No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2019

JAMES LYLE,

Petitioner,

– v. –

UNITED STATES OF AMERICA,

Respondent.

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

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QUESTIONS PRESENTED FOR REVIEW

First Question Presented

Under the Fourth Amendment and *Byrd v. United States*, 584 U.S. ___ (2018), may a person who operates a rental vehicle without a valid driver's license nevertheless have a reasonable expectation of privacy in the vehicle's locked trunk compartment, where the person enjoys exclusive, non-criminal possession and control over the vehicle's trunk, and where the person has affirmatively exercised their ability to exclude others from the trunk?

Second Question Presented

When the police seize a vehicle without a warrant or probable cause under the "community caretaking" exception to the Fourth Amendment established in *Colorado v. Bertine*, 479 U.S. 367 (1987), must the seizure be effected pursuant to a "standard procedure," as held by the U.S. Courts of Appeals for the Seventh, Eighth, Tenth, and D.C. Circuits, or is the warrantless seizure justified as long as a reviewing court can determine on an *ad hoc* basis that the seizure was reasonable, as the First, Second, Third, and Fifth Circuits have held?

LIST OF PARTIES

In addition to the parties mentioned in the caption of the case, parties to the proceeding whose judgment is sought to be reviewed include Mr. Lyle's codefendants:

Michael Van Praagh (aka Sealed Defendant 1)

and

Anthony Tarantino (aka Sealed Defendant 2).

LIST OF RELATED PROCEEDINGS

- *United States v. Michael Van Praagh & James Lyle*, No. 14 Cr. 189 (PAC), U.S. District Court for the Southern District of New York. Memorandum order entered October 1, 2014. Judgment entered March 25, 2015.

- *United States v. James Lyle, et al.*, Nos. 15-958-cr (L); 15-1175-cr (CON), U.S. Court of Appeals for the Second Circuit. Judgment entered May 9, 2017. Order denying petition for *en banc* rehearing issued June 14, 2017. Amended judgment entered April 1, 2019. Order denying petition for *en banc* rehearing issued May 20, 2019.

- *James Lyle v. United States*, No. 17–5992, U.S. Supreme Court. Order granting *in forma pauperis* status, grating certiorari, vacating judgment, and remanding to Second Circuit entered June 22, 2018.

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The petitioner, James Lyle, respectfully prays that this Court issue a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Second Circuit entered in *United States v. James Lyle, et al.,* Nos. 15-958-cr(L), 15-1175-cr(CON), 919 F.3d 716 (2d Cir. 2019), which is attached to this petition as Appendix A.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit was published in the Federal Reporter at 919 F.3d 716, and is attached as Appendix A.

The Court of Appeals' decision affirmed rulings in a memorandum and order dated October 1, 2014, by the Honorable Paul A. Crotty of the United States District Court for the Southern District of New York, in case number 14-cr-189, which denied Mr. Lyle's motion to suppress evidence claimed to have been obtained in violation of the Fourth Amendment's prohibition on unreasonable searches and seizures. That memorandum and order is attached as Appendix B to this petition.

JURISDICTIONAL STATEMENT

The United States District Court for the Southern District of New York assumed jurisdiction over Mr. Lyle's criminal trial pursuant to 18 U.S.C. § 3231. The district court entered a judgment against Mr. Lyle on March 25, 2015.

Mr. Lyle filed a timely notice of appeal to the United States Court of Appeals for the Second Circuit on March 30, 2015. The Second Circuit assumed jurisdiction pursuant to 28 U.S.C. § 1291 and affirmed the district court's judgment in an opinion dated May 9, 2017. Mr. Lyle filed a timely petition for *en banc*

rehearing to the Second Circuit on May 23, 2017. The Second Circuit denied Mr. Lyle's petition for rehearing in an order dated June 14, 2017.

Mr. Lyle filed a timely petition for certiorari to this Court on September 12, 2017. In a June 22, 2018 order, this Court granted certiorari, vacated the judgment, and remanded to the Second Circuit for further consideration in light of *Byrd v. United States*, 584 U.S. ___, 138 S. Ct. 1518 (2018). *See Lyle v. United States,* No. 17–5992, 138 S. Ct. 2024 (2018).

