No. 19-6060

ORIGINAL

FILED
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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

VINCENTSCOTTMATHEWS — PETITIONER
(Your Name)

vs.

UNITEDSTATESOFAMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

COLORADO COURT OF APPEAL, TENTH APPEALATE DISTRICT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Vincent S. Mathews - Pro-Se Petitioner #43517013
(Your Name)

U.S. Penitentiary - Florence - High
(Address)

P.O. Box 7000 - Florence, CO. 81226
(City, State, Zip Code)

(Phone Number)

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QUESTIONS PRESENTED

(1) Does U.S. v. Knights, 534 u.s.112,122 s. ct.587,151 L. ed. 2d. 497 (2001) and Griffin v. Wisconsin, 483 u.s. 868,873,107 s. ct. 3164, 971, ed. 2d. 709 (1987). Which were used in Samson v. California, 547 u.s. 843,126 s. ct. 2193, 165. L. ed, 2d. 250(2006) still precedent to be relied on?
If yes, then under the totality of the circumstances does Mathews still have a reasonable expectation of privacy of his person (under the Fourth Amendment),to not be subjected to GPS monitor, to search and investigate State and Federal crimes without a warrant or with no provision in a parole agreement?

(2) According to Colorado law, if a contract/parole agreement doesn't state provisions allowing GPS monitoring to search/investigate for State and Federal crimes outside of probation/parole, without first having a warrant, then is that a Fourth Amendment violation?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

OPINIONS BELOW 1

JURISDICTION 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 3

STATEMENT OF THE CASE 4-5

REASONS FOR GRANTING THE WRIT 6-9

CONCLUSION 10

INDEX TO APPENDICES

APPENDIX A: United States court of appeal's opinion

APPENDIX B: United States district court's opinion

APPENDIX C: Gov. Ex. A-Declaration of CPO Wendy Beach

APPENDIX D: Gov. Ex. B-Declaration of TFO Aaron Anderson

APPENDIX E: Gov. Ex. A-ChronLog of Vincent Mathews

APPENDIX F: Brief/Replybrief of Defendant-Appellant

APPENDIX G: Mathews district court motion to suppress

APPENDIX H: United States response to Mathews motion to suppress

APPENDIX I Mathews reply to United States response to motion to suppress

TABLE OF AUTHORITIES CITED

CASES PAGE NUMBER

United States v. Knights, 534 U.S 112 (2001) 4,5
Samson v. California, 547 U.S 843 (2006) 5
United States v. Mabry, 728 F.3d 1163 (10th Cir. 2013) 4,5
Colorado v. McCullough, 6 P.3d 774 (Colo. 2000) 5
United States v. Pacheco, 884 F.3d 1031 (10th Cir. 2018) 5
United States v. Warren, 556 F.3d 1211, 1216 (10th Cir. 2009) 5
United States v. Glass, 128 F.3d 1398 (10th Cir. 1997) 5

STATUTES AND RULES

Colorado Revised Statute, 17-2-201 4,5
ADministrative Regulation 5
Directive/Community Supervision Lawful Order 5

OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[X] reported at July 1, 2019; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[X] reported at April 20, 2017; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix ______ to the petition and is

[ ] reported at ______; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the ______ court appears at Appendix ______ to the petition and is

[ ] reported at ______; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 1, 2019.

[X] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: ____________________, and a copy of the order denying rehearing appears at Appendix ______.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including ____________________ (date) on ____________________ (date) in Application No. ___A______.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was ______________. A copy of that decision appears at Appendix ______.

[ ] A timely petition for rehearing was thereafter denied on the following date: ____________________, and a copy of the order denying rehearing appears at Appendix ______.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including ______________ (date) on ______________ (date) in Application No. ___A______.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES' CONSTITUTION, AMENDMENT IV:

Protects the rights of the people to be secure in their persons against unreasonable searches and seizures. This fundamental right is preserved by a requirement that searches be conducted pursuant to a warrant issued by an independent judicial officer. A search conducted without a warrant issued upon probable cause is per-se unreasonable subject only to a few specifically established and well-delineated exceptions.

-The attachment of the tracking device constitutes a search within the meaning of the Fourth Amendment, U.S. Const. amend.IV, because the Government physically occupies private property for the purpose of obtaining information.

