NO. 22-_____

In the Supreme Court of the United States

VOLODYMYR KVASHUK,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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AUGUST 1, 2022 * SUPREME COURT BAR APPLICATION PENDING

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QUESTION PRESENTED

Whether the Ninth Circuit's analytical approach in weighing "the nature of cybercrime" into its assessment of nexus to search one's home violates the Fourth Amendment due to (1) its generalized, universal treatment of all electronic devices, regardless of their mobility and/or connection to one's house; (2) its automatic justification of law enforcement's invasion of one's home based on unfounded presumptions; and, (3) its injection of the vague, troublesome concept of "cybercrime" into the nexus analysis, which prejudices the public at large with ambiguities in law and discourages the public's technology use?

LIST OF PROCEEDINGS

United States Court of Appeals for the Ninth Circuit

No. 20-30251

United States of America, *Plaintiff-Appellee,* v. Volodymyr Kvashuk, *Defendant-Appellant.*

Date of Final Opinion: March 28, 2022

Date of Rehearing Denial: May 4, 2022

United States District Court
for the Western District of Washington

Case No. 2:19CR00143JLR-001

United States of America, v. Volodymyr Kvashuk

Date of Final Judgment: November 9, 2020

(Note: an additional order relating to the transfer of seized funds was entered on June 14, 2021)

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JURISDICTION

The United States District Court for the Western District of Washington had jurisdiction over this matter pursuant to 18 U.S.C. § 3231. The Ninth Circuit Court of Appeals had jurisdiction pursuant to 28 U.S.C. § 1291. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

The United States Court of Appeals for the Ninth Circuit decided Kvashuk's appeal on March 28, 2022. (App.1a). Kvashuk filed his Petition for Rehearing on April 11, 2022. The Ninth Circuit denied his Petition for Rehearing on May 4, 2022. (App.41a).

This Petition is timely filed with this Court within ninety (90) days after the denial of rehearing. Sup. Ct. R. 13.

CONSTITUTIONAL PROVISION INVOLVED

U.S. Const., amend. IV

> 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

On December 5, 2019, a grand jury returned a Second Superseding Indictment against Kvashuk, charging him with Access Device Fraud (Count 1), Access to a Protected Computer in Furtherance of Fraud (Count 2), Mail Fraud (Count 3), Wire Fraud (Counts 4-8), Making and Subscribing to a False Tax Return (Counts 9-10), Money Laundering (Counts 11-16), and Aggravated Identity Theft (Counts 17-18). 2-ER-192-207,[1] Second Superseding Indict. 1-12, ECF No. 61.[2] Kvashuk, a former member of Microsoft's testing team, was charged with defrauding Microsoft by making

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[1] References to "ER" are to the Excerpt of Records filed in this matter with the United States Court of Appeals for the Ninth Circuit.

[2] References to "ECF No." are to the pleadings filed in this matter with the District Court for the Western District of Washington via the CM/ECF system.

unauthorized purchases and resale of Microsoft online store's Currency Stored Value ("CSV") via Microsoft's internal "test accounts" between November, 2017 and March, 2018. *Id*.

On July 11, 2019, United States Magistrate Judge Michelle L. Peterson issued a warrant to search Kvashuk's home, his vehicle, and his person, for evidence of the crime. 2-ER-107-156, Aff., ECF No. 68-3. The search warrant permitted the seizure of "digital devices or other electronic storage media and/or their components" from Kvashuk's house. Aff., App.78a, 2-ER-153, ECF No. 68-3 at 47.

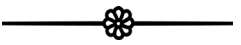
Kvashuk filed a motion to suppress illegally obtained evidence, arguing, *inter alia*, that the affidavit failed to establish the requisite nexus between the scheme and his home, thus violating his constitutional rights guaranteed by the Fourth Amendment. Mot. to Suppress, ECF No.56. Indeed, Kvashuk did not purchase the house until in June, 2018. Aff., App.7a, 2-ER-129, ECF No. 68-3 at 23. The court denied his motion. 1-ER-55, Min. Entry, ECF No.75; 1-ER-52-53, Mot. Hr'g Tr. at 13-14, ECF No. 83.

Jury trial began on February 18, 2020. On February 25, 2020, the jury found Kvashuk guilty on Counts 1 through 18. Verdict 1-7, ECF No. 133.

