No. 21-7703

IN THE

Supreme Court of the United States

TYRONE WORTHAM,

Petitioner,

- versus -

THE STATE OF NEW YORK,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF NEW YORK

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the police were required to give petitioner *Miranda* warnings before asking a routine, administrative question about his address during the execution of a search warrant.

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INTRODUCTION

This petition for a writ of certiorari seeks interlocutory review of a decision by the New York Court of Appeals that remitted this case for a hearing and, depending on the outcome of that hearing, a new trial. The interlocutory posture of this case deprives this Court of jurisdiction under 28 U.S.C. § 1257(a) and would weigh heavily against a grant of discretionary review even if jurisdiction were available. For this reason alone, the petition should be denied.

Even setting aside jurisdiction, certiorari would not be warranted here. Petitioner asks this Court to resolve a purported split in authority concerning the scope of the pedigree exception to the *Miranda* rule, which allows police to collect basic biographical information for administrative purposes without first providing *Miranda* warnings. The facts of this case, however, do not implicate any such split because the pedigree question at issue in this case was a straightforward request for an arrestee's address that was made solely for booking purposes (specifically, in order to enter information into the New York City Police Department's online booking system) and in accordance with routine procedure. Whatever disagreement courts may have about ambiguous cases—where police questioning verges on interrogation to obtain incriminating testimony—there is no entrenched split on whether the pedigree exception covers quintessential booking questions like the one here. Because this case would not present the Court with an opportunity to address any supposed uncertainties about the scope of the pedigree exception in more marginal cases, the petition should be denied.

JURISDICTION

This Court lacks jurisdiction to review the order of the New York Court of Appeals, which remitted the case for further proceedings, including an evidentiary hearing and possibly a new trial. As explained below, the Court of Appeals' order is thus not a final judgment reviewable under 28 U.S.C. § 1257(a). Nor does the order fall within any of the exceptions set forth in *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975).

STATEMENT OF THE CASE

A. Factual Background

On May 26, 2011, police officers executed a search warrant at 435 Alabama Avenue, Apartment 2A, in Brooklyn, New York. (Respondent's Appendix [Resp. App.] 13a-15a.) Upon entering the apartment, the officers found petitioner, who was wearing a pair of shorts and no shirt, alone with two young children. (Resp. App. 16a; *see also* Trial Transcript [Tr.] 19.)[1] The officers secured the apartment and handcuffed petitioner as a safety precaution. (Petitioner's Appendix [Pet. App.] 69a-70a; Resp. App. 41a.) In accordance with routine procedure, the officers also asked petitioner for his pedigree information—his name, date of birth, address, height, and weight. (Pet. App. 70a-71a; Resp. App. 17a-19a.) The officers requested this information so that they could enter it into the New York City Police Department's online booking system—a

[1] Citations to the trial transcript are to the minutes of the trial proceedings on March 5, 7, 8, 11, 12, 14, 15, and 18, 2013.

process they were required to follow for every person encountered during a search whether or not that person was ultimately arrested. (Pet. App. 70a; Resp. App. 17a-19a.) When asked for his address, petitioner said that he lived "here," explaining that his "baby's mother" let him stay on a mattress in the apartment's living room. (Pet. App. 73a; Resp. App. 18a, 34a-35a.) Before the officers escorted petitioner out of the apartment, they allowed him to put on a t-shirt, pants, and sneakers. The clothes fit him. (Tr. 28.)

The officers then searched the apartment. In a closet in one of the bedrooms, they found men's and women's clothing, a loaded TEC-9 assault rifle, and a loaded .40-caliber Kahr handgun. (Pet. App. 64a-65a; *see also* Tr. 34-41.) In a drawer in that same bedroom, the officers found a bag of crack cocaine, an electronic scale, and materials used for packaging cocaine. (Pet. App. 67a-68a.) In another drawer in that bedroom, they found .40-caliber ammunition alongside cash and a benefit-identification card bearing petitioner's name and photograph. (Pet. App. 68a-69a.) And on a table in that bedroom, the officers found mail addressed to both petitioner and the children's mother, Shawana Harrison, at the address of the apartment. (Pet. App. 66a-67a.)

