No. _____

IN THE SUPREME COURT OF THE UNITED STATES

CHRISTIAN ESTRELLA,

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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QUESTION PRESENTED

A police officer may seize and search a person on parole without suspicion. *See Samson v. California*, 547 U.S. 843, 857 (2006). But the officer must first determine that this person is a parolee rather than an ordinary citizen.

The question presented is: Does probable cause to believe that a person is on parole suffice for a suspicionless seizure and search or is knowledge of parole status required?

RELATED PROCEEDINGS

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

United States v. Estrella, No. 19-cr-517 (Jan. 31, 2022)

United States Court of Appeals (9th Cir.):

United States v. Estrella, No. 22-10027 (June 6, 2023)

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Federal Cases

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PETITION FOR A WRIT OF CERTIORARI

Christian Estrella respectfully petitions for a writ of certiorari to review the judgment of the Ninth Circuit in this case.

OPINIONS BELOW

The Ninth Circuit's published opinion is reported at 69 F.4th 958 and reproduced at Appendix 1a. The Ninth Circuit's order denying rehearing is not reported but is reproduced at Appendix 30a. The district court's unpublished order denying Estrella's suppression motion is available at 2020 WL 2733979 and is reproduced at Appendix 31a.

STATEMENT OF JURISDICTION

The court of appeals entered judgment on June 6, 2023. App. 1a. Estrella's timely petition for rehearing was denied on November 9, 2023. App. 30a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION

The Fourth Amendment to the Unites States Constitution provides:

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

STATEMENT OF THE CASE

Two police officers seized Estrella without suspicion while he was working on his car in front of his home. App. 8a. One of the officers knew that Estrella was on parole four months prior but did not know if he was currently on parole. App. 7a.

The other officer was a trainee and knew nothing about Estrella. App. 8a. The officers did not check Estrella's parole status before seizing him. App. 8a.

Following the seizure, the officers confirmed that Estrella was on parole, and he told them that there was a gun in his car. App. 9a. The officers found the gun, and Estrella was arrested and charged with being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). App. 9a. He moved to suppress the firearm as the fruit of an unlawful seizure. App. 9a. The district court denied Estrella's motion, holding that the officers had a reasonable belief that he was presently on parole. App. 10a, 31a–39a. Estrella then entered a conditional guilty plea under Federal Rule of Criminal Procedure 11(a)(2), reserving his right to appeal the denial of his suppression motion. App. 10a.

The Ninth Circuit affirmed the district court's judgment but under a different standard. App. 11a–27a. First, the court rejected the requirement that police officers must "actually know" that a person is presently on parole before initiating a suspicionless search or seizure. App. 14a–19a. The court asserted that this requirement is categorically incompatible with the Fourth Amendment's touchstone of reasonableness and "would create practical problems for everyday police work." App. 18a–19a. Next, the court rejected the "reasonable belief" standard applied by the district court and endorsed by the California Court of Appeal in *People v. Douglas*,193 Cal. Rptr. 3d 79, 89–92 (Cal. Ct. App. 2015). App. 20a–26a. That standard, the Ninth Circuit explained, is "amorphous" and could be construed as requiring only "reasonable suspicion" about parole status. App. 24a. The Ninth

Circuit then concluded that "a law enforcement officer must have probable cause to believe that an individual is on active parole before conducting a suspicionless search or seizure[.]" App. 26a. The court explained that a probable-cause standard prevents the police from conducting "unfettered searches of suspected parolees" and sufficiently protects ordinary citizens "against unjustified assumptions about their parole status." App. 17a, 25a.

Finally, the Ninth Circuit concluded that the officers had probable cause to believe that Estrella was on active parole at the time of the encounter. App. 27a.

REASONS FOR GRANTING THE PETITION

Whether police officers must know that a person is currently on parole before conducting a suspicionless seizure and search is an important federal question. The knowledge requirement is the only constraint preventing police officers from seizing and searching ordinary citizens, as well as their residences and property, without suspicion. Diluting this requirement therefore diminishes everyone's Fourth Amendment protections. This dilution most affects people with prior police contacts, because it enables police officers to make assumptions about their parole status. Diluting the knowledge requirement also disproportionately burdens Black and Hispanic communities, who are overrepresented in the parolee (and former parolee) populations.

