No. 24-

IN THE

Supreme Court of the United States

MOISES ORLANDO ZELAYA-VELIZ, JOSE ELIEZAR MOLINA-VELIZ, LUIS ALBERTO GONZALES, GILBERTO MORALES, AND JONATHAN RAFAEL ZELAYA-VELIZ,

Petitioners,

v.

UNITED STATES,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does the Fourth Amendment prohibit the issuance of apparent "all-data" warrants for Facebook accounts without any temporal limitation whatsoever, where the warrants resulted in exposing potentially more than a decade of the subject's personal information and communications to government scrutiny?[1]
2. Does the Fourth Amendment prohibit the issuance of apparent "all-data" warrants for Facebook accounts for a period of 18 months or longer, where the warrants demanded all conceivable contents of the accounts during that time period, including the account owners' GPS information for eight months prior to the alleged crimes, even though the alleged incidents occurred over a less than a two-month period?[2]

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[1] This question presented pertains to Petitioner Luis Alberto Gonzalez.

[2] This question presented pertains to Petitioners Moises Zelaya-Veliz, Jonathan Rafael Zelaya-Veliz, Gilberto Morales and Jose Eliezar Molina-Veliz.

STATEMENT OF RELATED CASES

- *United States v. Moises Zelaya-Veliz*, 1:20-cr-196-AJT-1, U.S. District Court for the Eastern District of Virginia. Judgement entered on November 10, 2022.
- *United States v. Jonathan Rafael Zelaya-Veliz*, 1:20-cr-196-AJT-10, U.S. District Court for the Eastern District of Virginia. Judgement entered on November 10, 2022.
- *United States v. Gilberto Morales*, 1:20-cr-196-AJT-9, U.S. District Court for the Eastern District of Virginia. Judgement entered on November 10, 2022.
- *United States v. Luis Alberto Gonzales*, 1:20-cr-196-AJT-6, U.S. District Court for the Eastern District of Virginia. Judgement entered on November 10, 2022.
- *United States v. Jose Eliezer Molina-Veliz*, 1:20-cr-196-AJT-4, U.S. District Court for the Eastern District of Virginia. Judgement entered on November 10, 2022.
- *United States v. Moises Zelaya-Veliz*, No. 22-4656, U. S. Court of Appeals for the Fourth Circuit. Judgment entered on February 16, 2024. Petition for rehearing denied on March 15, 2024.
- *United States v. Jonathan Rafael Zelaya-Veliz*, No. 22-4659, U. S. Court of Appeals for the Fourth Circuit. Judgement entered on February 16, 2024. Petition for rehearing denied on March 15, 2024.
- *United States v. Gilberto Morales*, No. 22-4669, U. S. Court of Appeals for the Fourth Circuit. Judgement entered on February 16, 2024. Petition for rehearing denied on March 15, 2024.

- *United States v. Luis Alberto Gonzales*, No. 22-4670, U. S. Court of Appeals for the Fourth Circuit. Judgement entered on February 16, 2024. Petition for rehearing denied on March 15, 2024.
- *United States v. Jose Eliezer Molina-Veliz*, No. 22-4684, U. S. Court of Appeals for the Fourth Circuit. Judgement entered on February 16, 2024. Petition for rehearing denied on March 15, 2024.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Moises Zelaya-Veliz, Jonathan Rafael Zelaya-Veliz, Gilberto Morales, Luis Alberto Gonzales, and Jose Eliezar Molina-Veliz (together "Petitioners") respectfully petition for a writ of *certiorari* to the United States Court of Appeals for the Fourth Circuit to review the judgment against them in *United States v. Moises Zelaya-Veliz, et al.,* 94 F.4th 321 (2024).

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit denying the Petitioners' appeal is published at 94 F.4th 321 (4th 2024); it is reproduced in the Appendix at 1a. The decision of the United States Court of Appeals for the Fourth Circuit denying a petition for rehearing is unpublished; it is reproduced in the Appendix at 59a. The United States District Court for the Eastern District of Alexandria's oral opinions denying the Petitioners' motions to suppress Facebook records are unpublished and reproduced in the Appendix at 40a and 45a.

JURISDICTION

The United States Court of Appeals for the Fourth Circuit issued its decision denying Petitioners' petition for rehearing on March 15, 2024, requiring the Petitioners to file a petition for a writ of *certiorari* on or before June 13, 2024. On June 6, 2024, the Petitioners filed an application to extend the time to file their petition for a writ of *certiorari* until July 13, 2024. On June 11, 2024, the application for an extension of time was granted. This petition for a writ of *certiorari* is timely filed on July 12, 2024.