Subsequent DNA testing revealed a mixture of DNA on the handgun. (Tr. 274, 343-44.) The New York City Office of Chief Medical Examiner (OCME) determined, using its Forensic Statistical Tool software program, that there was a strong likelihood that petitioner was one of the contributors to that mixture. (Tr. 280.)

B. Procedural History

Petitioner was indicted on charges of weapon possession, drug possession, and endangering the welfare of a child. While in jail awaiting trial, petitioner had several phone conversations with Harrison. During those conversations, Harrison referred to one of the beds in the apartment as "our bed," petitioner referred to various of his belongings that were in "the house" at the time of the search, and they discussed a bottle of champagne that had been sitting in "the refrigerator" for a long time. (People's Trial Exhibit 32.)

Before his trial in New York County Supreme Court, petitioner moved *in limine* for an order precluding the People, under *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923), from presenting expert testimony about OCME's Forensic Statistical Tool to establish the likelihood that petitioner was a contributor to the DNA mixture found on the handgun. The court denied the motion without a hearing.

Petitioner also moved, under *Miranda v. Arizona*, 384 U.S. 436 (1966), to suppress his statement to police that he lived in the apartment. After a suppression hearing, the court denied the motion. (*See* Resp. App. 1a-76a.) The court found that standard NYPD procedure called for the collection of pedigree information from every adult present during the execution of a search warrant. Petitioner's statement that he lived in the apartment thus was made in response to questioning that fell within the pedigree exception to the *Miranda* rule.

After a jury trial, petitioner was convicted as charged. He was subsequently sentenced, as a second violent felony offender, to an aggregate prison term of nine years followed by five years of post-release supervision.

The Appellate Division, First Department affirmed. (Pet. App. 37a-39a.) It held that the hearing court had properly denied petitioner's motion to suppress his statement about his address because that statement was a response to "a routine administrative question that was not a disguised attempt at investigatory interrogation and was not designed to elicit an incriminating response." (Pet. App. 37a-38a [internal quotation marks and citations omitted].) The Appellate Division then held that petitioner was not entitled to a *Frye* hearing concerning the reliability of the Forensic Statistical Tool. (Pet. App. 38a.)

C. The Court of Appeals' Reversal and Remittal for Further Proceedings

On November 23, 2021, the Court of Appeals reversed the Appellate Division's order and remitted for further proceedings. (Pet. App. 12a.)

First, the Court held that petitioner's suppression motion was properly denied because his statement about his address fell within the pedigree exception to the *Miranda* rule. (Pet. App. 7a-9a.) The Court explained that the request for petitioner's address was "reasonably related to the police's administrative concerns, and, under the circumstances, was not a disguised attempt at investigatory interrogation." (Pet. App. 8a.)

Second, however, the Court ruled that the lower court had "abused its discretion when it denied [petitioner's] motion for a *Frye* hearing" concerning OCME's Forensic Statistical Tool. (Pet. App. 9a.) That error was not harmless and therefore required reversal. (Pet. App. 9a-11a.) The Court thus directed that the lower court conduct a *Frye* hearing. (Pet. App. 11a.) If the *Frye* court were to reject OCME's use of the Forensic Statistical Tool, then petitioner would be "entitled to a new trial." (Pet. App. 11a.) If the *Frye* court were instead to uphold the use of the Forensic Statistical Tool, then petitioner would receive an opportunity to "challenge that determination on direct appeal." (Pet. App. 11a.)

Since the Court of Appeals' ruling, the parties have appeared in New York County Supreme Court, but petitioner's *Frye* hearing has not yet been scheduled.

REASONS FOR DENYING THE PETITION

The petition should be denied for two independent reasons. First, under 28 U.S.C. § 1257(a), this Court has no jurisdiction to review the non-final order of the New York Court of Appeals, which remitted the case for further proceedings. Second, setting aside the jurisdictional bar to this Court's review, the facts of this case make it a poor vehicle for resolving any questions about the pedigree exception to *Miranda*.

A. This Court Lacks Jurisdiction Because the Decision Below Is Not a Final Judgment Under 28 U.S.C. § 1257(a).

1. The petition asks this Court to review an interlocutory decision of the New York Court of Appeals that did not fully resolve this case, but instead remitted for

further proceedings—including a hearing, potentially a new trial, and further appellate proceedings. This Court lacks jurisdiction to review state-court decisions that, like the Court of Appeals' decision in this case, do not finally dispose of a case.

