No. 21-752

In the Supreme Court of the United States

REX HAMMOND, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether law enforcement violated petitioner's Fourth Amendment rights by acquiring approximately six hours of real-time location information for petitioner's cell phone pursuant to Section 2702(c)(4) of the Stored Communications Act, 18 U.S.C. 2701 *et seq.*, in the course of arresting him, where the arrest was supported by probable cause that he had committed a recent string of armed robberies; the requesting detective had a good-faith belief that the situation presented an exigency that required petitioner's immediate apprehension; and the real-time information revealed only petitioner's movements along public roads and in publicly visible parking lots.

2. Whether, assuming that a Fourth Amendment violation occurred, petitioner's motion to suppress the real-time information and its fruits was properly denied pursuant to the good-faith exception to the exclusionary rule because the government obtained that evidence by relying in good faith on Section 2702(c)(4) of the Stored Communications Act.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (N.D. Ind.):

United States v. *Hammond*, No. 18-cr-5 (July 16, 2019)

United States Court of Appeals (7th Cir.):

United States v. *Hammond*, No. 19-2357 (Apr. 26, 2021)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 2a-48a) is reported at 996 F.3d 374. The order of the district court (Pet. App. 49a-60a) is unreported but is available at 2018 WL 5292223.

JURISDICTION

The judgment of the court of appeals was entered on April 26, 2021. A petition for rehearing was denied on August 19, 2021 (Pet. App. 61a-62a). The petition for a writ of certiorari was filed on November 17, 2021. 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 Northern District of Indiana, petitioner was convicted on five counts of Hobbs Act robbery, in

violation of 18 U.S.C. 1951; two counts of brandishing a firearm during a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A); and one count of possessing a firearm as a felon, in violation of 18 U.S.C. 922(g)(1). Judgment 1; Pet. App. 3a. The district court sentenced petitioner to 564 months of imprisonment, with no term of supervised release. Judgment 3-4. The court of appeals affirmed. Pet. App. 2a-48a.

1. From October 6 to October 9, 2017, petitioner committed three armed robberies of gas-station convenience stores in northern Indiana, obtaining approximately $1600. Pet. App. 4a; Presentence Investigation Report (PSR) ¶ 5. During each robbery, petitioner entered the store wearing a mask and clear plastic gloves, brandished a light-brown handgun at the store clerk, and demanded money from the cash register. Pet. App. 3a-4a; PSR ¶ 5. On the evening of October 10, 2017, petitioner attempted two more armed robberies of stores in Michigan, again wearing the same garb and again brandishing a gun at the store clerk. *Ibid.* In the first attempted robbery, the store clerk fled, and petitioner tried and failed to open the cash register himself. Pet. App. 4a; PSR ¶ 5. In the second attempted robbery, the store clerk began to give petitioner cash, but managed to grab petitioner's gun when petitioner placed it on the counter. *Ibid.* Petitioner fled the scene, leaving his gun behind. *Ibid.*

On October 25, 2017, federal and state investigators met to discuss the string of robberies. Pet. App. 5a, 50a. After reviewing surveillance videos of each crime, investigators believed that the same person had committed all of them. *Id.* at 4a, 50a; PSR ¶ 6. That same day, petitioner robbed another Indiana convenience store at gunpoint, with a similar modus operandi to the others

but a different gun (a dark-colored .22 revolver). Pet. App. 4a, 50a; PSR ¶ 7. Two days later, on October 27, 2017, petitioner followed the same pattern to rob an Indiana liquor store, his seventh armed robbery (or attempt) of the month. *Ibid.*

On October 28, 2017, investigators traced the gun seized by the clerk at the fifth would-be robbery to a seller who reported that the buyer's name was "Rex." Pet. App. 5a, 50a. The seller provided the cell-phone number that "Rex" had used to arrange the sale, and on October 29, 2017, investigators traced that number to petitioner. *Id.* at 5a, 51a. The officers also confirmed that petitioner's car matched descriptions and surveillance footage of the one used in the robberies. *Ibid.* The officers additionally learned that petitioner had several prior Indiana convictions, including for armed robbery. *Id.* at 5a.

