NO._____

IN THE
SUPREME COURT OF THE UNITED STATES

SAMER ABDALLA,

Petitioner

vs.

UNITED STATES OF AMERICA,

Respondent

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Approximately 18 law-enforcement officers raided Samer Abdalla's home with what purported to be a search warrant. On the first page of the document was a statement that probable cause existed to search Mr. Abdalla's home, with an accurate description of that residence. However, on the third and final page, the document expressly authorized search of a *different* residence—an actual home on a different street, in a different town, and in a different county.

The questions presented are:

1. Under the Fourth Amendment, did officers have a "warrant" to search Mr. Abdalla's residence when the document purporting to authorize search in fact authorized search of an entirely different residence in a different town and different county?

2. Under the Fourth Amendment, if the document in question *was* a warrant, did the inclusion of the incorrect address in the authority-to-search section deprive the warrant of probable cause, particularity, or the authorization of a neutral and detached magistrate?

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The opinion of the United States Court of Appeals for the Sixth Circuit upholding the district court's denial of Mr. Abdalla's motion to suppress is a reported decision. *United States v. Abdalla*, 972 F.3d 838 (6th Cir. 2020); A1-A17. The memorandum of the United States District Court for the Middle District of Tennessee is also a reported decision. *United States v. Abdalla*, 327 F. Supp. 3d 1079 (M.D. Tenn. 2018); A18-36.

JURISDICTION

The Sixth Circuit issued its opinion on August 27, 2020. This Court has jurisdiction under 28 U.S.C. § 1254.

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."

STATEMENT OF THE CASE

Approximately 18 officers—representing both federal and state law enforcement—raided Samer Abdalla's home, authorized by a purported warrant that correctly described the location of his home but that authorized search of an entirely different home in a different county.

A. The "warrant"

In early 2017, federal and state officers conducted several controlled purchases of heroin from Mr. Abdalla and/or his girlfriend, sometimes at Mr. Abdalla's residence at 332 New Hope Road in Alexandria, DeKalb County, Tennessee. Based on these sales, Agent Brandon Gooch drafted a warrant affidavit and obtained a document purporting to be a search warrant.

The warrant was three pages long. A046-A048.[1] On the first page, there is a statement to "Agent Brandon Gooch, or any law enforcement officer of [DeKalb] County," that proof was made to the magistrate that "there is probable cause to believe that evidence of felony narcotics trafficking . . . is located upon the following described property. . . ." A046. The warrant then gave a lengthy description of Mr. Abdalla's residence—repeated from the supporting affidavit—that included the correct address of the residence at 332 New Hope Road.

Strangely, however, the warrant's third page gives permission to search an entirely different home in a different county:

> I now issue this search warrant in triplicate whereby you are commanded in the name of the State of Tennessee to search the residence, real property, outbuildings, barns, and premises located at *245 Carey Road, Hartsville, Trousdale [County] Tennessee* as well as all buildings, vehicles and persons found thereon . . . .

A048 (emphasis added). The warrant was signed on June 8, 2017 by Thirteenth Judicial District Criminal Court Judge David Patterson. (*Id.*) Notably, Trousdale County is not within the Thirteenth Judicial District in which Judge David

[1] The warrant and affidavit were originally filed under seal as Exhibit 1 to Docket Entry 20 in Case No. 2:17-cr-00007 (M.D. Tenn.). They are included in the Appendix for ease of reference.

Patterson sat. Further, as discussed below, in Tennessee a judge sitting in one judicial district does not have authority to issue a warrant to search a residence in another district.

Agent Gooch would later testify in federal court regarding drafting the warrant. The warrant was created in the same template as the affidavit, and as part of the same computer file. The 245 Carey Road address was officer error: the template Agent Gooch used to create the affidavit and warrant was taken from a prior document used in an investigation that had concluded approximately a year earlier, and Agent Gooch simply failed to erase the old address from that previous investigation. Agent Gooch testified that he did not read the warrant after the magistrate signed it, and he did not notice the error.