Following remand, the Second Circuit issued a revised opinion on April 1. 2019, again affirming the district court's judgment. *See* Appendix A. Mr. Lyle filed a timely petition for *en banc* rehearing on April 15, 2019. The Second Circuit denied Mr. Lyle's petition for rehearing in an order dated May 20, 2019. *See* Appendix C.

Mr. Lyle again invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1254(1), through the timely filing of the instant petition for writ of certiorari.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment of the United States Constitution states, in relevant part, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." *See* U.S. Const. amend. iv.

STATEMENT OF THE CASE

Mr. Lyle was convicted in the Southern District of New York, following trial, of one count of conspiracy to distribute methamphetamine and one substantive count of methamphetamine distribution.[1] The primary physical evidence against Mr. Lyle consisted of a quantity of methamphetamine seized by the New York Police Department from the trunk of a rental car Mr. Lyle had been operating. The vehicle had been lawfully rented by Mr. Lyle's girlfriend, and there is no dispute that she had authorized Mr. Lyle to access the vehicle, including — as relevant to this petition — the vehicle's trunk compartment. Mr. Lyle himself, however, was not named on the vehicle's rental agreement and, on the date of his December 11, 2013 arrest, his driver's license had been suspended.

At the time police seized the vehicle, it was lawfully parked in midtown Manhattan. Indeed, nothing in the record supports any finding that the vehicle was illegally parked, creating or likely to create a nuisance, or otherwise subject to greater risk of damage than any other legally-parked car in midtown Manhattan. While Mr. Lyle concedes that he had previously driven the vehicle to the spot where it was lawfully parked, he was not operating the vehicle at the time he was first approached by the police. Rather, he was standing outside and behind the parked vehicle, checking the contents of the vehicle's trunk compartment, which

[1] *See* 21 U.S.C. §§ 841, 846.

he shut and locked when he noticed police officers approaching. These officers, having observed a knife clipped to Mr. Lyle's front pants pocket, and suspecting that it might be a form of knife that is illegal in New York, asked for Mr. Lyle's consent to search the vehicle, which Mr. Lyle declined. The police responded that they did not need Mr. Lyle's permission to search the vehicle and proceeded to arrest Mr. Lyle for possessing a prohibited knife. Only after this point did the police determine that Mr. Lyle's license had been suspended, indicating that they had already made their determination to search the trunk for criminal evidence prior to any later-fabricated concerns about Mr. Lyle's ability to drive the car after the completion of his arrest processing for possessing the knife. The police seized the legally-parked vehicle, ostensibly under their "community caretaking" function, but without applying any standardized procedure or criteria in support of the seizure. During a subsequent inventory search, the police discovered methamphetamine in the vehicle's locked trunk compartment.

Mr. Lyle moved to suppress the methamphetamine as the fruit of an illegal seizure and search, and also moved to suppress a post-arrest statement that Mr. Lyle argued had been obtained in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966). The district court permitted an evidentiary hearing on the *Miranda* issue, but refused to allow Mr. Lyle to present any evidence concerning his Fourth Amendment challenge, including evidence of the officer's improper motive of

seizing the vehicle to search for criminal evidence. Indeed, the government successfully objected on several occasions at the hearing when counsel for Mr. Lyle attempted to develop a record concerning the facts of Mr. Lyle's arrest and the seizure of the vehicle. The district court held that, because Mr. Lyle was not named on the rental agreement with the car rental company, he had no reasonable expectation of privacy in the vehicle's trunk and thus lacked standing under the Fourth Amendment. *See* Appendix B at 5–6, 12–13. Alternatively, the district court held that the warrantless seizure of the vehicle was a valid exercise of the "community caretaking" exception to the Fourth Amendment, and that the search that ensued was an appropriate inventory search following that seizure. *See id.* at 6–7, 13. Mr. Lyle timely appealed the district court's judgment, seeking (among other things) appellate review of both the district court's standing determination as well as its application of the "community caretaking" exception.

The Second Circuit initially issued an opinion on May 9, 2017, which held that Mr. Lyle lacked Fourth Amendment standing to challenge the seizure of a rental car in his lawful possession, as well as to object to the search of its trunk compartment, because he was not the vehicle's named lessee, and because his driver's license had been suspended at the time of the search. Mr. Lyle filed a timely motion for an *en banc* rehearing on May 23, 2017, which the Second Circuit denied in a three-sentence order dated June 14, 2017. Mr. Lyle subsequently filed

a timely petition for certiorari to this Court on September 12, 2017, accompanied by a motion to proceed *in forma pauperis*. That petition was docketed in this Court as case number 17–5992.