By October 30, 2017, a detective with the Kalamazoo, Michigan police force believed that he had probable cause to arrest petitioner for the robbery spree. Pet. App. 6a. During the day, he determined that AT&T was the cellular-service provider for petitioner's cell-phone number, contacted AT&T, and asked AT&T to disclose location information for petitioner's cell phone pursuant to Section 2702(c)(4) of the Stored Communications Act, which allows providers of certain electronic-communication services to disclose "information pertaining to a subscriber to or customer of such service," not including the contents of communications, "to a governmental entity, if the provider, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of information relating to the emergency." 18 U.S.C. 2702(c)(4); see 18 U.S.C. 2702(a)(1); Pet. App. 6a.

In his Section 2702(c)(4) request, the detective asked AT&T to provide "real-time 'pings' to nearby cell towers." Pet. App. 6a. AT&T agreed to provide the information and, as relevant here, began "pinging" petitioner's phone roughly every 15 minutes, beginning at approximately 6 p.m. on October 30, 2017, and sharing that real-time location information with the detective.[1] *Id.* at 6a, 51a. Using the real-time location information from AT&T, the detective directed two officers to look for petitioner in Elkhart, Indiana, but efforts to locate him there were unsuccessful. *Id.* at 6a. At approximately 11:30 p.m., petitioner's cell phone "pinged" near a toll road in South Bend, Indiana. *Ibid.*

When the officers arrived in South Bend, they recognized petitioner's car in a motel parking lot, ran a license-plate check to confirm that it was his, and called for backup. Pet. App. 6a-7a. Before the backup arrived, petitioner drove out of the parking lot, and the two officers at the scene began following him. *Id.* at 7a. When he spotted the officers, petitioner started driving evasively, and managed to get away. *Ibid.* A short time later, a local officer who was aware of the investigation recognized petitioner driving by; at approximately 1:23 a.m. he stopped petitioner for speeding and failing to signal. *Ibid.*

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[1] At the detective's request, AT&T also provided historical cell-site location records dating back to the beginning of the robbery spree, but investigators did not use that information to locate petitioner or to locate any other evidence, and those historical records were not introduced at petitioner's trial. Pet. App. 6a, 16a-17a. Petitioner does not challenge officers' acquisition of the historical cell-site location data before this Court. See Pet. i; see also, *e.g.*, Pet. 12, 18, 20.

Officers then arrested petitioner, who was wearing the same clothes that he had worn during the robberies. Pet. App. 7a; see *id.* at 3a; PSR ¶ 6. Petitioner's passenger informed officers that petitioner had told her that "they were going to 'get[] some money.'" Pet. App. 7a (brackets in original). Officers obtained a warrant to search petitioner's car and discovered a black .22 caliber revolver, 44 rounds of .22 caliber ammunition, rubber gloves, and other evidence. *Ibid.*[2]

2. In January 2018, a grand jury in the Northern District of Indiana charged petitioner with five counts of Hobbs Act robbery, in violation of 18 U.S.C. 1951; two counts of brandishing a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A); and one count of possessing a firearm as a felon, in violation of 18 U.S.C. 922(g)(1). Indictment 1-8; Pet. App. 8a.

Approximately five months after the indictment, and eight months after the arrest, this Court held in *Carpenter* v. *United States*, 138 S. Ct. 2206 (2018), that the government's acquisition of seven or more days of historical cell-site location records is a Fourth Amendment "search" generally subject to the warrant requirement. *Id.* at 2217. Petitioner subsequently moved to suppress all location information for his cell phone, the statements that he and his passenger had made at the time

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[2] The government subsequently obtained additional historical cell-site records for petitioner's phone pursuant to a court order under 18 U.S.C. 2703(d). Pet. App. 8a. The records confirmed that, at the time of each robbery, petitioner's phone had connected to AT&T cell towers near that robbery location. *Ibid.* Petitioner does not challenge officers' acquisition of that information before this Court. See Pet. i; see also, *e.g.*, Pet. 12, 18, 20.

of his arrest, and the physical evidence recovered from his car. Pet. App. 8a.