B. The raid

In the early morning of June 9, 2017, approximately 18 law-enforcement officers participated in the execution of the search warrant at the residence at 332 New Hope Road. Although the officers travelled together and participated in a pre-raid briefing, none of the officers other than Agent Gooch had a copy of the warrant or had read the warrant.

Officers entered the residence by force. Mr. Abdalla and his girlfriend were naked in their bed, high on a mixture of methamphetamine and fentanyl. A scuffle ensued, but officers quickly subdued Mr. Abdalla. Officers discovered several firearms in the residence, as well as small quantities of various narcotics.

C. The district court

The government originally indicted Mr. Abdalla with one count of being a felon in possession of a firearm under 18 U.S.C. § 922(g). Mr. Abdalla filed a motion to suppress the evidence, arguing among other things that the warrant was invalid due to the address error described above.

After a suppression hearing, the district court denied Mr. Abdalla's motion as it regarded the warrant error. A023-A027. After the district court denied the suppression motion, the government superseded the indictment, adding drug offenses and offenses under 18 U.S.C. § 924(c), among others. Mr. Abdalla pleaded guilty to most of the counts in the superseding indictment, expressly reserving his right to appeal the denial of his suppression motion. The district court ultimately sentenced Mr. Abdalla to 168 months' imprisonment.

D. The Sixth Circuit Court of Appeals

The Sixth Circuit Court of Appeals upheld the district court's denial of Mr. Abdalla's motion to suppress. *United States v. Abdalla*, 972 F.3d 838 (6th Cir. 2020); A1-A17. The appeals court held that the warrant was validly formed, probable cause existed, the warrant described the location with sufficient particularity, and the issuing judge did not "rubber-stamp" the warrant. A5-A12.

ARGUMENT

Approximately 18 officers raided Mr. Abdalla's residence based on a warrant they had never read. Had they read it, they would have found that it did not authorize the search that they nevertheless conducted: it authorized search of another residence two counties over. What they had in their hand, therefore, was

not a warrant for the residence at 332 New Hope Road in Alexandria, Tennessee. Even if it was, it lacked probable cause, particularity, and neutrality, as required by the Fourth Amendment.

A. A document granting authority to search on Carey Road in Trousdale County, Tennessee is not a "warrant" to search on New Hope Road in DeKalb County, Tennessee.

This Court has recognized that technical errors in a warrant may render that warrant "so obviously deficient that we must regard the search as 'warrantless' within the meaning of our case law." *Groh v. Ramirez*, 540 U.S. 551, 558 (2004). In *Groh*, the Court addressed a search warrant that was based on an affidavit that accurately described the location to be searched and the items that officers intended to seize (there, grenade launchers, rocket launchers, and assault rifles). *Id.* at 554. However, in the warrant itself, the officers filled out the portion labeled "person or property to be seized" by re-describing the location of the search rather than "the alleged stockpile of firearms." *Id.*

This Court held that "[t]he warrant was plainly invalid" for failing to list the items to be seized, despite the fact that those items were listed in the affidavit. *Id.* at 557. This technical failure was not a mere "formality," because "the right of a man to retreat into his home and there by free from unreasonable government intrusion stands at the very core of the Fourth Amendment." *Id.* at 559 (internal quotations and alterations omitted) (citing *Kyllo v. United States*, 533 U.S. 27, 31 (2001)).

As in *Groh*, the purported "warrant" to search Mr. Abdalla's home "was so obviously deficient that we must regard the search as 'warrantless.'" *Groh*, 540 U.S.

at 558. A "warrant" is "[a] writ directing or authorizing someone to do an act, esp[ecially] one directing a law enforcer to make an arrest, a search, a seizure." Black's Law Dictionary 1616 (8th ed. 2004). Thus, the main purpose of the document that the officers relied on in this case was to "direct or authorize" them to search the home on New Hope Road. In this respect it failed spectacularly:

> I now issue this search warrant in triplicate whereby you are commanded in the name of the state of Tennessee to search the residence, real property, outbuildings, barns, and premises located at 245 Carey Road, Hartsville, Trousdale Tennessee as well as all buildings, vehicles and persons found thereon . . . .

