No. _____

IN THE

Supreme Court of the United States

PERRY WAYNE SUGGS, JR.,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This case involves a warrant that authorized officers to conduct an unbridled search of a home. The warrant was "so open-ended" that it could "only be described as a general one, akin to the instruments of oppression vivid in the memory of newly independent Americans when the Fourth Amendment was adopted." *United States v. Suggs*, 998 F.3d 1125, 1135 (10th Cir. 2021). Under *Groh v. Ramirez*, 540 U.S. 551 (2004), suppression was warranted. Yet, a divided panel of the Tenth Circuit refused to suppress the fruits of the unconstitutional warrant and instead applied the good-faith exception to the exclusionary rule. The question presented is:

When a warrant plainly violates the Fourth Amendment's particularity requirement by authorizing an unbridled, general search of a home, does the good-faith exception save the fruits of the unconstitutional search from suppression.

RELATED PROCEEDINGS

United States v. Suggs, No. 22-1024 (10th Cir.)

United States v. Suggs, No. 19-1487 (10th Cir.)

United States v. Suggs, No. 1:18-cr-00089-WJM-1 (D. Col.)

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PETITION FOR WRIT OF CERTIORARI

Petitioner Perry Suggs respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit.

OPINIONS BELOW

The Tenth Circuit's unpublished opinion is available at 2023 WL 3963620, and is reprinted in the Appendix (Pet. App.) at 1a-8a. The Tenth Circuit's unpublished order denying rehearing en banc is reprinted at Pet. App. 41a. The Tenth Circuit's prior decision is published at 998 F.3d 1125, and is reprinted at Pet. App. 9a-19a. The district court's initial order denying Mr. Suggs's motion to suppress is published at 371 F.Supp.3d 931, and is reprinted at Pet. App. 29a-40a. The district court's second order denying the motion to suppress is published at 582 F.Supp.3d 849, and is reprinted at Pet. App. 20a-28a.

JURISDICTION

The district court had jurisdiction under 18 U.S.C. § 3231. The Tenth Circuit had jurisdiction under 28 U.S.C. § 1291. The Tenth Circuit denied the petition for rehearing en banc on August 17, 2023. Pet. App. 1a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

INTRODUCTION

This case involves the confluence of two time-honored Fourth Amendment principles. The first is the "'centuries-old principle' that the 'home is entitled to special protection.'" *Lange v. California*, 141 S. Ct. 2011, 2018 (2021). More than anything, the Fourth Amendment protects the right "to retreat into [one's] own home and there be free from unreasonable governmental intrusion." *Florida v. Jardines*, 569 U.S. 1, 6 (2013). The second is also a centuries-old principle rooted in the Fourth Amendment's text: that all warrants must "particularly describ[e] … the persons or things to be seized." U.S. Const. amend. IV. As history teaches, the Framers included the Fourth Amendment within the Bill of Rights primarily "as a 'response to the reviled 'general warrants' and 'writs of assistance' of the colonial era, which allowed British officers to rummage through homes in an unrestrained search for evidence of criminal activity.'" *Carpenter v. United States*, 138 S. Ct. 2206, 2213 (2018). The condemnation of such unbridled searches "helped spark the Revolution itself." *Id.*

What happens when these two principles collide – when officers obtain a general warrant to search one of our homes? This Court has provided that answer: "[t]he warrant [is] plainly invalid." *Groh v. Ramirez*, 540 U.S. 551, 557 (2004). Such warrants are "so obviously deficient" that the resulting searches must be regarded as "'warrantless.'" *Id.* at 558. In a criminal case, any fruits of the unconstitutional general warrant must be suppressed. *Id.* at 563-565, 565 n.8 (confirming that qualified immunity and good faith are governed by the same standard); *United States v. Leon*, 468 U.S. 897, 923 (1984). "Given that the particularity requirement is set

forth in the text of the Constitution, no reasonable officer could believe that a warrant that plainly did not comply with that requirement was valid." *Groh*, 540 U.S. at 563.

This case is at the aforementioned crossroads: it involves a residential search warrant that "flubbed the Fourth Amendment's particularity requirement." Pet. App. 13a. The warrant's "plain language authorized officers to search for and seize evidence of *any* crime" within Mr. Suggs's home. Pet. App. 12a. The warrant was "so open-ended" that it could "only be described as a general one, akin to the instruments of oppression vivid in the memory of newly independent Americans when the Fourth Amendment was adopted." Pet. App. 13a. "[N]o reasonable construction of the residential search warrant—be it technical, practical, or otherwise—" could save the warrant from unconstitutionality. Pet. App. 11a.

Yet, the Tenth Circuit (with one judge in dissent) declined to suppress the fruits of the unconstitutional warrant and instead applied the good-faith exception to the exclusionary rule. Pet. App. 4a-5a. In doing so, the Tenth Circuit, for the first time ever, refused to remedy the unbridled, general search of a home. It did so not only without mentioning *Groh*, but also via an analysis that conflicts with *Groh* (and opinions from other Circuits). Had the Tenth Circuit faithfully applied *Groh*, it would have done what it normally does: suppress the fruits of an unconstitutional general residential search warrant.

This Court should grant certiorari, reject the Tenth Circuit's analysis as inconsistent with *Groh*, and suppress the fruits of the unconstitutional general residential search warrant. Alternatively, because the Tenth Circuit's error is patent

under controlling precedent, this petition could be resolved with a summary reversal. *See*, *e.g.*, *Maryland v. Dyson*, 527 U.S. 465, 465-467 (1999) (summarily reversing because the lower courts failed to follow controlling Fourth Amendment precedent); *Pennsylvania v. Labron*, 518 U.S. 938, 941 (1996) (similar).

