No. 20-6161

IN THE SUPREME COURT OF THE UNITED STATES

JOEY LAMOND BRUNSON, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether Title III of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 211 (18 U.S.C. 2510-2520), required suppression of communications that were intercepted pursuant to wiretap orders that listed the titles but not the specific names of the Department of Justice officials who had authorized the wiretap applications, where those officials were identified by name in the applications and the wiretap orders referred to the authorizing officials named in the applications.

ADDITIONAL RELATED PROCEEEDINGS

United States District Court (D.S.C.):

United States v. Brunson, No. 14-cr-604 (Sept. 25, 2018)

United States Court of Appeals (4th Cir.):

United States v. Brunson, No. 18-4696 (July 31, 2020)

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A35) is reported at 968 F.3d 325. The district court's order denying a motion for a new trial (Pet. App. E1-E2) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on July 31, 2020. A petition for rehearing was denied on August 27, 2020. 2020 (Pet. App. C1). The petition for a writ of certiorari was filed on October 26, 2020. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the District of South Carolina, petitioner was convicted on one count of conspiring to traffic five kilograms or more of cocaine and an additional quantity of crack cocaine, in violation of 21 U.S.C. 846; six counts of using a telecommunications facility for drug trafficking, in violation of 21 U.S.C. 843(b); one count of conspiring to commit money laundering, in violation of 18 U.S.C. 1956(a)(1)(A)(i), (B)(i), and (h); one count of possessing cocaine and marijuana with intent to distribute, in violation of 21 U.S.C. 841(a)(1), (b)(1)(C), and (D); one count of transporting a firearm as a felon, in violation of 18 U.S.C. 922(g)(1) and 924(a)(2); one count of possessing a firearm in furtherance of a drug-trafficking crime, in violation of 18 U.S.C. 924(c)(1)(A)(1); and one count of perjury, in violation of 18 U.S.C. 1621. Pet. App. D1. Petitioner was sentenced to life imprisonment and a consecutive term of 60 months of imprisonment, to be followed by ten years of supervised release. Id. at D2-D3. The court of appeals affirmed. Id. at A1-A35.

1. From the early 2000s until his arrest in 2017, petitioner belonged to a cocaine-trafficking conspiracy headed by Lamario Wright. Gov't C.A. Br. 3-7. In 2013, pursuant to an investigation into large-scale drug trafficking in South Carolina, the government applied for judicial authorization to intercept wire and electronic communications over certain phones used by Wright,

pursuant to Title III of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 211 (18 U.S.C. 2510-2520). C.A. App. 76-78; see Pet. App. A2-A5. Title III authorizes district courts to issue wiretap orders when certain statutory requirements have been met. See Pet. App. A2.

The first such application stated that it had been approved by Deputy Assistant Attorney General Denis J. McInerney. Pet. App. A4. On July 31, 2013, the district court issued an order granting that application. Ibid. The order stated that it was being entered "pursuant to an application authorized by an appropriate official of the Criminal Division, United States Department of Justice, Deputy Assistant Attorney General, pursuant to the power delegated to that official by special designation of the Attorney General," but it did not recite that Deputy Assistant Attorney General's name. Id. at A5; see Gov't C.A. Br. 10. Pursuant to that order, the Federal Bureau of Investigation (FBI) intercepted various wire communications, including one involving petitioner. Pet. App. A5.

The government subsequently filed a second application, seeking to extend the district court's July 31, 2013, order. Pet. App. A5. The second application "used the same form as the first application," except that the second application stated that it had been approved by a different Deputy Assistant Attorney General, Paul M. O'Brien. Ibid. On August 29, 2013, the court issued an order approving that second application, with language similar to

the first order, again noting the title of the official whom the application stated had approved the application but without reciting that official's name. Ibid.; see Gov't C.A. Br. 11. Pursuant to that order, the FBI intercepted additional communications, including one involving petitioner. Pet. App. A5.

The government thereafter filed a third application, seeking to extend the district court's August 29, 2013, order. Pet. App. A5. The third application "was in the same form as the previous two applications," except that the third application stated that it had been approved by Acting Assistant Attorney General Mythili Raman. Ibid. On October 11, 2013, the court issued an order approving the third application, with language similar to the first two orders, again stating that the application had been approved by an appropriate official but without reciting the official's name. Ibid.; see Gov't C.A. Br. 11-12. Pursuant to that order, the FBI intercepted additional communications involving petitioner. Pet. App. A5.

