No.

In the Supreme Court of the United States

DARRIUS MARCEL MASTIN, PETITIONER

v.

UNITED STATES OF AMERICA

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether *Michigan* v. *Summers*, 452 U.S. 692 (1981), authorizes police officers executing an arrest warrant to detain a bystander without individualized suspicion.

RELATED PROCEEDINGS

United States District Court (M.D. Ala.):

United States v. *Mastin*, Crim. No. 2:16-542 (Jan. 2, 2018) (recommendation by magistrate judge on motion to suppress)

United States v. *Mastin*, Crim. No. 2:16-542 (Feb. 21, 2018) (order adopting magistrate judge's recommendation and denying motion to suppress)

United States v. *Mastin*, Crim. No. 2:16-542 (Oct. 3, 2018) (district court's judgment)

United States Court of Appeals (11th Cir.):

United States v. *Mastin*, No. 18-14241 (Aug. 26, 2020)

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Darrius Marcel Mastin respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-16a) is reported at 972 F.3d 1230. The order of the district court (App., *infra*, 17a) is not reported. The recommendation of the magistrate judge (App., *infra*, 18a-64a) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on August 26, 2020. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides in relevant part:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]

STATEMENT

In *Michigan* v. *Summers*, 452 U.S. 692 (1981), this Court held that officers executing a search warrant for contraband may categorically detain the occupants of the premises while the search is conducted. That decision recognized an exception to the ordinary Fourth Amendment principle that an officer must have individualized suspicion before conducting a detention. A clear conflict has developed among federal courts of appeals on the question whether the rule of *Summers* also categorically authorizes police to detain bystanders during the execution not of a *search* warrant but of an *arrest* warrant.

In this case, officers detained petitioner while attempting to execute arrest warrants for two other individuals. Petitioner was in the hotel room in which the officers believed the two suspects may have been found. The officers detained petitioner, even though they immediately knew that he was not either of the suspects and even though they saw no evidence of criminal activity. During that seizure, a handgun fell from petitioner's waistband, and he was later charged with possessing a firearm as a felon. A magistrate judge recommended denying petitioner's motion to suppress, and the district court adopted that recommendation. Petitioner was later convicted.

The court of appeals affirmed. After acknowledging the circuit conflict, the court held that *Summers* extends to the detention of bystanders during the execution of an arrest warrant. Because the decision below solidifies a

conflict among the courts of appeals and is incorrect; because the question presented is plainly a significant and recurring one; and because this case is an ideal vehicle in which to decide that question, the petition for a writ of certiorari should be granted.

A. Background

The Fourth Amendment generally prohibits police officers from seizing an individual without probable cause to believe that the individual committed a crime. See *Bailey* v. *United States*, 568 U.S. 186, 192 (2013). But this Court has recognized certain exceptions to that general rule. The most familiar of those exceptions is a "*Terry* stop," when officers possess a reasonable suspicion of criminal activity. See *Terry* v. *Ohio*, 392 U.S. 1, 30-31 (1968).

In *Summers*, the Court recognized another exception: officers executing a search warrant for contraband may "detain the occupants of the premises" while the search is conducted. 452 U.S. at 705. Those seizures are categorically reasonable, the Court explained, because a detention during the execution of a search warrant is "only an incremental intrusion on personal liberty" beyond that caused by the search itself; because the "existence of [the] search warrant" provides an "objective" basis for believing that "someone" on the premises "is committing a crime"; and because such a detention furthers "law enforcement interest[s]" in preventing flight, minimizing the risk of harm to officers, and facilitating completion of the search. *Id.* at 702-703; see *Bailey*, 568 U.S. at 194.

Critically, the *Summers* exception is categorical: officers do not need individualized suspicion that those detained are "involved in criminal activity or pose[] a specific danger to the officers." *Bailey*, 568 U.S. at 193; see *Summers*, 452 U.S. at 705 n.19. Because that bright-line exception grants officers "substantial authority" that is

"outside of the traditional rules of the Fourth Amendment," it "must be circumscribed." *Bailey*, 568 U.S. at 200. Thus, the Court has held that the *Summers* exception is limited to the immediate vicinity of the premises to be searched. See *id.* at 202. In so holding, the Court emphasized that any application of the *Summers* exception "must not diverge from its purpose and rationale." *Id.* at 194.

