No. _____

IN THE

Supreme Court of the United States

JAVION SCOTT,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In March 2017, a United States Marshal Service search of probationers and supervisees known as "Operation Spring Sweep" involved nearly 200 local, state, and federal law enforcement officers and resulted in fifty-one arrests. Cumberland County Probation Office supervisors directed certain probation officers to select some of their supervisees to participate. One of those selected was the petitioner, Javion Scott. The question presented is:

Whether a warrantless search of a North Carolina post-release supervisee as part of a United States Marshal Service search is a special-needs probationary search governed by *Griffin* v. *Wisconsin*, 483 U.S. 868 (1987), or whether it is, rather, a law-enforcement search subject to the balancing test of *United States* v. *Knights*, 534 U.S. 112 (2001).

LIST OF ALL DIRECTLY RELATED PROCEEDINGS

United States Court of Appeals for the Fourth Circuit, No. 18-4440, *United States* v. *Scott* (opinion entered Oct. 25, 2019)

United States District Court for the Eastern District of North Carolina, No. 5:17-CR-136-H-1, *United States* v. *Scott* (judgment entered June 14, 2018)

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Petitioner Javion Scott respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The Fourth Circuit's opinion is published at 941 F.3d 677 (4th Cir. 2019). Pet. App. 1a-17a. The District Court's judgment is available at Pet. App. 18a-25a. The District Court's order adopting the Magistrate Judge's memorandum and recommendation is unpublished, but available at Pet. App. 26a-28a, and the Magistrate Judge's memorandum and recommendation is also unpublished, but available at Pet. App. 29a-48a.

JURISDICTION

The District Court entered final judgment on June 14, 2018. Pet. App. 18a-25a. The Fourth Circuit had jurisdiction pursuant to 28 U.S.C. § 1291 and entered

judgment on October 25, 2019. Pet. App.1a-17a. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

North Carolina General Statutes § 15A-1368.4 provides, in relevant part:

> (a) In General. - Conditions of post-release supervision may be reintegrative in nature or designed to control the supervisee's behavior and to enforce compliance with law or judicial order. A supervisee may have his supervision period revoked for any violation of a controlling condition or for repeated violation of a reintegrative condition. Compliance with reintegrative conditions may entitle a supervisee to earned time credits as described in G.S. 15A-1368.2(d).
>
> (b) Required Condition. - The Commission shall provide as an express condition of every release that the supervisee not commit another crime during the period for which the supervisee remains subject to revocation. A supervisee's failure to comply with this controlling condition is a supervision violation for which the supervisee may face revocation as provided in G.S. 15A-1368.3.
>
> (b1) Additional Required Conditions for Sex Offenders and Persons Convicted of Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. - In addition to the required condition set forth in subsection (b) of this section, for a supervisee who has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4), or which involves the physical, mental, or sexual abuse of a minor, controlling conditions, violations of which may result in revocation of post-release supervision, are:
>
> (1) Register as required by G.S. 14-208.7 if the offense is a reportable conviction as defined by G.S. 14-208.6(4).
>
> (2) Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the Commission.
>
> (3) Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.

(4) Not reside in a household with any minor child if the offense is one in which there is evidence of sexual abuse of a minor.

(5) Not reside in a household with any minor child if the offense is one in which there is evidence of physical or mental abuse of a minor, unless a court of competent jurisdiction expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the child's best interest to allow the supervisee to reside in the same household with a minor child.

(6) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the offense is a reportable conviction as defined by G.S. 14-208.6(4) and the supervisee is in the category described by G.S. 14-208.40(a)(1).

(7) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the offense is a reportable conviction as defined by G.S. 14-208.6(4) and the supervisee is in the category described by G.S. 14-208.40(a)(2).

(8) Submit at reasonable times to warrantless searches by a post-release supervision officer of the supervisee's person and of the supervisee's vehicle and premises while the supervisee is present, for purposes reasonably related to the post-release supervision, but the supervisee may not be required to submit to any other search that would otherwise be unlawful. For purposes of this subdivision, warrantless searches of the supervisee's computer or other electronic mechanism which may contain electronic data shall be considered reasonably related to the post-release supervision. Whenever the warrantless search consists of testing for the presence of illegal drugs, the supervisee may also be required to reimburse the Division of Adult Correction and Juvenile Justice of the Department of Public Safety for the actual cost of drug screening and drug testing, if the results are positive.