COLORADO REV. STAT. 17-2-201(5)(F)(1)(D):

-As a condition of every parole, the parolee shall sign a written agreement that contains such parole conditions as deemed appropriate by the board, which conditions shall include but need not limited to the following.....
(D) That the parolee shall make reports as directed by his or her community parole officer, submit to urinalysis or other drug test, and allow the community parole officer to make searches of his or her person, residence or vehicle.
DIRECTIVE /COMMUNITY SUPERVISION LAWFUL ORDER
- No. 14: You shall allow [your] CPO to search your person, vehicle, residence or any property under your control.

STATEMENT OF THE CASE

On April 19,2016, a grand jury indicted the Petitioner on two counts of robbery in violation of 18 U.S.C. 1951(Record on Appeal, here in "ROA", AT 33-35). On September 27,2016, a grand jury indicted the Petitioner on one count of being a felon in possession of a firearm in violation of 18 U.S.C. 922(g)(1). (ROA at 99) After trial, a jury convicted the Petitioner on all counts.(ROA at 552). On May 16, 2018, the Petitioner filed his notice of appeal, on July 1, 2019 the Tenth Circuit of Appeals affirmed the conviction.

The Petitioner was convicted of Colorado state crimes in 2009 and 2011, and was sentenced to imprisonment for a period of time.(ROA at 166). Thereafter, the State of Colorado deemed the Petitioner fit for early release from incarceration. On January 5,2015, the State of Colorado released him to a halfway house in Denver, Colorado.(ROA at 33, 166). On September 10,2015, the State of Colorado deemed the Petitioner fit for "another progressive move", and deemed him fit for detention in his own home. (ROA at 167). Upon this further integration of the Petitioner closer to a freed man's status, he was assigned a new Community Parole Officer(CPO) Wendy Beach. Prior to his movement from the halfway house to home detention, the State of Colorado presented the Petitioner with a document titled "Directive/community Supervision Lawful Order."(ROA at 172-174). This document was a written agreement drafted by the State of Colorado between the Petitioner and the State of Colorado, whereby the Petitioner agreed to abide by the terms and conditions set forth therein and the State of Colorado agreed to not revoke his parole or terminate his participation in community corrections at the halfway house.(ROA at 235).The Petitioner's considerations included the following conditions:

(1) that he would "be monitored by electronic surveillance equipment,"(ROA at 172);(2) that he would "cooperate and comply with all directives given by [his] CPO" without explicit limitation,(ROA at 173); and (3) that he would "allow [his]CPO to search [his] person,vehicle,residence or any property under [his] control" without explicit limitation.(ROA at 173). After agreeing to abide by these terms and conditions, the Petitioner was placed on a location monitoring system called a "cell unit," which simply tracked when the Petitioner was in his residence in order to enforce the curfew provisions of the parole agreement.(ROA at 167).It did not continually track the Petitioner's location.

On October 1,2015, CPO Beach received a call from a detective with the Denver Police Department.(ROA at 235). He represented that he had information that the Petitioner had been present in a vehicle used in a drive-by shooting more than four months earlier. The detective wanted to interview the Petitioner and determine if he had information on this incident. On October 6,2015,the detective reported to CPO Beach that he interviewed the Petitioner. Based on the information reported to her by the detective, CPO Beach conferred with her supervisor and decided to exchange the Petitioner's cell unit system for a global positioning system(GPS)which would monitor his movements continuously anywhere on the globe. The Petitioner was moved to the GPS monitor the next day, on October 7,2015(ROA at 236). A month later, the detective contacted CPO Beach and reported that the Petitioner's wife was wanted in connection with the crime, but the there were no pending charges against the Petitioner in connection with the May drive-by shooting.

At the same time, Aaron Anderson was serving as a task force officer(TFO) with the Bureau of Alcohol,Tobacco,Firearms (ATF) task force.(ROA at 252). In addition to being an ATF TFO, Anderson wore another hat-that of a CPO employed by the Colorado Department of Corrections(CDOC). (ROA at 251-252). Through CDOC and in his role as a CPO, Anderson had access to a location information database that he could use to obtain location information" for a particular offender". (ROA at 252). According to TFO Anderson's sworn declaration, his "access applies to all offenders under supervision of [any] CPO of the CDOC, and is not limited only to those offenders under [his] particular supervision," including the Petitioner who was under the supervision of CPO Beach. TFO Anderson acknowledges that even when he is wearing his ATF,TFO hat instead of his CDOC,CPO hat, he "regularly accesses and makes use of information from the CDOC location monitoring program."

