

No. \_\_\_\_\_

**In the Supreme Court of the United States**

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KRISTOPHER DEAN PUTNAM, *APPLICANT*,

v.

UNITED STATES OF AMERICA, *RESPONDENT*.

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APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR  
WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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To the Honorable Samuel A. Alito, Jr., Associate Justice of the Supreme Court of the United States and Circuit Justice for the Fifth Circuit:

1. Applicant Kristopher Dean Putnam requests a 30-day extension of time, to and including March 12, 2024, to file his petition for certiorari in this Court. *See* 28 U.S.C. § 2101(c); Sup. Ct. R. 13.5, 22, 30. The final judgment of the Fifth Circuit was entered on November 13, 2023, and Applicant's time to file a petition for certiorari in this Court expires February 11, 2024. This application is being filed more than 10 days before that date.

A copy of the unpublished opinion below is attached hereto. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1).

2. As shown by the opinion below, the case involves an important Fourth Amendment question about the scope of the good-faith exception to the exclusionary rule.

In April 2020, an accidental trailer fire killed one its occupants. Applicant was a witness to the fire, but provided inconsistent statements about his precise location on the property when he discovered the fire. Police officers took his cell phone on the night of the blaze. A week later, they applied for a search warrant to search the entirety of the cell phone's contents, as well as information stored offsite, pursuant to a warrant. The search of the cell phone revealed images of child pornography.

Applicant was indicted on two counts related to the child pornography discovered on his cellphone: distribution and possession, in violation of 18 U.S.C. §§ 2252(a)(2) and 2252A(a)(5)(B), respectively. Applicant moved to suppress

the illicit images discovered on his cell phone, which the district court denied. Putnam conditionally pleaded guilty to both counts, and the court sentenced him to 188 months' imprisonment for each count, to run concurrently, followed by concurrent terms of 10 years' supervised release.

On appeal, Applicant argued that the district court erroneously denied his motion to suppress because the search of his cell phone violated the Fourth Amendment. *First*, the good-faith exception did not apply. The warrant affidavit lacked indicia of probable cause that a crime was committed. Alternatively, the warrant affidavit lacked indicia of probable cause that would have connected Applicant's cellphone to the alleged criminal activity. The warrant also lacked particularity because it failed to incorporate the affidavit, alleged a crime that can be committed in a variety of ways, provided no temporal scope by which to guide or narrow the search, and identified the entire, vast contents of the cellphone, as well as any offsite storage that could be accessed by the phone. There was no good faith by the detective in his reliance on such a deficient warrant that he himself had drafted. *Second*, there was no substantial basis on which the local magistrate judge could have found probable cause to issue the defective warrant. Because the search of Applicant's cellphone was unconstitutional, its contents were poisonous fruits of the tainted search and must be suppressed.

The court of appeals affirmed and held that the affidavit that accompanied the warrant application contained specific facts and circumstances that allowed for a probable-cause determination, and thus the good-faith exception

applied. This holding is contrary to the Fourth Amendment and this Court's decisions, including *Michigan v. Tyler*, 436 U.S. 499, 506 (1978), *Michigan v. Clifford*, 464 U.S. 287, 294 (1984), *Groh v. Ramirez*, 540 U.S. 551 (2004), and *Riley v. California*, 134 S. Ct. 2473 (2014).

3. Applicant was represented in the district court and court of appeals by the Federal Public Defender for the Western District of Texas and is represented in this Court by Assistant Federal Public Defender Kristin L. Davidson, a member of the Bar of this Court. Since the Fifth Circuit handed down its decision on November 13, 2023, counsel has been engaged in many matters in this Court and the Fifth Circuit, limiting the amount of time she has been able to devote to preparing the petition in this case. Counsel has filed 14 briefs in the Fifth Circuit and two certiorari petitions in this Court. Between now and the current February 11, 2024, deadline, counsel has two opening briefs, as well as two anticipated reply briefs, due in the Fifth Circuit, as well as an oral argument before the Fifth Circuit on February 7, 2024. Between February 11 and March 12, 2024, counsel has four opening briefs due in the Fifth Circuit and one certiorari petition in this Court, with more briefing notices likely to issue during that time.

For these reasons, Applicant respectfully requests that an order be entered extending his time to petition for certiorari in the above-captioned case to and including March 12, 2024.

Respectfully submitted,

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Dated: January 12, 2024

## CERTIFICATE OF SERVICE

I, a member of the Bar of this Court, certify that on January 12, 2024, I served a copy of this Application on Counsel for the United States by enclosing it in an envelope, with first-class postage prepaid, addressed to her post office address:

Elizabeth B. Prelogar  
Solicitor General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW, Room 5616  
Washington, D.C. 20530-0001  
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and depositing it in a United States mailbox at San Antonio, Texas.

/s/ Kristin L. Davidson  
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