No. _____

IN THE SUPREME COURT OF THE UNITED STATES

---

REGINA WOLGAMOTT,

PETITIONER,

- v -

UNITED STATES OF AMERICA,

RESPONDENT.

---

PETITIONER'S PETITION FOR WRIT OF *CERTIORARI* TO THE COURT OF APPEALS FOR THE NINTH CIRCUIT

ZANDRA L. LOPEZ
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, California 92101
Telephone: (619) 234-8467
Attorney for Petitioner

## QUESTION PRESENTED

If when executing a search warrant of a single-family residence, officers discover multiple occupants with their own private rooms, are officers required to limit the search to common areas and areas within the control of the target in order to protect against an overbroad search of third persons' rooms not intended to be included within the search warrant?

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Federal Cases** **Page(s)**



**State Cases**

**Federal Statutes**



**United States Constitution**

## PETITION FOR A WRIT OF CERTIORARI

Petitioner Regina Wolgamott respectfully requests that a writ of certiorari be granted to review the judgment of the United States Court of Appeals for the Ninth Circuit.

## OPINION BELOW

The unpublished memorandum disposition of the United States Court of Appeals for the Ninth Circuit is reproduced in Appendix A to this petition.

## JURISDICTION

The court of appeals affirmed Ms. Wolgamott's conviction on August 30, 2019. See Appendix A. The court thereafter denied Ms. Wolgamott's petition for rehearing and rehearing en banc on November 7, 2019. This Court has jurisdiction under 28 U.S.C. § 1254(1). See Appendix B.

## PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS

The relevant constitutional provision here is the Fourth Amendment. It states:

> 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.

U.S. Const. Amend. IV.

## INTRODUCTION

This case presents an opportunity to resolve a circuit split between the Ninth and First Circuits, on the one hand, and the D.C., Fifth, and Eleventh Circuits, on

the other, concerning reasonable execution of search warrants. Specifically, the Circuits disagree on whether, under this Court's decision in *Maryland v. Garrison*, officers who execute a warrant for a single-family home and discover that the property comprises of separate private units with a shared common space must limit their search to the unit and areas within the control and possession of the target of the search. Certiorari is appropriate to resolve the disagreement.

In this case, officers obtained a warrant to search a single family home for firearms in the possession of one of the residents of the property. When police arrived at the home, they discovered that the target of the warrant occupied a detached unit in the backyard of the house. Inside the detached unit, officers found the four listed firearms in the search warrant. Officers continued their search within the main house of the property. In addition to searching the common areas, the officer searched in areas that were beyond the control of the target of the search. Without obtaining a separate search warrant, officers searched the private bedroom of Petitioner and her husband, and the locked safe within that room. After officers found the firearms legally registered to Petitioner, the government charged Petitioner with aiding and abetting her husband with felon in possession of a firearm.

## STATEMENT OF THE CASE

Agents from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) filed an application for a search warrant for a house at 9103 Valencia Street. The need for the search warrant was based on the agents' beliefs that a resident and

convicted felon, Ricardo Delos Santos, had acquired firearms through his girlfriend. The affidavit specifically connected Ricardo to four firearms.

At the time of the affidavit, agents also suspected Ricardo's brother, Elijah Delos Santos, also a felon, was in possession of firearms lawfully registered in the name of his wife, Petitioner. Agents were aware that Elijah and Petitioner, with their four young children, also lived on the Valencia Street property. The request to search the property made no allegations regarding Elijah and Petitioner.

At approximately 6:00 in the morning, a swat team of agents knocked on the front door of the main house on the Valencia Street property and yelled that they had a warrant. Petitioner, who was in the process of getting ready for work and preparing the kids for school, opened the door. Five to ten agents with weapons drawn, pulled her out of the home, handcuffed her, and placed her in the driveway.

Inside the main house, agents found no other adults. Petitioner's three older children were in one bedroom and her infant child was found in Petitioner's bedroom, sleeping in a playpen next to her bed.

When the agents exited the main house into the backyard, they found a detached unit. Ricardo, the target, was found near the detached unit. It was locked with a deadbolt. Inside, agents found Ricardo's belongings. This included toiletries and cups used by Ricardo to urinate. The unit did not have a bathroom or kitchen. Next to Ricardo's bed was a gun safe. Inside it, agents found all four firearms listed in the search warrant.