STATEMENT

A. The Search Warrant

1. In January 2018, a Colorado Springs police officer, Adam Menter, responded to a report that a motorist had fired a shot at a pedestrian's feet. Pet. App. 10a. After an initial investigation, the officer obtained an arrest warrant for Mr. Suggs and a search warrant for his home from a state court judge. *Id.* The search warrant incorporated by reference an attachment ("Attachment B") that listed the things to be searched for and seized. *Id.*

The following person(s), property or thing(s) will be searched for and if found seized:

GENERAL INFO

- General photographs of the scene
- Indicia of residency
- Identification which would identify any occupants of the residence

GUNS INVOLVED

- Any and all firearms: specify if known
- Any and all ammo: specify if known
- Any documentation showing the ownership of a firearm
- Any and all sales records showing the purchase of a firearm
- Any projectiles
- Any and all spent shell casings
- Any item commonly used to carry and transport a firearm (i.e. holster & gun carrying case, magazines, cleaning kits)

VEHICLE

- Indicia of ownership of vehicle
- Vehicle registration

MISCELLANEOUS

- Any item identified as being involved in crime

NO OTHER ITEMS ARE SOUGHT FOR SEIZURE

This attachment was a template regularly used by the police department when applying for warrants. Pet. App. 7a; Pet. App. 30a. Officer Menter used the template "because, as a patrol officer, he does not regularly write warrant applications." Pet. App. 30a. It is clear, however, that he did not revise the template to fit the facts of the case. The attachment did not specify, for instance, the items to be searched for and seized within its four broad categories. Pet. App. 10a. The "MISCELLANEOUS" category went further and included a catchall phrase, authorizing the officers to search for and seize "[a]ny item identified as being involved in crime." *Id.* Neither the attachment nor the warrant identified the specific crime under investigation, however. Pet. App 12a. Thus, "the warrant's plain language authorized officers to search for and seize evidence of *any* crime." Pet. App. 12a.

The warrant included other untouched boilerplate language, broadly claiming that probable cause to search existed for any of five different reasons, some of which had nothing to do with the commission of a crime (for instance, that the items were "possessed in violation of state law under circumstances involving a serious threat to the public safety, or order, or to the public health"). Pet. App. 13a.

2. Officer Menter also authored an affidavit in support of the warrant that detailed the circumstances of the vehicle shooting. Pet. App. 10a. The warrant-issuing state judge signed this affidavit. Pet. App. 26a. This affidavit was not incorporated into the warrant, however. Pet. App. 10a. Nor was the affidavit limited to the vehicle shooting; the affidavit also explained that Mr. Suggs was a suspect in several other crimes. *Id.*

3. The government did not introduce any evidence indicating that Officer Menter took steps to verify the warrant's constitutionality. For instance, there is no evidence that Officer Menter contacted the prosecutor or the warrant-issuing judge or did anything else to clarify the warrant's terms. Nor is there any evidence that the warrant-issuing judge was aware of the defects with the warrant and assured the officers that the judge would correct those defects.

B. The Search

1. Before executing the search warrant, officers arrested Mr. Suggs at a gas station after he left the home in the vehicle involved in the shooting. Pet. App. 10a. A SWAT team, led by Officer Teresa Tomczyk, then conducted what the officer termed a "protective sweep" of the home. *Id.* During the "protective sweep," Officer Tomczyk observed guns in a vehicle parked under the home's carport. Pet. App. 10a.

Below, the government expressly disclaimed any argument that Tomczyk conducted a valid warrantless protective sweep. R1.88. And rightly so. The officers had already executed the arrest warrant at the gas station. *United States v. Walker,* 474 F.3d 1249, 1254 (10th Cir. 2007) (protective sweeps "may take place only incident to arrest"). And Tomczyk had no information that anyone was at the home. R2.90, 93, 96; *United States v. Nelson*, 868 F.3d 885, 889-891 (10th Cir. 2017) (officers cannot conduct a protective sweep without information of a third party). Thus, Officer Tomczyk could search only pursuant to the warrant. But the officer was not provided with a copy of the warrant or the affidavit and was not advised of the search's parameters, although she was generally aware of the vehicle shooting incident. Pet. App. 3a, 25a-26a.

2. Following Officer Tomczyk's search, three officers, Officer Menter, Sergeant Keith Wrede, and Officer Aaron Lloyd, then searched the home and found, *inter alia*, ammunition that matched the ammunition used in the vehicle shooting. Pet. App. 2a, 10a. The district court found that the officers confined their search to the evidence specified in the first three categories in Attachment B. Pet. App. 23a-24a. At trial, however, Officer Menter confirmed that the officers conducted a general search of the home. R2.229 ("Everything was searched that I'm aware of, inside the house.").

Neither Sergeant Wrede nor Officer Lloyd read the search warrant or affidavit prior to the search. Pet. App. 24a-25a. Rather, the district court found that Officer Menter told the other two officers what to search for and seize ("indicia [of residency] and, you know, anything related to firearms"). Pet. App. 24a-25a.

3. At some point, Officer Tomczyk told Officer Menter about the guns in the vehicle, and Officer Menter obtained a second warrant to search the vehicle and seize the guns. Pet. App. 10a, 3a. This warrant was essentially identical to the residential search warrant. *Id.* As with the residential search warrant, the officer relied on the same template, and again failed to fill out the template, resulting in a second warrant that authorized officers to search for and seize evidence of any crime. Pet. App. 32a.

C. Initial District Court Proceedings

1. Mr. Suggs was indicted and charged with possession of a firearm and ammunition by a convicted felon under 18 U.S.C. § 922(g)(1). Pet. App. 9a. He moved to suppress the evidence obtained from the search of his home and vehicle, arguing that the residential search warrant violated the Fourth Amendment's particularity

requirement and that the officers would not have found the evidence but for the unconstitutional warrant. Pet. App. 9a.