While Mr. Lyle's certiorari petition was pending, this Court unanimously decided *Byrd v. United States*, 584 U.S. ____; 138 S. Ct. 1518, 1527 (2018), which held that a person's expectation of privacy is "reasonable" when the person exercises authority analogous to the rights enjoyed by owners of property. Thus, in a summary disposition dated June 22, 2018, this Court granted Mr. Lyle's motion to proceed *in forma pauperis*, granted the writ of certiorari, vacated the Second Circuit's May 9, 2017 judgment, and remanded the matter for further consideration in light of *Byrd*. *See Lyle v. United States*, No. 17–5992, 138 S. Ct. 2024 (2018). On July 8, 2018, both parties filed letter-briefs in the Second Circuit addressing *Byrd*'s application to the matters on appeal.

The Second Circuit issued a revised opinion on April 1, 2019, in which it once again held that Mr. Lyle lacked Fourth Amendment standing to challenge the warrantless search. *See* Appendix A at 17–19, 22–27. In doing so, the opinion below relies primarily on an exception this Court recognized in *Byrd* for when a defendant gains possession of a vehicle through criminal means, since "a person present in a stolen automobile at the time of the search may not object to the lawfulness of the search of the automobile regardless of his level of possession and

control over the automobile." *See id*. at 19 (quoting *Byrd*, 138 S. Ct. at 1529) (internal quotation marks and brackets omitted).

Purporting to apply this principle, the revised opinion explained that Mr. Lyle had no reasonable expectation of privacy in the trunk compartment of the rental vehicle, which was in his lawful possession, because Mr. Lyle's license had been suspended at the time of the seizure of the automobile. *See id.* at 22. Driving a car with a suspended license, the Second Circuit explained, is a violation of N.Y. Vehicle & Traffic Law § 511.[2] *See id.* at 22. Analogizing to the car thief unlawfully present in a stolen car, the Second Circuit concluded that Mr. Lyle's "possession and control of the car was unlawful the moment he started driving it," since although the vehicle was lawfully parked at the time of his arrest, he had admittedly driven the vehicle at some point prior to the arrest. *See id*. at 24, 26. As the opinion further asserts, Mr. Lyle "did not have *lawful* possession and control of the vehicle in the sense that he unlawfully drove the vehicle onto the scene and could not lawfully drive it away." *See id.* at 23 (emphasis in original). Accordingly, the panel once again held that Mr. Lyle lacked standing to challenge the warrantless search of the vehicle's trunk compartment.

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[2] While § 511 prohibits a person with a suspended license from *operating a vehicle*, it places no restriction on that person's lawful ability either to *possess* a vehicle or to lawfully *exclude others* from that vehicle's closed compartments: the two considerations that this Court in *Byrd* held fundamental to a non-lessee's reasonable expectation of privacy in a rental car. *See Byrd*, 138 S. Ct. at 1527–28.

Further, the Second Circuit opined that even if Mr. Lyle had standing to object to the search of the locked trunk compartment, the seizure and resultant search of the lawfully parked vehicle were permissible under the Fourth Amendment's "community caretaking" exception. *See id*. at 19–21; 27–30. The revised opinion cited this Court's opinion in *Colorado v. Bertine*, 479 U.S. 367 (1987), for the principle that police may exercise discretion to seize a vehicle under its "community caretaking" function if "that discretion is exercised according to standard criteria and on the basis of something other than suspicion of evidence of criminal activity." *See* Appendix A at 19–20 (quoting *Bertine*, 479 U.S. at 375). The panel further noted that several of this Court's sister Circuits have divided on how to apply *Bertine*, with four courts — the Seventh, Eighth, Tenth, and D.C. Circuits — requiring that police adhere to standard criteria in some or all cases when seizing a vehicle under the "community caretaking" function, and three courts — the First, Third, and Fifth Circuits — requiring only that the decision to seize the vehicle be "reasonable." *See id*. at 20–21.