After searching Ricardo's detached unit, officers continued the search into the main house. In addition to searching common areas, agents searched Petitioner's bedroom, which she shared with her husband Elijah. In it, they found Petitioner's baby, clothes, purses, make-up stand, curling iron, and other belongings. Toiletries and food were also stored in the bedroom. In the corner of Petitioner's room was a locked safe with a combination. Surrounding the safe were papers belonging to Elijah and Petitioner. When agents opened the safe, they found firearms registered in Petitioner's name. When questioning Petitioner regarding the firearms, agents indicated they were aware she was the registered owner of the guns and they had evidence of Elijah possessing them. Petitioner provided agents with incriminating statements.

The government charged Petitioner with aiding and abetting a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1) and § 2.

Petitioner and Elijah filed a motion to suppress the evidence based on an unlawful search under the Fourth Amendment. They argued that although the Valencia Street property is considered a "single-family residence" in terms of real estate, it does not change the fact that it is a property with multiple families and multiple units where Petitioner had a reasonable expectation of privacy and the government was aware of this before conducting the search of Petitioner's bedroom.

Following an evidentiary hearing, the district court denied the motion to suppress. It found the Valencia Street property was a single-family dwelling and although it had a detached unit, it was not equipped for independent living. The

court found it was reasonable for agents to believe that all tenants of the Valencia Street property shared the residence and was not used as a multi-family dwelling. Petitioner entered into a conditional plea agreement with the government in which she reserved her right to appeal the district court's rulings on her motion to suppress due to the invalid search.

On appeal, a panel of the Ninth Circuit Court of Appeals issued an unpublished memorandum affirming the district court's denial of the motion to suppress. The panel held that because the property "had only one kitchen, living space, refrigerator, and bathroom," the agents reasonably concluded that the residence was a single-family unit, not a "multi-unit dwelling" requiring a separate warrant for the search of Petitioner's bedroom.

The Ninth Circuit denied Ms. Wolgamott's petitions for panel rehearing and rehearing en banc.

## REASONS FOR GRANTING THE PETITION

### I. The Ninth Circuit's decision deepens a Circuit split interpreting this Court's decision in *Garrison*, which the Court should resolve.

This case presents an important question over which the lower courts are fractured: whether officers must restrict their search to common areas and areas within the control of the target, if they discover private rooms of third parties not included in the search warrant. This Court should grant review to identify the correct standard and ensure uniformity in the interpretation and application of the

meaning of a separate dwelling requiring a separate warrant supported by probable cause. The Court should therefore grant review.

## II. Circuits have held that this Court's decision in *Garrison* extends to private bedrooms of parties not intended to be included in the search warrant.

In *Maryland v. Garrison*, 480 U.S. 79 (1987), the Supreme Court dealt with the constitutionality of a search of a home executed pursuant to a warrant authorizing the search of a structure that turned out to contain more individual dwellings than was believed at the time the warrant was issued. The Court held that officers are "required to discontinue the search ... as soon as they discover[ ] that there [are] two separate units ... and therefore [are] put on *notice of the risk* that they *might be* in a unit erroneously included within the terms of the warrant." *Garrison*, 480 U.S. at 87 (emphasis added).

Circuits have determined that this Court's decision in *Garrison* extends to private bedrooms even if not equipped for independent living and share common spaces with the target of the search warrant.

**The D.C. Circuit**. The D.C. Circuit endorsed the application of *Garrison* to a third party's private bedroom of a house shared with the target of the search in *United States v. Geraldo*, 271 F.3d 1112 (D.C. Cir. 2016). There, federal agents filed an affidavit for a search warrant of a District of Columbia townhouse at 1430 Newton. Before entering the residence, the agents had limited information about the interior of the townhouse. Government informants advised the agents that several people lived in the home, each with access to the common areas, as opposed

to a multi-unit apartment building with distinct apartments inside. Once inside, agents learned that there were several locked rooms inside the house. They entered all the rooms to locate any persons within the residence. After locating four persons and speaking with them about which rooms belonged to the persons named in the warrant, the agents limited their search to common areas and the rooms of persons, including Geraldo, named in the warrants the agents obtained. *Id.* at 1118.

The D.C. Circuit citing to *Garrison* endorsed this, noting that "[u]pon discovering that 1430 Newton consisted of several individual rooms secured by padlocks, the agents *properly limited* their search to common areas and those rooms inhabited by persons named in the arrest warrants and in the affidavits accompanying the search warrant." *Id.* (emphasis added). The Court went on to state that this was a "*reasonable* response to protect against an overbroad search of third persons' rooms not intended to be included within the warrant." *Id.* (emphasis added).