In October 2015, the ATF task force was investigating a series of pawn shop robberies.(ROA at 253). At that time,the ATF task force suspected the Petitioner was involved, TFO Anderson's sworn declaration provides zero information shedding light on why the ATF task force suspected the Petitioner. On January 14,2016, an ATF case agent had TFO Anderson access the CDOC GPS database under authority of Anderson's position as a CPO; the purpose: to search for the Petitioner's GPS data at the time of a robbery. At the behest of the ATF, TFO Anderson did so without a warrant and found that the Petitioner was not close to the location of the robbery.

The next month, in February 2016,TFO Anderson "conducted a parole search of the Petitioner's home of record," even though CPO Beach was the Petitioner's parole officer, It is unclear whether TFO Anderson advised CPO Beach of his intent to conduct a parole search of his home. What is clear is that TFO Anderson "discovered nothing incriminating" during the search of the Petitioner's home.

Subsequently, in March 2016, ATF task force investigators decided that TFO Anderson should look up the Petitioner's GPS data again; this time in reference to robberies on December 21,2015 and March 23,2016. TFO Anderson complied with the order. Anderson warrantless used his access to the CDOC GPS database to aid in the task force's investigation of the pawn shop robberies. TFO Anderson searched for and reported investigation of the pawn shop robberies. Id. The Defendant's information placed his GPS signal in and around one of the pawn shops during a robbery. Id. Afterward TFO Anderson assisted

in executing a search of an address frequented by the Petitioner. However, TFO Anderson's sworn statement notes nothing that was found at the location that would implicate the Petitioner in the robberies, such as stolen goods or cash.

Eventually, the Defendant was arrested and indicted in connection with the pawn shop robberies. During pretrial investigation, he moved the district court to suppress the GPS data on the grounds that TFO Anderson's warrantless search of the CDOC database was unreasonable under the Fourth Amendment. (ROA at 70-73). The district court ordered the Government to provide detailed, written, sworn declarations from CPO Beach and TFO Anderson in order to resolve the Fourth Amendment issues. (ROA at 229-230). The district court relied exclusively on those sworn declarations sand the Defendant's mere status as a community inmate. (i.e. parolee), to deny the Petitioner's request for an evidentiary hearing on the suppression motion. (ROA at 260). The Petitioner also moved the district court to exclude expert testimony related to the GPS data or, in the alternative, to hold a Daubert hearing to determine admissibility of such testimony. (ROA at 80-85). Again, the district court denied the Petitioner's request for an evidentiary Daubert hearing on the basis that the Governments's proposed experts credentials necessarily made his testimony admissible, but adopting the Governments's argument that questioning the accuracy of the proposed expert's opinion (i.e. testing the reliability of those opinions) "is appropriate material for cross examination at trial, but is not an essential" element to determining admissibility. (ROA at 277).

REASONS FOR GRANTING THE PETITION

Mr. Mathews contends that when a State has authorized a search by it's Statues laws and Directives, then and only the can a Parole officer(s) search within the 4th Amendment.

Colorado Revised, CRS 17-2-201, authorizes Parole and probation Officers to search Parolees/ probationers. however, CRS 17-2-201 does not authorize ATF TASK Force Offices to search Colorado State parolees/ probationers without a search warrant.

The Tenth Circuit Court of Appeals has held that the reasonableness of a warrantless search of a parolee without probable cause is an "instance in which the contours of a federal constitutional rights are determined, in part by the content of the state law" of the state administering parole. (see, MABRY, 728 f.3d 1163, 1163-1176).

It is clear that Aaron Anderson is both a ATF-Task force Agent and a Colorado Parole Officer. (see, ROA, page 2, Para 4, or Declaration of Task Force Officer Aaron Anderson (Doc. 57-1, Exhibit B), "In June of 2014, became a task force officer ("TFO") with the Bureau of Alcohol Tobacco And Firearms and Explosives ("ATF"). When I became a TFO, I remained a CPO, and maintained my duties with the CDOC including an active supervision caseload.").

Thus in the contours of Colorado Parole, CPO Aaron Anderson has authority to search "HIS PAROLES" without a search warrant, and Mr. Mathews was not Andersons Parolee.