B. Facts and Procedural History

1. On January 19, 2016, an Alabama judge signed arrest warrants for two individuals, Trudyo Hines and Taboris Mock, on charges of first-degree robbery. The Montgomery Police Department sent copies of those warrants to a task force of federal and state officers charged with finding and arresting violent fugitives. Sometime after nightfall, the task force discovered that Hines' girlfriend, Nakita Rogers, had rented a room at a local hotel. The officers began surveilling the hotel. App., *infra*, 2a-3a, 18a-20a; C.A. App. 97-106.

Shortly after midnight, three vehicles entered the lot, and six people emerged—three men and three women. The officers believed that two of the men might be Hines and Mock. The women entered the hotel lobby, and one briefly spoke with the clerk at the front desk; after the women left the lobby, an officer called the front desk and confirmed that the woman who had spoken with the clerk was Rogers. After lingering briefly outside, the men followed the women into the hotel. The task force prepared to execute the arrest warrants. App., *infra*, 3a, 20a-21a; C.A. App. 108-113.

Before the task force could act, two of the men and one of the women left the hotel and drove off. Concerned that Hines, Mock, or both might escape, the task force quickly broke into two teams—one to enter the hotel room, the

other simultaneously to conduct a traffic stop on the departing vehicle. The first team assembled in the hallway, preparing to go into the room. Just then, petitioner opened the door. It is undisputed that the officers immediately realized that petitioner was neither Hines nor Mock. They nevertheless detained him, ordering him to remove his hands from his pockets and raise his hands over his head. The officers also noticed the other two women in the room; they ordered all three occupants to get on the ground and to crawl out of the room. App., *infra*, 3a-4a, 21a-23a.

Petitioner complied. As he crawled out of the room, however, a handgun fell from his waistband. The officers secured the handgun and detained petitioner outside. After the two women crawled out of the room, the officers entered to ensure that no one else remained inside. The officers found three more handguns, which the women were licensed to carry. An ensuing computer-database check revealed that petitioner was on probation for a 2010 felony conviction, and he was arrested. App., *infra*, 4a, 23a-24a.

Meanwhile, the task force's other team conducted the planned traffic stop and arrested Hines. Mock was not in the vehicle but was later arrested at another hotel. App., *infra*, 4a, 24a-25a.

2. On November 15, 2016, a federal grand jury in the Middle District of Alabama indicted petitioner on one count of possessing a firearm as a felon, in violation of 18 U.S.C. 922(g). Petitioner moved to suppress the gun on the ground that it constituted the fruit of an illegal seizure under the Fourth Amendment. C.A. App. 24-29.

A magistrate judge recommended that the motion to suppress be denied. App., *infra*, 18a-64a. The judge first rejected the government's argument that petitioner's initial seizure—*i.e.*, the order for petitioner to raise his

hands over his head, drop to the floor, and crawl out of the room—was justified under *Terry* v. *Ohio*, 392 U.S. 1 (1968). The judge noted that the arrest warrant did not name petitioner; that the officers saw no evidence of illegal activity in the hotel room; and that petitioner did not seem nervous or erratic. "At most," the judge explained, petitioner was "exiting a hotel room occupied by the girlfriend of a wanted individual" who "might or might not also have been present in the room." App., *infra*, 29a. Because "[p]roximity to a wanted individual is simply insufficient to meet the reasonable suspicion standard," the judge concluded, the government had failed to show that petitioner "was, or was about to be, engaged generally in any criminal activity at all." *Id.* at 33a.

Nevertheless, the magistrate judge concluded that the seizure did not violate the Fourth Amendment. App., *infra*, 34a-44a. The judge reasoned that the categorical exception of *Summers*—that officers executing a *search* warrant may detain the occupants of the premises while the search is conducted—should extend to the context of *arrest* warrants. The seizure was lawful, the judge explained, because petitioner "was in the immediate vicinity of the area in which the officers intended to attempt to serve the [arrest] warrants." *Id.* at 43a.

3. The district court summarily adopted the magistrate judge's recommendation and reasoning. App., *infra*, 17a. The case proceeded to trial, and a jury found petitioner guilty. He was sentenced to 51 months of imprisonment, to be followed by three years of supervised release. App., *infra*, 5a-6a; C.A. App. 236-240.

4. On appeal, petitioner renewed his contention that his detention violated the Fourth Amendment, arguing that *Summers* did not authorize officers to detain a bystander during the execution of an arrest warrant. See Pet. C.A. Br. 21-26 & 24 n.6; Pet. C.A. Reply Br. 13-15. In

response, the government did not challenge the magistrate judge's conclusion that the officers lacked reasonable suspicion for petitioner's initial seizure under *Terry*; instead, it argued only that *Summers* categorically authorizes a "seizure incident to the attempted execution of arrest warrants." See Gov't C.A. Br. 31-35.