This Court's power to review state-court decisions is limited to the review of "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had." 28 U.S.C. § 1257(a). As this Court has explained, 28 U.S.C. § 1257(a) establishes "a firm final judgment rule" under which this Court can review a state-court judgment only if it is "final" in two ways: (a) "it must be subject to no further review or correction in any other state tribunal"; and (b) "it must also be final as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein." *Jefferson v. City of Tarrant*, 522 U.S. 75, 81 (1997); *see also Atl. Richfield Co. v. Christian*, 140 S. Ct. 1335, 1349 (2020). Compliance with this finality rule is "an essential prerequisite to [this Court's] deciding the merits" of an appeal from a state's highest court. *Johnson v. California*, 541 U.S. 428, 431 (2004). And, in keeping with that rule, this Court has repeatedly held that it lacks jurisdiction over an appeal from a decision in which a state's highest court conclusively disposed of a federal issue in the case but nonetheless remanded for further proceedings that could affect the case's ultimate outcome. *See*, *e.g.*, *Johnson*, 541 U.S. at 430-31; *Jefferson*, 522 U.S. at 81.

The New York Court of Appeals' decision in this case is not "final." In the context of criminal prosecutions, "finality generally is defined by a judgment of conviction and the imposition of a sentence." *Florida v. Thomas*, 532 U.S. 774, 777 (2001)

(internal quotation marks omitted). Here, rather than affirming petitioner's conviction and sentence, the Court of Appeals reversed and remitted for further proceedings, including a hearing and possibly a new trial. (Pet. App. 12a.) Specifically, under the Court of Appeals' ruling, the trial court must now hold a *Frye* hearing to determine the admissibility of evidence of OCME's Forensic Statistical Tool analysis. (Pet. App. 11a.) Depending on the outcome of the *Frye* hearing, there will either be a new trial or further appellate proceedings to challenge the trial court's *Frye* determination. The Court of Appeals' decision thus does not finally determine this litigation. To the contrary, it expressly orders further proceedings that could yield a wide range of possible outcomes.

Petitioner tries to evade the finality problem here by repeatedly misstating this case's procedural posture. He claims that the Court of Appeals "entered judgment" in this case (Pet. 1) when that Court in fact reversed and remitted for further proceedings. He also incorrectly states that "[t]here are no other proceedings in state or federal trial or appellate courts . . . directly related to this case" (Pet. iii), but, as discussed above, the Court of Appeals directed the trial court to hold a *Frye* hearing, and the parties have been communicating with the trial court about scheduling.[2]

[2] In those communications, petitioner has asked the trial court to adjourn the *Frye* hearing until this Court issues a decision concerning the present petition. The People have consented to those requests.

2. Although petitioner acknowledges elsewhere that this case has been remitted for further proceedings, he maintains that this Court should nonetheless grant certiorari now because this case falls within an exception to the finality requirement. (Pet. 7, 15-16.) This Court has recognized exceptions to the finality requirement of 28 U.S.C. § 1257(a) only in a "'limited set of situations.'" *Jefferson*, 522 U.S. at 82 (quoting *O'Dell v. Espinoza*, 456 U.S. 430, 430 [1982]). In *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975), this Court outlined four exceptions—commonly called the four *Cox* exceptions—to the finality requirement. Petitioner appears to invoke the third *Cox* exception, which applies when a "'federal claim has been finally decided, with further proceedings on the merits in the state courts to come, but in which later review of the federal issue cannot be had, whatever the ultimate outcome of the case.'" (Pet. 15 [quoting *Cox Broadcasting*, 420 U.S. at 481].) According to petitioner, that exception applies here because "there is no sign that review of [the federal *Miranda* issue] would be available later" in the case. (Pet. 15.)