This Court has jurisdiction under 28 U.S.C. § 1254(a).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourth Amendment to the United States Constitution provides that:

> 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.

U.S. Const. amend. IV.

STATEMENT OF THE CASE

In October 2020, the Petitioners were charged in a multi-count indictment with crimes alleging gang-related sexual exploitation of E.B., a minor, in the Eastern District of Virginia and in Maryland. JA181-197.[3] The offenses alleged in the indictment occurred between August 27, 2018, and October 11, 2018, the time period during which E.B. had absconded from a juvenile shelter care facility in Fairfax County, Virginia. JA181-197. All allegations relevant to the alleged conduct in the indictment occurred during this less than two month timeframe. JA187-194.

[3] JA refers to the Joint Appendix filed in the United States Court of Appeals for the Fourth Circuit. Specifically, Petitioners Moises Zelaya-Veliz, Jonathan Rafael Zelaya-Veliz, Luis Alberto Gonzales, and Jose Eliezar Molina-Veliz, proceeded to trial on three counts charging: (1) Conspiracy to Sex Traffic a Minor Under Age 14 and via Force, Fraud and Coercion in violation of 18 USC §§ 1951(a), (b)(1) and (c) & 1594(c); (2) Sex Trafficking a Minor Under Age 14 and via Force, Fraud, and Coercion in violation of 18 USC §§ 1591(a), (b)(1), (c) & 2; and (3) Conspiracy to Transport a Minor with Intent to Engage in Criminal Sexual Activity in violation of 18 USC §§ 2423(a) & (e). Petitioner Gilberto Morales proceeded to trial on two counts charging Conspiracy to Sex Traffic a Minor Under Age 14 and via Force, Fraud and Coercion in violation of 18 USC §§ 1951(a), (b)(1) and (c) & 1594(c), and Sex Trafficking a Minor Under Age 14 and via Force, Fraud, and Coercion in violation of 18 USC §§ 1591(a), (b)(1), (c) & 2. JA181.

During the government's investigation into the sex trafficking allegations, FBI Special Agent Jeremy Obie applied for and obtained a series of search warrants that sought a laundry list of different types of data from the Petitioners' Facebook accounts for broad time frames. JA1353, JA1380, JA1428, JA1481. The first search warrant was obtained on March 14, 2019, for five Facebook accounts, *without any temporal limitation*, for evidence related to sex trafficking of E.B. between August 27, 2018, and October 11, 2018. JA1353. The warrant set forth nine different categories of information to be disclosed by Facebook, including all communications related to the account and a host of other data types (e.g., pokes, likes, gifts, tags, and "other items"). JA1357. On June 5, 2019, Special Agent Obie obtained a second search warrant for eight additional Facebook accounts, to include accounts linked to Petitioner Luis Alberto Gonzales, also without any temporal limitation. JA1380. The agent utilized the same template that had been used in the March 14, 2019 warrant, requesting that Facebook provide data in categories that were identical to the categories requested in the March 14, 2019 warrant. JA1357, JA1382.

On July 12, 2019, Special Agent Obie obtained a third search warrant for ten more Facebook accounts, including data from the Facebook account of Petitioner Moises Zelaya-Veliz. JA1428. This warrant was based on a different and more comprehensive template, which requested a broader array of Facebook records than the two previous warrants issued in the case. While the warrant contained a temporal limitation limiting the disclosure of Facebook account information from January 1, 2018 (almost nine months before the offense conduct) to the date of the warrant, it

commanded that Facebook disclose 18 different categories of data to include "all check-ins and location information," which would include GPS location data[4] related to the accounts for the entire 18-plus month period. JA1475-1480. On February 20, 2020, Agent Obie obtained a fourth search warrant for 22 additional Facebook accounts, including the accounts of the remaining Petitioners, from January 1, 2018, to the date of the warrant. This warrant sought disclosure from Facebook for the same 18 data categories of information as the July 12, 2019, warrant. JA1481-1489.

The following table summarizes the warrants:

FACEBOOK ACCOUNT WARRANTS FOR OFFENSE CONDUCT OCCURRING BETWEEN AUGUST 27, 2018 and OCTOBER 11, 2018			
Date of Issuance	Number of Accounts	Limitation on Data Type Sought	Temporal Limitation
March 14, 2019 (JA1353)	5	Laundry list of data set forth in the warrant	None
June 5, 2019 (JA1380)	8 (including Facebook accounts linked to Petitioner Luis Gonzales)	Same	None

[4] When a person logs into a Facebook account, Facebook creates a GPS record noting from where the account was accessed.