This case is an ideal vehicle for addressing the meaning of the knowledge requirement because the issue is squarely presented; was thoroughly briefed below; and was addressed in a published opinion by the Ninth Circuit.

The Ninth Circuit's decision replacing the knowledge requirement with a probable-cause determination about parole status is wrong. The probable-cause standard diminishes ordinary citizens' privacy rights without a legitimate government justification. First, allowing government agents to act on probable-cause about a person's parole status is inappropriate when that status is determined by the government. Second, there is no exigency to suspicionless seizures and searches that would justify officers to act without knowledge. Third, permitting officers to act on probable cause discourages officers from checking parole status. There is no reason to permit police officers to assume a person's parole status.

A. The limit on police authority to conduct suspicionless seizures and searches is an important question of federal law that should be settled by this Court.

1. The intrusive power of the police is at its broadest when dealing with a person on parole. That is the only circumstance when police officers may conduct seizures and searches without individualized suspicion and without a special need. *See Samson v. California*, 547 U.S. 843, 858 (2006) (Stevens, J., dissenting). Such seizures and searches often encompass the parolee's person, home, car, papers, and effects. *See, e.g.*, Cal. Pen. Code § 3067(b)(3) (2023) ("[A parolee] is subject to search or seizure by a probation or parole officer or other peace officer at any time of the day or night, with or without a search warrant or with or without cause."); Cal. Code Regs. tit. 15, § 2511(b)(4) (2023) ("[The parolee] and [the parolee's] residence and any property under [the parolee's] control may be searched without a warrant at any time by any agent of the Department of Corrections or any law enforcement

officer."). When the police are dealing with a parolee, the Fourth Amendment ceases to be a meaningful check on their power.

These intrusions often affect not only the parolee, but also the parolee's family, household members, and other people associated with the parolee. In the Ninth Circuit, officers may search any residence upon probable cause that a parolee resides there; any car or object outside any probable residence upon probable cause that the parolee controls it; and anything within any probable residence upon reasonable suspicion that the parolee controls it. *See United States v. Dixon*, 984 F.3d 814, 821–22 (9th Cir. 2020). Because parolees often live with and share property with others, these searches intrude on the privacy interests of people close to parolees. Further, the lowered standards for these downstream determinations endanger privacy rights of many innocent third parties. *See generally id.* at 822. So even when the police are correct that they are dealing with a parolee, they may search the wrong house or car because they need only probable cause that the parolee lives in the house or controls the car. And when the police are wrong about the initial parole determination, the entire universe of suspicionless searches that follows intrudes on the privacy rights of innocent third parties.

A police officer's determination that a person is on parole is therefore a key that unlocks broad intrusive powers. This determination permits officers to invade a large swath of privacy interests in ways not permitted even with a warrant. While search warrants must "describe with particularity" the places to be searched and the things to be seized, *Groh v. Ramirez*, 540 U.S. 551, 556 (2004), officers

conducting a parole search lack such restraints. Anything in the supposed parolee's residence or under the supposed parolee's control is fair game whenever any officer decides to search it.

2. This Court intended this broad intrusive power to be used only with parolees, whose expectations of privacy are severely diminished due to their status as convicts serving custodial sentences outside of prison. *See Samson*, 547 U.S. at 850. But once police officers have this power, the Fourth Amendment's tolerance for reasonable mistakes means that some ordinary citizens are bound to be swept in. *See Heien v. North Carolina*, 574 U.S. 54, 57 (2014). For example, an ordinary citizen who looks like a parolee cannot cry foul if inadvertently subjected to a suspicionless search or seizure. *Cf. Hill v. California*, 401 U.S. 797, 802 (1971) (arrests based on mistaken identity can be reasonable). Upon *Samson*'s recognition of a category of people whom the police can seize and search without suspicion, the risk of such intrusions to everyone else becomes "one of the inconveniences we all expose ourselves to as the cost of living in a safe society[.]" *Illinois v. Rodriguez*, 497 U.S. 177, 184 (1990).