(c) Discretionary Conditions. - The Commission, in consultation with the Section of Community Corrections of the Division of Adult Correction and Juvenile Justice, may impose conditions on a supervisee it believes reasonably necessary to ensure that the supervisee will lead a law-abiding life or to assist the supervisee to do so. The Commission may also impose a condition of community service on a supervisee who was a Class F through I felon and who has failed to fully satisfy any order for restitution, reparation, or costs imposed against the supervisee as part of the supervisee's sentence; however, the Commission shall not impose such a condition of community service if the Commission determines, upon inquiry, that the supervisee has the financial resources to satisfy the order.

INTRODUCTION

Nine law enforcement officers from four different agencies converged on Javion Scott's apartment in the early-morning hours of March 29, 2017. None of them had a warrant. Nor did any of them have any reason to believe that Mr. Scott was committing a crime or violating his conditions of post-release supervision. Notably absent was Mr. Scott's supervising probation officer, Courtney Thomas.

This swarm arrived as part of a joint operation called "Operation Spring Sweep," initiated by the United States Marshals Service. A press release praised the effort's goal of "taking criminals, weapons and drugs off our streets." It lauded fifty-one arrests. Mr. Scott was only selected to be a part of the search because his probation officer was directed to choose some of her supervisees to participate.

By any measure, this was a law enforcement search, and it should have been governed by the balancing test of *United States* v. *Knights*, 534 U.S. 112 (2001). But both the District Court and Court of Appeals applied the special-needs test of *Griffin* v. *Wisconsin*, 483 U.S. 868 (1987) to deny Mr. Scott's motion to suppress. That was wrong and conflicts with this Court's precedents.

The petition should be granted to clarify when each test applies to warrantless searches of probationers and parolees to ensure the Fourth Amendment is not rendered a nullity for these persons.

STATEMENT

1. North Carolina law requires that all persons serving an active sentence in

the Division of Adult Correction of the Department of Public Safety be released on post-release supervision before the maximum term of imprisonment has elapsed. *See* N.C. Gen. Stat. § 15A-1368.2. Certain conditions of supervision are mandated by state law and apply to all persons on post-release supervision. N.C. Gen. Stat. § 15A-1368.4(b),(d),(e), and (f). Other conditions apply only to persons convicted of a sex offense or an offense involving abuse of a minor. N.C. Gen. Stat. § 15A-1368.4(b1).

2. In June 2010, Javion Scott was convicted in the Superior Court of Cumberland County, North Carolina, of violating North Carolina General Statute section 14-27.5(A); he was sentenced to sixty to eighty-one months of imprisonment, including a nine-month term of post-release supervision. Pet. App. 3a. That supervision was governed by the mandatory and discretionary conditions of N.C. Gen. Stat. § 15A-1368.4. Because Mr. Scott's conviction was deemed to be a "sex offense" under the statute, he was subjected to eight additional conditions, including 15A-1368.4(b1)(8), which provides that a supervisee shall:

> Submit at reasonable times to warrantless searches by a post-release supervision officer of the supervisee's person and of the supervisee's vehicle and premises while the supervisee is present, for purposes reasonably related to the post-release supervision, but the supervisee may not be required to submit to any other search that would otherwise be unlawful. For purposes of this subdivision, warrantless searches on the supervisee's computer or other electronic mechanism which may contain electronic data shall be considered reasonably related to the post-release supervision.

Pursuant to this statute, Mr. Scott signed a supervision agreement that required him to "[s]ubmit at reasonable times to searches of my person, premises, or any

vehicle under my control by *my* supervising officer for purposes reasonably related to my supervision." Pet. App. 4a (emphasis added). As a "level 2" sex offender, and a member of a "security risk group," Mr. Scott was also subject to a probation office policy providing for unannounced warrantless searches every 180 days. JA100. Mr. Scott had various supervising officers throughout his period of release, but from November 2016 to the date of the search in this case in March 2017, his supervising officer was Courtney Thomas. Pet. App. 4a.

3. On March 29, 2017, at approximately 7:20 a.m., law enforcement officers from the Cumberland County Sheriff's Office, the Fayetteville Police Department, and the Bureau of Alcohol, Tobacco, and Firearms, and several North Carolina probation officers arrived at Mr. Scott's apartment to conduct a warrantless search. JA170-JA171. Officer Courtney Thomas was not present. JA111.