The court of appeals affirmed. App., *infra*, 1a-16a. The court held that the *Summers* rule "extend[s] * * * to cover arrest warrants as well as search warrants" and thus that "officers may briefly detain those on the premises while they seek to execute an arrest warrant." *Id.* at 11a. The court reasoned that the "primary rationale" of the *Summers* exception is to "minimiz[e]" the "[s]afety" risk to "both officers and bystanders" by giving officers "unquestioned command of the situation." *Id.* at 10a (quoting *Summers*, 494 U.S. at 702-703). While the court recognized that *Summers* concerned the execution of a search warrant and not an arrest warrant, the court took the view that "the *Summers* rationale applies equally in both scenarios." *Ibid.*

A contrary conclusion would be "absurd[]," the court of appeals reasoned, because it would expose officers to "an unacceptable degree of risk." App., *infra*, 11a-12a. At the same time, the court acknowledged that other courts of appeals had reached "differing conclusions" on whether *Summers* extends to the arrest-warrant context. *Id.* at 11a n.3 (citing *Cherrington* v. *Skeeter*, 344 F.3d 631, 638 (6th Cir. 2003), and *Sharp* v. *County of Orange*, 871 F.3d 901, 915 (9th Cir. 2017)).

REASONS FOR GRANTING THE PETITION

This is a paradigmatic case for the Court's review. It squarely presents a pure question of constitutional law that divides the federal courts of appeals. That question is whether police officers executing an arrest warrant may

detain a bystander without any individualized suspicion. In the decision below, the Eleventh Circuit authorized such a seizure on the basis of the categorical exception for detentions during the execution of a search warrant recognized in *Michigan* v. *Summers*, 452 U.S. 692 (1981). As the court expressly recognized, its decision is in conflict with a decision of the Ninth Circuit; it is in considerable tension with a decision of the Tenth Circuit as well.

The decision below is also wrong. This Court has made clear that the *Summers* exception "must not diverge from its purpose and rationale." *Bailey* v. *United States*, 568 U.S. 186, 194 (2013). Yet the justifications for the search-warrant detention in *Summers* have significantly less purchase in the arrest-warrant context. If the decision below is permitted to stand, moreover, it would have extraordinary practical consequences: whenever officers execute an arrest warrant, every bystander—however innocent or harmless—would face the prospect of police detention. Because this case readily satisfies the criteria for certiorari, the petition should be granted.

A. The Decision Below Solidifies A Conflict Among The Federal Courts Of Appeals

The decision below solidifies a conflict among the courts of appeals as to whether the categorical exception of *Summers* for search-warrant detentions extends to the context of arrest warrants. That conflict warrants the Court's review.

1. In *Sharp* v. *County of Orange*, 871 F.3d 901 (2017), the Ninth Circuit squarely held that the *Summers* exception does not extend to arrest warrants. There, officers executing an arrest warrant detained the suspect's father without individualized suspicion, even though he did not match the suspect's description. The Ninth Circuit concluded, in the context of a 42 U.S.C. 1983 action, that the

detention violated the Fourth Amendment. The court declined to "extend" *Summers* because none of the three justifications for that search-warrant exception applied "with the same force to arrest warrants." *Id.* at 913-914.

First, the Ninth Circuit explained, the intrusion on individual liberty is greater in the context of an arrest warrant: while a search-warrant detention inflicts only an "incremental intrusion on personal liberty" beyond that caused by the search itself, *Summers*, 452 U.S. at 702, the detention of a bystander to an arrest "inflicts an entirely separate Fourth Amendment injury on an entirely separate person," *Sharp*, 871 F.3d at 914.

Second, the Ninth Circuit reasoned that a search warrant, by its nature, supports a broader set of inferences than does an arrest warrant. A search warrant itself gives officers an objective reason to believe that "someone in the home may have committed a crime." *Sharp*, 871 F.3d at 914. But "the existence of [an] *arrest warrant* implies nothing about whether dangerous third parties will be found in the arrestee's house." *Ibid.* (quoting *Maryland* v. *Buie*, 494 U.S. 325, 334 n.2 (1990)).