The district court denied the suppression motion. Pet. App. 49a-60a. Although the court considered the government to have "concede[d]," in light of *Carpenter*, that the acquisition of petitioner's real-time phone-location information had required a search warrant, the court determined that the good-faith exception to the exclusionary rule applied. *Id.* at 53a; see *id.* at 53a-58a. The court explained that the Kalamazoo detective had "believed in good faith that a federal statute allowed him to act as he did, based on what he (and AT&T) believed to be an emergency, rather than obtaining a warrant." *Id.* at 56a. And the court found that the detective "reasonably thought that he, other officers, and the public faced a compelling need to act without a warrant." *Id.* at 55a.

3. The court of appeals affirmed. Pet. App. 2a-48a. The court observed, as a threshold matter, that the government had not in fact conceded before the district court that the acquisition of the real-time location information required a search warrant. See *id.* at 18a n.4. And it determined that the acquisition of real-time location information for petitioner's cell phone "did not constitute a search under the particular circumstances of this case." *Id.* at 17a; see *id.* at 27a-28a.

The court of appeals observed that the real-time location information in this case, which had provided periodic updates on petitioner's movements for approximately six hours "on public, interstate highways and in[] parking lots within the public's view," did not "provide a 'window into [petitioner's] life, revealing his familial, political, professional, religious, and sexual associations' to the same, intrusive degree as the collection

of" 127 days of historical cell-site records that this Court considered in *Carpenter*. Pet. App. 22a (ellipsis omitted) (quoting *Carpenter*, 138 S. Ct. at 2217); see *id.* at 22a-23a. The court emphasized that petitioner "does not argue that he was in private areas during this time period" and that the real-time data here, unlike the data in *Carpenter*, had no "retrospective quality." *Id.* at 23a.

The court of appeals additionally observed that the government's acquisition of real-time location information in these circumstances aligned with society's expectations about "law enforcement's capabilities," including that "officers may follow and track a suspect's movements for several hours." Pet. App. 23a-24a. The court also determined that, to the extent that petitioner had a subjective expectation of privacy in his location during the hours in question, that expectation was "not reasonable" because law-enforcement officers "had probable cause to arrest [petitioner]" at the relevant time. *Id.* at 27a. And the court made clear that its determination that no Fourth Amendment violation occurred was "narrow and limited to the particular facts of this case." *Id.* at 28a.

"In the alternative," the court of appeals found that even if a warrant had been required, petitioner was not entitled to suppression of the evidence or its fruits, because the officers' "'good-faith belief that their conduct [wa]s lawful'" fell within the good-faith exception to the exclusionary rule. Pet. App. 28a (citation omitted). The court observed that officers had relied in good faith on Section 2702(c)(4), which allows a cell-service provider to release records to a governmental entity related to an emergency involving the risk of death or serious physical injury. *Id.* at 29a; see 18 U.S.C. 2702(c)(4). The court found no clear error in the district court's finding

that the detective who requested such records here "had a good faith belief" that such an emergency "was at hand," and that his pre-*Carpenter* reliance on Section 2702(c)(4) was "reasonabl[e]." Pet. App. 29a-30a (internal quotation marks omitted). And the court "reinforced" that reasonableness determination by pointing to its own pre-*Carpenter* precedent, which had explained that "a suspect 'wanted on probable cause' could not 'complain about how the police learned his location,'" including if the information came from "the phone company's cell towers." *Ibid.* (emphasis omitted) (quoting *United States* v. *Patrick*, 842 F.3d 540, 545 (7th Cir. 2016), cert. denied, 138 S. Ct. 2706 (2018)).