The search was part of a large-scale operation known as "Operation Spring Sweep," initiated by the U.S. Marshals. JA84. According to the press release issued by the North Carolina Department of Public Safety, "[n]early 200 local, state and federal law enforcement officers" participated. JA43. In the press release, Hope Mills Police Chief Joel Acciardo "thank[s] the U.S. Marshals Service for bringing this campaign to our community." JA44. Spring Lake Police Chief Charles Kimble states that "we are thankful that the U.S. Marshals Service has taken the lead and partnered with local agencies to lead this effort." JA44. Cumberland County Sheriff Ennis Wright says: "It's always good when law enforcement from local, state and federal agencies can come together to achieve a

common goal to protect the citizens of Cumberland County by taking criminals, weapons and drugs off our streets." *Id.* The search was described in probation records as a "U.S. Marshal search." JA147-JA148.

4. As a result of this warrantless search of Mr. Scott's home, car, and cell phone, a complaint was filed in the Eastern District of North Carolina, alleging that Mr. Scott possessed a firearm after having been convicted of a crime punishable by a term of imprisonment exceeding one year. JA14-JA17. He was indicted the next month. JA18-JA20.

Mr. Scott moved to suppress all evidence seized pursuant to this warrantless search. JA21-JA46. A suppression hearing was held before a United States Magistrate Judge, at which Officer Thomas testified. She explained that she only became involved in the Sweep "based on [her] supervisors. They wanted . . . to do searches of offenders." JA84. No evidence was presented that the law enforcement officers participating in Operation Spring Sweep had any individualized, reasonable suspicion of criminal activity or supervision violations by Mr. Scott. Officer Thomas testified she had not "received a tip" that Mr. Scott was engaged in criminal activity and that she had recently lifted Mr. Scott's curfew, which she wouldn't do when a person is "violating" conditions of supervision. JA133.

She said that she selected Mr. Scott because he wore "flashy" jewelry but had no job, but she later admitted he was working a job she described as "unstable." JA163; JA231-JA232. And she agreed that it is "more difficult" for sex offenders to find employment. JA161.

She also claimed that Mr. Scott was "due" for a 180-day warrantless search but admitted that Operation Spring Sweep took place forty-five days before the deadline for Mr. Scott's search under the probation office's policies; they do not appear to be permitted under any state statute and were not included in the conditions that he signed. JA162.

Officer Thomas confirmed she was not present at the search of Mr. Scott's home during Operation Spring Sweep. JA111. She explained that, in response to litigation about other large-scale sweeps, she signed a document purporting to "delegate another officer to search my offender's residences in case I was not at that search." JA113. That document bore no date, but Thomas testified it was drafted before the Sweep. JA128. Written in on the form was the name of Billy Drawhorn, another probation officer who did not attend the search. JA113-JA114. Above Drawhorn's name, which was crossed out, was the name of Becky Staley, the probation officer who was present at the search. JA114. Thomas confirmed she did not write in Officer Staley's name and did not know who did. JA114. And she confirmed that she did not brief Staley on the conditions of the search. JA115.

Becky Staley also testified. She learned she would be searching Mr. Scott's home when she received a list with his name on it. JA167. She also received the form Thomas described: She crossed Drawhorn's name off and added her own. JA168. Staley testified she was the "team leader" for the search and that she was accompanied by three other probation officers, two ATF agents, a Department of

Corrections animal handler, an officer from the Fayetteville Police Department, and one from the Sheriff's Department. JA184.

Jarrett Wishon, an agent with the Bureau of Alcohol, Tobacco, Firearms, and Explosives, also testified. He did not talk to Officer Thomas before the Sweep and had no independent knowledge of Mr. Scott prior to his interaction with him during the Sweep; he found out he would be going to Mr. Scott's home about twenty minutes before the Sweep. JA209. He had no reason to believe Mr. Scott would have a firearm in his home. JA219; JA227.

Upon entry, Wishon saw two guns, a box of ammunition, and a couple of magazines on the ground near the balcony railing. JA213. He also found marijuana and an identification card for Mr. Scott's girlfriend, who stayed at his home. JA214. Officers also searched Mr. Scott's car and found a duffel bag with marijuana and a firearm. JA217.