A048. This is simply not a warrant to search at 332 New Hope Road. It does not matter that the first page of the purported warrant describes the New Hope Road residence and states that there is probable cause to believe that contraband might be found there. (*Id.* PageID#57.) The "warrant" is not the assertion of probable cause; it is the direction or authorization to search the residence, which here is at 245 Carey Road in Hartsville, Trousdale County, Tennessee, a few counties over from Mr. Abdalla's residence on New Hope Road.

Accordingly, when authorities searched Mr. Abdalla's residence, they did so without a warrant.

B. Even if the search was not technically "warrantless," it failed to establish probable cause, state with particularity the place to be searched, or receive authorization from a neutral and detached magistrate.

If the document that officers had could be considered a "warrant" for the purposes of the Fourth Amendment, the address deficiency still renders it facially invalid by depriving it of probable cause, necessary particularity, and the authority

of a neutral magistrate. Any one of these could suffice to invalidate the search, and their combined effect mandates suppression.

1. Probable cause

Under the Fourth Amendment, warrants shall only issue "upon probable cause." Here, the warrant expressly states that there is probable cause to search the residence at 332 New Hope Road in Alexandria, DeKalb County, Tennessee. A046. It then authorizes search at 245 Carey Road, Hartsville, Trousdale County, Tennessee. A048. The mismatch between the stated location of probable cause and the place to be searched deprives this warrant of probable cause.

"'We are not dealing with formalities.'" *Groh*, 540 U.S. at 558-59 (quoting *McDonald v. United States*, 335 U.S. 451, 455 (1948)). *Groh* teaches that fundamental errors in a warrant such as this must be read literally, and the circuit courts have reached similar conclusions. Consider *United States v. Hodson*, 543 F.3d 286 (6th Cir. 2008). There, officers had investigated a man for alleged child molestation. *Id.* at 287. The officers submitted an affidavit describing the molestation investigation, which did not involve child pornography in any way; but for reasons unknown they requested permission to "search for evidence of child *pornography*, with nary a hint of child *molestation*." *Id.* at 288. The warrant itself had the same problem: it incorporated the affidavit by reference, including the part describing the molestation investigation, but it authorized search for child pornography. *Id.* Officers then searched the defendant's residence and discovered child pornography. *Id.*

The district court in *Hodson* had held that the warrant lacked probable cause, and the Sixth Circuit Court of Appeals agreed, noting that "it is beyond dispute that the warrant was defective" because it "established probable cause to search for evidence of one crime (child molestation) but designed and requested a search for evidence of an entirely different crime (child pornography)." *Id.* at 292. The only question left for the appeals court was whether the good faith exception applied, and the court dispatched that easily: "upon looking at this warrant," any "reasonably well trained officer" would have certainly realized that "the search described . . . did not match the probable cause described." *Id.* at 293.

In this case, it is even more obvious that "the search described did not match the probable cause described": the warrant describes probable cause to search in DeKalb County, Tennessee, whereas it authorizes a search at a different address two counties over in Trousdale County. One would certainly hope that any "reasonably trained officer"—or any one of the 18 officers that executed the warrant without reading it—would have realized that their warrant was for a different property. This fundamental deficiency deprived the warrant of probable cause.

