized pursuant to the search warrant at issue in this case.

c. Finally, petitioner errs in contending (Pet. 19-20) that the decision below conflicts with the decisions of five state courts of last resort. Each of those state decisions addressed warrant affidavits that were substantially different from Agent Bates's affidavit here, and none of those decisions adopted a "rule" (Pet. 20) that would require suppression in petitioner's case.

In *Ex parte Perry*, 814 So. 2d 840 (Ala. 2001), for example, the Supreme Court of Alabama found an affidavit insufficient to provide probable cause to search the defendant's residence where the affidavit did not explain "how the officers came to know" that the defendant lived at the home; "indicate[d] that individuals engaged in the sale of illegal drugs may keep those illegal drugs at their residence *or* a 'stash house,' thereby identifying two possible locations in which officers might find illegal drugs, without providing any cause to search one location over the other"; and did not establish that the defendant in that case was part of a large drug-trafficking conspiracy involving other co-conspirators who stored drugs in their homes or garages for future distribution. *Id.* at 842-843 (emphasis added). Given the differences between the affidavit in *Perry* and Agent Bates's affida-

vit here, the fact-bound decision in *Perry* does not indicate that the Supreme Court of Alabama would disagree with the decision below.

The warrant affidavit at issue in *Commonwealth* v. *Pina*, 902 N.E.2d 917 (Mass. 2009), likewise lacked some of the indicia of probable cause contained in Agent Bates's affidavit. In particular, the affidavit in *Pina* "provide[d] no details about the amount and quantity of drugs the defendant had sold in the past, or any other facts tending to demonstrate that the defendant sold drugs from his apartment or that he kept his supply of drugs there." *Id.* at 920. *Pina* thus does not show that the Supreme Judicial Court of Massachusetts would take the view that Agent Bates's affidavit, which did describe petitioner's participation in multiple large-quantity drug sales, was insufficient to establish probable cause for a search of petitioner's home. Indeed, since *Pina*, the Massachusetts court has recognized that "'no bright-line rule can establish whether there is a nexus between suspected drug dealing and a defendant's home'" and that such a nexus "may be found in 'normal inferences as to where a criminal would be likely to hide the drugs' he sells." *Commonwealth* v. *Colondres*, 27 N.E.3d 1272, 1281 (Mass.) (brackets, citations, and ellipsis omitted), cert. denied, 136 S. Ct. 347 (2015).

The cases petitioner cites from Arkansas and Kansas are similarly inapposite, because the warrant affidavits in those cases did not establish that the defendants in question had repeatedly distributed large quantities of drugs. See *Yancey* v. *State*, 44 S.W.3d 315, 321 (Ark. 2001) (affidavit established only that, on one occasion, the defendants had watered 18 marijuana plants growing "some five to six miles from the homes to be searched");

State v. *Longbine*, 896 P.2d 367, 371 (Kan. 1995) (affidavit stated that the defendant had at least one conversation with a drug dealer in which the two discussed a drug transaction, but the affidavit did not specify whether the drug transaction involved the defendant). Furthermore, neither of those decisions adopted any "rule" (Pet. 20) that would have precluded the issuance of a search warrant based on the specific facts presented in Agent Bates's affidavit. See *Yancey*, 44 S.W.3d at 319-324; *Longbine*, 896 P.2d at 370-372.

Finally, *State* v. *Tester*, 592 N.W.2d 515 (N.D. 1999), does not indicate that the North Dakota Supreme Court would disagree with the decision below. In *Tester*, a police detective provided a magistrate judge with information indicating that the defendant was trafficking in narcotics that he received in packages shipped from Colorado. See *id.* at 521-522. But the officer also told the magistrate judge that the defendant had received all those packages at one address (his parents' home), while the warrant authorized the search of another residence in a different location (the defendant's trailer). See *id.* at 517-519, 521. The North Dakota Supreme Court's fact-bound conclusion that those assertions did not establish "a sufficient nexus to search the trailer home," *id.* at 522, does not demonstrate that the court would disagree with the decision below in the distinct circumstances of petitioner's case.

3. Even if the question presented warranted this Court's review, this case would be an unsuitable vehicle to address it because the good-faith exception to the exclusionary rule provides an independent basis for reversing the district court's suppression order. See Gov't C.A. Br. 21-23 (arguing that the good-faith exception applies).