Petitioner misconstrues the third *Cox* exception. Although "later review of the federal issue" may not be practically available *in state court* due to the Court of Appeals' ruling on the *Miranda* claim, the relevant question is whether later review *by this Court* would be available. For instance, in *Johnson v. California*, the California Supreme Court disposed of the petitioner's federal claim under *Batson v. Kentucky*, 476 U.S. 79 (1986), but remanded for the California Court of Appeal to consider other claims raised by the petitioner. *Johnson*, 541 U.S. at 429. This Court initially granted certiorari to review the

Batson claim but then dismissed the appeal, finding the third *Cox* exception inapplicable. *Johnson*, 541 U.S. at 429-30. The Court explained that later review of the federal issue could in fact be had because, "[i]n the event that the California Court of Appeal on remand affirms the judgment of conviction, petitioner could once more seek review of his *Batson* claim in the Supreme Court of California—albeit unsuccessfully—and then seek certiorari on that claim from this Court." *Id.* at 430-31.[3]

This Court reached the same conclusion in *Jefferson v. City of Tarrant*, dismissing the appeal while explaining that the third *Cox* exception did not apply because the petitioner would "be free to seek our review [of the federal issue in the case] once the state-court litigation comes to an end." *Jefferson*, 522 U.S. at 82-83. Although the Alabama Supreme Court's ruling on the federal issue in *Jefferson* constituted "law of the case" for any further proceedings in state court, the availability of subsequent review in this Court precluded application of the third *Cox* exception: "Even if the Alabama Supreme Court adheres to its interlocutory ruling as 'law of the case,' that determination will in no way limit our ability to review the issue on final judgment." *Id.* at 83.

The analysis in *Johnson* and *Jefferson* applies squarely here. If the People prevail at the *Frye* hearing, the state appellate courts uphold that determination, and the Court of

[3] The case's subsequent history demonstrates that this Court's analysis was completely accurate. After the California state courts disposed of the remaining issues in the case, this Court granted certiorari again and decided the *Batson* issue on the merits. *See Johnson v. California*, 545 U.S. 162, 167-68 (2005).

Appeals ultimately affirms petitioner's conviction or denies leave to appeal, then this Court could still review petitioner's *Miranda* claim. If the People do not prevail at the *Frye* hearing, and again introduce petitioner's statement about his residence at a new trial, then petitioner will again be able to raise his *Miranda* claim during any appeal from a conviction, including in this Court. Either way, the federal issue for which petitioner seeks this Court's review now would be available to be reviewed later as well. Petitioner therefore cannot satisfy the requirement that "later review of the federal issue cannot be had, whatever the ultimate outcome of the case." *Cox Broadcasting*, 420 U.S. at 481. Because this case does not fall within an exception to the finality requirement, this Court lacks jurisdiction to review it.

3. Even if the interlocutory posture of the New York Court of Appeals' decision did not technically deprive this Court of jurisdiction, it should nonetheless weigh heavily against a discretionary grant of certiorari at this stage of the case. Because further proceedings remain pending—up to and including the possibility of a new trial—it is premature to assess what effect, if any, the federal *Miranda* issue may have on the case's ultimate outcome. For instance, if petitioner were to prevail at the *Frye* hearing, proceed to a new trial, and obtain an acquittal on all charges, there would be no need to decide whether and how the pedigree exception to the *Miranda* rule should apply in this case. For that reason, this Court should decline to issue an interlocutory ruling on the federal *Miranda* issue, even if there were jurisdiction to issue such a ruling, because of the "fundamental and long-standing principle of judicial restraint [that] requires that courts

avoid reaching constitutional questions in advance of the necessity of deciding them." *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439, 445 (1988).

B. This Case Does Not Implicate Any Division of Authority on the Scope of the Well-Established Pedigree Exception to the *Miranda* Rule.

Certiorari is also not warranted because the facts of this case simply do not implicate the circuit split that petitioner claims to have identified. To the contrary, the question at issue here falls squarely within the core of the *Miranda* rule's pedigree exception. Even if courts have varied on their approach in more ambiguous cases, petitioner has identified no serious disagreement that booking-related questions like the request for petitioner's address here fall outside of *Miranda*'s coverage.