The sole protection against this risk—and the only check on the broad police power to conduct suspicionless seizures and searches—is the requirement that officers must know that they are dealing with a parolee rather than an ordinary citizen. The public has the strongest possible interest in preserving that requirement. Recognizing this strong public interest, the United States Government previously assured this Court that police authority reserved for dealing with

parolees will not "intrude on the privacy of ordinary citizens," because "an officer is entitled to conduct suspicionless searches only of persons *known by him to be parolees*." Amicus Br. for USA 19–20, *Samson v. California*, S. Ct. No. 04-9728, 2006 WL 139218 (emphasis added). This Court's majority relied on that assurance to permit suspicionless searches of parolees. *See* 547 U.S. at 856 n.5 ("Under California precedent, we note, an officer would not act reasonably in conducting a suspicionless search absent *knowledge* that the person stopped for the search is a parolee." (emphasis added)). And the dissent emphasized the knowledge requirement as an indispensable limit on police power. *See id.* at 866 n.7 ("It would necessarily be arbitrary, capricious, and harassing to conduct a suspicionless search of someone without *knowledge* of the status that renders that person, in the State's judgment, susceptible to such an invasion." (emphasis added)).

3. While diluting the knowledge requirement affects all ordinary citizens, it most directly affects former parolees, current and former probationers, and other persons with prior police contacts.

Nationwide, there are nearly one million parolees.[1] Over 35,000 parolees reside in California.[2] Because the vast majority of parolees are not on lifetime parole, they will eventually complete their parole terms and have their

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[1] Bureau of Justice Statistics (BJS), *Probation and Parole in the United States, 2020*, Summary, Dec. 2021, https://bjs.ojp.gov/content/pub/pdf/ppus20_sum.pdf.
[2] California Department of Corrections and Rehabilitation (CDCR), Summary of Offender Data Points for Month-end December 2023, https://public.tableau.com/app/profile/cdcr.or/viz/OffenderDataPoints/SummaryInCustodyandParole.

constitutional rights restored. But under a diluted knowledge requirement, they will remain in danger of suspicionless seizures and searches, because police officers will not be required to check if they have completed parole. For former parolees, the police continuing to treat them as though they have no Fourth Amendment rights will "undermine their ability to reintegrate into productive society[.]" *Samson*, 547 U.S. at 856.

The diluted knowledge requirement will also affect the nation's large probation population. Over 3 million people are on probation in the United States.[3] Like parolees, probationers are often subjected to diminished Fourth Amendment protections. *See, e.g.*, *United States v. Knights*, 534 U.S. 112, 119 (2001). Under the Ninth Circuit's reasoning, officers will need only probable cause that a person is on probation to treat that person as a probationer. *See* Appx. 18a–19a. That means that former probationers will also remain at risk of otherwise-prohibited seizures and searches after completing probation. Further, the probable-cause standard may justify officers treating some probationers (whose rights are merely reduced) as though they are parolees (whose rights are effectively eliminated).

More broadly, the lowered knowledge requirement will permit officers to make assumptions about anyone they previously investigated, arrested, or otherwise encountered. If the police decide to round up their "usual suspects," they will now have a new justification for their conduct: probable cause to believe that

[3] BJS, *Probation and Parole in the United States, 2020*.

their targets are on parole. *Contra United States v. Laughrin*, 438 F.3d 1245, 1247 (10th Cir. 2006) ("Under the Fourth Amendment our society does not allow police officers to 'round up the usual suspects.').

4. The diluted knowledge requirement will disproportionately burden minority communities. In California, while 6.5% of the total population is Black, this group makes up 23.4% of the parolee population.[4] For Hispanic people, the figures are 40.3% of the total population versus 47.1% of the parolee population.[5] Thus in California, over 70% of the parolee population is Black or Hispanic. These communities' shares of the former parolee population are likely similar. Because these communities are overrepresented in the former parolee population, they will bear the brunt of erroneous parole checks, which cannot help but "inflict[] dignitary harms that arouse strong resentment[.]" *Samson*, 547 U.S. at 856. These intrusive actions will exacerbate tensions between the police and minority communities. *Cf. Terry v. Ohio*, 392 U.S. 1, 14 & n.11 (1968) (recognizing that police interactions similar to parole checks can increase police-community tensions, especially when targeted at minority groups).

In discussing her work on mass incarceration, Professor Michelle Alexander highlighted how probation and parole are used to subjugate minority communities:

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[4] Census Bureau, QuickFacts, California (July 1, 2023), https://www.census.gov/quickfacts/CA; CDCR, Summary of Offender Data Points for Month-end December 2023 under Parole tab.