Kvashuk filed his written motion for judgment of acquittal and motion for new trial (ECF Nos. 161, 163), which the court again denied. 1-ER-10-25, Order, ECF No. 167.

Kvashuk appealed to the Ninth Circuit, arguing, *inter alia*, that the district court erred in denying his motion to suppress. Appellant's Opening Brief, at

12-43. The Ninth Circuit Court of Appeals had jurisdiction pursuant to 28 U.S.C. § 1291. The Ninth Circuit affirmed. *United States v. Kvashuk*, 29 F.4th 1077, 1093 (9th Cir. 2022); App.1a-27a, Opinion. In upholding the district court's denial of Kvashuk's motion to suppress, the Ninth Circuit reasoned that there was sufficient nexus between the items to be seized and Kvashuk's home primarily because of "the nature of cybercrime-specifically, its reliance on computers and personal electronic devices." App.11a, Opinion.



REASONS FOR GRANTING THE PETITION

Kvashuk submits that this Court should grant the writ because the Ninth Circuit entered a decision effectively in conflict with the D.C. Circuit's decision on the same important matter and decided an important question of federal law that has not been, but should be, settled by this Court. Sup. Ct. R. 10(a), (c).

Specifically, the most significant problems of the Ninth Circuit's approach in considering "the nature of cybercrime" for nexus to search one's home are (1) its generalized, universal treatment of all electronic devices, regardless of their mobility and/or connection to one's house; (2) its automatic justification of law enforcement's invasion of one's home based on unfounded presumptions; and, (3) its injection of the vague, troublesome concept of "cybercrime" into the nexus analysis, which prejudices the public at large with ambiguities in law and discourages the public's technology use.

I. INTRODUCTION

As a preliminary matter, the July 11, 2019 search warrant at issue authorized law enforcement to invade Kvashuk's home, which stands at "the very core" of the Fourth Amendment's protections, *Silverman v. United States*, 365 U.S. 505, 511 (1961) for evidence of the fraudulent scheme that occurred between November, 2017 and March, 2018. Aff., 52a, 2-ER-107-156, ECF No. 68-3. There is no doubt that the Fourth Amendment's prohibition against unreasonable search of one's house has "firm grounding in constitutional text, history, or precedent." *Dobbs v. Jackson Women's Health Organization*, __ S.Ct. __, 2022 WL 2276808 (June 24, 2022) at *32.

In its Opinion, the Ninth Circuit concluded that there was sufficient nexus between the items to be seized and Kvashuk's home primarily because of "the nature of cybercrime—specifically, its reliance on computers and personal electronic devices." App.11a, Opinion (emphasis added), citing to *Peffer v. Stephens*, 880 F.3d 256, 272-73 (6th Cir. 2018), *inter alia*.

Kvashuk submits that, by misplacing excessive reliance on "the nature of cybercrime" generally, the Ninth Circuit actually departed from the fact-specific "totality of circumstances" inquiry and accepted a categorical, *per se* rule disfavoring the accused in any cybercrime cases. *United States v. King*, 985 F.3d 702, 707 (9th Cir. 2021). Indeed, the Ninth Circuit misconstrued the Fourth Amendment's nexus requirement in that it conflated the long-established distinction between probable cause for an arrest warrant and that for a search warrant. These fundamental problems of the Ninth Circuit's erroneous analytic framework beg the following questions, as best summarized by a district

judge, "what [] happened to the Fourth Amendment? Was it . . . repealed somehow?" *United States v. Comprehensive Drug Testing, Inc.*, 621 F.3d 1162, 1177 (9th Cir. 2010), *overruled in part on other grounds*.

By doing so, the Ninth Circuit effectively joined the Sixth Circuit's widely criticized "rebuttable presumption" approach in *Peffer v. Stephens*, 880 F.3d 256, 272-73 (6th Cir. 2018), which conflicts with the District of Columbia Circuit's opinion in *United States v. Griffith*, 867 F.3d 1265, 1288 (D.C. Cir. 2017).

Thus, it is patently clear that there exists a circuit split over the issue of what approach a court should take to analyze "the nature of cybercrime" in its nexus assessment when the search penetrates one's home. Sup. Ct. R. 10(a). Even assuming *arguendo* that such a disagreement among the federal appellate courts did not constitute a circuit split, the Ninth Circuit still "decided an important question of federal law that has not been, but should be, settled by this Court," which could significantly impact technological innovation, economic policy, and civil liberties in this digital age; thus warranting this Court's review. Sup. Ct. R. 10(c).