In the Tenth Circuit of Appeals opinion at page 13 it states. " 7* The CSL Order contains the following directive/ lawful order: "You shall allow your CPO to search your person, vehicle, residence or any property under your control." App. Vol. I at 173. Notably, Anderson is not Mathews CPO and, under our precedents, this distinction affects our analysis. See, FREEMAN, 429 F.3d at 749-50 (suppressing evidence seized from a search of a parolee's home conducted "without consent, without the presence of a parole officer [as required by the parole agreement], and in violation of Kansas Department Of Corrections rules governing parole searches"). But see MABRY, 728 F.3d at 1169 ("Under the totality of circumstances [exception], the failure to comply with state policies governing searches of parolees is [only one] factor to consider.") However Mathews did not argue, that Anderson's search was outside the scope of the directive lawful order in the district court and did not brief the argument on appeal. therefore, we decline to address this in the first instance now.

These findings by the Tenth Circuit are in error, due to oversight and or misapprehensions of fact(s) presented by Mathews on the District and Appeal level. Thus Mr. Mathews will point these facts argued then out clearly herein for this Honorable Court.

In the Tenth Circuit the Court should determine whether Colorado state law, and or it's parole Conditions of Mr. Mathews Directive/ lawful order permit ATF- Task Force Officers to search without a warrant for investigative reasons, side stepping the rights of privacy of parolee's.

Under Colorado state law ,"a warrantless parole search is constitutional, absence of "reasonable grounds" only if that "search has meet theses requirements:

(1) it is conducted pursuant to any applicable statue;
(2) it is conducted in furtherance of the purposes of parole; and to the rehabilitation and supervision of the parolee; and
(3) it is not arbitrary, capricious, or harassing." (see, MCCULLOUGH, 6 p.3 at 781).

Here the first requirement, MCCULLOUGH implicates the Colorado parole statute at issue in Mathews case: Colorado Revised Statute 17-2-201(5)(f)(I) or 17-27-5-101, which set out the language of the "Directives/ Lawful Orders" document at paragraph 14. "You shall allow YOUR CPO to search your person, vehicle, residence or any property under your control."

Mathews now points this Court's Attention to the previous times that he argued the first requirement of MCCULLOUGH in his filings that have been overlooked by the Tenth Circuit and District Courts either by error or mistake:

MATHEWS MOTION TO SUPPRESS WARRANTLESS SEIZURE OF GPS TRACKING EVIDENCE, Doc 37 Para. 2 ; "When the federal agents wanted to determine Mathews coordinates,....., the agents simply ask their fellow task force member, Aaron Anderson, to obtain the GPS data for the ATF agents."

Doc 37, para.3; "officer Anderson was also a member of a federal task force, and thus was acting under the authority of a federal law enforcement agency, the ATF."

Doc. 37, para. 5: "However, any wavier that he did sign did not extend to allowing federal officers to access GPS data via a federal task force member; i.e. Officer Anderson."

Doc. 37, para. 5; "any wavier he signed with the state of Colorado Department of Corrections did not extend to allowing a federal task force member to have unfettered access to his constitutionally protected GPS data."

Doc .67, para 3; m" Aaron Anderson occupied two roles in investigation. Anderson was described by the Government as an ATF Task Force Officer ("TFO") as well as an employee of the Colorado Department of Corrections, division of Adult Parole, where his job title was Community Parole Officer ("CPO"). (Gov's Response, Doc 57) The Government asserted that Agent Anderson "served as an ATF TFO, and carries the authorization to investigate federal crimes under his affiliation with the ATF..." [id]

Doc 67, para.6; " you shall cooperate and comply with all directives given by YOUR CPO".

Doc. 67, para 11; "Moreover, as noted by the Government, Mathews agreed to comply with "all directives" given to him by HIS parole officer". [Directive 12].

Doc. 67, para 15; "Those "parolee search polices" have been applied strictly in deterring if Government agents were entitled to engage in searches predicated on the waivers".

App. Open. Brief., pg. 15-16; " The Government does not dispute the Defendant's factual assertions that "[w]hen the federal agents wanted to determine Mathews' coordinates in realtion to a particular time period, the agents simply asked their fellow federal task force member, agent Anderson, to obtain the GPS tracking data for the ATF agents," and "that Officer Anderson ... was acting under the authority of a federal law enforcement agency, the ATF."