Third, the Ninth Circuit observed that the law-enforcement interests cited in *Summers* "do not apply" to the same degree. *Sharp*, 871 F.3d at 914. The Ninth Circuit explained that the interest in preventing flight if incriminating evidence is found is "wholly inapplicable to the arrest-warrant context," because the officer's goal in that context is not to search for evidence of wrongdoing but to capture a wrongdoer. *Ibid.* Likewise, the Ninth Circuit reasoned, the interest in the "orderly completion of the search" is "inapposite," except in the unlikely scenario that the suspect "is behind a locked door" to which the bystander holds the key. *Ibid.* While the Ninth Circuit acknowledged that detaining bystanders could sometimes ensure "officer safety," it deemed that interest

alone to be "insufficient to extend the *Summers* rule—a rule of categorical authority—to arrest warrants." *Id.* at 914-915.

The Ninth Circuit further noted that detaining arrest-warrant bystanders might be reasonable in some circumstances, observing that officers must have "reasonable tools at their disposal * * * to protect their own safety and the safety of others." *Sharp*, 871 F.3d at 915. But such detentions, the Ninth Circuit explained, must satisfy ordinary Fourth Amendment principles—that is, they must be "objectively reasonable" under the "particular circumstances." *Ibid.*; cf. *Terry*, 392 U.S. at 20-22.

2. In the decision below, by contrast, the Eleventh Circuit squarely held that the categorical exception of *Summers* applies in the context of arrest warrants. The court took the view that the "primary rationale" of the *Summers* exception is to "minimiz[e]" the "[s]afety" risks "for both officers and bystanders." App., *infra*, 10a (quoting *Summers*, 494 U.S. at 702-703). Because that rationale "applies equally" to the execution of search warrants and arrest warrants, the Eleventh Circuit reasoned, the *Summers* exception also "cover[s] arrest warrants." *Id.* at 10a-11a. While the Eleventh Circuit recognized that its decision conflicted with the Ninth Circuit's decision in *Sharp*, see *id.* at 11a n.3, it did not engage with the Ninth Circuit's analysis of the three original justifications for the *Summers* exception.

The Sixth Circuit has also endorsed extending *Summers* to the arrest-warrant context, albeit in dicta. In *Cherrington* v. *Skeeter*, 344 F.3d 631 (2003), the Sixth Circuit upheld the detention of a toddler while officers arrested her mother. Citing *Summers*, the court stated that "the police have the limited authority to briefly detain those on the scene, even wholly innocent bystanders, as

they execute a search *or arrest warrant*." *Id.* at 638 (emphasis added). While that statement was dictum, the Sixth Circuit has subsequently cited *Cherrington* for that proposition. See, *e.g.*, *United States* v. *Ocean*, 564 Fed. Appx. 765, 770 (2014).

3. In addition to the direct conflict with the Ninth Circuit, the decision below is in considerable tension with the Tenth Circuit's decision in *United States* v. *Maddox*, 388 F.3d 1356 (2004), cert. denied, 544 U.S. 935 (2005). In that case, the Tenth Circuit crafted its own fact-intensive test: "law enforcement officers may only detain individuals on the scene of the arrest who are not within the 'immediately adjoining' area of the arrest if the officers 'possess a reasonable belief based on specific and articulable facts,' that the individual poses a danger to them." *Id.* at 1363 (quoting *Buie*, 494 U.S. at 337). That test plainly leaves open the possibility that the *Summers* exception would apply to those within the "immediately adjoining area" of the arrest. But unlike the Eleventh's Circuit's more sweeping approach, it requires individualized suspicion for the detention of someone who is on the premises, but not in the "immediately adjoining area," during the execution of an arrest warrant for another individual.

The decision below, then, is in direct conflict with a decision of the Ninth Circuit and is in considerable tension with a decision of the Tenth Circuit. That conflict, about a discrete question of Fourth Amendment law, warrants the Court's review.

B. The Decision Below Is Erroneous

The court of appeals erred in extending the *Summers* exception to permit, as a categorical matter, the detention of bystanders during the execution of an arrest warrant.

1. In *Summers*, this Court held that officers have "categorical authority to detain" occupants of a dwelling

"incident to the execution of a search warrant" for that dwelling. *Bailey*, 568 U.S. at 199. The author of the foremost treatise in the area has described *Summers* as the "most significant" of the exceptions to the ordinary mode of Fourth Amendment analysis. 2 Wayne R. LaFave, *Search and Seizure* § 4.9(e), at 924 (5th ed. 2012). Indeed, that decision crafted an exception within an exception: it first departed from the ordinary rule that Fourth Amendment seizures require probable cause, see *Dunaway* v. *New York*, 442 U.S. 200, 213 (1979), and it then dispensed even with the requirement that more limited seizures require some lesser amount of individualized justification, see *Terry*, 392 U.S. at 30-31.