ARGUMENT

Petitioner contends (Pet. 9-12, 20-21) that his Fourth Amendment rights were violated when law-enforcement officers relied on 18 U.S.C. 2702(c)(4) to obtain approximately six hours of real-time location information for petitioner's cell phone. Petitioner additionally contends (Pet. 12-18, 21-23) that, if a Fourth Amendment violation occurred, the good-faith exception to the exclusionary rule should not apply because Section 2702(c)(4) of the Stored Communications Act (SCA), 18 U.S.C. 2701 *et seq.*, did not allow for the disclosure of real-time location information to officers in these circumstances. The court of appeals correctly rejected the first contention and the second was neither pressed nor passed on below. The decision below does not conflict with any decision of this Court, any other court of appeals, or any state court of last resort. And in any event, this case presents a poor vehicle for reviewing either question presented. No further review is warranted.

1. a. This Court has explained that a Fourth Amendment search occurs "when government officers violate a person's 'reasonable expectation of privacy.'" *United States* v. *Jones*, 565 U.S. 400, 406 (2012) (quoting *Katz* v. *United States*, 389 U.S. 347, 360 (1967) (Harlan, J., concurring)); see *Florida* v. *Jardines*, 569 U.S. 1, 5-6 (2013). The reasonable-expectation-of-privacy standard requires "first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as 'reasonable.'" *Katz*, 389 U.S. at 361 (Harlan, J., concurring); see *Smith* v. *Maryland*, 442 U.S. 735, 740 (1979) (adopting Justice Harlan's formulation).

Petitioner claims (Pet. 20-21) that his reasonable expectation of privacy was violated here by the six hours of periodic updates of cell-phone location information that officers received in the course of apprehending him. In support of that claim, petitioner invokes (Pet. i, 2-3, 20) this Court's decision in *Carpenter* v. *United States*, 138 S. Ct. 2206 (2018), in which this Court held that the government's acquisition of seven days of historical cell-site location information (CSLI) from a cellular-service provider constituted a Fourth Amendment search. *Id.* at 2217 & n.3. In *Carpenter*, the Court found that the government's acquisition of that information had "contravene[d]" society's expectation "that law enforcement agents and others would not—and indeed, in the main, simply could not—secretly monitor and catalogue every single movement of an individual's car for a very long period." *Id.* at 2217 (citation omitted); see Pet. App. 23a-24a. But the Court specifically declined to "express a view" regarding the Fourth Amendment's application to "real-time CSLI,"

Carpenter, 138 S. Ct. at 2220, or to more "limited" periods of cell-phone location information, *id.* at 2217 n.3.

Petitioner is accordingly mistaken in contending (Pet. 20) that "the logic of *Carpenter*" compels suppression of the contested evidence here.[3] As the court of appeals explained, the government's acquisition of six hours of periodic updates of real-time phone location information is "very different from the 127 days of monitoring at issue in *Carpenter*," because the limited information "does not provide a 'window into [petitioner's] life, revealing his familial, political, professional, religious, and sexual associations' to the same, intrusive degree." Pet. App. 22a (ellipsis omitted) (quoting *Carpenter*, 138 S. Ct. at 2217). Instead, "law enforcement only followed [petitioner] on public roads, for the duration of one car trip," *id.* at 23a, and "society is fully aware that officers may follow and track a suspect's movements for several hours," *id.* at 24a. See also *Jones*, 565 U.S. at 430 (Alito, J., concurring in the judgment) ("[R]elatively short-term monitoring of a person's movements on public streets accords with expectations of privacy that our society has recognized as reasonable.").