App.Op. Br., pg. 16-17; "the Defendant had the right to rely on Colorado State law that explicitly states HIS CPO had no lawful authority to conduct a search of HIS GPS coordinates for law enforcement investigative purpoes. The Government argues that "the fact TO Anderson used the GPS data in his roles both as a CPO and as a TFO of the ATF, and shared the data with fellow TFO agents of the ATF, does not create a Fourth Amendment 'Violation.'"

App. Op. br., pg 17; " CPO TFO Anderson acted as a "front" and a "alter ego" for the ATF task force in searching" Mathews GPS."

Here Mathews argued previously that ATF-TFO Anderson was not Mathews parole officer, that Wendy Beach was, and Colorado Revised Statue 17-2-201 and the Directive/ lawful orders gives ONLY Mathews CPO Beach authority to search without a warrant. As set out in the Directive/ lawful Orders signed by Mathews, the words "YOUR CPO" appears nineteen (19) times in those directives. (see, Doc. 57-1). Not one time in the Directives/ lawful Order does the wavier of his fourth amendment rights flee at the behest of ATF TFO Anderson. (id).

Further, Aaron Anderson concedes that he searched Mathews GPS data as an Agent of the ATF Task Force, not as a Colorado Parole Officer. The title of Anderson's testimony and Affidavit is, "Task Force Officer." (see, Gov's, Ex.B or Doc. 57).

In fact ATF Agent Christopher J. Niculussi, in his "Report of Investigation (ROI) " states which hat of authority Aaron Anderson wore during his search of Mathews: "S A Niculussi was notified by the ATF Task Force Officer (TFO) Aaron Anderson that Mathews was currently on an ankle monitor as part of his terms of parole." (at para. 7, pg. 2) of Summary of event, criminal intelligence investigation Number 788010-16-028.

Then Special Agents of the ATF Nicolussi and Ryan Noble both state that Araron Anderson was conducting searches under the title and hat of the ATF:

"SA Niculussi contacted ATF Officer (TFO) Araon Anderson and requested Global Positioning System (GPS) cordinances for MATTHEWS on January 2, 2016. TFO Anderson located steady GPS coordinaces[.]" (at para. 10).

"SA Ryan Noble made a similar request to TFO Anderson..."(at para. 11, pg. 6)

Therefore in order to search throught Matthews GPS data ATF Agents Ryan Noble, Christopher Nicolussi and Araron Anderson all were required to have a search warrant, and failed the first requirements of MCCULLOUGH. As non Colorado Statute exist for ATF agents to conduct searches without a warrant.

The second requirement of McCullough is a search conducted in furtherance of the purposes of parole i.e. related to the rehabilitation and supervision of the parolee.

(Doc.67,pg.2)" A review of Mathews exhibit one shows that Mathews never waived his rights to a search of his GPS data. The government was not authorized to subject Mathews to a search of his GPS data. In fact, Mathews asserts that he provided his GPS data to his parole agent under protest, because he had not consented to such a search in the wavier he signed with the CDOC."

(Doc.67,pg.4,para.4) "The undersigned has been unable to find any Colorado Statues that authorize this dual role of a Colorado State employee. In fact, the stated purpose of the waiver was to allow Mathews to participate in the I.S.P. program, not to assist a State and Federal agency in an ongoing criminal investigation.(Freeman,479,f.3d.at 784." parolee and probationer searches are examples of the rare instance in which the contours of a federal constitutional right are determined ,in part, by the content of state law.")

(Doc.67,pg.5) " Not only did the terms of the waiver define the rights Mathews was giving up, but also by definition the limitations placed on officers intrusion of privacy. If that was not the case, this form would be merely an example of powers the parole officer could exercise as opposed to specific terms that could subject Mathews to criminal prosecution if violated.

(Doc.67,para.2) The government candidly admitted that the GPS data was seized to advance the federal criminal investigation of Mathews."

Colorado Parole Officer Wendy Beach is Mathews parole officer pursuant to the Directive/Lawful Order and it's conditions signed and agreed to by Mathews on September 10,2015.

The Government concedes to the investigation for purposes outside of parole in it's response to Mathews request for suppression.(Doc.57,pag.3,para.2)" On October 6,2015,due to an investigation into illegal activity that the defendant was suspected to have been involved in with,CPO Beach change the defendant's monitoring system from a cell system to GPS"Thus imposing unwarranted penalties of GPS on Mathews without a parole violation.