5. The Magistrate Judge recommended that Mr. Scott's motion to suppress be denied, concluding that warrantless searches are lawful if they comply with a constitutional state law or regulation authorizing such a search for the special needs of supervision; in the Magistrate Judge's view, if they do not comply with such a statute or the statute itself is unconstitutional, they may nonetheless be lawful if they can satisfy the balancing test of *United States* v. *Knights*, 534 U.S. 112 (2001), and *Samson* v. *California*, 547 U.S. 843 (2006). JA305-JA306.

The Magistrate Judge did not conduct the *Knights* and *Samson* balancing test, concluding that the search was justified under the special needs of post-release

supervision. Relevant to this petition, the Magistrate Judge rejected Mr. Scott's argument that the search of his apartment was not reasonably related to the purposes of his post-release supervision because *State* v. *Powell*, 800 S.E.2d 745, 751 (N.C. Ct. App. 2017) requires only that the search be "within the bounds of reason." She found that the search took place at a "reasonable time," that Mr. Scott was "personally selected" by Officer Thomas for the Sweep, and that he was also required to submit to the warrantless search because of his prior conviction for a second-degree sexual offense. JA312.

Mr. Scott objected, but the District Court adopted the memorandum and recommendation. It held, in a two-and-a-half page order, that Mr. Scott's factual and legal objections were "without merit." JA329-JA331.

Ultimately, Mr. Scott pleaded guilty, pursuant to a written plea agreement, to the sole count of being a felon in possession of a firearm. JA386. Although he waived some of his appellate rights, he expressly reserved his right to "appeal the Court's order, filed on February 13, 2018, denying the Defendant's motion to suppress." JA383. The District Court imposed a sentence of seventy-eight months of imprisonment, to be followed by three years of supervised release, as well as a $2,500 fine. JA368-JA369.

6. Mr. Scott appealed and the Fourth Circuit affirmed in a published opinion. Pet. App. 1a-17a. Relevant to this petition, it held that the search of Mr. Scott's apartment was reasonably related to his post-release supervision. It cited its prior opinion in *United States* v. *Midgette*, 478 F.3d 616 (4th Cir. 2007), for the

proposition that even though only probation officers are authorized to conduct warrantless searches under North Carolina law, that authorization does not prohibit them from seeking help from the police department; the court there suggested that a search could even be valid if a police officer suggested it, "so long as the search is authorized and directed by the probation officer." Pet. App. 14a (quoting 478 F.3d at 626). In the Fourth Circuit's view, "NCDPS initiated and supervised the warrantless search of Scott's apartment" even though "the Marshals Service organized Operation Spring Sweep." Pet. App. 15a. In the court's view, it was sufficient that Thomas selected Mr. Scott to be searched in response to a request from her supervisor, probation officers "led the search team into Scott's apartment," and Becky Staley "supervised the search." Pet. App. 15a. It viewed itself as bound by its prior decision in *Midgette*. *Id.*

The court found that Thomas's two reasons for selecting Scott—that he wore "flashy" jewelry and that he was forty-five days from being due for a mandatory warrantless search per policy of the probation office—were sufficiently reasonably related to his supervision and "not for the purpose of furthering general law enforcement goals." Pet. App. 16a.

It concluded by explaining that "no . . . individualized suspicion" of criminal activity is required where a search is reasonably related to post-release supervision. Pet. App. 17a. And it declined to conduct the balancing test of *United States* v. *Knights*, 534 U.S. 112 (2001), in light of its view that the warrantless search qualified as a "special needs" search under *Griffin*.

This petition followed.

REASONS FOR GRANTING THE PETITION

I. THE FOURTH CIRCUIT'S DECISION IS WRONG AND CONFLICTS WITH *GRIFFIN* V. *WISCONSIN* AND *UNITED STATES* V. *KNIGHTS*

The Fourth Amendment protects "the right of the people to be secure in their persons, houses, papers, and effects" against "unreasonable searches." U.S. Const. amend IV. "[T]he physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." *Payton* v. *New York*, 445 U.S. 573, 585 (1980) (quoting *United States* v. *United States District Court for the Eastern District of Michigan*, 407 U.S. 297, 313 (1972)). Warrantless searches are "*per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." *Katz* v. *United States*, 389 U.S. 347, 357 (1967). That is because an "essential purpose of a warrant requirement is to protect privacy interests by assuring citizens subject to a search . . . that such intrusions are not the random or arbitrary acts of government agents." *Skinner* v. *Railway Labor Executives Ass'n*, 489 U.S. 602, 621-622 (1989).