Notwithstanding the plain language of this Court's opinion, requiring that the police exercise their discretion "according to standard criteria" when seizing a vehicle without a warrant or probable cause, the panel determined to follow the First, Third, and Fifth Circuits in *not* requiring police to follow standard criteria, but instead considering merely whether the decision to impound "is reasonable . . .

based on all the facts and circumstances of a given case." *See id*. at 27–28 (quoting *United States v. Coccia*, 446 F.3d 233, 239 (1st Cir. 2006)). The panel determined that the seizure of the lawfully-parked vehicle in Mr. Lyle's case was "reasonable" under this standard because "by impounding the vehicle, the officer ensured that the rental vehicle was not left on a public street in a busy midtown Manhattan location where it could have become a nuisance or been stolen or damaged and could have become illegally parked the next day." *See id*. at 29.

Finally, the revised opinion concluded that "there is no indication that the officers did not act in good faith or solely for the purpose of investigation in exercising their discretion to impound the rental car." *See id*. at 29. In so deciding, however, the Second Circuit did not acknowledge that the district court had explicitly prevented Mr. Lyle from inquiring into the officer's motives for seizing the vehicle during the suppression hearing. Nor did the panel acknowledge the sworn affidavit Mr. Lyle had submitted in support of his suppression motion, which indicated that the police had made their determination to seize and search the vehicle even *before* they knew that Mr. Lyle's license was suspended or that he was not the named lessee of the rental car, thus undermining the hypothesized rationale speculated to in the revised opinion. Thus, the panel upheld the validity of the seizure without actually remanding to the district court to determine, in the first instance, "the facts and circumstances of a given case."

Mr. Lyle filed a timely motion for an *en banc* rehearing on April 15, 2019, which the Second Circuit denied in a three-sentence order dated May 20, 2019. Mr. Lyle, through counsel appointed pursuant to the Criminal Justice Act, 18 U.S.C. § 3006A, now files this petition *in forma pauperis* for a writ of certiorari to the Second Circuit.

REASONS FOR GRANTING THE WRIT

I. This Court should grant certiorari on the First Question Presented to resolve an important question of Fourth Amendment law and to provide the lower courts with guidance regarding the scope and application of *Byrd*'s criminal-possessor exception.

Mr. Lyle respectfully requests this Court grant certiorari under U.S. Sup. Ct. R. 10(c) because the first Question Presented raises a fundamental question of Fourth Amendment law left undecided in the wake of *Byrd*. At its most basic level, the question is whether people may be deemed not to have a reasonable expectation of privacy in the closed compartments of a vehicle in their lawful possession and control merely because they are not legally authorized to *drive* the vehicle. And under the Second Circuit's skewed interpretation of *Byrd*'s criminal-possessor exception, a person indeed has no reasonable expectation of privacy in the trunk compartment of such a vehicle — even, potentially, a vehicle *they themselves own* — if they *drive* the car without legal authorization. This Court

should grant certiorari to reverse the Second Circuit and clarify the limits on the narrow criminal-possessor exception set forth in *Byrd*.

In *Byrd*, this Court explained that a person's expectation of privacy is "reasonable" when the person exercises authority analogous to the rights enjoyed by owners of property: chiefly, the right to exclude others:

> Although the Court has not set forth a single metric or exhaustive list of considerations to resolve the circumstances in which a person can be said to have a reasonable expectation of privacy, it has explained that "[l]egitimation of expectations of privacy by law must have a source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society." The two concepts in cases like this one are often linked. "***One of the main rights attaching to property is the right to exclude others***," and, in the main, "***one who owns or lawfully possesses or controls property will in all likelihood have a legitimate expectation of privacy by virtue of the right to exclude***."