**The Fifth Circuit**. The Fifth Circuit also came to a similar conclusion in *United States v. Perez*, 484 F.3d 735 (5th Cir. 2007). There, police traced child pornography to an IP address assigned to Perez, who lived in a home in Austin, Texas. The officers believed that Perez was the sole resident. Upon executing the warrant, the officers learned that Perez had two housemates, each of whom rented a room and shared the common areas of the house. Knowing that the target of the search was Perez, the officers limited their search to only the common areas of the home and Perez's room; the officers did not search either of the rented rooms.

The Fifth Circuit found that "*Garrison* squarely supports the officers' actions," because the officers "confined their search to areas used by Perez," which was, according to the government, "exactly what *Garrison* prescribes." *Id.* at 742. The court also noted that, because, among other things, "the IP address in question was registered in Perez's name," the search of only Perez's room was permissible. *Id.* at 744. The Fifth Circuit reasoned that the bedrooms rented by each housemate was a separate residence. The Fifth Circuit made this finding despite the fact there were no separate entrances and all occupants could access common areas in the property. *Id.* at 742. The court found that the property "contained three residences." *Id*. at 742. And the court agreed that it would be impermissible to search the residences not occupied by Perez. *Id*.

**The Eleventh Circuit**. Finally, the Eleventh Circuit also addressed this issue in dicta in *United States v. Schwinn*, 376 F. App'x 974, 983 (11th Cir. 2010). There, officers obtained a warrant to search the defendant's apartment believing it to be a single-unit residence. When executing the warrant, they learned that the defendant had a housemate that rented out one of the bedrooms. The police searched defendant's room and did not search the housemate's bedroom.

Although the Eleventh Circuit denied defendant's motion to suppress the evidence found in the apartment, it held that, pursuant to *Garrison*, "the officers acted reasonably in limiting the scope of the search by excluding the locked bedroom to which Schwinn had no access." *Id*. at 983. Thus, also like *Geraldo* and *Perez*,

*Schwinn* similarly concluded that single rented bedrooms constitute separate residences for search and seizure purposes.

Although a separate kitchen and bath can be indicia of separate units for purposes of *Garrison*, these Circuits hold such factors are not prerequisites.

## III. Other Circuits have held that this Court's decision in *Garrison* does not extend to private bedrooms of parties not intended to be included in the search warrant.

The First Circuit has held that this Court's decision in *Garrison* does not extend to private bedrooms of parties not intended to be included in the search warrant.

**The First Circuit**. In *United States v. McLellan*, 792 F.3d 200 (1st Cir. 2015), officers traced child pornography to an IP address assigned to a person named St. Yves. Based on that evidence, the officers obtained a search warrant for St. Yves's home. When they entered the house, the officers realized that St. Yves rented out rooms within his house to others, including defendant. The officers searched defendant's room and found incriminating evidence. The district court denied defendant's motion to suppress the evidence.

The First Circuit affirmed, holding that the defendant made no showing that that the house was a multi-unit residence. The First Circuit found that *Garrison* did not apply because there was no separate entrance and the residents had joint access to common areas including the kitchen and living room. *Id*. at 213.

This contradicts with the conclusions of the cases from the D.C., Fifth, and Eleventh Circuits, which accorded Fourth Amendment protection to residences that

had no separate outside entrances and shared common spaces. *See Geraldo*, 271 F.3d at 1118; *Perez*, 484 F.3d at 742; *Schwinn*, 376 F. App'x at 983; *see also Mena v. City of Simi Valley*, 226 F.3d 1031, 1039 (9th Cir. 2000) (discussed below); *State v. Fleming*, 790 N.W.2d 560, 568 (Iowa 2010) (analyzing this Court's cases and holding that a rented bedroom constitutes a separate residence for search and seizure purposes); *United States v. Greathouse*, 297 F. Supp. 2d 1264, 1275 (D. Or. 2003) (same); *United States v. Belcher*, 577 F. Supp. 1241, 1257, n.3 (E.D. Va. 1983) ("Defendant lived in a single room in a roominghouse. His reasonable expectation of privacy in that room cannot be doubted. It was his home.").

**Ninth Circuit.** The Ninth Circuit's panel decision in this case deepens this split.

For its part, the Ninth Circuit has issued decisions embracing a different view of *Garrison* from its decision in this present case.