2. The district court denied the motion to suppress after an evidentiary hearing involving testimony from Officers Menter and Tomczyk. Pet. App. 29a-40a. The district court held that the residential search warrant was not insufficiently particular under *Andresen v. Maryland*, 427 U.S. 463 (1976). Pet. App. 33a-37a. The district court further held that it could consider the unincorporated affidavit under Tenth Circuit precedent because Officer Menter authored the affidavit and executed the warrant. Pet. App. 35a-36a. Because the district court found that the residential search warrant was valid, it further upheld the search of the vehicle. Pet. App. 36a-37a.

D. Initial Tenth Circuit Proceedings

1. The Tenth Circuit reversed in a published opinion. Pet. App. 9a-19a. The Tenth Circuit rejected the district court's (and the government's) reliance on *Andresen* as "misplaced," noting that, unlike the residential search warrant at issue in this case, the warrant in *Andresen* included the specific crime under investigation. Pet. App. 12a-13a. The Tenth Circuit held that the residential search warrant's "plain language authorized officers to search for and seize evidence of *any* crime" because the warrant included the broad catchall phrase ("any item identified as being involved in crime") without identifying the specific crime under investigation. Pet. App. 12a-13a.

> Read as whole, the warrant told officers they could search for evidence of any crime rather than only evidence related to the vehicle shooting. So open-ended is the description that the warrant can only be described as a general one, akin

> to the instruments of oppression vivid in the memory of newly independent Americans when the Fourth Amendment was adopted.

Pet. App. 13a.

The officer's reliance on a template caused additional problems. For instance, the boilerplate probable-cause language within the warrant failed to provide any "context from which to constrain the search to evidence of a specific crime." Pet. App. 13a. And the "Vehicles" section of the warrant lacked particularity because the officer could have, but did not, identify the specific vehicle under investigation. Pet. App. 15a.

The Tenth Circuit further held that, under well-established precedent, the district court should not have considered the unincorporated affidavit in its analysis. Pet. App. 14a-15a.

2. The Tenth Circuit refused to apply the severability doctrine to save the unconstitutional warrant because the invalid sections of the warrant constituted the greater part of the warrant. Pet. App. 16a. "The residential search warrant's catch-all section authorized the search and seizure of evidence of any crime—'be it murder, robbery, stolen property, fraud, tax evasion, or child pornography, to name just a few examples.'" *Id.* "[T]he warrant empowered officers to search for evidence of any crime. The warrant [was] therefore both invalid and non-severable." *Id.*

3. The Tenth Circuit further rejected the government's arguments that the evidence found in the vehicle was not fruit of the unconstitutional residential search warrant. Pet. App. 17a-18a. "But for the invalid residential search warrant, Officer Tomczyk would not have entered the curtilage of Defendant's home and seen the guns in the SUV parked under his carport." Pet. App. 18a. Without this information, which

Officer Menter used to obtain the vehicle warrant, Officer Menter would not have obtained the second warrant, "which led directly to the seizure of the evidence from the SUV." *Id.*

4. Finally, the Tenth Circuit remanded for the district court to address the good-faith exception's possible application in the first instance. Pet. App. 17a. Citing *United States v. Russian*, 848 F.3d 1239 (10th Cir. 2017) (a factually dissimilar case involving the warrantless search of cell phones not listed in a sufficiently particular search warrant), the Tenth Circuit noted that the good-faith-exception inquiry considers not just the warrant's text, but also "the totality of the circumstances to determine whether officers reasonably relied on the invalid warrant." Pet. App. 17a.

The Tenth Circuit identified three "potentially material" factual disputes: (1) "whether officers limited their search to evidence only related to the vehicle shooting"; (2) whether officers Wrede and Lloyd "either read the warrant or reviewed any of its supporting documents before they executed the search"; and (3) if not, whether Officers Wrede and Lloyd "were otherwise informed of the warrant's contents or briefed on what items to look for during the search." Pet. App. 17a. The Tenth Circuit further indicated that the district court should resolve whether Officer Tomczyk "reasonably relied on the warrant when she testified that she never received a copy of the warrant or reviewed [the] affidavit." Pet. App. 17a.

E. District Court Proceedings on Remand

1. On remand, the district court denied the suppression motion under the good-faith exception. Pet. App. 20a-27a. The district court determined that the residential search warrant was not "so 'facially deficient' that a reasonably well-trained officer

would have known the search was illegal." Pet. App. 22a. Although the Tenth Circuit squarely held that Attachment B authorized a search for evidence of any crime, Pet. App. 12a, the district court determined that Attachment B contained "a detailed list of things to be searched for and seized if found." Pet. App. 22a. And even though the warrant said nothing about the specific crime under investigation, the district court concluded that a reasonable officer "could have read the warrant—particularly the specific list of items to be seized—and interpreted it as restricting the scope of the search to items involved in the shooting under investigation." Pet. App. 22a. The district court also considered the unincorporated affidavit as "bolster[ing]" this conclusion. Pet. App. 14a-15a.

2. Turning to the totality of the circumstances, the district court found it significant that Officer Menter prepared the affidavit and executed the search. Pet. App. 23a. According to the district court, this fact "support[ed] a finding of good faith." *Id.* The district court further found that the officers conducted a limited search because: (1) Office Menter testified that the officers "looked for stuff related to firearms"; and (2) the officers did not seize anything unrelated to the alleged shooting. Pet. App. 24a. With respect to Officer Lloyd and Sergeant Wrede, the district court found that, although the officers did not read the warrant or the affidavit, Officer Menter told the officers what to look for ("indicia [of residency] and, you know, anything related to firearms"). Pet. App. 24a-25a. The district court weighed all of this against suppression. Pet. App. 24a-25a.