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[3] Although aspects of the court of appeals' description of the technology used in this case support petitioner's suggestion that the technology may not actually have been CSLI, he accepts the court of appeals' description of the technology that way. Pet. 5 n.1. The government is also uncertain that it was CSLI, but likewise accepts the lower courts' characterization. And at all events, even if it were a technology whose employment might more readily be described as a Fourth Amendment search, suppression of the evidence would not be required because neither the exigent-circumstances exception to the exclusionary rule, nor the applicability of Section 2702(c)(4) as relevant to the good-faith exception to the exclusionary rule, turns on the technology used to obtain the information received by the government.

b. In any event, even if acquiring real-time location information for petitioner's cell phone in these circumstances constituted a search within the meaning of the Fourth Amendment, no warrant was required under the exigent circumstances rule. See *Kentucky* v. *King*, 563 U.S. 452, 460 (2011). Although the court of appeals did not need to address the exigent circumstances rule, the government raised it before the court, see Gov't C.A. Br. 23-32, and it provides an independent basis for affirmance. See *Dandridge* v. *Williams*, 397 U.S. 471, 475 n.6 (1970) (prevailing party may rely on any ground to support the judgment, even if not considered below).

In *Carpenter*, this Court confirmed that the government may obtain phone-location information without a warrant "'when the exigencies of the situation make the needs of law enforcement so compelling that a warrantless search is objectively reasonable under the Fourth Amendment,'" including "to pursue a fleeing suspect" and to "protect individuals who are threatened with imminent harm." 138 S. Ct. at 2222-2223 (citations and internal quotation marks omitted). And as the lower courts made clear in addressing the statutory exigency requirement under the SCA, see Pet. App. 29a-30a, 51a, 54a-56a, petitioner's case presented just those kinds of exigencies.

As the court of appeals observed (Pet. App. 27a), "[o]fficers were pursuing an individual suspected of committing at least five successful armed robberies and two attempted armed robberies within a short period of time," and they "had reason to believe he was armed (he was) and likely to attempt another armed robbery (he intended to)." The "district court's factual findings regarding a pending emergency—that there was a strong possibility of another robbery and that the detective

was alarmed at the suspect's handling of his weapon" were not clearly erroneous. *Id.* at 30a. And the district court, relying on those facts, explained that petitioner's apparent "willingness to use a weapon" justified a belief that "the public faced a compelling need to act without a warrant." *Id.* at 55a.

c. No conflict warranting this Court's review exists between the decision below and the decisions that petitioner cites (Pet. 9-11) from the state courts of last resort in Florida, Washington, and Connecticut.[4]

In *Tracey* v. *State*, 152 So. 3d 504 (2014), which predated *Carpenter*, the Supreme Court of Florida concluded that the acquisition of the defendant's real-time cell-site location information, which had included tracking the defendant's phone inside a house, was a Fourth Amendment search "for which probable cause was required." *Id.* at 526. And it determined that a Fourth Amendment violation had occurred "[b]ecause probable cause did not support the search." *Ibid.* But it expressly did not "reach the issue of any recognized exceptions to the warrant requirement, such as exigent circumstances that require immediate location of a subject's cell phone." *Id.* at 526 n.17. *Tracey* thus does not establish that the Florida Supreme Court would find a Fourth Amendment violation in petitioner's case, where "the law enforcement officers involved * * * collectively had probable cause to arrest [petitioner]," Pet. App. 25a-26a, and also had "reason to believe he was

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[4] Petitioner also predicts (Pet. 11 n.2) that the D.C. Court of Appeals would "very likely" disagree with the decision below, but acknowledges that it "has not directly addressed" whether a Fourth Amendment search occurs when the government obtains real-time phone-location information from a cellular-service provider.

armed" and "likely to engage in another armed robbery," *id.* at 27a-28a.

The decision below is in accord with the result in *State* v. *Muhammad*, 451 P.3d 1060 (2019), where the Washington Supreme Court determined that the warrantless acquisition of the defendant's real-time phone-location information did *not* violate the defendant's Fourth Amendment rights. See *id.* at 1066. Although the Washington court found that a Fourth Amendment search had occurred, see *id.* at 1068-1074, the court determined that the government permissibly obtained the defendant's real-time location information without a warrant because exigent circumstances existed: the defendant "was in flight," "might have been in the process of destroying evidence," and was a suspect in "grave and violent" crimes. *Id.* at 1075; see *id.* at 1074-1075. That analysis accords with the lower courts' determination here that the government did not violate petitioner's Fourth Amendment rights by obtaining the real-time location information for petitioner's phone pursuant to 18 U.S.C. 2702(c)(4).