2. In 2017, a federal grand jury in the District of South Carolina returned a second superseding indictment charging petitioner with one count of conspiring to traffic five kilograms or more of cocaine and an additional quantity of crack cocaine, in violation of 21 U.S.C. 846; six counts of using a telecommunications facility for drug trafficking, in violation of 21 U.S.C. 843(b); one count of conspiring to commit money laundering, in violation of 18 U.S.C. 1956(a)(1)(A)(i), (B)(i),

and (h); one count of possessing cocaine and marijuana with intent to distribute, in violation of 21 U.S.C. 841(a)(1), (b)(1)(C), and (D); one count of transporting a firearm as a felon, in violation of 18 U.S.C. 922(g)(1) and 924(a)(2); one count of possessing a firearm in furtherance of a drug-trafficking crime, in violation of 18 U.S.C. 924(c)(1)(A)(i); and one count of perjury, in violation of 18 U.S.C. 1621. Second Superseding Indictment 1-8.

a. Before trial, petitioner filed a motion under 18 U.S.C. 2518(10)(a) to suppress evidence obtained from the intercepted communications. Pet. App. A6. Section 2518(10)(a) provides in relevant part that

> [a]ny aggrieved person * * * may move to suppress the contents of any wire or oral communication intercepted pursuant to this chapter, or evidence derived therefrom, on the grounds that --
>
> (i) the communication was unlawfully intercepted;
>
> (ii) the order of authorization or approval under which it was intercepted is insufficient on its face; or
>
> (iii) the interception was not made in conformity with the order of authorization or approval.

18 U.S.C. 2518(10)(a). Petitioner's motion invoked subparagraph (ii), contending that each of the district court's three orders authorizing interception of communications was "'insufficient on its face'" because Title III requires an order approving interception to include (among other things) "the 'identity of . . . the officer authorizing the application,'" and the orders had specified the title but not "the name of the official

authorizing the application." Pet. App. A2, A6 (quoting 18 U.S.C. 2518(1)(a) and (10)(a)(2)) (emphasis omitted).

The district court denied the motion. Pet. App. A6. The court determined that the orders substantially complied with Title III because they were based on and referred to the government's applications, which had identified the officials who had approved the applications by both title and by name. Ibid. Following a trial, the jury found petitioner guilty on all counts. Ibid.

b. Several months after the trial, petitioner moved for a new trial. Pet. App. A6. His motion asserted that this Court's decision in Dahda v. United States, 138 S. Ct. 1491 (2018), constituted a material change in the applicable law with respect to his request to suppress wiretap evidence. Pet. App. A6, E1-E2. In Dahda, this Court held that wiretap orders authorizing the interception of communications outside a district court's territorial jurisdiction were not "'insufficient' on their 'face'" within the meaning of Section 2518(10)(a)(ii) because the orders "would have been sufficient even if they lacked" the jurisdictional language. 138 S. Ct. at 1494, 1499. The Court observed that not every defect in a Title III order renders it "facially insufficient." Id. at 1498-1499.

The district court denied petitioner's new-trial motion, finding that it was "untimely by well over four months." Pet. App. E2. The court additionally found that the motion should be denied in any event "because [this] Court's ruling in [Dahda] d[id]

not disturb" the district court's determination that the omission of "the authorizing official's actual name in the Orders" did not warrant suppression given that "the Orders were all accompanied by an Application with the authorizing official's name." Ibid.

3. The court of appeals affirmed. Pet. App. A1-A35.

The court of appeals first observed that this Court's decision in Dahda "does not address how" the court of appeals should "determine whether the orders' failure to include the names of authorizing officials renders them 'insufficient.'" Pet. App. A11. The court explained that "the defect at issue" in Dahda itself -- language in a wiretap order purporting to authorize interception of communications outside the issuing court's territorial jurisdiction -- "did not implicate the requirements stated in [18 U.S.C.] 2518(4)(a)-(e)," including the requirement that a Title III order to specify (among other things) the identity of the authorizing official. Pet. App. A10. And the court noted that Dahda had reserved judgment on "the consequence of a defect under § 2518(10)(a)(ii) based on 'identifying the wrong Government official as authorizing the application.'" Id. at 11 (quoting Dahda, 138 S. Ct. at 1498).