The Government bears the burden of demonstrating that a warrantless search falls within an established exception. *Florida* v. *Royer*, 460 U.S. 491, 500 (1983) (plurality opinion). One of those limited exceptions is the so-called "special needs exception," which applies when "special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable." *New Jersey* v. *T.L.O.*, 469 U.S. 325, 351 (1985).

Under this exception, this Court has upheld a search of a probationer's home where state regulations allowed a warrantless search if there were "reasonable grounds" to believe contraband was present. *Griffin* v. *Wisconsin*, 483 U.S. 868, 880 (1987). In that case, the probation officer received a tip from a detective that the petitioner possessed a firearm, in violation of his terms of release. *Id.* at 870-872. The Court found that those regulations comported with the Fourth Amendment and deferred to the Wisconsin Supreme Court's finding that "reasonable grounds" were present under those regulations. *Id.* at 880 n.8. Critical to the court's analysis was the fact that the probation officer was not

> the police officer who normally conducts searches against the ordinary citizen. He is an employee of the State Department of Health and Social Services who, while assuredly charged with protecting the public interest, is also supposed to have in mind the welfare of the probationer . . . . In such a setting, we think it reasonable to dispense with the warrant requirement.

Id. at 876-877. Rather, a probation officer is in a unique position to judge "how close a supervision the probationer requires." *Id.* at 876. The Court explained: "[W]e deal with a situation . . . in which there is an ongoing supervisory relationship—and one that is not, or at least not entirely, adversarial—between the object of the search and the decisionmaker." *Id.* at 879. The unique role of a probation officer was critical. As Justice Kennedy has explained, "[n]one of our special needs precedents has sanctioned the routine inclusion of law enforcement, both in the design of the policy and in using arrests, either threatened or real, to implement the system designed for the special needs objectives." *Ferguson v. Charleston*, 532 U.S. 67, 88 (2001) (Kennedy, J., concurring in judgment).

So when a search is driven by a law enforcement objective, a different test applies. In *Knights*, this Court affirmed a law-enforcement-drive search of a probationer. Knights was subject to warrantless searches of his person or property, with or without a warrant or "reasonable cause" by any probation officer or law enforcement officer. 534 U.S. 112, 121 (2001). The Court applied a "general Fourth Amendment approach of 'examining the totality of the circumstances,' " with the probation search condition to which Knights was subject as a "salient circumstance." *Id.* at 118.

The Court compared, on the one hand, "the degree to which [the search] intrudes upon an individual's privacy" and, on the other, "the degree to which it is needed for the promotion of legitimate governmental interests." *Id.* at 119 (quoting *Wyoming* v. *Houghton*, 526 U.S. 295, 300 (1999)).

With respect to Knights' privacy interest, it found that the search condition was "clearly expressed" in his probation order and he was "unambiguously informed of it," which "significantly diminished" his reasonable expectation of privacy. With respect to the Government's interest, the Court considered that a probationer "is more likely than the ordinary citizen to violate the law" and have "even more of an incentive to conceal their criminal activities." *Id.* at 120.

It found that the appropriate quantum of suspicion to be applied is "no more than reasonable suspicion," with "a sufficiently high probability that criminal conduct is occurring to make the intrusion on the individual's privacy interest reasonable." *Id.* at 121 (citing *United States* v. *Cortez*, 449 U.S. 411, 418 (1981)). It

held: "Where an officer has reasonable suspicion that a probationer subject to a search condition is engaged in criminal activity, there is enough likelihood that criminal conduct is occurring that an intrusion on the probationer's significantly diminished privacy interests is reasonable." *Id.* at 121. It found that an exception to the warrant requirement was warranted for the same reasons.