Application of the *Summers* exception has substantial consequences. It authorizes the police to detain an individual even if the individual has no apparent connection to the suspect's criminal activity; to detain the individual in appropriate restraints for the duration of the arrest; and to question the individual even on unrelated subjects. See *Muehler* v. *Mena*, 544 U.S. 93, 100-101 (2005). Put another way, when an individual falls within the scope of the *Summers* exception, there is no need to conduct any additional, case-specific inquiry concerning the justification for, or intrusiveness of, a particular detention. See *Bailey*, 568 U.S. at 193. Precisely for that reason, this Court has made clear that any application of the exception "must not diverge from its purpose or rationale." *Id.* at 194.

2. The decision below violates that mandate. The court of appeals' extension of *Summers* to the arrest-warrant context cannot be reconciled with *Summers* itself or with Fourth Amendment principles more generally.

a. In *Summers*, the Court identified three justifications for categorically permitting the detention of an individual present during the execution of a search warrant: (1) such a detention is "only an incremental intrusion on

personal liberty" beyond that caused by the search itself; (2) the "existence of [the] search warrant" provides an "objective" basis for believing that "someone" on the premises "is committing a crime"; and (3) such a detention furthers "law enforcement interest[s]" in preventing flight, minimizing the risk of harm to officers, and facilitating the completion of the search. 452 U.S. at 702-703; see *Bailey*, 568 U.S. at 194.

Each of those justifications has significantly less force in the context of a detention of a bystander during the execution of an arrest warrant. As to the intrusion on personal liberty: unlike a search-warrant detention, an arrest-warrant detention is not merely an "incremental intrusion" beyond the intrusion justified by the warrant. *Summers*, 452 U.S. at 703. To the contrary, an arrest-warrant detention works an "entirely separate Fourth Amendment injury" on an "entirely separate person." *Sharp*, 871 F.3d at 914. And if that detention occurs in public, it "will resemble a full-fledged arrest," with all of its concomitant indignities. *Bailey*, 568 U.S. at 200.

As to the inference of criminal activity: unlike a search warrant, an arrest warrant does not supply an "objective justification" for suspecting a bystander of "criminal activity." *Summers*, 452 U.S. at 704. An arrest warrant establishes only that a magistrate has found "probable cause" that the "subject of the warrant"—and only that subject—"has committed an offense." *Steagald* v. *United States*, 451 U.S. 204, 213 (1981). As this Court has noted, an individual's "mere propinquity to others independently suspected of criminal activity" implies nothing about the individual's own conduct. *Ybarra* v. *Illinois*, 444 U.S. 85, 91 (1979); cf. *Buie*, 494 U.S. at 334 n.2.

And as to law-enforcement interests: the interest in preventing flight is inapposite because a mere bystander to an arrest generally has no reason to flee. See *Sharp*,

871 F.3d at 914. Likewise, the interest in "facilitating the search" does not apply: there is, quite simply, no "search" to facilitate, except in the most unusual of circumstances. *Ibid.* And even if the interest were (wrongly) broadened to include the facilitation of an *arrest*—say, because a bystander might "distract" officers or "get in the way," *Bailey*, 568 U.S. at 197—that interest would still not justify a categorical rule of detention. An arrest ordinarily takes less time than a comprehensive search of a dwelling, and a bystander's opportunity to disrupt the officers' conduct is correspondingly diminished. In any event, "the mere fact that law enforcement may be made more efficient can never by itself justify disregard of the Fourth Amendment." *Id.* at 199 (citation omitted).

The sole law-enforcement interest identified in *Summers* that is fit for the arrest-warrant context is that of preventing "harm to the officers." 452 U.S. at 702. But that interest, however important, is not alone enough to extend the categorical exception of *Summers* to the context of arrest warrants. This Court has made clear that any single justification for the *Summers* exception would on its own be "insufficient" to justify extending the exception to new contexts. *Bailey*, 568 U.S. at 199. If it were otherwise, the protections of the Fourth Amendment—and in particular, the bedrock requirement of individualized suspicion—would be suspended whenever the work of law enforcement is dangerous.

b. The court of appeals' contrary conclusion was erroneous. That error followed from a faulty premise—namely, the assertion that the "primary rationale" for the *Summers* exception was the safety of "officers and bystanders." App., *infra*, 10a. In *Summers*, however, the Court listed safety as only one of several law-enforcement interests, and that collective set of interests was only one of three justifications for the categorical search-warrant

exception. See p. 13, *supra*. By focusing on only a fraction of just one of the three justifications, the court of appeals flouted this Court's mandate that a single justification is not enough to extend the *Summers* exception to a new context, see *Bailey*, 568 U.S. at 199, and ignored the reality that the remaining justifications do not track the arrest-warrant context, see pp. 13-14, *supra*.