[5] Census Bureau, Quick Facts, California; CDCR, Summary of Offender Data Points for Month-end December 2023 under Parole tab.

> [O]ne of the main points of "The New Jim Crow" is that it is a profound mistake to think of the system of mass incarceration as simply a system of prisons.
>
> There are twice as many people on probation or parole today as are locked in prisons or jails. When people think about the system of mass incarceration, they typically just think about who's in prison at any given moment. But what I hope to draw people's attention to is that this system of mass incarceration is actually a system of mass criminalization. It is a system that criminalizes people at very young ages, often before they're old enough to vote. It labels them criminals and felons, and then strips them of basic civil rights, the very rights supposedly won in the civil-rights movement. And this happens even if you've been sentenced only to probation.
>
> . . . .
>
> The war on drugs has been a primary vehicle for sweeping people into a criminal-justice system, branding them criminals and felons, and then relegating them to a permanent second-class status for life.[6]

Diluting the knowledge requirement about parole status aggravates this problem by facilitating the assumption that any person with prior police contacts is not an ordinary citizen entitled to full Fourth Amendment protections.

5. The meaning and vitality of the crucial knowledge requirement about parole status is at issue in this case. The Ninth Circuit has diluted this requirement by holding that "probable cause to believe than an individual is on active parole" is sufficient to conduct "a suspicionless search or seizure[.]" App. 26a. The California Court of Appeal set the bar even lower, holding that an officer who "was not just acting on a hunch that [the defendant] was on [parole] . . . . had an objective basis for his belief." *Douglas*, 193 Cal. Rptr. 3d at 94. This Court has not yet addressed how sure a police officer must be that a person is on parole before employing the

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[6] David Remnick, *Ten Years After "The New Jim Crow,"* The New Yorker Interview with Michelle Alexander, Jan. 17, 2020, https://www.newyorker.com/news/the-new-yorker-interview/ten-years-after-the-new-jim-crow.

broad intrusive powers reserved only for dealing with parolees. Estrella's petition presents this important question.

B. This case is an ideal vehicle for this Court's review.

The facts and procedural posture of this case make it an excellent vehicle to determine the conditions under which the police may conduct parole seizures and searches and, correlatively, the limits on police power to conduct suspicionless seizures and searches of ordinary citizens. The question is squarely and cleanly presented. It was raised and addressed at each stage of the proceedings below. App. 11a–27a, 36a–39a. It was thoroughly briefed and argued before the Ninth Circuit and decided in a published, precedential opinion. It would come before this Court on direct review, posing none of the issues that can arise on interlocutory or collateral review.

C. The decision below is wrong.

1. The Ninth Circuit rejected any standard higher than probable cause as categorically incompatible with the Fourth Amendment. *See* App. 18a–19a. No decision of this Court supports that holding. This Court has long held that "there can be no ready test for determining reasonableness other than by balancing the need to search against the invasion which the search entails." *Camara v. Mun. Ct. of City & Cnty. of San Francisco*, 387 U.S. 523, 536–37 (1967). Thus, the standard for distinguishing between ordinary citizens and parolees must be determined by balancing the applicable individual privacy rights against the government's legitimate interests. *See Terry*, 392 U.S. at 21; *Knights*, 534 U.S. at 118–19.

Applying this test shows that the probable-cause standard unduly burdens individual privacy rights without furthering legitimate governmental interests. This Court should instead require officers to have prior knowledge of a person's parole-end date or else to check the person's current parole status before initiating a suspicionless seizure or search.

2. As discussed supra, ordinary citizens have a very strong interest in not being treated like parolees. But the probable-cause standard permits police officers to treat ordinary citizens like parolees even when there is not a "preponderance of the evidence" supporting that belief. *Illinois v. Gates*, 462 U.S. 213, 235 (1983); *see United States v. Gourde*, 440 F.3d 1065, 1069 (9th Cir. 2006) ("[P]robable cause means 'fair probability,' not certainty or even a preponderance of the evidence."). This diminished standard is what permitted the Ninth Circuit to conclude that an officer's knowledge that Estrella was on parole four months prior sufficed for probable cause that he remained on parole at the time of the stop. *See* App. 27a.