With respect to Officer Tomczyk, the district court determined that she had no obligation to read the warrant because she was only tasked with conducting a "protective sweep" and "*was not an officer involved in the search*." Pet. App. 25a-26a. In doing so, the district court ignored the fact that the government had taken the opposite position with respect to Officer Tomczyk's role in the search. R1.88. The district court further found that Officer Tomczyk was aware that the arrest warrant "stemmed from a road-rage situation that resulted in a shooting." Pet. App. 26a. According to the district court, all of this also weighed against suppression. *Id.*

The district court determined that two other facts weighed against suppression: (1) that the warrant-issuing judge also signed the affidavit; and (2) that Officer Menter was able to obtain a second (equally flawed) warrant from a different state court judge. Pet. App. 26a. The district court concluded by determining that suppression would not serve the underlying purposes of the exclusionary rule because Officer Menter obtained the second (unconstitutional) warrant to search the vehicle. Pet. App. 27a.

F. Tenth Circuit's Proceedings

1. The Tenth Circuit affirmed the district court's denial of Mr. Suggs's suppression motion over the dissent of Judge Phillips. Pet. App. 1a-8a. The Tenth Circuit relied almost exclusively on three Tenth Circuit cases involving computer searches (and ignored this Court's decision in *Groh*). Pet. App. 3a-5a (discussing *Russian*, 848 F.3d 1239; *United States v. Otero*, 563 F.3d 1127 (10th Cir. 2009); *United States v. Riccardi*, 405 F.3d 852 (10th Cir. 2005)). Like the district court, the Tenth Circuit concluded that a "reasonable officer could have understood the warrant as limited to

the shooting crime under investigation and presumed the warrant to be valid" because "Attachment B contained a detailed list of things to be searched for and seized." Pet. App. 4a. The Tenth Circuit also twice relied on the fact that Officer Menter prepared the warrant and affidavit and executed the search in support of its good-faith determination. Pet. App. 4a.

Turning to the totality of the circumstances, the Tenth Circuit (again, like the district court) determined that: (1) the executing officers "understood the search was limited to the shooting under investigation, which validates that they acted in good faith"; (2) the officers only seized items related to the shooting; (3) Officer Menter briefed Sergeant Wrede and Officer Lloyd to look for evidence of the crime under investigation; (4) Officer Tomczcyk "understood the nature of the search and the crime under investigation"; (5) the warrant-issuing judge signed the affidavit; and (6) because Officer Menter obtained the second (unconstitutional) warrant, his conduct was "not the kind of flagrant or deliberate violation that the rule was meant to deter." Pet. App. 5a. Throughout its analysis, and despite identifying the correct objective test, the Tenth Circuit repeatedly relied on the officers' subjective good faith. Pet. App. 3a-5a.

2. Judge Phillips dissented. Pet. App. 5a-8a. Judge Phillips would have suppressed the evidence under binding Tenth Circuit precedent (including the prior panel opinion) "dictating that the warrant was 'so facially deficient' that no officer could reasonably rely on it." Pet. App. 5a. Because the warrant was so facially deficient, Judge Phillips concluded that the conduct of the officers involved in the

search was irrelevant. *Id.* Judge Phillips noted that the Tenth Circuit assumes that officers "have a reasonable knowledge of what the law prohibits," and that officers are deemed "aware of binding precedent clearly establishing a rule." Pet. App. 5a-6a. Because the residential search warrant suffered from the same defect as warrants deemed insufficiently particular in prior Tenth Circuit decisions, the warrant was invalid under clearly established law, and the officers could not reasonably rely on it. Pet. App. 6a.

Judge Phillips explained that the conduct of the other officers would be relevant in a civil case when determining which officers were liable, but "not for suppression" in a criminal case. Pet. App. 6a. For suppression purposes, courts "consider the objective reasonableness of the government as a whole," not "the objective reasonableness of each officer individually." *Id.* Citing *Groh*, Judge Phillips disagreed that suppression would not serve the purposes of the exclusionary rule, as Officer Menter "relied on a template that the [police department] regularly used to apply for search warrants." Pet. App. 7a. "Suppressing the evidence in this case would deter police officers and departments from drafting warrants that serve as blank checks to search for evidence of any crime." Pet. App. 7a.

REASONS FOR GRANTING THE PETITION

Review is necessary because the Tenth Circuit's decision conflicts with this Court's decision in *Groh* (and other cases), as well as with decisions from other courts of appeals. Review is also necessary because the question presented is vitally important. This Court has consistently recognized that, "when it comes to the Fourth

Amendment, the home is first among equals." *Jardines*, 569 U.S. at 6. This Court has also consistently "viewed with disfavor practices that permit 'police officers unbridled discretion to rummage at will among a person's private effects.'" *Byrd v. United States*, 138 S. Ct. 1518, 1526 (2018). Yet, the Tenth Circuit refused to remedy an unbridled search of Mr. Suggs's home pursuant to a general warrant that was no different than the general warrants that sparked the American Revolution. Pet. App. 13a; *Carpenter*, 138 S.Ct. at 2213. If the exclusionary rule applies at all, it must apply to remedy the use of general warrants reviled by the Framers. This petition is a clean vehicle for this Court to reaffirm its prior holdings and to defend the core of the Fourth Amendment from governmental overreach. This Court should grant this petition.

I. The Tenth Circuit's Decision Conflicts With *Groh* and Other Supreme Court and Lower Court Opinions.

The Tenth Circuit's decision conflicts with this Court's precedent (and precedent from the other courts of appeals) in seven material respects.