2. Particularity

The Fourth Amendment requires that a warrant describe with "particular[ity] . . . the place to be searched and the persons or things to be seized." U.S. Const. amend. IV. A warrant should describe the place to be searched and objects to be seized with sufficient particularity to leave "'nothing . . . to the discretion of the officer executing the warrant.'" *Andresen v. Maryland*, 427 U.S. 463, 480 (1976) (quoting *Marron v. United States*, 275 U.S. 192, 196 (1927)). To

determine whether a warrant meets this particularity requirement, the various circuit courts of appeals have cohered on a similar standard, as exemplified by the Sixth Circuit's two-part test: (1) "whether the description is sufficient 'to enable the executing officer to locate and identify the premises with reasonable effort,'" and (2) "'whether there is any reasonable probability that another premises might be mistakenly searched.'" *United States v. Durk*, 149 F.3d 464, 465 (6th Cir. 1988) (quoting *United States v. Gahagan*, 865 F.2d 1490, 1496 (6th Cir. 1990) (officers transposed digits in warrant from "4216 Fulton" to "4612 Fulton," although the house was otherwise described with great specificity). *See also, e.g.*, *United States v. Pervaz*, 118 F.3d 1, 9 (1st Cir. 1997) (apartment number 156 was between two doors, and defendant *may* have lived at 156A, or may have lived at 158); *United States v. Williams*, 69 F. App'x 494, 495-96 (2d Cir. 2003) (warrant identified apartment building containing multiple units, but directed officers to "brown side door" that was the only entrance to the apartment to be searched); *United States v. May*, 446 F. App'x 652, 655 (4th Cir. 2011) (warrant gave address that was shared by three different trailer homes, but officers were familiar with the trailer to be searched); *United States v. McMillian*, 786 F.3d 630, 640 (7th Cir. 2015) (warrant and affidavit described address as 6633 rather than 6333, but there was sufficient description of the residence aside from the wrong digit); *United States v. Lora-Solano*, 330 F.3d 1288, 1293 (10th Cir. 2003) (officers incorrectly listed 2021 Camelot Way instead of 2051, but the warrant was conditioned on a successful sale

of narcotics to a CI, and the CI traveled there with an officer familiar with the correct residence).

Simply stated, the Sixth Circuit's determination that this warrant falls within the above precedent constitutes a dramatic expansion of this body of law beyond anything previously approved or addressed by this Court or others under the particularity requirement of the Fourth Amendment. As the above parenthetical descriptions indicate, courts apply this standard to small discrepancies in addresses, such as transposed digits or residences with ambiguous addresses. None of these or dozens of similar cases across the country address an error so grave as a warrant that only gives permission to search a residence two counties over at an entirely different address—especially when that wrong address actually describes a real residence that was the target of another investigation. Indeed, the only case to address a similar (yet much less geographically significant) error upheld suppression based on a lack of particularity. *United States v. Williamson*, 1 F.3d 1134, 1136 (10th Cir. 1993) (invalidating warrant that gave an incorrect rural highway address that was "about one mile east and eight miles south" of the correct target location).

Even if the above standard *does* apply to so grave an error, this warrant fails the two-part test. It is clear that the description in the authority-to-search section of the warrant in this case would not "enable the executing officer to locate and identify the premises with reasonable effort." *Durk*, 139 F.3d at 465. The only way

to get to the "correct" address to be searched is by ignoring the address that the warrant tells officers to search.

Similarly, the test of "whether there is any reasonable probability that another premise might be mistakenly searched" fits awkwardly at best under these uniquely egregious circumstances. *Id.* While it is true that none of the 18 or so officers who kicked in Mr. Abdalla's door were likely to accidentally kick in a door on Carey Road in Trousdale County (if for no other reason than that none of them had read the warrant), it is hard to argue that a warrant listing two different addresses does not create some risk that an objective reader might search the wrong house. This is especially true where the government has argued that the officers could have and *should have* ignored the language in the warrant authorizing search (on Carey Road) in favor of the language that merely states where probable cause exists (on New Hope Road). Again, the whole purpose of the particularity requirement is to describe the place to be searched and objects to be seized so as to leave "nothing . . . to the discretion of the officer executing the warrant." *Andresen*, 427 U.S. at 480 (internal quotations omitted). Choosing which of two real addresses to ignore is the ultimate discretion.