1. In *Pennsylvania v. Muniz*, 496 U.S. 582 (1990), a plurality of this Court held that *Miranda* warnings were not required when police asked "routine booking question[s]" to "secure the 'biographical data necessary to complete booking or pretrial services.'" *Id.* at 601 (plurality opinion). The Court specifically identified questions regarding a suspect's "address" (among other pedigree information) as falling within this exception to *Miranda*. *Id.* Since *Muniz*, lower courts—both federal and state—have had little difficulty recognizing that, regardless of the precise contours of the pedigree exception, it applies to requests for an arrestee's address to facilitate booking.[4]

[4] *See*, *e.g.*, *United States v. Arellano-Banuelos*, 912 F.3d 862, 868 (5th Cir. 2019) ("data such as a suspect's name, address, height, weight, eye color, date of birth, and current age" [internal quotation marks omitted]); *United States v. Zapien*, 861 F.3d 971, 975 (9th Cir. 2017) ("the routine gathering of background biographical information, such as identity, age, and address" (Continued…)

The facts of this case fall squarely within this quintessential example of pedigree questioning. As the Court of Appeals found, based on undisputed testimony during the suppression hearing, the officer made a request for petitioner's address as part of the NYPD's standard booking procedure, which police apply to "*all* adults found at a location where a search warrant is executed," regardless of whether contraband is found or the person is arrested. (Pet. App. 7a-8a; Resp. App. 17a-19a.)[5] Further, as in *Muniz*, the Court of Appeals found that the officer asked for petitioner's residence for booking purposes alone, not as part of the investigation. (Pet. App. 8a.) *See Muniz*, 496 U.S. at 601 ("The state court found that the first seven questions were 'requested for record-keeping purposes only.'"). Indeed, the facts here make the administrative purpose of the questioning even clearer than in *Muniz*. In that case, the pedigree questions were

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[internal quotation marks omitted]); *United States v. Sanchez*, 817 F.3d 38, 44-45 (1st Cir. 2016) ("routine booking questions seeking background info, such as the suspect's name, address, and related matters" [internal quotation marks omitted]); *Griffin v. State*, 311 Ga. 579, 587 (Ga. 2021) ("basic biographical data, such as the suspect's name, age, address, . . . and other information required to complete an arrest form" [internal quotation marks omitted]); *State v. Chrisicos*, 148 N.H. 546, 548-49 (N.H. 2002) ("the defendant's name, address, height, weight, eye color, date of birth and current age"); *Hughes v. State*, 346 Md. 80, 95 (Md. 1997) ("the suspect's name, address, . . . and similar such pedigree information"), *cert. denied*, 522 U.S. 989 (1997); *Commonwealth v. Sheriff*, 425 Mass. 186, 197 (Mass. 1997) ("routine background questions regarding a suspect's name, address, and related matters").

[5] *Amicus curiae* NACDL thus misstates the record in claiming that the officers' questioning "had nothing to do with the booking process." (NACDL Amicus Br. 8.) NACDL similarly ignores the record when claiming that "there simply is no justification for conducting such an interrogation at any location other than the stationhouse." (*id.* at 9.) Again, testimony at the suppression hearing established that routine NYPD procedure required the officers to collect petitioner's pedigree information on the spot and record it in NYPD's online booking system. (Resp. App. 18a-19a.)

part of a longer line of non-pedigree questioning that was challenged as a custodial interrogation. *See* 496 U.S. at 585-87. No such extended interrogation occurred here immediately after officers collected petitioner's basic biographical information. (Resp. App. 17a-18a, 34a-35a.) The Court of Appeals' decision thus faithfully applied *Muniz* to find that the request for petitioner's address here fell within the core of the pedigree exception to *Miranda*.

2. Petitioner and his amici claim to have identified "an entrenched split" on whether the applicability of the pedigree exception should be decided by a "subjective" or "objective" inquiry. (Pet. 7-8; *see also* NACDL Amicus Br. 3; Br. of *Amici Curiae* James Connell and Meghan Skelton ["Connell and Skelton"] 5.) But any difference of approach by the courts is immaterial to this case because both objective and subjective factors would support the application of the pedigree exception here. The objective circumstances show that (a) the questioning officer was merely following routine NYPD procedures for collecting booking information, (b) there was no extended interrogation following the booking questions, and (c) this information was collected "immediately after [police officers'] entry to the apartment, before the apartment had been searched and before any contraband had been found." (Pet. App. 8a.) On the police officers' subjective intent, the testimony at the suppression hearing established that the officers questioned petitioner for the sole purpose of obtaining pedigree information to enter into the online booking system (Resp. App. 17a-19a), and the Court of Appeals found no factual basis to conclude that the officers were instead

engaged in a surreptitious "investigatory interrogation." (Pet. App. 8a.) This case thus provides no basis for resolving the split identified by petitioner because any resolution would have no impact on the outcome here.