1. The Tenth Circuit applied a subjective test rather than an objective test. This Court has long held that the "good-faith inquiry is confined to the objectively ascertainable question whether a reasonably well trained officer would have known that the search was illegal despite the magistrate's authorization." *Leon*, 468 U.S. at 919, 923 n.23 (1984). Courts must "eschew inquiries into the subjective beliefs of law enforcement officers who seize evidence pursuant to a subsequently invalidated warrant." *Id.* at 923 n.23. "[S]ending state and federal courts on an expedition into the minds of police officers would produce a grave and fruitless misallocation of

judicial resources." *Id.* This objective inquiry asks whether an "officer of reasonable competence would have requested the warrant." *Malley v. Briggs*, 475 U.S. 335, 346 n.9 (1986). It does not ask whether the officer had a subjective good-faith motive for requesting the warrant.

This Court reaffirmed this principle the last time that it considered the good-faith exception. *Herring v. United States*, 555 U.S. 135, 145 (2009). In doing so, this Court explained that, while this objective test considers "a particular officer's knowledge and experience," it does not consider "his subjective intent." *Id.*

The Tenth Circuit acknowledged this objective inquiry. Pet. App. 3a-4a. But it plainly applied a subjective test. Pet. App. 4a-5a. For instance, rather than inquire into how an objectively reasonable officer would have understood the warrant's text, the Tenth Circuit inquired into "Officer Menter's understanding of the warrant's text." Pet. App. 4a. The panel majority then concluded that Menter's subjective understanding of the warrant supported its good-faith determination. *Id.* Similarly, rather than inquire into how an objectively reasonable officer would have understood the warrant's scope, the panel majority asked how "[t]he executing officers understood" the warrant's scope. *Id.* The panel majority then justified its good-faith determination via the officers' subjective good faith, finding that their subjective beliefs that the warrant authorized a search "limited to the shooting under investigation … validate[d] that they acted in good faith." *Id.*

Had the Tenth Circuit asked the relevant question – whether a reasonably well-trained officer would have known that the search was illegal despite the magistrate's

authorization," *Leon*, 468 U.S. at 919, 923 n.23 – it would have suppressed the evidence. It is blackletter law that reasonably well-trained officers must conform their conduct to binding Fourth Amendment precedent. *Davis v. United States*, 564 U.S. 229, 241 (2011).

At the time of the search at issue here, it was conclusively established that a warrant that includes a broad catchall phrase is constitutional only if it identifies the specific crime under investigation. Over 50 years ago, this Court made clear that a provision authorizing a general search is unconstitutional if it "lays down no requirement for particularity in the warrant as to what specific crime has been or is being committed." *Berger v. New York*, 388 U.S. 41, 56 (1967). On multiple occasions, the Tenth Circuit has determined that search warrants with general, unspecific language (like the catchall phrase here) were unconstitutional because those warrants failed to identify the specific crime under investigation (like the warrant here). *See*, *e.g.*, *United States v. Leary*, 846 F.2d 592, 594 (10th Cir. 1988); *United States v. Riccardi*, 405 F.3d 852, 862-863 (10th Cir. 2005); *United States v. Otero*, 563 F.3d 1127, 1133 (10th Cir. 2009); *United States v. Brown*, 984 F.2d 1074, 1077 (10th Cir. 1993).

Indeed, on several occasions, the Tenth Circuit has held invalid analogous Colorado state warrants that failed to "tie[] the listed items to any particular crime." *Mink v. Knox*, 613 F.3d 995, 1010 (10th Cir. 2010); *Cassady v. Goerhing*, 567 F.3d 628, 642 (10th Cir. 2009); *United States v. Dunn*, 719 Fed. Appx. 746, 749 (10th Cir. 2017). The Tenth Circuit invalidated the warrant in *Cassady*, for instance, because it

included a "similar catch-all phrase" that authorized officers "to search for 'all other evidence of criminal activity.'" Pet. App. 13a. As four members of the Tenth Circuit have recognized, "the invalid portions of the search warrant [for Mr. Suggs's home were] just as broad and invasive as the tainted provisions in the *Cassady* warrant." Pet. App. 16a (first published opinion); Pet. App. 6a (Judge Phillips's dissent).

In dissent, Judge Phillips applied the proper objective test in light of this well-established precedent. "In *Cassady*, we held that the catchall provision doomed the warrant by violating the Fourth Amendment's particularity requirement." Pet. App. 6a. Because the warrant in *Cassady* violated the Fourth Amendment's particularity requirement, so did "the warrant to search Suggs's home." *Id.* "And because the warrant was invalid under clearly established lase, Officer Menter could not reasonably rely on it to conduct a search." *Id.*

> *Cassady* clearly establishes that the warrant to search Suggs's home violated the Fourth Amendment's particularity requirement. Applying the good-faith exception here runs counter to *Leon*'s rule that evidence should be suppressed when the warrant is "so facially deficient … that the executing officers cannot reasonably presume it to be valid."

Id.

Judge Phillips's reasoning is undoubtedly sound. It flows directly from *Leon*, *Groh*, *Davis*, and *Herring*. The Tenth Circuit's contrary rule flouts the objective inquiry and instead asks whether the officers acted in subjective good faith. Pet. App. 3a-5a. Review is necessary.

2. The Tenth Circuit has adopted a rule that, when the executing officer also authored the warrant and supporting affidavit (as Officer Menter did here), this fact

supports a good-faith determination. Pet. App. 4a (citing, *inter alia*, *Russian*, 848 F.3d at 1246). But this Court held the exact opposite in *Groh*: if the officer "himself prepared the invalid warrant, he may not argue that he reasonably relied on the Magistrate's assurance that the warrant contained an adequate description of the things to be seized and was therefore valid." *Groh*, 540 U.S. at 564; *see also id.* at 554 (confirming that the officer also prepared the warrant affidavit). Other courts of appeals have faithfully applied *Groh*. *See*, *e.g.*, *United States v. Sheehan*, 70 F.4th 36, 51 (1st Cir. 2023) ("an officer's reliance on a magistrate's approval of a facially deficient warrant is especially unreasonable when those 'deficiencies arise from the failure of the [officer] conducting the search to provide the required supporting information in the affidavit'"); *United States v. Bershchansky*, 788 F.3d 102, 114 (2d Cir. 2015) (similar); *United States v. Hodson*, 543 F.3d 286, 293 (6th Cir. 2008) (similar).