The court of appeals determined that the omission of the names of the officials who approved the wiretap orders in this case did not require suppression under 18 U.S.C. 2518(10)(a)(ii). Pet. App. A11-A14. The court recognized that Title III's text requires a wiretap order to specify the authorizing official's "identity,"

and accepted a definition of that term as meaning "'the distinguishing character or personality of an individual.'" Id. at A12-A13 (quoting Merriam-Webster's Collegiate Dictionary 616 (11th ed. 2007)) (emphasis omitted). The court reasoned that, so defined, "the word 'identity' requires a description of [a] person that is sufficient to distinguish that person from others, but not necessarily the person's name," and therefore "whether a wiretap order sufficiently identifies a person turns on whether the description of the person leads to but one person." Id. at A13. As an example, the court observed -- and noted petitioner's "agree[ment]" -- that if an order "stated that the 'Attorney General,' without naming him or her, authorized the application, the order would be sufficient because that title refers to a unique, identifiable person." Id. at A12; see id. at A13.

Applying that "same reasoning," the court of appeals determined that the orders here were not facially insufficient. Pet. App. A13-A14. The court explained that "[e]ach order in this case state[d] that it was issued 'pursuant to an application authorized by an appropriate official of the Criminal Division, United States Department of Justice,'" whom each order identified by his or her title, "'pursuant to the power delegated to that official by special designation of the Attorney General.'" Id. at A11. The court accepted that an order that referred merely to "a Criminal Division Deputy Assistant Attorney General would not, without more, be sufficient because there are six such persons."

Id. at A13 (emphasis omitted). But it found that the orders here provided "more complete" identifications by specifying, "as the authorizing official, the Deputy Assistant Attorney General of the Criminal Division of the Department of Justice who signed off on the application leading to the issuance of the order." Ibid. The court observed that "the specific official who authorized the application was readily obtainable from that application, which was submitted to the judge with the proposed order and given to [petitioner] with the executed order." Ibid. The court accordingly found that, "in context, the orders contained sufficient information to identify the authorizing officials," and "both the authorizing judge and [petitioner] had a description sufficient to readily identify the one official who authorized the application for the order[s]." Id. at A13-A14.

The court of appeals recommended that, "to avoid doubt and possible confusion in the future," prosecutors should submit proposed wiretap orders that state both the authorizing official's name and title. Pet. App. A14. But it observed that "the Department of Justice ha[d] already recognized this" and that, "[s]everal years after the orders in this case were issued, the Department sent a circular to all federal prosecutors recommending that the name of the authorizing official be included in any proposed wiretap order." Ibid.; see C.A. Doc. 74, at 1-2, 7 (Feb. 5, 2020) (government post-argument letter submitting, at panel's

request, the current template for proposed wiretap orders, which includes the authorizing official's title and name).

The court of appeals additionally determined that, in any event, suppression would not be warranted here for two independent reasons. Pet. App. A14-A18. First, the court stated that the omission of the authorizing official's name "is a defect that does not amount to an insufficiency," because the orders here "substantially complied" with Section 2518(4). Id. at A14; see id. at A14-A15 (emphasis omitted). The court reasoned that "the statute does not specifically require the name of the person authorizing the application"; the applications were "in fact appropriately approved"; the orders had "disclosed by title the authorizing official[s]"; and the authorizing judge and petitioner "had actual knowledge of the name of each authorizing official." Id. at A15.

Second, the court of appeals determined that suppression was unwarranted "under the good faith doctrine." Pet. App. A15; see id. at A15-A18. The court observed that Congress had enacted Title III "against the backdrop of analogous Fourth Amendment jurisprudence," and accordingly "suppression is not justified" where "law enforcement officials have acted reasonably and in good faith to comply with the central substantive requirements of [Title III]." Id. at A16-A17. The court found that to be "the case here" because, although "the wiretap orders submitted by the government did not contain the names of the authorizing officials, the

accompanying applications did"; the government thus neither "fail[ed] to secure proper authorization for the applications" nor "attempt[ed] to obfuscate the identity of the relevant officials"; and, "at the time the orders in question were issued in 2013, no court of appeals had held that a failure to include the name of the authorizing officer in the wiretap order rendered such an order substantively deficient," and "numerous courts had considered challenges to similar orders and held that communications intercepted under those orders were not subject to suppression." Id. at A17. In addition, the panel noted that, following a decision of the D.C. Circuit in United States v. Scurry, 821 F.3d 1 (2016), that post-dated the wiretap applications in this case and that concluded that the omission of the name of the authorizing official from a wiretap order rendered the order fatally deficient, "the Department of Justice changed its practice to ensure that future orders d[o] contain the name of the authorizing official." Pet. App. A18 (emphasis omitted).