The cases cited by petitioner do not suggest otherwise. To the contrary, petitioner's own cases (Pet. 13-14) acknowledge that questions about residence for booking purposes fall squarely within the pedigree exception. *See United States v. Pacheco-Lopez*, 531 F.3d 420, 423 (6th Cir. 2008); *United States v. Peterson*, 506 F.Supp.2d 21, 24 (D.D.C. 2007). The additional questioning that these courts found more troubling under *Miranda* went well beyond such routine collection of biographical information. For example, in *Pacheco-Lopez*, the Sixth Circuit acknowledged that *Miranda* warnings usually are not required for a request for an arrestee's "address"—but the questioning in that case went further by interrogating the arrestee about how and when he had arrived at the house in question. 531 F.3d at 424. Similarly, in *Peterson*, the district court expressly held that the pedigree exception applied to questions about defendant's "ownership of the apartment," but did not apply to further questioning about defendant's specific bedroom when an officer had testified that the further questioning was intended to determine who was "more responsible" for contraband. 506 F.Supp.2d at 25.

Thus, in both *Pacheco-Lopez* and *Peterson*, the requests for information strayed well beyond standard pedigree information and were not limited to the basic biographical information needed for booking purposes. For such questioning at the margins of what

Muniz would permit, lower courts may very well employ diverse approaches to determine whether and under what circumstances *Miranda* warnings would be required. But that dispute is not implicated here because the question at issue was a standard pedigree question for booking purposes and had no ulterior investigatory purpose.

3. Petitioner's other attempts to identify errors in the Court of Appeals' analysis are unavailing.

First, petitioner contends that the Court of Appeals took an unprecedented step in its *Muniz* analysis, adopting "[y]et [a]nother" approach to the pedigree exception by considering whether "'the pedigree question was a *disguised attempt* at investigatory interrogation.'" (Pet. 12 [quoting Pet. App. 7a] [emphasis in Petition].) But in *Muniz* itself, the plurality opinion specified that the exception did not apply to pedigree questions "that are designed to elicit incriminatory admissions." *Muniz*, 496 U.S. at 602 n.14 (internal quotation marks omitted).

Second, petitioner questions the applicability of the pedigree exception in this case on the ground that his address was requested before he was taken to the police precinct. (Pet. 12-13; *see also* Br. of *Amicus Curiae* The National Association of Criminal Defense Lawyers ["NACDL"] 8.) But nothing in *Muniz* indicates that routine booking questioning must take place at the stationhouse. And courts have recognized that booking questions asked at the location of a search or crime can fall outside the scope of *Miranda* because they request only pedigree information. *See*, *e.g.*, *United States v. Cowan*, 674 F.3d 947, 958 (8th Cir. 2012), *cert. denied*, 568 U.S. 911 (2012); *United States v.*

Gaston, 357 F.3d 77, 82 (D.C. Cir. 2004), *cert. denied*, 541 U.S. 1091 (2004). Petitioner has identified no case categorically rejecting the application of *Muniz*'s pedigree exception outside of the stationhouse.

3. Finally, the importance of the *Miranda* issue is substantially diminished here because there is a compelling argument that any erroneous admission of petitioner's statement about his residence would be harmless—an argument that could be further strengthened depending on the outcome of the upcoming *Frye* hearing. Here, even ignoring petitioner's response to the officer's question about his address, other evidence overwhelmingly established his residence at the apartment. He was the only adult in the apartment at the time of the search, along with two young children. He was wearing a pair of shorts and no shirt—as though he was relaxing at home. His benefits card was found in a bedroom drawer. Mail addressed to him at the apartment was found in that same bedroom. And, if the People prevail at the *Frye* hearing, there will also be admissible evidence that petitioner's DNA was found on one of the guns recovered during the search. Thus, even without petitioner's answer that he lived at the apartment, there would be compelling evidence of his residence there, and the DNA evidence (if deemed admissible at the upcoming *Frye* hearing) would link him even more forcefully to the contraband. This Court should decline to grant certiorari to review a question that will likely not make any difference to the outcome of this proceeding.

CONCLUSION

The petition for a writ of certiorari should be denied.

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