The Tenth Circuit's decision is in direct conflict with *Groh* and decisions from at least three courts of appeals. Review is necessary.

3. The Tenth Circuit held that the limited scope of the search also supported a good-faith determination. Pet. App. 4a. As a threshold matter, the panel majority's perfunctory statement that the officers conducted a "limited" search is contradicted by the record, which indicates (via Officer Menter's own sworn testimony) that "[e]verything was searched that I'm aware of, inside the house." R2.229. This evidence was uncontradicted, and the government has never attempted to argue that the testimony was incredible or unreliable. Thus, the undisputed facts indicate that the

officers obtained a general warrant, then conducted a general search. The Tenth Circuit's contrary finding is clearly erroneous.

In any event, the Tenth Circuit's reliance on the "limited" scope of the search directly conflicts with *Groh*. In *Groh*, the officer argued that the limited search favored a good-faith finding. 540 U.S. at 558. This Court flatly rejected that argument: "[e]ven though petitioner acted with restraint in conducting the search, 'the inescapable fact is that this restraint was imposed by the agents themselves, not by a judicial officer.'" *Id.* at 561. This Court explained that, to hold otherwise would improperly shift the determination from the warrant-issuing judge to the officers. *Id.* at 560-561, 563-565 (denying qualified immunity without mentioning the scope of the search). At least one other court of appeals has faithfully applied *Groh*. *United States v. Griffith*, 867 F.3d 1265, 1277 (D.C. Cir. 2017) ("To the extent the officers showed restraint when executing the search, 'this restraint was imposed by the agents themselves, not by a judicial officer.'"). Review is necessary.

4. The Tenth Circuit held that the good faith exception applies absent "flagrant or deliberate" police misconduct. Pet. App. 5a. This holding is plainly inconsistent with this Court's precedent in two respects. First, this Court has held that suppression is also appropriate for "grossly negligent" conduct. *Herring*, 555 U.S. at 144. Considering the volume of precedent (discussed above) putting the officers on notice that the warrant at issue here was plainly deficient, the officers' conduct was, at a minimum, "grossly negligent." Had the Tenth Circuit asked whether the officers' conduct was "grossly negligent," it would have suppressed the evidence.

Second, with respect to the Fourth Amendment's particularity requirement, this Court has gone further and has held that mere negligent conduct requires suppression. *Groh*, 540 U.S. at 565. In *Groh*, the officer argued that the search "was the product, at worst, of a lack of due care, and that [this Court's] case law requires more than negligent behavior before depriving an official of qualified immunity." *Id.* Citing *Leon*, this Court rejected that argument. *Id.*; *Leon*, 486 U.S. at 919 (holding that the exclusionary rule applies when "the police have engaged in willful, or at the very least, negligent conduct"). At least one Circuit has recognized that *Groh*'s negligence standard controls in the particularity context. *United States v. Lazar*, 604 F.3d 230, 237-238 (6th Cir. 2010) ("*Herring* does not purport to alter that aspect of the exclusionary rule which applies to warrants that are facially deficient warrants *ab initio*.") Had the Tenth Circuit faithfully applied *Groh* and *Leon*, it would have suppressed the evidence as well.

In practice, the Tenth Circuit's "flagrant or deliberate" standard effectively turns the objectiveness of the good-faith inquiry into a subjective test (as discussed above). But this Court has long recognized that the Fourth Amendment protects us from incompetent officers, not just corrupt ones. *Malley*, 475 U.S at 346 n.9; *see also Herring*, 555 U.S. at 145 (the analysis "is objective, not an 'inquiry into the subjective awareness of arresting officers'"). It necessarily follows that suppression was warranted whether Officer Menter "realized [the warrant was invalid] or not" because courts "impute knowledge of clearly established law to officers executing a

search." Pet. App. 7a (Phillips, J., dissenting). Because the Tenth Circuit reached a contrary result by applying the wrong test, review is necessary.

5. The Tenth Circuit held that officers need not read warrants before executing searches if the officers were briefed about the warrant's contents. Pet. App. 4a. In *Leon*, however, this Court held that an officer cannot obtain a deficient warrant "and then rely on colleagues who are ignorant of the circumstances under which the warrant was obtained to conduct the search." 468 U.S. at 923 n.24. And in *Massachusetts v. Sheppard*, 468 U.S. 981, 990 n.6 (1984), this Court noted that, "[n]ormally, when an officer who has not been involved in the application stage receives a warrant, he will read it in order to determine the object of the search." This Court has never held that an officer can search a home for specific items without first reading the portion of the warrant that lists those specific items. Such a rule would gut the Fourth Amendment's particularity requirement. What is the point of a particularity requirement if there is no requirement that officers read the warrant?

If it is indeed true that officers need not read warrants before searching homes, that rule should come from this Court. That issue is sufficiently important to require this Court's review.

6. The Tenth Circuit's analysis considered each officer individually, rather than collectively. Pet. App. 4a-5a. That analysis conflicts with Ninth Circuit precedent, which explains that "'it is the government's duty,' not the duty of any particular officer, to serve a sufficiently particular warrant." *United States v. McGrew*, 122 F.3d 847, 850 (9th Cir. 1997)).