As a result, the decision below significantly distorts the careful balance struck by this Court in its Fourth Amendment cases between protecting personal liberty and ensuring officer safety. An extension of *Summers* to the arrest-warrant context would pose a significant threat to individual liberty—authorizing officers to detain any bystander, no matter how innocent or harmless, simply because a suspect happens to be arrested nearby. Those arrests might occur anywhere—not just in stash houses and darkened alleys, but in restaurants, movie theaters, and parking lots. And while some arrest warrants target violent offenders who pose a threat to officers, others issue for minor offenses such as "traffic violation[s]," *Utah* v. *Strieff*, 136 S. Ct. 2056, 2060 (2016), or "breach[es] of municipal ordinances," *Shadwick* v. *City of Tampa*, 407 U.S. 345, 351 (1972).

The decision below thus imposes a significant cost in the name of officer safety. But that interest can be, and long has been, served by less intrusive means. For decades, the Court has used the reasonable-suspicion standard to "strike[] the proper balance between officer safety and citizen privacy." *Buie*, 494 U.S. at 334 n.2. That fact-intensive standard governs officers "dealing with the rapidly unfolding and often dangerous situations on city streets," *Terry*, 392 U.S. at 10; it governs officers conducting a "protective sweep" of a dwelling, *Buie*, 494 U.S. at 327; and it governs officers executing a search warrant

who encounter occupants beyond the "immediate vicinity" of the premises, *Bailey*, 568 U.S. at 202.

The same standard should govern here as well: the detention of a bystander during the execution of an arrest warrant must be justified by individualized suspicion. That is the general rule under the Fourth Amendment, and the court of appeals' departure from that rule was misguided and wrong.

3. This case is an optimal vehicle for the Court's review. The decision below turns on a discrete question of Fourth Amendment law: whether the categorical exception of *Summers* extends to the arrest-warrant context. That question is plainly a recurring one, as evidenced by the enormous number of lower-court decisions addressing the issue (which reflect broad confusion about how *Summers* relates to the arrest-warrant context). See, *e.g.*, *Adams* v. *Springmeyer*, 17 F. Supp. 3d 478, 503 (W.D. Pa. 2014); *Hines* v. *City of Albany*, Civ. No. 06-1517, 2011 WL 2620381, at *9 (N.D.N.Y. July 1, 2011); *United States* v. *Smith*, Crim. No. 07-181, 2007 WL 4143221, at *7 (E.D. Wis. Nov. 19, 2007); *Bartlett* v. *City of New York*, Civ. No. 03-1961, 2005 WL 887112, at *8 (S.D.N.Y. Feb. 11, 2005); *United States* v. *Werra*, Crim. No. 06-10414, 2008 WL 4280035, at *7 (D. Mass. Sept. 11, 2008), rev'd on other grounds, 638 F.3d 326 (1st Cir. 2011); *Hovington* v. *State*, 616 A.2d 829, 832 (Del. 1992); *State* v. *Williams*, 394 P.3d 99, 104-106 (Idaho Ct. App. 2016); *Way* v. *State*, 101 P.3d 203, 208-209 (Alaska Ct. App. 2004); *State* v. *Valdez*, 68 P.3d 1052, 1057-1058 & n.8 (Utah Ct. App. 2003); *People* v. *Hannah*, 59 Cal. Rptr. 2d 806, 808-810 (Ct. App. 1996).

Because the question presented has been thoroughly examined in the courts of appeals, further percolation would not help the Court resolve it. And resolution of the question is likely to be outcome-determinative in this case, given that the government did not contest the district

court's determination that the officers lacked reasonable suspicion to detain petitioner. See Gov't C.A. Br. 25.

* * * * *

The petition in this case provides the Court with an ideal opportunity to consider and resolve the question presented. That question, on which the courts of appeals are divided, is undeniably important, and the decision below is seriously flawed. Further review is therefore warranted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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