As this Court has explained, the exclusionary rule is a "'judicially created remedy'" that is "designed to deter police misconduct rather than to punish the errors of judges and magistrates." *United States* v. *Leon*, 468 U.S. 897, 906, 916 (1984) (citation omitted). "As with any remedial device, application of the exclusionary rule properly has been restricted to those situations in which its remedial purpose is effectively advanced." *Illinois* v. *Krull*, 480 U.S. 340, 347 (1987). And because suppression "cannot be expected, and should not be applied, to deter objectively reasonable law enforcement activity," the exclusionary rule does not apply "where [an] officer's conduct is objectively reasonable." *Leon*, 468 U.S. at 919. Instead, to justify suppression, "police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system" for the exclusion of probative evidence. *Herring* v. *United States*, 555 U.S. 135, 144 (2009).

With specific respect to warrants, this Court has long held that evidence should not be suppressed if it was obtained "in objectively reasonable reliance" on a search warrant, even if that warrant was subsequently held invalid. *Leon*, 468 U.S. at 922. Rather, suppression of evidence seized pursuant to a warrant is not justified unless (1) the issuing magistrate was misled by affidavit information that the affiant either "knew was false" or offered with "reckless disregard of the truth"; (2) "the issuing magistrate wholly abandoned his judicial role"; (3) the supporting affidavit was "'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable'"; or (4) the warrant was "so facially deficient—*i.e.*, in failing to particularize the place to be searched or the things to be seized—that the

executing officers could not reasonably presume it to be valid." *Id.* at 923 (citation omitted). As the Court has emphasized, "evidence obtained from a search should be suppressed only if it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment." *Id.* at 919 (citation omitted).

The district court in this case plainly erred in finding that "a reasonably well-trained officer would have known that the search was illegal, despite the search warrant being issued."* Pet. App. 25a; see *id.* at 25a-27a. Petitioner does not challenge the particularity of the warrant or contend that the magistrate judge either was misled by the affidavit or wholly abandoned his judicial role, and at a minimum, the affidavit was not "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." *Leon*, 468 U.S. at 923 (citation omitted). And the court of appeals' own

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* As noted, the government raised the good-faith exception in the court of appeals but did not discuss it in opposing suppression in the district court. Pet. App. 8a-9a, 25a-27a; see Gov't C.A. Br. 21-23. Accordingly, plain error review applies. Fed. R. Crim. P. 52(b). Under that standard, the government would need to show (1) an error; (2) that is plain, *i.e.*, clear or obvious; (3) that affects substantial rights; and (4) that, if left uncorrected, would seriously affect the fairness, integrity, or public reputation of judicial proceedings. *United States* v. *Olano*, 507 U.S. 725, 732-736 (1993); Fed. R. Crim. P. 52(b). Because the government was prejudiced by the district court's misapplication of the good-faith exception, through the exclusion of evidence, and exclusion of the evidence would seriously affect the fairness and integrity of the proceedings by foreclosing the presentation of direct and probative evidence of a crime, only the first two prongs are addressed in the text.

prior decisions would have bolstered a reasonable officer's belief that the search warrant was valid. See *Davis* v. *United States*, 564 U.S. 229, 239 (2011) (holding that suppression is inappropriate "when the police conduct a search in objectively reasonable reliance on binding judicial precedent"). By the time the magistrate judge issued the search warrant for petitioner's home, the Seventh Circuit had repeatedly upheld warrants to search drug dealers' residences where the supporting affidavit indicated that the defendant was an active drug dealer and that, based on the affiant's training and experience, drug traffickers generally store drug-related evidence in their residences. See, *e.g.*, *United States* v. *Orozco*, 576 F.3d 745, 747-750 (2009) (upholding warrant to search defendant's residence where the government's affidavit stated that the defendant was the second-in-command of a large-scale drug-trafficking gang and that the affiant agent knew from his experience that high-ranking gang members often keep drug-related evidence at home), cert. denied, 559 U.S. 916 (2010); *United States* v. *Lamon*, 930 F.2d 1183, 1190 (1991) (upholding warrant to search defendant's primary residence where his secondary residence contained considerable evidence of his illegal drug dealing and where affiant agent stated that, in his experience, drug dealers often hide incriminating evidence at their permanent residences); cf. *United States* v. *Sewell*, 780 F.3d 839, 846 (7th Cir. 2015) ("[I]t was * * * entirely reasonable to believe that [the defendant] operated his drug business from the home, as other drug dealers do.").

Because the evidence seized from petitioner's home is thus admissible under the good-faith exception to the exclusionary rule, the question presented in the petition

is not outcome-determinative here. This Court's intervention is accordingly is unwarranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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