As Judge Phillips explained in dissent, in holding otherwise, the Tenth Circuit majority confused individual liability in civil cases with suppression in criminal cases. Pet. App. 6a. In the qualified-immunity context, courts must consider "the objective reasonableness of each officer individually, but for suppression purposes, we consider the objective reasonableness of the government as a whole." Pet. App. 6a (citing Ninth Circuit precedent in support of this proposition). The Tenth Circuit's flawed reasoning in this respect is yet another reason that this Court should grant this petition.

7. The Tenth Circuit's "totality of the circumstances" approach, Pet. App. 4a, is also inconsistent with this Court's precedents. As explained above, the test focuses on whether a reasonably well-trained officer conducted a search that conformed to the law. *Leon*, 468 U.S. at 919, 923 n.23. When conducting this analysis, this Court has recognized that the warrant-application process is relevant. *See*, *e.g.*, *Messerschmidt v. Millender*, 565 U.S. 535, 132 S.Ct. 1235, 1249 (2012).

For instance, in *Sheppard*, 468 U.S. at 989-991, an officer used a narcotics warrant to search for evidence of a murder. Before submitting the warrant to the judge, the officer had the district attorney review and approve the warrant affidavit. *Id.* at 989. When presenting the warrant to the judge, the officer informed the judge that the warrant dealt with controlled substances. *Id.* at 986. The judge informed the officer that he would make the necessary changes, made some changes, returned it to the officer, and informed the officer "that the warrant was sufficient authority in form and content to carry out the search as requested." *Id.* The judge's changes, however,

were insufficient to cure the warrant's lack of particularity. *Id.* This Court applied the good-faith exception. *Id.* at 989-990. The officer had no "duty to disregard the judge's assurances that the requested search would be authorized and the necessary changes would be made." *Id.* at 989.

But this Court has never held that the "totality of the circumstances" test permits court to consider circumstances unrelated to those surrounding the warrant's procurement. Just the opposite. *Messerschmidt*, 132 S.Ct. at 1245 n.2, 1248 n.6 (in the probable-cause context, focusing solely on the warrant affidavit and the warrant-application process, and criticizing the dissent because the dissent relied "almost entirely on facts outside the affidavit"); *see also Leon*, 468 U.S. at 922, 922 n.23, 926 (similar); *United States v. Abrams*, 615 F.2d 541, 544 (1st Cir. 1980) (similar; applying analogous reasoning in the particularity context). Judge Phillips recognized this point in dissent below. Pet. App. 5a. Because the search warrant was plainly deficient under controlling precedent, the warrant "was so facially deficient that no officer could reasonably rely on it. That's where our inquiry should end." Pet. App. 5a.

To be clear, this case is nothing like *Sheppard*. Officer Menter testified that, in his four years as a patrol officer, he had authored only "a handful" of search warrants. R2.67. To draft the warrant, he used a template. Pet. App. 7a. He did not seek assistance or approval from a state prosecutor. Nor did he obtain assurances from the warrant-issuing judge that the warrant was valid despite the insufficiently particular catchall phrase. Without any assurances from the warrant-issuing judge or a prosecutor that the warrant was valid despite its inclusion of the insufficiently

particular catchall phrase, the warrant-application process does not support a finding that a reasonably well-trained officer would have presumed that the plainly unconstitutional warrant was valid. Because those are the relevant "totality of the circumstances," the Tenth Circuit should have suppressed the evidence. Again, because the Tenth Circuit applied the wrong test, review is necessary.

8. The various conflicts created by the Tenth Circuit's analysis require either summary reversal or this Court's review. The Tenth Circuit's opinion ignores *Groh* and adopts a test at direct odds with *Groh* (and other cases from this Court and the other courts of appeals). This Court should either summarily reverse or grant this petition, reaffirm *Groh* (and *Leon*), reject the Tenth Circuit's analysis, and suppress the evidence.

II. The Question Presented Is Critically Important.

When courts interpret the Fourth Amendment, history matters. *See*, *e.g.*, *Lange*, 141 S.Ct. at 2018 (looking "to the common-law practices familiar to the Framers" when resolving Fourth Amendment disputes); *Virginia v. Moore*, 553 U.S. 164, 168 (2008) (similar). And history teaches that the Framers despised general search warrants – those warrants "which allowed British officers to rummage through homes in an unrestrained search for evidence of criminal activity." *Carpenter*, 138 S.Ct. at 2213. The condemnation of such searches "helped spark the Revolution itself," *id.*, and served as the impetus for the Fourth Amendment's adoption, *Stanford v. Texas*, 379 U.S. 476, 481 (1965). Thus, it should come as no surprise that this Court has "viewed with disfavor practices that permit 'police officers unbridled discretion to rummage at will among a person's private effects,'" *Byrd*, 138 S.Ct. at 1526, especially

the home, *Jardines*, 569 U.S. at 6 ("when it comes to the Fourth Amendment, the home is first among equals").

Indeed, the Fourth Amendment's plain text requires particularity in warrants: "no Warrants shall issue," the Framers wrote, without "particularly describing the place to be searched, and the persons or things to be seized." Because of this plain-text requirement, this Court has held: "Given that the particularity requirement is set forth in the text of the Constitution, no reasonable officer could believe that a warrant that plainly did not comply with that requirement was valid." *Groh*, 540 U.S. at 563.

This Court has never refused to remedy an unbridled search of a home premised on a general search warrant. But the Tenth Circuit did below. And it did so by ignoring this Court's precedent and instead relying on three cases about computer searches (not unbridled searches of homes). Pet. App. 3a-5a. General warrants are too dangerous, and homes too precious, to let the Tenth Circuit's opinion stand. The question presented is one of exceptional importance. This Court should summarily reverse or grant this petition.