FACEBOOK ACCOUNT WARRANTS FOR OFFENSE CONDUCT OCCURRING BETWEEN AUGUST 27, 2018 and OCTOBER 11, 2018			
July 12, 2019 (JA1428)	10 (including Facebook account of Petitioner Moises Zelaya-Veliz)	Augmented laundry list of data set forth in the warrant	January 1, 2018 to July 12, 2019
February 20, 2020 (JA1481)	22 (including Facebook accounts of Petitioners Jose Eliezar Molina-Veliz, Luis Alberto Gonzales, Jonathan Rafael Zelaya-Veliz, and Gilberto Morales)	Same	January 1, 2018 to February 20, 2020

The massive breadth of information sought is demonstrated by the particular categories of information requested in the warrants. The categories of information required to be disclosed by Facebook in the July 12, 2019, and February 20, 2020, warrants were:

> (a) All contact and personal identifying information including full name, user identification number, birth date, gender, contact e-mail addresses, Facebook passwords, Facebook security questions, and answers, physical address (including city state and zip code), telephone numbers, screen names, websites, device identifiers, and other personal identifiers;
>
> (b) All activity logs for the account and all other documents showing the users posts and other-Facebook activities;
>
> (c) All photos uploaded by that username or account and all photos uploaded by any user that have that user tagged in them to

include metadata;

(d) All profile information; advertisement identification tied to the specific user and user's device; News Feed information; status updates; links to videos, photographs, articles, and other items; Notes; Wall postings; friend lists, including the friends Facebook user identification numbers; groups and networks of which the user is a member including the groups' Facebook group identification numbers; future and past event postings; rejected Friend requests; comments; gifts; pokes; tags; and information about the user's access and use of Facebook applications;

(e) All other records of communications and messages made or received by the user, including all private messages, chat history, video calling history, and pending Friend requests;

(f) All check ins and other location information;

(g) All IP logs including all records of the IP addresses that logged into the account; all device identifier logs, including all records of the device identifiers that logged into the account;

(h) All records of the account's usage of the Like feature, including all Facebook posts and all non-Facebook webpages and content that the user has "liked";

(i) All information about the Facebook pages that the account is or was a "fan" of;

(j) All past and present lists of friends created by the account;

(k) All records of Facebook searches performed by the account;

(l) All information about the user's access and use of Facebook Marketplace;

(m) The types of service utilized by the user;

(n) The length of service (including start date) and the means and source of any payments associated with the service (including any credit card or bank account number);

(o) All privacy settings and other account settings, including privacy settings for individual Facebook posts and activities, and all

> records showing which Facebook users have been blocked by the account;
>
> (p) All records pertaining to communications between Facebook and any person regarding the user or the user's Facebook account, including contacts with support services and records of actions taken;
>
> (q) Any records associated with photos posted to the user's Facebook account; any records associated with Instagram photos posted to other Facebook accounts that the user commented on or liked; and
>
> (r) All other accounts which are forensically linked to the account identified in Attachment A through cookies, e-mail addresses, phone numbers, or other account information.

JA 1428 & 1481.

While the above information was required to be disclosed to government scrutiny, all warrants purported to *seize* only information that "constitutes fruits, evidence and instrumentalities" of the delineated crimes,[5] including such things as "[p]hotographs of women or girls in provocative poses, lingerie or naked women or girls." JA1487. In reality, based on a review of the discovery provided by the government, the government seized what it demanded to be disclosed – the entire[6] contents of the Facebook accounts, including available GPS information, photos of the account holders' children, private messages, birthday greetings, and a vast array of innocent messages and private information for extended time periods in the July 2019 and February 2020 warrants and without temporal limitation for the March and

[5] That is, for the warrants issued on July 12, 2019, and February 20, 2019, violations of 18 USC §§ 1951(a), (b)(1) and (c), 18 USC § 2421, 18 USC § 2422(a), 18 USC § 2423(a), 18 USC § 1952, and 18 USC § 1959(a)(3). The warrants issued on June 5 and June 12, 2019 sought evidence for similar allegations.

[6] The government provided to defense counsel during discovery the entire contents of all Facebook accounts obtained by the warrants in this case.

June 2019 warrants.

The affidavits in support of these sweeping seizures alleged offense conduct related to the Petitioners that occurred from August 27, 2018 to October 11, 2018. JA1402-1403. There are no allegations in any of the affidavits to the search warrants that the Petitioners were involved in a conspiracy or suspected in child trafficking crimes prior to the offending conduct. Thus there is no justification for the government requesting and obtaining Petitioners' GPS location data and other Facebook information from January 1, 2018, until the issuance of the warrants, where the offending conduct was not alleged to have begun until August 2018. As to Petitioner Luis Gonzalez, there are no allegations in the June 5, 2019 warrant affidavit indicating that he was involved in any other criminal conduct outside the dates of the indictment to justify the complete disclosure of his Facebook accounts without any temporal limitation that could disclose personal communications and information for the past 15 years or since he was a juvenile.[7] JA1380-1411.