b. Judge Motz dissented. Pet. App. A21-A35. In her view, the omission of the names of the authorizing officials from the wiretap orders rendered them facially insufficient. Id. at A21-A31. She also disagreed with the majority's alternative conclusion that suppression would be unwarranted in any event under the good-faith doctrine. Id. at A32-A33.

ARGUMENT

Petitioner renews his contention (Pet. 3-5) that the wiretap orders were facially insufficient, and that evidence obtained pursuant to those orders was required to be suppressed under 18 U.S.C. 2518(10)(a)(ii), because the orders did not recite the names of the Department of Justice officials who had authorized the wiretap applications, and instead referred to the authorizing officials named in each application. The court of appeals correctly rejected that contention, and its decision does not conflict with any decision of this Court or otherwise warrant further review.

Although the D.C. Circuit has previously held that omission of the authorizing official's identity does render an order facially insufficient, petitioner overstates the disagreement, and in any event that shallow conflict does not warrant further review in this case. The question presented lacks ongoing practical significance under current Department of Justice practices. And even if the question warranted further review, this case would be an unsuitable vehicle to address it.

1. The court of appeals correctly determined that none of the wiretap orders in this case was "insufficient on its face," 18 U.S.C. 2518(10)(a)(ii). Pet. App. A7-A14.

a. Title III "allows judges to issue wiretap orders authorizing the interception of communications to help prevent, detect, or prosecute serious federal crimes." Dahda v. United

States, 138 S. Ct. 1491, 1494 (2018). To obtain such an order, the government must submit an application that provides certain information, id. at 1495, and which must be authorized by one of certain listed officials within the Department of Justice, including (among others) a Deputy Assistant Attorney General of the Criminal Division "specially designated by the Attorney General." 18 U.S.C. 2516(1); see 18 U.S.C. 2518(1). Title III "requires the judge to find 'probable cause' supporting issuance of the order" as a prerequisite for issuing one, "and it sets forth other detailed requirements governing both the application for a wiretap and the judicial order that authorizes it." Dahda, 138 S. Ct. at 1494 (citing 18 U.S.C. 2518). And it provides for suppression of intercepted communications or "evidence derived therefrom" in certain circumstances -- including, as relevant here, if "the order of authorization or approval under which" a communication "was intercepted is insufficient on its face." 18 U.S.C. 2518(10)(a)(ii).

As relevant here, Title III requires that an application for a wiretap "include * * * the identity of * * * the officer authorizing the application." 18 U.S.C. 2518(1)(a). Section 2518(4)(d) provides that, if a court approves the application, its wiretap order must "specify" "the identity * * * of the person authorizing the application." 18 U.S.C. 2518(4)(d). Here, each of the three wiretap orders "state[d] that it was issued 'pursuant to an application authorized by an appropriate official of the

Criminal Division, United States Department of Justice, Deputy Assistant Attorney General, pursuant to the power delegated to that official by special designation of the Attorney General.'" Pet. App. A11. Each order thus "identified the authorizing official by title" but "did not include the official's name, instead referring to the application where the name was provided." Id. at A11-A12. As the court of appeals recognized, under the circumstances, the orders thereby specified the identity of the authorizing official, as Section 2518(4)(d) requires.

The court of appeals explained that the language of Section 2518(4)(d) "requir[ing] that an order include the 'identity' of the person authorizing an action" means that the order must contain a "description of the person that is sufficient to distinguish that person from others, but not necessarily the person's name." Pet. App. A13. It reasoned that, in ordinary usage, "identity" refers to "'the distinguishing character or personality of an individual,' and not necessarily the name of the individual." Id. at A12-A13 (citation and emphasis omitted). An order would therefore be sufficient so long as it provides a "description of the [authorizing official]" that "leads to but one person." Id. at A13. For example, as petitioner acknowledged below, if a wiretap order "stated that the 'Attorney General,' without naming him or her, authorized the application, the order would be sufficient because that title refers to a unique, identifiable

person" whose "name, even though not given, can readily be obtained." Id. at A12-A13.