Finally, *State* v. *Brown*, 202 A.3d 1003 (Conn. 2019), does not support petitioner's assertion of a conflict. In *Brown*, the State conceded that the court orders authorizing officers to obtain real-time location information for the defendant's phone had violated Connecticut General Statutes § 54-47aa (2021). 202 A.3d at 1010. In light of that concession, the Connecticut Supreme Court found it "unnecessary to resolve whether those orders also violate the [F]ourth [A]mendment" and thus "confine[d]" its analysis to the question "whether application of the exclusionary rule is the proper remedy for a violation of § 54-47aa." *Id.* at 1014 n.9. And although the court expressed the passing view

that the state-law violation in that case "implicate[d] important [F]ourth [A]mendment interests," *id.* at 1014, the court found it "at best unclear whether the holding in *Carpenter* would extend" to the orders because neither order "authorized the release of more than three days of CSLI and both applied prospectively," *id.* at 1014 n.9, and it made clear that it was "the importance of the protected interests—not the force of the [F]ourth [A]mendment itself—that require[d] suppression" based on the violation of state law. *Id.* at 1017 n.13.

2. The court of appeals also correctly determined that petitioner was not entitled to suppression of the disputed evidence in this case based on the good-faith exception to the exclusionary rule. And the contrary argument that petitioner advocates in this Court was neither pressed nor passed on below.

a. As this Court has explained, the exclusionary rule is a "'judicially created remedy'" "designed to deter police misconduct rather than to punish the errors of judges and magistrates." *United States* v. *Leon*, 468 U.S. 897, 906, 916 (1984) (citation omitted); see *Davis* v. *United States*, 564 U.S. 229, 236-237 (2011). It permits "the harsh sanction of exclusion only when [police practices] are deliberate enough to yield 'meaningful' deterrence, and culpable enough to be 'worth the price paid by the justice system.'" *Davis*, 564 U.S. at 240 (brackets and citation omitted). Accordingly, in *Illinois* v. *Krull*, 480 U.S. 340 (1987), this Court held that the good-faith exception to suppression applies when "officers act[ed] in objectively reasonable reliance upon a *statute* authorizing warrantless administrative searches," even though that statute was later found to violate the Fourth Amendment. *Id.* at 342; see *id.* at 349.

The good-faith exception likewise applies in petitioner's case because, as the courts below found, the officers here acted in objectively reasonable reliance on the SCA, 18 U.S.C. 2702(c)(4), when they obtained the real-time location information for petitioner's cell phone. See Pet. App. 28a-31a, 53a-56a. Even assuming that Section 2702(c)(4) were unconstitutional as applied under *Carpenter*, that decision had not yet been issued, and both "binding circuit precedent" and out-of-circuit decisions indicated that obtaining the information here pursuant to the SCA would comport with constitutional limits. *Id.* at 30a-31a.

b. Petitioner contends that the good-faith exception does not apply here because "the SCA does not in fact authorize law enforcement officers to obtain real-time CSLI," on the theory that real-time CSLI is not an "'*existing*'" record. Pet. 22-23 (citation omitted). But petitioner did not make this argument in the court of appeals. See Pet. C.A. Br. 18-28 (arguing only that the SCA did not apply because the government had neglected certain statutory procedural requirements and the circumstances did not sufficiently show an exigency under Section 2702(c)(4)); Pet. C.A. Reply Br. 6-8 (same). And the court of appeals did not directly address the argument that the SCA authorizes the acquisition of only historical rather than real-time information, determining only that the requesting detective had the "good faith belief that an emergency was at hand" as required by Section 2702(c)(4), and thus "reasonably relied on § 2702 of the [SCA]" in requesting the information. Pet. App. 29a-30a.