What is clear from CPO Beach's" Declaration" is she started an investigation outside of parole purposes for Denver Police Department, Detective Hagan. For an unrelated crime in pursuit of the whereabouts of Ronnette Mathews and other. Although Mathews had not been arrested and in fact was interviewed with Det. Hagan, CPO Beach increased Mathews parole provisions from cell unit to GPS based on information given by Det. Hagan as part of Denver's investigation for reasons outside of parole, Mathews was placed on GPS by Beach.

For every parolee on a CPO's caseload, CPO's are required to keep "Chronological" (CHOR) records of each event surrounding the parolee on their caseload. Herein, CPO Wendy Beach has provided (CRON) for her parolee Mathews. This shows the mind state and reasons for investigating with the Denver Police.

What is devoid from the record is the (CRON) records from CPO Anderson concerning parolee Mathews. Moreover the reasons Anderson began investigating Mathews wearing the hat of a Colorado Parole Officer.

(Gov.Ex.B,pg.3,para.1)(Declaration of Task force officer Aaron Anderson)"In this case(fed. Case),I was involved in the investigation of a string of pawn shop robberies(fed. Investigation) though I was not the primary case agent.

(Ex.B,pg.3,para.2)" As the investigation continued(fed. Investigation), Mathews continued to be a somewhat peripheral suspect. On January 14,2016, the case(fed)agent in the investigation requested that I look up location information for Mathews on the day between 11am and 12pm, because a robbery had just occured at a pawn shop in Federal Heights. I looked up the information, and determined that Mathews had not been in the vicinity of that robbery."(Ex.B,pg.3,para.3) " To the best of my recollection, in late March, 2016, after the March 23,2016, pawn shop robbery, the investigators(fed. Agents) in the case decided we should look up Mathews location information during December 21, and March 23,2016, pawnshop robberies. At that point I accessed BI's location monitoring web database(as a TFO agent), and discovered that his GPS was in the area.

Above it is clear that Aaron Anderson repeatedly accessed Mathews GPS data wearing the hat of the ATF,task force without a warrant. ATF Anderson states how " I was involved in the investigation of a string of pawn shop robberies, I was not the primary case agent." Anderson's "I" is him as an ATF Task Force Officer in this paragraph. Then Anderson's use of the word "we" as he includes his self in the decision making process of the ATF as an ATF,TFO agent."We attempted to determine the identities of the individuals who were committing robberies."

Again Anderson uses "we" in the jest of acting as as ATF,TFO,agent." the investigators in the case decided we should look up Mathews location."

ATF Anderson has sworn to these facts under penalty of perjury as truth. That truth is ATF Anderson used his CPO pin number to access a Colorado State authorized web database as an ATF,TFO agent, thus avoiding the inconvenience of complying with the Constitutions warrant requirement, for purposes outside of parole, and wasn't Mathews parole officer.

The third and final requirement of McCullough is that the Colorado State law in which Mathews relies on, " is arbitrary, capricious, or harassing."

The Fourth Amendment gives U.S. citizens the right to be secure in their persons and property. Because Mathews was a person convicted of a crime and on parole that right was somewhat diminished, due to the CSL/Directives agreement.

The CSL allowed Mathews CPO Beach to search his person and property without a warrant. The CLS doesn't extend to Denver Police,ATF, other law enforcement or Colorado Parole Officers Mathews is not assigned to.

When law enforcement agencies search a Colorado Parolee without the presence of [his] CPO a warrant is needed and to do so without one is arbitary,capricious, and harassing.

The CLS/Directives allows Mathews CPO Wendy Beach to search his person and property under Mathews control without a warrant.(no.4" You are yo be monitored by electronic surveillance equipment and you are responsible for the care, safekeeping, and return of the equipment. You may be required to install your electronic monitoring equipment as instructed by [your CPO] or a representative of a contracting agency. Installation shall be made immediately upon your return to your residence of record." (Gov. Ex. Doc.57-1at 4).

The fact that ATF,TFO, Anderson relied on the CLS/Directive in his Declaration to access Mathews GPS data was arbitary,capricious,and harassing. The Government conceded to the fact that TFO Anderson used the GPS for the ATF investigation(Gov.Doc.57)

Mathews challenge to the CLS order is and was that the CLS order only gives his CPO Wendy Beach authority to search his person for parole without a warrant. As directives state the words [your CPO], not any CPO. (Doc.57-1 at 4,14)

When Mathews signed the CLS/Directive order he believed that only Wendy Beach his CPO [your CPO] was allowed to search him, not ATF,TFO Anderson.