The court of appeals properly found that each of the three wiretap orders at issue similarly pointed to a single individual and therefore satisfied Section 2518(4)(d)'s requirements. Pet. App. A13. As the court observed, "[e]ach order identifies, as the authorizing official, the Deputy Assistant Attorney General of the Criminal Division of the Department of Justice who signed off on the application leading to the issuance of the order," and in each instance "the specific official who authorized the application was readily obtainable from that application, which was submitted to the judge with the proposed order and given to [petitioner] with the executed order." Ibid. The court thus correctly "conclude[d] that, in context, the orders contained sufficient information to identify the authorizing officials." Id. at A14.

Petitioner does not dispute that each order referred to a single person -- i.e., the particular official named in the application -- or that the name of each official could readily be obtained from consulting the application. And he offers no reason why it was necessary for the court to repeat that individual's name in its order. Petitioner instead contends (Pet. 5) that the court of appeals' decision conflicts with this Court's decision in Dahda v. United States, supra. That contention lacks merit.

The Court in Dahda held that the wiretap orders in that case were not facially insufficient under Section 2518(10)(a)(ii), even

though they contained language that erroneously described the orders' territorial scope (in a manner that would exceed the issuing court's territorial jurisdiction), because that language was "surplus." 138 S. Ct. at 1499; see id. at 1498-1500. That case did not present the question whether an order can specify an individual's identity by referring to a particular person named in another document but without also reciting the individual's name. The Court thus had no occasion to address whether an order's sufficiency in fact hinges, as petitioner suggests, on repeating the name of the authorizing official identified in the application.

b. The court of appeals further correctly determined that, even if "perfect compliance with § 2518(4)(d) would entail the inclusion of the authorizing official's name in the text of the order itself," and even if the orders' omission of that redundant information (already set forth in the applications the orders cited) thus were "technically a defect," it "is not the type of defect that would render th[o]se orders facially insufficient" and warrant suppression. Pet. App. A15; see id. at A14-A15.

As the Court observed in Dahda, "not every defect" in a Title III order "results in an insufficiency." 138 S. Ct. at 1499. For example, in United States v. Chavez, 416 U.S. 562 (1974), the Court held that a wiretap order was not facially insufficient under Section 2518(10)(a)(ii) even though it misidentified the official who had approved the application. Id. at 573-574. As the Court explained, both the official incorrectly identified as having

approved the application and the person who actually approved it were legally authorized to do so. Ibid. The Court concluded that, despite the error in the order's specification of the authorizing official, "[i]n no realistic sense * * * c[ould] it be said that the order failed to identify an authorizing official who possessed statutory power to approve the making of the application." Id. at 574.

Similarly, lower courts have long held that "technical" errors or omissions in Title III orders do not necessarily warrant suppression. United States v. Moore, 41 F.3d 370, 374 (8th Cir. 1994) ("[E]very circuit to consider the question" as of 1994 "ha[d] held that [Section] 2518(10)(a)(ii) does not require suppression if the facial insufficiency of the wiretap order is no more than a technical defect."), cert. denied, 514 U.S. 1121 (1995); see, e.g., id. at 375-376 (holding that omission of judge's signature did not warrant suppression). And several courts of appeals have specifically concluded that suppression was not warranted where the wiretap order omitted the identity of the authorizing official but where the authorizing official was specifically identified in the application or the memorandum of authorization was attached to the wiretap application. See United States v. Gray, 521 F.3d 514, 527-528 (6th Cir. 2008), cert. denied, 557 U.S. 919 (2009); United States v. Callum, 410 F.3d 571, 576 (9th Cir.), cert. denied, 546 U.S. 929 (2005); United States v. Fudge, 325 F.3d 910, 918 (7th Cir. 2003); United States v. Radcliff, 331 F.3d 1153, 1161

(10th Cir.), cert. denied, 540 U.S. 973 (2003); but see United States v. Scurry, 821 F.3d 1, 12 (D.C. Cir. 2016) (noting that D.C. Circuit has "left open the possibility that a 'technical defect' in a wiretap order might not rise to the level of facial insufficiency'" but holding that an order's omission of the authorizing official's name was not such a technical defect).