II. THE DISTRICT OF COLUMBIA CIRCUIT'S OPINION IN *GRIFFITH*

There, Griffith challenged the denial of his motion to suppress the warrant authorizing the search and seize of all cell phones and other electronic devices in his residence. *Griffith*, 867 F.3d at 1268. The D.C. Circuit agreed with Griffith, finding insufficient probable cause due to lack of nexus "between the item to be seized and criminal behavior." *Id*. at 1268, 1271. The D.C. Circuit first summarized the issue as follows:

> Most of us nowadays carry a cell phone. And our phones frequently contain information chronicling our daily lives—where we go, whom we see, what we say to our friends, and the like. When a person is suspected of a crime, his phone thus can serve as a fruitful source of evidence, especially if he committed the offense in concert with others with whom he might communicate about it. Does this mean that, whenever officers have reason to suspect a person of involvement in a crime, they have probable cause to search his home for cell phones because he might own one and it might contain relevant evidence? That, in essence, is the central issue raised by this case.

Id. This is also the issue presented here.

In answering this question, the *Griffith* court began with emphasizing that "probable cause to arrest a person will not itself justify a warrant to search his property," and that "[t]here must, of course, be a nexus . . . between the item to be seized and criminal behavior." *Id.* at 1271 (internal cites omitted).

Then, the D.C. Circuit examined whether the affidavit provided "particularized information that [Griffith] owned [electronic devices.]" *Id.* at 1273. In this regard, the court observed that "there is no common-sense reason simply to presume that individuals own a computer or tablet." *Id.* at 1272. It further noted that the affidavit conveyed no particularized information indicating that Griffith owned a cell phone. *Id.* Thus, the court concluded that "[w]e are aware of no case, and the government identifies none, in which police obtained authorization to search a suspect's home for

a cell phone without any particularized information that he owned one." *Id*. at 1273.

Next, the D.C. Circuit assessed whether there was probable cause that "the device would be located in the home." *Id*. The answer is "no." In this regard, the D.C. Circuit criticized the district court's unfounded assumptions as follows:

> [t]he assumption that most people own a cell phone would not automatically justify an open-ended warrant to search a home anytime officers seek a person's phone. Instead, such a search would rest on a second assumption: that the person (and his cell phone) would be home. . . .
>
> The upshot is that the information in the warrant application might well have supported an arrest warrant for Griffith . . . But the government instead elected to seek license to conduct a full-scale search of his entire home based on the possibility that he owned a phone and that a phone found there might be his.

Id. (emphases added).

Finally, the D.C. Circuit inquired "even if we assume Griffith owned a phone and that his phone would be found in the apartment, what about the likelihood that the phone would contain incriminating evidence?" *Id*. at 1274. "Because a cell phone, unlike drugs or other contraband, is not inherently illegal, there must be reason to believe that a phone may contain evidence of the crime." *Id*. The court reasoned, while "the police often might fairly infer that a suspect's phone contains evidence of recent criminal activity,

. . . by the time police sought the warrant in this case, more than a year had elapsed since the [time of the offense.]" *Id*. Thus, the search "would be grounded in an assumption that [Griffith] continued to possess the same phone more than one year later," even after he was incarcerated for some time and "had become aware of the investigation of him" during the intervening period. *Id*.

As such, the D.C. Circuit concluded as follows:

> [t]he government's argument in favor of probable cause essentially falls back on our accepting the following proposition: because nearly everyone now carries a cell phone, and because a phone frequently contains all sorts of information about the owner's daily activities, a person's suspected involvement in a crime ordinarily justifies searching her home for any cell phones, regardless of whether there is any indication that she in fact owns one. Finding the existence of probable cause in this case, therefore, would verge on authorizing a search of a person's home <u>almost anytime</u> there is probable cause to suspect her of a crime. <u>We cannot accept that proposition</u>.
>
> We treat the home as the "first among equals" when it comes to the Fourth Amendment. The general pervasiveness of cell phones affords an inadequate basis for eroding that core protection.

Id. at 1275 (emphases added) (internal citations omitted).