III. The Tenth Circuit Erred.

We explained above the various ways in which the Tenth Circuit's decision strayed from this Court's precedent and resulted in an erroneous decision. To summarize, had the Tenth Circuit applied an objective test and asked whether a reasonably well-trained officer would have presumed that the residential search warrant was valid in light of the circumstances surrounding the warrant's procurement, the Tenth Circuit

would have reversed because the warrant was plainly unconstitutional under decades of precedent from this Court and the Tenth Circuit. *See* Pet. App. 6a-7a (Phillips, J., dissenting). Instead, the Tenth Circuit applied a subjective test and asked whether the officers' subjective understanding of the warrant was reasonable in light of the officers' conduct in executing the warrant. Pet. App. 4a-5a. That test has no basis in this Court's precedent.

We note two additional points. First, the Tenth Circuit's determination that "Attachment B contained a detailed list of things to be searched for and seized," Pet. App. 4a, was plainly wrong. As the Tenth Circuit held in its prior opinion, Attachment B's "plain language authorized officers to search for and seize evidence of *any* crime." *Suggs*, 998 F.3d at 1133. Thus, the Tenth Circuit's opinion is not just doctrinally flawed; it also rests on a false premise.

Second, the Tenth Circuit's reliance on the fact that the warrant-issuing judge signed the unincorporated affidavit is unpersuasive for two reasons. First, because the affidavit was not incorporated into the warrant, the affidavit could not be considered under *Groh*. 540 U.S. at 563-565. In *Groh*, the affidavit included a specific list of items to be searched for and seized. 540 U.S. at 554. The warrant, however, did not, nor did it incorporate the affidavit. *Id.* at 554-555. The specific list of items within the affidavit did not save the officer from liability. *Id.* at 564-565. Nor should it save the fruits from suppression in this case (even if the judge signed the unincorporated affidavit).

Second, in a prior case, the Tenth Circuit relied on the warrant-issuing judge's

signature on an unincorporated affidavit because the affidavit "carefully identified" the items to be searched for and seized. *Russian*, 848 F.3d at 1246. Other courts of appeals have done so as well. *See*, *e.g.*, *United States v. Allen*, 625 F.3d 830, 839 (4th Cir. 2010). But the affidavit here did not "carefully identify" any items to be searched for and seized. The affidavit did not, for instance, mention the miscellaneous portion of Attachment B, set forth a definition of the phrase "any item identified as being involved in crime," or make any attempt to set forth specific items to be seized under this miscellaneous provision. R1.52-54.

Nor is this a situation where the unincorporated affidavit identified the specific crime under investigation. While the affidavit "detailed the circumstances of the vehicle shooting and the fruits of Officer Menter's investigation," Pet. App. 10a, it did not identify by name a specific crime, R1.52-54. Nor was the affidavit limited to the vehicle-shooting investigation. The affidavit noted that Mr. Suggs was "suspected to be involved in several other crimes," Pet. App. 10, including three burglaries, two assaults, a domestic violence offense, and a resisting/obstructing offense, R1.54. Thus, even assuming an unincorporated affidavit may be considered if it's signed by the warrant-issuing judge, the cases relied on by the Tenth Circuit below do not support its decision to rely on the affidavit under the facts of this case.

In the end, the Tenth Circuit's decision is plainly wrong. This Court should summarily reverse or grant this petition.

IV. This Case Is An Excellent Vehicle.

For two reasons, this case is an ideal vehicle to resolve the conflict.

First, the question presented arises on direct review and was preserved below. One judge dissented and agreed with Mr. Suggs that the exclusionary rule should apply to suppress the fruits of the unconstitutional warrant. There are no procedural hurdles to overcome for this Court to address the merits of this critically important question.

The fact that the Tenth Circuit's decision is unpublished does not weigh against granting this petition. Publication is not a prerequisite to review or a reliable measure of a decision's importance. *See*, *e.g.*, *Carter v. United States*, 530 U.S. 255 (2000) (reviewing unpublished circuit court decision); *Los Angeles County, California v. Rettele*, 550 U.S. 609 (2007) (same); *National Archives and Records Admin. v. Favish*, 541 U.S. 157 (2004) (same); *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001) (same); *Eastern Assoc. Coal Corp. v. United Mine Workers of America, Dist. 17*, 531 U.S. 57 (2000) (same); *Wisconsin Right to Life, Inc. v. F.E.C.*, 546 U.S. 410 (2006) (reviewing unpublished three-judge district court decision); *Kaupp v. Texas*, 538 U.S. 626 (2003) (reviewing unpublished Texas Court of Appeals decision); *Ewing v. California*, 538 U.S. 11 (2003) (reviewing unpublished California Court of Appeal decision).

The Tenth Circuit's rules permit the citation of unpublished decisions "for their persuasive value." 10th Cir. R. 32.1(A). Indeed, the Tenth Circuit itself "generally follows that principle, looking in appropriate circumstances to an unpublished opinion if its rationale is persuasive and apposite to the issue presented." *Noreja v. Commissioner, SSA*, 952 F.3d 1172, 1176 (10th Cir. 2020) (citing examples). The

government will undoubtedly rely on the decision below as persuasive authority in future cases, and district courts will undoubtedly endeavor to harmonize their decisions with the decision below.

Second, if this Court grants certiorari and reaffirms its prior precedent, Mr. Suggs would prevail on the merits. As explained above, if the relevant inquiry asks whether a reasonably well-trained officer would have known that the residential search warrant was invalid based on well-established precedent, the answer is an obvious yes. The Tenth Circuit reached the opposite conclusion only by applying a materially different test that focused not on an objectively reasonable officer's understanding of the law or on what happened during the procurement of the warrant, but on the officers' subjective understanding of the warrant and their conduct during the search. Only by applying an incorrect test could the Tenth Circuit affirm. This Court should summarily reverse or grant this petition, then reverse the Tenth Circuit, and suppress the evidence.

CONCLUSION

For the foregoing reasons, this Court should summarily reverse or grant this petition.

Respectfully submitted,

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