See id. at 1527 (emphasis added; internal citations omitted). This is particularly true, this Court noted, with respect to "an individual who has exclusive control of an automobile ***or of its locked compartments***." *See id*. at 1528 (quoting *Rakas v. Illinois*, 439 U.S. 128, 154 (1978) (Powell, J., concurring); emphasis added). Thus, this Court cited the defendant in *Jones v. United States*, 362 U.S. 257 (1960), who "had a reasonable expectation of privacy in his friend's apartment because he "had complete dominion and control over the apartment and could exclude others from it." *See Byrd*, 138 S. Ct. at 1528. Because "the expectation of privacy . . . comes from lawful possession and control and the attendant right to exclude," this Court

explained, even a person lacking a formal proprietary or contractual interest in a vehicle would nevertheless "have the expectation of privacy that comes with the right to exclude." *See id.*

Nevertheless, this Court explained that were a person to acquire possession of a rental vehicle through criminal means, that person would lack a reasonable expectation of privacy in the stolen vehicle. *See id.* ("No matter the degree of possession and control, the car thief would not have a reasonable expectation of privacy in a stolen car.") Yet *Byrd* limits this exception to situations where the defendant's *acquisition* of the vehicle is a crime; that is, where their threshold possession of the vehicle is criminal in nature. Thus, in response to the government's argument that Byrd was similarly situated to a car thief because he had allegedly conspired with a third party to rent the car for him, this Court explained that it "is unclear whether the Government's allegations, if true, would constitute ***a criminal offense in the acquisition of the rental car*** under applicable law." *See id.* at 1530 (emphasis added).

The Ninth Circuit usefully explains *Byrd*'s narrow criminal-possessor exception as an application of the concept of *trespass*: "Like a burglar, trespasser, or squatter, an individual violating a court no-contact order is on property that the law prevents him from entering. We therefore hold that such an individual lacks a legitimate expectation of privacy in that place." *See United States v. Schram*, 901

F.3d 1042, 1046 (9th Cir. 2018). Saliently, a trespasser — one who has criminally violated another's right to exclude — is not one who can reasonably invoke a right to exclude others.

Just as the "right to property" is not a single right, but rather a "bundle" of related but separable prerogatives, including the right to possess, the right to exclude, the right to alienate, and so forth, not all of which are implicated with every item of property, so too can a car be used for several distinct and separable purposes. In particular, while one important use of a vehicle is to use it for driving, that is hardly a vehicle's *only* use, or even necessarily its primary use. A vehicle may also be used to lock and store property in its trunk compartment, a private compartment that is generally separate from the rest of the vehicle and easily accessible to the vehicle's possessor without having to access the passenger compartment of the vehicle, much less operate the vehicle as a driver.[3] Car rental companies routinely understand that nondrivers are going to use a vehicle's trunk to privately store luggage and other valuables — as with, e.g., any family on vacation that rents a car — and there is no reasonable basis to determine that a rental company would refuse to rent to a potential lessee if they knew that a

[3] A car may also be a place people use for sleep and shelter, especially if such people are otherwise homeless. Alternatively, cars may be collected for their aesthetic or investment value, mined by mechanics for their parts, or used by hobbyists for improvement projects. None of these purposes requires a valid driver's license.

nondriver might exercise possession and control over the trunk compartment. Indeed, there is nothing in the record of this case to suggest either that the rental contract here, or rental contracts in general, restrict nondrivers from using a rental vehicle's trunk. Nor does N.Y. Vehicle & Traffic Law § 511 — which prohibits only the "operation" of motor vehicles — impose any restriction on unauthorized drivers lawfully possessing and controlling a vehicle's trunk compartment.

In short, the fact that a person is not authorized to *drive* a vehicle should not be germane to the separate and independent question of whether the person exercises lawful possession and control over the vehicle's trunk compartment. This Court should thus grant certiorari to clarify that the narrow criminal-possessor exception recognized in *Byrd* pertains only to offenses that nullify the lawfulness of a defendant's possession of and control over the area searched.

II. This Court should grant certiorari on the Second Question Presented because the Second Circuit's opinion conflicts with authoritative decisions from the U.S. Courts of Appeals for the Seventh, Eighth, Tenth, and D.C. Circuits, and extends a split between those Circuits and authoritative opinions of the First, Third, and Fifth Circuits.