Finally, in *Samson* v. *California*, 547 U.S. 843 (2006), the Court upheld another law-enforcement search of a parolee using the *Knights* balancing test. Samson signed an order submitting to a condition that he was required to submit to suspicionless searches by a parole officer or other peace officer "at any time." *Id.* at 852. The search condition was "clear and unambiguous" and "significantly diminished" his reasonable expectation of privacy. *Id.*

Critical to both of these cases driven by law enforcement rather than by the special needs of supervision, the condition used to authorize the search or seizure must be clearly and unambiguously explained to the supervisee. That did not happen with Operation Spring Sweep. Mr. Scott agreed only to "submit at reasonable times to searches of my person, premises, or any vehicle under my control by my supervising officer for purposes reasonably related to my supervision." It was not "clearly expressed" in the documents he signed that he could be subject to warrantless, suspicionless searches of his home at any time; he certainly was not "unambiguously informed." In fact, the governing statute provides that he "may not be required to submit to any other search that would otherwise be unlawful." N.C. Gen. Stat. § 15A-1368.4(b1)(8). He was promised in

his conditions that his supervising officer would be there, JA38; she was not. Although a document was later signed purporting to authorize another probation officer—Drawhorn, and ultimately Staley—to conduct such searches, Mr. Scott was never made aware of this change and certainly did not sign his agreement to it. And even the probation officers who *were* present were not given background on Mr. Scott's case or his history on supervision. JA113-JA115; JA209.

Nor can any legitimate interest of the Government outweigh Mr. Scott's reasonable expectation of privacy. Officer Thomas confirmed that she had, shortly before the Sweep, lifted Mr. Scott's curfew requirements because he was doing well on his curfew. JA132-JA133. She confirmed that she had not received any tip that he was engaged in criminal activity prior to the Sweep. JA132. Her last visit with Mr. Scott prior to the Sweep was only a couple of weeks earlier and she reported no issues with his electronic monitoring at that time. JA91.

An early morning warrantless home search of a supervisee whose curfew had recently been lifted, and who gave his supervising officer no reasonable reason to believe he was violating the law or a condition of his supervision, cannot be justified on the basis of a supervision condition that, at worst, prohibits such a search and, at best, does not "clearly and unambiguously" provide for it.

What is more, the Government here was acting in the opposite of good faith; witnesses at the suppression hearing admitted that they purported to delegate supervision of the search of Mr. Scott's home to another officer in the face of adverse case law. JA112-JA113.

If the courts below had applied *Knights* and *Samson*, as they should have, they would have concluded that Mr. Scott's reasonable expectation of privacy was not so diminished that it must give way to a large-scale warrantless law-enforcement operation. This Court's guidance is needed to clarify that the *Knights* and *Samson* test should apply whenever law enforcement drives the search or seizure of a supervisee and reaffirm that a condition must be "clearly and unambiguously" expressed to a supervisee to calibrate his reasonable expectation of privacy; if it is not, he still retains the hallmarks of Fourth Amendment protection, particularly for his home, the first among equals in that realm.

II. THIS ISSUE IS IMPORTANT AND RECURS FREQUENTLY

Large-scale law enforcement operations that target supervisees for warrantless searches are not unusual or unique. Many such searches have been executed in North Carolina alone in recent years. *See, e.g.*, *United States* v. *Smith*, 2017 WL 4685357 (E.D.N.C. Oct. 18, 2017); *United States* v. *Irons*, 226 F. Supp. 3d 513, 515 n.4 (E.D.N.C. 2016) (discussing Operation Zero Hour in Robeson County, North Carolina, including 180 law enforcement officers from twenty-one participating agencies); Ron Gallagher, *Multiagency Wake County Searches of Parolees, Probationers Lead To 41 Arrests*, The News And Observer, June 29, 2017, https://goo.gl/nKhaXt (discussing Operation Summer Solstice in Week County, North Carolina, involving fifty-six search locations, probation officers, sheriff's deputies, and police officers from ten jurisdictions).

The exclusionary rule's "prime purpose" is to "deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable searches and seizures." *United States* v. *Calandra*, 414 U.S. 338, 347 (1974). That purpose can find no higher use than to stop the routine use of large-scale law enforcement sweeps that operate in the absence of clear and unambiguous conditions allowing their use and setting the reasonable expectation of privacy of supervisees.

III. THIS CASE IS A CLEAN VEHICLE TO DECIDE THE QUESTION PRESENTED

Mr. Scott has litigated the constitutionality of Operation Spring Sweep's search of his apartment at every stage, before the Magistrate Judge, in objections filed with the District Court, in the Court of Appeals and now here. This case cleanly presents the question of which test should apply and, in light of the lack of a clear and unambiguous search condition, the selection of the test is outcome-determinative.

This Court should grant the petition, vacate the Fourth Circuit's decision, and remand for further proceedings.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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