Further, this interpretation is especially dangerous because it renders the warrant perfectly ambiguous. Consider this hypothetical: If the warrant affidavit accurately described the residence on Carey Road in Trousdale, Tennessee, and established probable cause to search that residence, it is easy to imagine the government defending a search of a residence on Carey Road based on the exact

warrant in front of the Court now.[2] It would claim that the grant-of-authority section of the affidavit properly described the right house in the right county, and that it matched the information in the warrant affidavit—the same arguments the government makes now. A warrant that could be construed to allow a search of two different homes in different counties altogether depending on what is in the affidavit is a deeply concerning prospect and exemplifies the possibility that officers could potentially search another location.

The Sixth Circuit's holding in this case—that this uniquely egregious warrant fits neatly into the previous body of cases addressing much smaller errors in warrants—dramatically diminishes the scope of the particularity clause, rendering that Fourth Amendment protection almost a nullity.

3. A neutral magistrate

To be valid under the Fourth Amendment, a search warrant must be issued by a neutral and detached magistrate. *Shadwick v. City of Tampa*, 407 U.S. 345, 350 (1972). "The purpose of a warrant is to allow a neutral judicial officer to assess whether the police have probable cause to make an arrest or conduct a search." *Steagald v. United States*, 451 U.S. 204, 212 (1981). In performing her neutral and detached role, an issuing magistrate must "not serve merely as a rubber stamp for the police." *Aguilar v. State of Texas*, 378 U.S. 108, 111 (1964). A neutral and detached judge is required to consider the persuasiveness of the warrant application

[2] Notably, although the warrant in this case made reference to "proof having been made before me and reduced to writing and sworn to," A046, nothing in the warrant itself expressly incorporates by reference the affidavit, nor is there any evidence that the executing officers had the affidavit in their possession at the time of the search.

and not blindly accept the conclusions of the application. *Giordenello v. United States*, 357 U.S. 480, 486 (1958); *see also United States v. Ramirez*, 63 F.3d 937, 941 (10th Cir. 1995) ("[I]t is the duty of an issuing magistrate to ensure that a warrant corresponds to the content of the supporting affidavit.").

A warrant may be invalidated when a magistrate fails to conduct an independent review of the affidavit supporting a warrant application. *See e.g., United States v. Decker*, 956 F.2d 773, 777-78 (8th Cir. 1992) (affirming district court's suppression of evidence because the magistrate who issued the search warrant failed to read the supporting affidavit).

Here, the judge issuing the warrant failed to act as a neutral and detached magistrate. The incorrect address in the warrant's authorization section would have stuck out like a sore thumb for numerous reasons. This was the first time any document involved had mentioned the Carey Road address. More importantly, the address lies in *another county altogether*, one that is outside of judge's judicial authority under Tennessee law. *United States v. Master*, 614 F.3d 236, 241 (6th Cir. 2010) (discussing Tennessee's restriction against out-of-county or out-of-judicial-district warrants and suppressing evidence because of it). A DeKalb County Judge in the 13th Judicial District reading this warrant would have noticed an address in Trousdale County in the 15th Judicial District. It is therefore safe to assume that he did not read the warrant. *See, e.g.*, *Decker*, 956 F.2d at 777 ("The warrant's glaring omission of the items to be seized supports the district court's finding that

the issuing judge never read it."). This judge's failure to note this "glaring omission" renders the warrant invalid. *Id.*

CONCLUSION

While it is true that the error in this case was "merely" a typographical mistake, it was a mistake of enormous consequence. The warrant expressly directs officers to search an entirely different home—in a different town and different county, and one that was the subject of another investigation entirely—than the one they ultimately searched. By issuing a published decision holding that this error did not invalidate the warrant and require suppression, the Sixth Circuit Court of appeals has gravely diminished the meaning of Fourth Amendment's particularity clause and erroneously expanded the realm of permissible exceptions to that requirement.

November 24, 2020

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