Thus Mathews did contest and argue TFO Andersons ability to access Mathews GPS data in this light, " your CPO" and for Tenth Circuit of Appeals to say," however Mathews did not argue that Anderson's search was outside the scope of the Directive/Lawful Order in the District Court and in the Appeals Brief argument on Appeal.Therefore,we decline to address this issue in the first instance now." Was facts over looked by mistake or error.

[SPECIAL NEEDS]- There where no special needs, beyond normal law enforcement that may justify departures from the usual warrant and probable cause requirements. The governmental interest at stake in Mathews case was the mere "normal need " for law enforcement to investigate crimes, not to enforce Mathews release terms.

The Supreme Court has recognized two expectations to the Fourth Amendment's warrant requirement in the parolee/probationer context(first is special need), the second expectation known as the totality-of-the-circumstances expectation, authorizes warrantless searches without probable cause or even reasonable suspicion by police officers with no responsibility for parolees or probationers when the totality-of-the-circumstances renders the search reasonable. (Warren,566 f. 3d.1211,1216,10th Cir.)(citing Samson v. California, 547, vs. 843,2006),(U.S v. Knights, 534, u.s 112,2001).

The totality -of-the- circumstance expectation is predicated on

(1.) the reduced or absent expectation of privacy for probationers and parolees and

(2) the needs of law enforcement. "When the terms of a parolee's parole allow officers to search his person or effects with something less than probable cause, the parolee's reasonable expectation of privacy is significantly diminished"(U.S v. Pacheco,884 f.3d.1031,1041,(10thCir. 2018)

Totality Fact 1- Mathews argued the terms of the CLS Order, no directive the Mathews signed allowed CPO Beach to change his "cell unit" to a GPS monitor, so that CPO Beach and ATF,TFO Anderson could help State and Federal law enforcement investigate crimes outside of parole/I.S.P.(Gov.Ex.A,Doc.37,67)

Totality fact 2- What is missing from the record is there are no parole violations for the shooting and pawn shop robberies. CPO Beach never violated Mathews parole once, never told the Colorado Parole Board what was going on, in fact Mathews was granted parole March 15,2016(CRON. record of Mathews,Gov.Ex.A)

Totality fact 3- The whole purpose of CPO Beach switching Mathews to GPS was to help law enforcement track, search Mathews, to aid Colorado law enforcement in a ongoing investigation(that to this day Mathews was never charged with the drive by shooting)(Doc.37,67,57,Appeals brief,Gov. Ex.A)

Totality fact 4- TFO,ATF,CPO Anderson's search and use of Mathews's GPS was not to enforce CDOC polices, but to aid fellow ATF agents in an on going investigation, so Federal agents wouldn't have to get a search warrant, going around the Fourth Amendment.(Doc.37,67,57)(Appeals Brief)(Gov.Ex.B)

Totality fact 5- Mathews argued that none of these terms(using GPS to investigate State/Federal crimes) was in his CLS Order/Directive/lawful orders that he signed September 10,2015, and in fact he did protest the change to GPS to CPO Beach. (Doc.67,pag.1,2)

SUPPRESSION HEARING

Evidence that would have been presented at an evidentiary hearing on the Petitioner's suppression motion would have aided the district in making the factual determinations. Such evidence likely would have included the testimony of CPO Wendy Beach to determine how the document was characterized to the Petitioner, the testimony of task force officers to determine whether their suspicions were reasonable, and the testimony of the Petitioner to determine whether there was a " meeting of the minds", a knowing and voluntary waiver, or whether he had a subjective belief that this was a simple acknowledgment.

The District Court and Appeal's Court abused it's discretion, overlooked facts when it denied the Petitioner's motion for a Suppression Hearing despite the fact that a material factual dispute existed which was necessary to resolve the question of the Petitioner's expectation of privacy. A question precedent to whether the acquisition of his GPS data unreasonable violated that expectation of privacy as protected by the Fourth Amendment.(Appeals brief,page29)

Additionally, there was an outstanding question of material fact as it relates to reasonable suspicion. The record is devoid of information on which the District/Appeal's Court could find the ATF task force's suspicions were reasonable.(Appeals brief,page24)

Mathews believes that when he was switched to the satellite based GPS, he didn't sign any additional waiver, Mathews asserts that he provided his GPS data to his parole agent under protest because he had not consented to such a search in the waiver he signed(Doc.67,para.1,2)