Because petitioner's current argument was neither raised nor considered below, review is unwarranted. This Court's "traditional rule * * * precludes a grant

of certiorari" when "'the question presented was not pressed or passed upon below,'" *United States* v. *Williams*, 504 U.S. 36, 41 (1992) (citation omitted); see, *e.g.*, *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005) (declining to address issues that were "not addressed" by the lower court because it is "a court of review, not of first view"), and petitioner provides no reason to depart from that general rule here. Cf. Sup. Ct. R. 10(c) (explaining that certiorari may be warranted in various circumstances where a "court of appeals has decided an important question of federal law").

c. Even if petitioner had preserved it, this case does not present the question "[w]hether a government agent's good faith but *objectively incorrect* reading of a statute prevents the exclusion of constitutionally tainted evidence in a criminal trial," Pet. i (emphasis added). Petitioner has identified no error in the application of Section 2702(c)(4). By its terms, Section 2702(c) allows disclosure of "a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications * * *)." 18 U.S.C. 2702(c); see 18 U.S.C. 2702(a)(1) and (c)(4). The capacious "other information" language in Section 2702(c) encompasses information about the real-time location of a subscriber's cell phone. See *United States* v. *Gilliam*, 842 F.3d 801, 802-803 (2d Cir. 2016) (determining that Section 2702(c)(4) applies to real-time phone-location information), cert. denied, 137 S. Ct. 2110 (2017).

The court of appeals did not hold that real-time phone-location information falls outside the scope of Section 2702(c)(4), and petitioner identifies no other court that has so held. The only authorities that petitioner cites (Pet. 12, 22-23) for that proposition are

three magistrate judge orders and one dissenting opinion that address a different provision of the SCA, 18 U.S.C. 2703(d). See *In re Application of the United States for an Order Authorizing the Installation and Use of a Pen Register Device, a Trap and Trace Device, and for Geographic Location Information*, 497 F. Supp. 2d 301, 308-311 (D.P.R. 2007); *In re Application for an Order Authorizing the Installation and Use of a Pen Register and Directing the Disclosure of Telecommunications Records for the Cellular Phone Assigned the Number [Sealed]*, 439 F. Supp. 2d 456, 456-458 (D. Md. 2006); *In re Application for Pen Register and Trap/Trace Device with Cell Site Location Authority*, 396 F. Supp. 2d 747, 758-761 (S.D. Tex. 2005); *United States* v. *Wallace*, 885 F.3d 315 (5th Cir. 2018) (per curiam) (Dennis, J., dissenting from denial of rehearing en banc). Petitioner's cited authority thus fails to establish that Detective Ghiringhelli relied on an "erroneous interpretation" of Section 2702(c)(4). Pet. 21.

3. In all events, for two reasons, this case would be a poor vehicle for further review of either question presented. As a threshold matter, neither question presented alone is outcome-determinative. The court of appeals resolved both questions, and petitioner would have to prevail on both questions in order to be entitled to suppression of the disputed evidence. Although petitioner suggests that the issues are almost invariably packaged together (see Pet. 19), nothing would preclude a court of appeals from relying only on one of them.

Second, petitioner would not be entitled to reversal of his convictions even if he prevailed on both questions presented because the other evidence of petitioner's guilt was overwhelming. See *Neder* v. *United States*, 527 U.S. 1, 18 (1999) (observing that constitutional error

is harmless when it is "clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error"). Surveillance video from the robberies showed that the robber resembled petitioner and left the scene of two robberies in a car that petitioner owned. See Pet. App. 5a; Gov't C.A. Br. 43. Petitioner's DNA was on the light-brown gun left at the scene of the fifth robbery, and the evidence established that petitioner bought that gun on October 5, 2017, the day before the first robbery. Gov't C.A. Br. 3-4, 8, 43. Moreover, historical cell-site location records for petitioner's cell phone, whose admission petitioner does not challenge in this Court, showed that petitioner's phone was in the vicinity of each robbery when it occurred. Pet. App. 8a. Given all of that evidence, the admission of the challenged evidence was harmless.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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