At first, the Ninth Circuit found in *Cannon* that evidence of independent living within the unit – such as a separate kitchen and bath – are not necessary to establishing a reasonable expectation of privacy within a unit inside a house. *United States v. Cannon*, 264 F.3d 875, 879 (9th Cir. 2001). Instead, the Ninth Circuit stated that the question is whether the individual has taken steps to "preserve" the area as "private" and whether that person's expectation of privacy was reasonable such that the area is a separate unit. *Id.* Even without the appliances and bathroom, the Ninth Circuit concluded that a warrant would be required for a "guest room in a single family home which is rented or used by a

third party, and, to the extent that the third party acquires a reasonable expectation of privacy." *Id.*

After *Cannon* and *Garrison*, the Ninth Circuit continued to embrace the view that individual bedrooms can constitute separate residences for search and seizure purposes in *Mena*, 226 F.3d at 1038. Like this case, the room that the police searched was a "bedroom," without a separate outside entrance and access to common areas. *Id.* at 1035. Although the room did have a refrigerator, it did not have a kitchen or separate bathroom. *Id.* at 1038. Unlike this case, all rooms in that property lead to the common area and there was no separate detached unit. *Id.* Even though the bedroom did not have its separate address number, bathroom, or full kitchen, the Ninth Circuit recognized that the property was a "multi-unit residential dwelling," and that Mena was entitled to protection for her individual room. *Id.*

But the panel's decision in this case rejected this view. Instead, consistent with the First Circuit, it looked to whether there was certain indicia of multi-unit dwellings such as kitchen and bath.

## IV. The decision below contradicts *Garrison* and the core principles of the Fourth Amendment.

In *Garrison*, upon executing the warrant, officers learned that there were multiple adults with separate private units in one house. The Court held that "[i]f the officers had known, or should have known, that the [relevant units] contained two apartments before they entered the living quarters on the third floor, and thus

had been aware of the error in the warrant, they would have been obligated to limit their search." *Garrison*, 480 U.S. at 86. The Court further confirmed that, "as the officers recognized, they were required to discontinue the search of [Garrison's] apartment as soon as they discovered that there were two separate units on the [property] and therefore were put on notice of the risk that they might be in a unit erroneously included within the terms of the warrant." *Id.* at 87.

Here, as in *Garrison*, the officers learned once they entered the house that it contained multiple residences. Unlike in *Garrison*, however, the officers here searched all of the rooms without obtaining a separate warrant. That contravention of *Garrison* warrants certiorari.

The Ninth Circuit's holding also violates more fundamental tenets of Fourth Amendment law. This Court's longstanding precedent draws a "firm line at the entrance to the house," deeming "any physical invasion of the structure of the home, 'by even a fraction of an inch' " "too much" and "all details" within the home "intimate details," and recognizing that in the home there is a "minimal expectation of privacy that exists, and that is acknowledged to be reasonable." *Kyllo v. United States*, 533 U.S. 27, 34-35 (2001) (emphasis in original) (quoting *Payton v. New York*, 445 U.S. 573, 590 (1980) and *Silverman v. United States*, 365 U.S. 505, 512 (1961)). The Fourth Amendment does not differentiate among types of "homes." *See McDonald v. United States*, 335 U.S. 451, 454–55 (1948) (defendant's room in a "rooming house" treated as a home); *Stoner v. California*, 376 U.S. 483, 490 (1964)

("[A] guest in a hotel room is entitled to constitutional protection against unreasonable searches and seizures.")

The decision below weakens each of those core protections. Thus, not only does the decision below deepen the split among Circuits, as seen below, it also violates core protections against unreasonable searches.

## V. The question presented is important.

In addition to the fundamental protection of a person's Fourth Amendment right in his or her own home, the question here also goes to the heart of the definition of a person's home. With the rise in cost of homes, it is more and more common for multiple families (especially among low income and minority families) to live together within one house. They do this to address economic needs by sharing expenses and trying to put a roof over their heads. It cannot be that when people decide on this type of living arrangement – that they are giving up their rights to privacy within the portion of the property that they hold out as exclusively their own. As noted by Justice Blackmun, because this type of living arrangement is now common, "particularly in neighborhoods with changing populations and of declining affluence," any analysis of the "reasonableness" of "the officers' behavior here must be done with this context in mind." *Garrison*, 480 U.S. at 96–97 (opinion per Justice Blackmun, with whom Justices Brennan and Marshall joined, dissenting).

## VI. This case is a good vehicle for the Court to resolve the question presented.

This case is a good vehicle to resolve the circuit split. Petitioner entered into a conditional plea agreement to address whether Garrison is applicable in her case. The Ninth Circuit Court of Appeals affirmed the denial of the suppression by finding that evidence of independent living within the private room is necessary for Garrison to apply. Therefore, by hearing Petitioner's case and applying Garrison, Petitioner will get the relief she seeks.

Moreover, by granting review here, this Court can resolve the question presented, as the petition squarely raises it.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

*s/ Zandra L. Lopez*

Dated: February 5, 2020

ZANDRA L. LOPEZ
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, CA 92101-5008
Telephone: (619) 234-8467
Attorneys for Petitioner