As the court of appeals observed, Dahda did not displace that substantial body of case law. Pet. App. A10-A11, A14-A15. Although the Court in Dahda declined to extend to Section 2518(10)(a)(ii) the approach it had previously applied to Section 2518(10)(a)(i) of excluding evidence only where a defect implicated Title III's "core concerns," the Court separately cited the body of lower-court decisions (including United States v. Moore, supra) holding that certain technical defects did not render wiretap orders insufficient and expressly reserved judgment on that question. 138 S. Ct. at 1497-1498.

Applying that settled approach, the court of appeals here properly found that the omission of the authorizing officials' names from the text of the wiretap orders is at most a "technical[]" error "that does not amount to an insufficiency" within the meaning of Section 2518(10)(a)(ii). Pet. App. A14-A15. As the court explained, "even if not in perfect compliance" with the requirements of Section 2518(4)(a)-(e), the orders here "nonetheless substantially complied with th[ose] requirements." Id. at A15 (emphasis omitted). The applications were in fact

properly approved by an appropriate official named in the applications the orders cited, and "both the court issuing the wiretap orders and later [petitioner] had actual knowledge of the name of each authorizing official" from those applications. Ibid.

2. Petitioner contends (Pet. 3-4) that review is warranted to resolve a conflict between the decision below and the D.C. Circuit's pre-Dahda decision in United States v. Scurry, supra. That contention lacks merit. Petitioner overstates the degree of disagreement between the D.C. Circuit and the decision below, and any conflict lacks ongoing practical significance.

As the court of appeals here observed, Pet. App. A12, the D.C. Circuit in Scurry agreed that Section 2518(4)(d)'s requirement to specify the "identity" of the authorizing official "may be met where the language" in a wiretap order "points unambiguously to a unique qualified officer." 821 F.3d at 8-9. The D.C. Circuit thus recognized, for example, that if an order refers to "a position that only one individual can occupy at a time," the wiretap order need not also identify that individual by name. Id. at 9.

The court of appeals and the D.C. Circuit thus agree that listing the authorizing official's name in the order is not invariably necessary. The D.C. Circuit nonetheless deemed the fact that the application supplied the official's name to be insufficient standing alone. See Scurry, 821 F.3d at 9. But it does not appear to have squarely addressed the possibility that,

even where a wiretap order refers to a position that may be held by more one than one individual, the order in context may still refer to a single person. And in this case, the court of appeals found sufficient identification where the order referred to the particular official who held the specified position and who was identified by name in the application cited by the orders. See pp. 7-10, supra.

In any event, any tension in the reasoning and results reached by the decision below and by the D.C. Circuit in Scurry does not warrant this Court's review. As the court of appeals in this case noted, following the D.C. Circuit's decision in Scurry in 2016, the "Department of Justice changed its practice to ensure that future [interception] orders did contain the name of the authorizing official." Pet. App. A18 (emphasis omitted). The Department issued a circular to federal prosecutors advising them to include the name of the authorizing official in the interception order. Id. at A14. In addition, the Department created a template wiretap order that includes the name of the authorizing official that it provides to federal prosecutors for delivery to district court judges. C.A. Doc. 74, at 1-2, 7; see pp. 9-10, supra. Those measures -- which post-dated by several years the wiretap orders from 2013 that are at issue in this case -- substantially reduce if not eliminate the practical significance of the question presented. Notably, petitioner has not identified any other

appellate decisions that have addressed the issue since the Department undertook those measures following Scurry.

3. Finally, even if the question presented otherwise warranted this Court's review, this case would be an unsuitable vehicle. The court of appeals determined in the alternative that, even assuming the wiretap orders were facially insufficient, suppression would not be warranted in any event under the good-faith doctrine. Pet. App. A15-A18. That determination provides an independent basis for affirmance of the court of appeals' judgment, and the government would be entitled to seek affirmance on that alternative ground. See, e.g., Dahda, 138 S. Ct. at 1498 (affirming on alternative ground). Unless that alternative ground were also set aside, a decision that the orders' omission of the authorizing officials' names renders the orders facially insufficient thus would not affect the judgment below. Petitioner, however, neither asks this Court to review that freestanding basis for the decision below nor attempts to demonstrate that it warrants plenary review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JANUARY 2021