3. These intrusions on individual privacy rights are not justified by a legitimate governmental interest. No doubt, this Court has held that the government's "overwhelming interest in supervising parolees" overrides any interest of parolees to be free from suspicionless seizures and searches. *Samson*, 547 U.S. at 853 (internal quotation marks omitted). But the preliminary question whether a person is a parolee involves entirely different interests. On the individual side are ordinary citizens whose privacy interests, and those of their household members, are invaded without any suspicion of criminal activity, when the police

erroneously assume that they are on parole. And on the government side is the purported need to conduct suspicionless parole checks without prior knowledge of the person's parole-end date or current status, notwithstanding the lack of exigency or any individualized suspicion of criminal activity. No such police need exists, and permitting this leeway only encourages abuse.

First, a probabilistic standard is not appropriate for determining a binary status set by the government. The probable-cause standard, "as the very name implies . . . deal[s] with probabilities." *Brinegar v. United States*, 338 U.S. 160, 175 (1949). It was crafted for resolving ambiguities about the outside world that are inherently unknown to the government. *See id.* at 175–76. For example, government agents cannot know if evidence of a crime will be found in a particular place until they search it. Similarly, they cannot know if a person will be convicted of a crime when they arrest that person. In those situations, officers require "leeway for enforcing the law in the community's protection." *Id.* at 176. But parole status is not a fact that is inherently unknown to the government. Just the opposite—it is a fact *created* by the government. A person is on parole when the government decides that person should be on parole. No analysis (by an officer or magistrate) is necessary to determine if a person is on parole.

Instead, officers need only look up the government's own information to determine if someone is on parole. Using widely available police tools, officers can determine parole status quickly and accurately by consulting a parole database via computers routinely found in police vehicles, radioing a dispatcher, calling parole

officers, asking the suspected parolee, or in myriad other ways. Reasonable mistakes in making this determination are already insulated from constitutional scrutiny. *See Heien*, 574 U.S. at 57. The additional leeway embedded in the probable-cause standard permits police officers to act without even trying to ascertain a person's parole status, so long as they can point to "a fair probability" that the person is on parole. *Gates*, 462 U.S. at 238. They might rely on knowledge of the person's prior parole status, *see* App. 19a; a past arrest, *see Douglas*, 193 Cal. Rptr. 3d at 92; or even a tip that someone is a parolee, *see, e.g.*, *United States v. Elliott*, 322 F.3d 710, 715 (9th Cir. 2003) (probable cause may be "based solely on an informant's tip"). The laxness of this standard is not appropriate when the underlying determination is about a fact created by the government.

Second, there is no exigency to suspicionless parole checks that justifies officers to act without determining the person's parole status. When criminal activity may be afoot, the reasonableness standard protecting ordinary citizens must often accommodate the need for swift police intervention. *See, e.g.*, *Terry*, 392 U.S. at 20 (recognizing situations requiring "swift action predicated upon the on-the-spot observations of the officer on the beat"); *Warden v. Hayden*, 387 U.S. 294, 298–99 (1967) (recognizing the hot-pursuit exception to the warrant requirement). But the distinctive feature of seizures and searches based only on a person's parole status is that they are conducted in the absence of individualized suspicion of criminal activity. *See Samson*, 547 U.S. at 857. The considerations that justify "taking summary action" based on "a policeman's on-the-scene assessment of

probable cause" are inapplicable to suspicionless parole checks. *Gerstein v. Pugh*, 420 U.S. 103, 113–14 (1975).

Third, the probable-cause standard disincentivizes police officers from ascertaining parole status before conducting suspicionless seizures and searches. Upon having probable cause that a person is on parole, ascertaining that person's status can only decrease an officer's intrusive authority. But "[t]he point of the Fourth Amendment" is to provide a check on "zealous officers . . . . engaged in the often competitive enterprise of ferreting out crime." *See Johnson v. United States*, 333 U.S. 10, 13–14 (1948). When officers seek to conduct suspicionless parole checks, the Fourth Amendment should constrain them to known parolees, rather than enabling them to harass *suspected* parolees.

In sum, there is no legitimate reason for police officers to seize or search a person without suspicion when the officers do not know if that person is currently on parole.

CONCLUSION

The Court should grant the petition.

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February 2, 2024

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