III. THE SIXTH CIRCUIT'S OPINION IN *PEFFER*

In drastic contrast, the Sixth Circuit allowed the automatic justification of searching one's home for electronic devices, which the D.C. Circuit rejected.

Jesse Peffer, as a caregiver for several patients, grew marijuana to cover their medical marijuana needs. *Peffer*, 880 F.3d at 260. He would sell the excess of marijuana to Tom Beemer to be sold at Beemer's dispensary. *Id.* Beemer, however, became a confidential informant for law enforcement and attempted to persuade Peffer to sell him more marijuana than was allowed by law. *Id.* Peffer initially declined, but eventually agreed to meet with him. *Id.* While en route, police conducted a traffic stop of Peffer and found in his vehicle more marijuana than permitted by law. *Id.* Peffer was arrested and charged with possession with intent to distribute and conspiracy to distribute marijuana. *Id.*

Months later, the local school district and child services agency received typewritten letters, accusing Beemer of distributing controlled substances and becoming a confidential informant. *Id.* The letters were purported to be written by Officer Coon, which Officer Coon denied. *Id.* Peffer and his wife were identified as two of the five potential suspects who authored the letters. *Id.*

More than a year later, Sergeant Mike Stephens was informed that fliers were being mailed to local businesses and residences identifying Beemer as a confidential informant. *Id.* at 261. Investigators concluded that Peffer was most likely the person responsible for the fliers. *Id.*

Sergeant Stephens then obtained a warrant to search the Peffer residence for "evidence of the crime of Impersonating a Police Officer and Witness Intimidation." *Id.* at 262. The affidavit stated that the letters and fliers appeared to be computer-generated, and that based upon Sergeant Stephens' training and experience, evidence of those documents was likely to be found on an electronic storage device, which he contended would likely be kept at its owner's residence. *Id.* at 269.

The Sixth Circuit found, as a matter of first impression, that "computers are . . . subject to the presumption that a nexus exists between an object used in a crime and the suspect's current residence." *Id.* at 272. Thus, it concluded that the affidavit's allegations that Peffer had used a computer in the commission of his crime, that evidence of the crime would likely be found on that computer, and that Peffer resided at his residence, established a presumption that evidence of the crime would be found at the Bierri Road residence. *Id.* at 273. The Sixth Circuit held so primarily because "the affidavit did not suggest any reason to believe that the computer used in the commission of the crime would not be found at the Bierri Road residence." *Id.*

The Sixth Circuit's opinion in *Peffer* has been criticized since its issuance. The Sixth Circuit implemented a legal presumption that a defendant's simple use of technology is enough to circumvent the long-established nexus requirement guaranteed by the Fourth Amendment and to justify law enforcement's breaking down of a citizen's front door. A scholar pointed out the absurdity of the rationale underlying the *Peffer* court's reasoning as follows:

> In a world of global networks and people using multiple electronic devices in many

> different places to perform many tasks, it is nearly impossible to generalize where computer-stored evidence is likely to be found. Unlike firearms, people in the modern era are continuously using technology even when they step out of their front door, whether it is through the use of cell phone technology, automobile technology, or public means of information. It would be absurd to generalize that most people keep their means of technology in their residence when modern use of technology is not even slightly limited to the interior of a building. In the modern era, most people in the United States own some form of technology. The court's reasoning in Peffer allows the police to create some tenuous theory as to how a person's technology factored into some suspected crime, and therefore use that theory to enter the person's home.
>
> [. . .]
>
> By using technology's inevitable grasp over modern life, as technology advances, the Peffer holding allows the State to circumvent the constitutional requirement of a "particular[]" description of "the place to be searched, and the persons or things to be seized." Further, if the simple use of technology is enough to justify breaking down the front door, a negative economic incentive is created against the use and advancement of technology.

See Shane Landers, *Peffer v. Stephens: Probable Cause, Searches and Seizures Within the Home, and Why Using Technology Should Not Open Your Front Door*, TEX.

A&M L. REV. 647, 672, 677 (2020) (internal citations omitted).