In addition, Mr. Lyle respectfully requests this Court grant certiorari under U.S. Sup. Ct. R. 10(a) to resolve a Circuit split that presently divides eight U.S. Courts of Appeals concerning the correct application of *Colorado v. Bertine*, 479 U.S. 367 (1987), and the Fourth Amendment's "community caretaking" exception. As the opinion below acknowledges, its resolution of the matter conflicts with the

holdings of four other Circuits, which have required that warrantless seizures under *Bertine*'s "community caretaking" exception be conducted pursuant to standardized criteria in some or all occasions. *See United States v. Duguay*, 93 F.3d 346, 351 (7th Cir. 1996); *United States v. Petty*, 367 F.3d 1009, 1012 (8th Cir. 2004); *United States v. Sanders*, 796 F.3d 1241, 1245 (10th Cir. 2015); *United States v. Proctor*, 489 F.3d 1348, 1354 (D.C. Cir. 2007). In contrast, three other Circuits require only that the seizure be "reasonable" in light of "all the facts and circumstances of a given case." *See Coccia*, 446 F.3d at 239 (1st Cir. 2006); *United States v. Smith*, 522 F.3d 305, 314 (3d Cir. 2008); *United States v. McKinnon*, 681 F.3d 203, 208 (5th Cir. 2012) (per curiam).[4]

The rift between the Circuits on this matter not only undermines the uniform application of constitutional law in the federal appellate courts, but also provides district and State trial-level courts with inadequate guidance concerning which facts are relevant to the inquiry. Further, in eschewing *Bertine*'s requirement that seizures be conducted pursuant to standard criteria, the Second Circuit's holding invites district courts to engage in post-hoc, speculative, and even counterfactual guesswork concerning the police's possible justifications for a seizure of property. Such an approach fails to provide either police officers or the public as a whole with meaningful guidance about which circumstances may justify the seizure of a

[4] Under either of these legal standards, Mr. Lyle's case should be remanded to the district court to enable the district court to engage in the requisite factfinding.

lawfully-parked vehicle that lacks any probable cause of criminal wrongdoing. Indeed, the explanation offered in the opinion below that the lawfully-parked rental vehicle "could have become a nuisance or been stolen or damaged and could have become illegally parked the next day" could be applied with equal force to virtually any lawfully-parked car in midtown Manhattan. It thus takes what ought to be, at most, a narrow exception to a constitutional prohibition and expands it to encompass potentially any situation where criminal evidence has been discovered after the police have already conducted a warrantless seizure of property, rendering the Fourth Amendment's prohibition on such seizures virtually meaningless.

Yet, even were the Second Circuit correct that the applicability of the "community caretaking" exception should be determined by reference to a post-hoc analysis of "all the facts and circumstances of a given case," rather than by using preestablished, standardized criteria, this Court should nevertheless grant certiorari to clarify how district courts should apply this holding in developing the necessary factual record. As noted above, Mr. Lyle specifically sought an evidentiary hearing in the district court to determine such "facts and circumstances" surrounding the seizure of the vehicle; but the district court, sustaining the government's objection, denied him such a hearing. *Bertine* requires that the police's warrantless seizure of a vehicle under the "community caretaking" exception be based on "something other than suspicion of evidence of criminal

activity," *see Bertine*, 479 U.S. at 375; and if the police are going to eschew the safe harbor of following standard criteria in determining which vehicles to seize, the burden ought to lie with the government, not with the defendant, of demonstrating that this element of *Bertine* is satisfied.

In short, the Fourth Amendment guarantees people a right "to be secure in their . . . effects, against unreasonable searches and seizures"; yet people are denied any reasonable sense of security in their property when lawfully-parked vehicles can be seized without a warrant, without probable cause of criminal activity, without prior notice, and without even a set of predetermined and standardized criteria that might provide property owners with reasonable notice regarding the scope of their rights. Leaving it to courts to determine on an *ad hoc*, *post hoc* basis whether a non-pretextual reason might retroactively justify the seizure of lawful property offends the Fourth Amendment and contradicts this Court's ruling in *Bertine*. This Court should thus grant certiorari to resolve the Circuit split and reverse the opinion of the Second Circuit.

CONCLUSION

For the foregoing reasons, the petitioner respectfully prays that this Court grant a writ of certiorari to the Second Circuit regarding both of the questions presented in this petition.

Respectfully submitted,

/s/ Daniel S. Nooter

Date: August 19, 2019

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CERTIFICATE OF COMPLIANCE WITH RULE 33(G)

Undersigned counsel hereby certifies that this petition for certiorari complies with the word-limitation provision of Supreme Court Rule 33(g)(1), as it contains 4,311 words, including footnotes.

/s/ Daniel S. Nooter
Daniel S. Nooter, Esq.