

No. 18-8202

In the Supreme Court of the United States

WALTER RONALDO MARTINEZ ESCOBAR,

Petitioner,

v

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the Eighth Circuit

REPLY IN SUPPORT OF PETITION
FOR A WRIT OF CERTIORARI

Mark D. Nyvold
Counsel of Record
Mark Nyvold, Attorney at Law
7671 Central Ave. NE
Suite 207
Fridley, MN 55432
(763) 276-9173
marknyvold@gmail.com

Counsel for Petitioner
Member of the Bar of this Court

TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities	ii
Reply Argument	1
Conclusion	3

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>United States v. Proell</i> , 485 F.3d 427 (8 th Cir. 2007)	1-2

REPLY ARGUMENT

The Government asserts that Escobar’s case would not be a suitable vehicle for deciding whether facts known to the warrant-affiant, but not included in the warrant-affidavit, can be considered in determining whether the affiant and fellow-officers acted in good-faith in executing the warrant (Govt. Brief, 15-16).

The Government says this because, in its view, the record does not show that the good-faith determination the Eighth Circuit Court of Appeals made rests on facts outside the warrant-affidavit. (*Id.*, 16). But the record shows it does.

To begin with, the District Court in its Order denying Escobar’s suppression motion — though stating that the warrant-affidavit “. . . outlined many other aspects of the suspected drug ring, giving the issuing judge more than sufficient probable cause to order a search of the Prescott house.” (Petition, App. 33a) — also said it was relying on the good-faith exception, based on facts outside the warrant-affidavit.

The District Court did so when it wrote “And in any event, although the R & R did not address this issue, the good-faith exception applies here.” Pet. App. 33a. The District Court subsequently cites *United States v. Proell*, 485 F.3d 427, 430 (8th Cir. 2007), and says “Here, the officers executing the warrant knew all of the information that defendant contends should have been presented to the issuing

judge.” Pet. App. 34a.

As for the Eighth Circuit’s decision, it likewise makes explicit that its good-faith determination rests on facts outside the affidavit. The decision does not even address whether the warrant stated probable cause, and proceeds directly to a good-faith analysis. Pet. App. 14a. It then cites *Proell*’s statement that “. . . we must look to the totality of the circumstances, including any information known to the officers but not presented to the issuing judge.” *Id.*, 14a. The Eighth Circuit hence based its good-faith determination on facts outside the record.

CONCLUSION

Contrary to the Government's claim, Mr. Escobar's case presents a suitable vehicle for this Court to address the good-faith exception's application when law-enforcement does not rely on the warrant, but on facts outside it. Escobar requests that this Court grant the Writ and decide the question his Petition presents, and simultaneously resolve the existing Circuit split on this question.

May 3, 2019.

Mark D. Nyvold

Counsel of Record

Mark Nyvold, Attorney at Law

7671 Central Ave. NE

Suite 207

Fridley, MN 55432

(763) 276-9173

marknyvold@gmail.com

Counsel for Petitioner

Member of the Bar of this Court