IV. THE NINTH CIRCUIT IMPLEMENTED A HIGHLY PROBLEMATIC APPROACH

Kvashuk submits that his instant Petition is not based on the Ninth Circuit's erroneous factual findings. Rather, his Petition focuses on the highly problematic approach that the Ninth Circuit implemented in its nexus analysis. The most significant problems of the Ninth Circuit's approach are (1) its generalized, universal treatment of all electronic devices, regardless of their mobility and/or connection to one's house; (2) its automatic justification of law enforcement's invasion of one's home based on unfounded presumptions; and, (3) its injection of the vague, troublesome concept of "cybercrime" into the nexus analysis, which prejudices the public at large with ambiguities in law and discourages the public's technology use.

A. Generalized, Universal Treatment of All Electronic Devices in the Context of Its Nexus Analysis

Here, in its nexus analysis the Ninth Circuit primarily emphasized on "the nature of cybercrime—specifically, its reliance on computers and personal electronic devices." App.11a, Opinion. The Ninth Circuit also explicitly cited and relied on *Peffer* in this regard. *Id*. Thus, it is patently clear that the Ninth Circuit's rationale is analogous to the Sixth Circuit's defective approach and conflicts with the D.C. Circuit's decision, thereby creating a circuit split on the important constitutional matter of nexus.

To better understand why "the nature of cybercrime" and "reliance on computers and personal electronic devices" cannot circumvent the constitutional nexus requirement, we must first look into the reality of modern technology use. As of 2021, 93% of U.S. adults use the internet, and 77% of U.S. adults have a broadband connection at home. *See* Pew Research Center, *Internet/Broadband Fact Sheet* (April 7, 2021), available at https://www.pewresearch.org/internet/fact-sheet/internet-broadband/. Meanwhile, as the Supreme Court observes in *Riley v. California*, 573 U.S. 373 (2014), as of 2014 over 90% of American adults owned a cell phone. Thus, "[t]echnology in the modern era is in no way limited to the interior of the home." *See* Shane Landers, *supra*, Tex. A&M L. Rev. at 675.

Based on these statistics, the Ninth Circuit's reasoning is defective in that it tends to permit an automatic satisfaction of the nexus requirement in all "cybercrime," the offenses with a "reliance on computers and personal electronic devices," without assessing the connection between one's home and his electronic devices which could varying from residential, non-mobile electronic devices from portable devices. The former, such as non-mobile home internet connection equipment, has a stronger connection with one's house than mobile phones, laptops, tablets, etc. In no way could all "computers and personal electronic devices," regardless of their mobility, be treated the same way for purposes of a nexus analysis concerning one's home. Thus, the Ninth Circuit's approach "painted with too broad of a brush by implementing a legal presumption that evidence of technology is likely to be found at a defendant's residence," which is "nonsensical" when considering that "the majority of internet usage occurs

outside the home." *See* Shane Landers, *supra*, Tex. A&M L. Rev. at 675. Indeed, since the Fourth Amendment treat the home as the "first among equals," *Florida v. Jardines*, 569 U.S. 1, 133 (2013), the constitutional nexus safeguards demand a rejection of the Ninth Circuit's generalized, universal approach.

Even the Ninth Circuit itself warned in *United States v. Gourde*, 440 F.3d 1065 (9th Cir. 2006) that

> [g]iven the current environment of increasing government surveillance and the long memories of computers, we must not let the nature of the alleged crime . . . skew our analysis or make us "lax" in our duty to guard the privacy protected by the Fourth Amendment. We are acutely aware that the digital universe poses particular challenges with respect to the Fourth Amendment.

Id. at 1074. Sadly, however, sixteen years thereafter, the Ninth Circuit seemingly forgot about the Fourth Amendment's nexus requirement and took "a step down the path of laxity and into the arms of Big Brother." *Id.*

B. Automatic Justification Premised on Unfounded Presumptions

To be clear, Kvashuk is not proposing an "two-category" approach which simply labels an electronic device as either "non-mobile" or "portable." Such an arbitrary approach would create confusions and ambiguities. For example, mini PCs could potentially fall within either category, depending on the circumstances. *See* Syed Asad, *What is a Mini PC? Everything You*

Should Know, available at https://linuxhint.com/a-mini-pc-everything-you-should-know/.

Rather, Kvashuk argues that, just like in *Griffith*, the Court should examine whether nexus exists between the residence to be searched and the criminal conduct based on the totality of circumstances, with specific inquires as to whether the affidavit contains particularized information showing (1) that the accused possesses electronic devices; (2) the likelihood that the device could be located at one's home, depending on circumstances such as its mobility; and, (3) the likelihood that the device would contain incriminating evidence, depending on whether the device was involved in the offense, etc.