The District Court's denial of the Petitioner's motion for a suppression hearing is an abuse of discretion if the motion to suppress raises factual allegations that are sufficiently definite, specific, detailed and no conjectural to enable the court to conclude that contested issues of fact going to the validity of the search are in issue.(Glass,128f.3d.at 1408-1409,Appeal's brief, page 26)

In the first place, the district court denied the Defendant's motion for a suppression hearing at which any evidence or information might have been presented to the district court to make a finding that the task force's suspicions were, in fact reasonable under the circumstances. Instead, this Court has only the sworn declarations of CPO Wendy Beach(ROA at 234-236) and TFO,CPO Anderson (ROA at 251-253) from which to make this determination. And as to the information TFO,CPO Anderson had at the time of the GPS search in March 2016, this is the sum total demonstrated by the record. CPO Beach's

statement suggests that in May 2015, a drive-by shooting incident occurred in which the Defendant was implicated. However, local law enforcement did not contact CPO Beach about the incident until four months later in October 2015. In October 2015, local law enforcement questioned the Petitioner, but " did not believe immediate arrest was warranted, and said that there were no charges against Mathews at this time".(ROA at 235). This is the sum total of information provided by CPO Beach.

So now this Court needs to look at TFO,CPO Anderson's declaration to determine if it provides sufficient information to support reasonable suspicion at the time of the GPS search in March 2016. Unfortunately, it does not.TFO,CPO Anderson merely declares that " in late October 2015, we [the ATF task force] identified Vincent Mathews as a possible suspecting the [pawn shop] robberies," but fails to identify or articulate an objective reason why.(ROA at 253). It is merely a bold declaration without supporting information. Then, TFO, CPO Anderson jumps straight to January 14,2016, when he conducts a search of the Petitioner's GPS data at the request of the ATF task force (not parole), but fails to provide a reason for conducting the search that day. What the appellate record demonstrates is that despite TFO,CPO Anderson's warrantless search that day, " Mathews had not been in the vicinity of that robbery."(ROA at 253). The record further demonstrates that TFO,CPO Anderson had no particularized or objective basis after searching the Petitioner's home in a parole search in February 2016 and " discovering nothing incriminating." (ROA at 253), Then, in late March 2016-ten months after the drive-by incident, and after ten months of police questionings and interviews that resulted in no arrests and no charges, transitions from home monitoring to GPS monitoring, parole searches which uncovered nothing incriminating, and a GPS search which proved he was not near the robberies searched-" the investigators in the case decided that we should look up Mathew's location information during the December 21,and March 23,2016, pawn shop robberies."(ROA at 253). They decided ? Based on what? The record is silent.

The only objective and articulable information the record points to is a ten-month-old drive-by incident about which the Petitioner was questioned, but not arrested or charged. Other than that, the record points to TFO,CPO Anderson and the ATF task force's mere hunch that the Petitioner was involved in the robberies but never mentions a basis for those suspicious. There is zero evidence in the record to suggest that either law enforcement or CDOC on March 23,2016 had information of an amount and quality that was not so stale that it would support a finding of reasonable suspicion by this Court.(see us v.villanueva, 821,f.3d. 1226,1237, 10th cir. 2016)(weather information is too stale "depends on the nature of the criminal activity, the length of the activity, and the nature of the property to be seized").Because the appellate record is devoid of information to support a finding that reasonable suspicion existed at the time of the GPS search,(based in part on the district court's denial of the Petitioner's motion for an evidentiary hearing,)this Court must alternatively find that the search of the Petitioner's GPS data violates the Fourth Amendment, and order it suppressed.

CONCLUSION:

Considering the facts and legal argument's herein this Honorable Court should grant the Petitioners Request, and remand this case to the appropriate Court for a Suppression Hearing, evidentiary hearing, vacate, remand or new trail. As United States v. Knights, 534 u.s. 112 S.ct. (2001), and Griffin v. Wisconsin, 483 u.s. 868 , S.ct (1987), used in Samson v. California, 547 u.s. 843 S.ct (2006). Give Mr. Mathews the rights to privacy under the Fourth Amendment of the United States Constitution, free from unwarranted searches by State and Federal Authorities. As Colorado (state) law dose not allow searches or investigation upon Probation/parolees without a warrant, for purposes outside of probation or parole.

Respectfully Submitted,
Vincent Mathews
Dated: September 18, 2019