Unfortunately, contrary to *Griffith* and similar to *Peffer*, the Ninth Circuit implicitly implemented multiple layers of unfounded presumptions when determining the nexus issue. First, it simply assumed that Kvashuk owned electronic devices at his home, despite that the Government's surveillance failed to verify that any such devices existed at the house when the warrant was sought. Aff. ¶ 69, App.73a, 2-ER-129-130. Appellant's Brief, 31. The affidavit's language that "if a digital device or other electronic storage media is found at the SUBJECT LOCATION . . . " further reveals that the affiant was not aware of any digital device existing there, but hoping there would be. Aff. ¶ 87, App.78a, 2-ER-134 (emphasis added).

Second, the Ninth Circuit also assumed that, if there were electronic devices at Kvashuk's home, they would contain incriminating evidence. The Ninth Circuit's decision is grounded on an assumption that Kvashuk continued to possess the same (although unspecified) electronic devices more than sixteen months

later (from March, 2018 to July, 2019), even after he moved from his apartment to the house and had become aware of the investigation of him during the intervening period. While the Google records placed a Samsung phone at the subject location "months prior to the search," Aff. ¶ 84, App.77a, 2-ER-133, it "would not automatically justify an open-ended warrant to search a home anytime." *Griffith*, 867 F.3d at 1273. Instead, such a search would rest on two other assumptions: that Kvashuk used the Samsung phone to commit the crimes, and that the Samsung phone would be home several months later when the warrant was executed. Nothing in the record support those assumptions.

C. Injection of the Vague, Troublesome Concept of "Cybercrime"

Moreover, in its Opinion the Ninth Circuit injected into the nexus analysis a vague, troublesome concept of "cybercrime," rendering its already problematic approach further unworkable and unacceptable for the following reasons:

First, what is a "cybercrime" within the context of the Fourth Amendment jurisprudence, exactly? While some scholar limits its scope to certain federal and state computer misuse statutes, *see* Orin S. Kerr, *Cybercrime's Scope: Interpreting "Access" and "Authorization" in Computer Misuse Statutes*, 78 N.Y.U. L. REV. 1596 (2003), the Ninth Circuit seemingly adopted a broader construction by interpreting "cybercrime" as all crimes with a "reliance on computers and personal electronic devices." App.11a, Opinion. Many offenses could qualify as "cybercrime" under this interpretation, considering the increasingly common use of electronic devices in the digital age. Thus, the Ninth Circuit's approach

and its fluid concept of "cybercrime" could open a can of worms and subject the public at large to the prejudice of vague law, thereby demanding this Court's review.

On the other hand, even assuming *arguendo* that the Ninth Circuit's reference to "cybercrime" is restrained to certain computer misuse statutes, another dilemma emerges: a similarly situated hypothetical defendant, who had the exact same offense conduct just like Kvashuk but was charged under a generic fraud statute rather than a computer misuse statute, would receive different treatment when it comes to issues of probable cause to search, as a matter of law. Such potential equal protection issues also warrant this Court's review.

CONCLUSION AND PRAYER FOR RELIEF

The Circuits need guidance about the appropriate approach for factoring the "nature of cybercrime" into determination of whether the requisite nexus exists between a defendant's home and the criminal conduct. At present, the Ninth and Sixth Circuits are adopting an approach that affords unfounded presumption and excessive weight to the "nature of cybercrime" which circumvents the Fourth Amendment's protection of one's home, constituting a conflict with the D.C. Circuit that deserves resolution by this Court. Absent this Court's intervention, the Ninth Circuit's generalized, universal treatment of all electronic devices will automatically justify law enforcement's breaking down of a citizen's front door. And, its injection of the fluid concept of

"cybercrime" into the nexus analysis will further prejudice the public at large with vague law. Altogether, the Ninth Circuit's approach not only invades the core of the Fourth Amendment protection of one's home and privacy, it also carries a negative economic effect by discouraging and punishing the public's technology use.

This Court should grant certiorari to review the Ninth Circuit's Opinion in this case, reverse the decision below, or grant such other relief as justice requires.

Respectfully submitted,

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AUGUST 1, 2022

* SUPREME COURT BAR APPLICATION PENDING