Further, the affidavits supporting warrants for the Facebook accounts of Luis Gonzales and Moises Zelaya-Veliz do not even claim these Petitioners utilized their Facebook accounts in furtherance of the alleged crimes under investigation, documented the alleged crimes, or discussed the alleged crimes through Facebook

[7] Facebook, now part of Meta, was launched in 2004. *See e.g.* About Mark Zuckerberg Founder, Chairman and Chief Executive Officer of Meta at https://about.meta.com/media-gallery/executives/mark-zuckerberg/. Petitioner Luis Gonzalez was born in 1989 and would have been 15 years old in 2004. United States v. Luis Alberto Gonzales, 1:20-cr-196-AJT-6, U.S. District Court for the Eastern District of Virginia. ECF 419 at 3 (Pre-sentence Report of Luis Alberto Gonzales).

communications. In all the warrant affidavits, the affiant makes general claims, based on his training and experience, regarding how "gang related prostitution rings/enterprises" operate, stating that "gang members regularly photograph their prostitutes and often use these photographs to advertise the prostitutes in print media or on-line." JA1400. The affidavits simply state that "it is known that individuals engaged in prostitution will use electronic means to communicate with clients and prostitutes," including using "cellular telephones and other computer-based systems; various social networking websites (*i.e.* Facebook, Instagram, and Twitter, e-mail services and instant messaging services)." JA1401. The agent also made general claims regarding MS-13 gang members and their use of cellular phones and messaging applications in furtherance of their crimes, provides general background on MS-13, and claims that it is "known" that gang members use social media platforms to communicate with each other and share photographs and videos. JA1401.

In pretrial ligation, all Petitioners challenged the search warrants for their Facebook accounts on Fourth Amendment grounds, arguing the warrants were impermissibly over-broad in violation of the Warrant Clause's particularity requirement. JA64-130, JA146-147.

The district court, in denying the motions to suppress Facebook evidence, erroneously found that the "magistrate judges [who issued the warrants] in each instance did have a substantial basis for concluding, as to each of the Petitioners, a

sufficient nexus existed between the Facebook accounts to be searched and the crimes under investigation." JA114-115. The district court went on to conclude:

> With respect to particularity and overbreadth, there's no doubt that these warrants were broad, but the issue with respect to the particularity requirement is whether the warrant sufficiently identifies the items to be seized and not leave to the discretion of the executing officer whether an item is within the scope of the warrant.

JA117.

The district court reasoned that "a warrant that describes items to be seized broadly may be valid if the description is as specific as the circumstances and the nature of the activity under investigation allows." JA117. The district court further erroneously found there was sufficient probable cause set forth in the warrant affidavits for apparently every category of data possessed by Facebook and sought by law enforcement. JA117-119. As to the timeframe of data sought by the warrants, the district court justified the timeframe as investigation into a "broader criminal enterprise" and incorrectly reasoned that the successive Facebook warrants narrowed the timeframe of records sought.[8] JA117-119. The district court lastly found that even

[8] The Facebook warrants reveal that the agent switched warrant templates during the investigation, which *broadened* the warrant in several important respects. The warrants issued on March 14, 2019, and June 5, 2019, using an apparently older Facebook warrant template, had no temporal limitations and called for the disclosure of nine categories of information, which appear to be intended to be all encompassing. JA1356-1358, JA1381-1384. The information requested in the warrants are identical and appear to be designed to capture the entirety of any Facebook account. The later warrants issued on July 12, 2019, and February 20, 2020, used an updated template that had at least some temporal limitation, but demanded even more data than the prior warrants. JA1475, JA1492. The updated templates sought an even greater laundry list of data (18 different categories), to include GPS location information for the entire timeframe of the warrant – Facebook's collection of location data from where the user logs on, which Facebook collects for every user every time they log on.

if the warrants lacked probable cause or were overbroad, the good faith exception to the Fourth Amendment's exclusionary rule would apply. JA121-122.

On June 1, 2022, the Petitioners proceeded to trial. JA41. During trial, the government introduced dozens of Facebook communications through its summary witness, Special Agent Jeremy Obie, which communications the Petitioners had objected to pretrial as having been obtained in violation of the Fourth Amendment. JA690-788, JA790-993, JA1109-1122. The Facebook communications were devastating evidence against all Petitioners as the communications consisted of real-time statements by the Petitioners demonstrating their participation in the charged offense conduct in addition to prejudicial communications indicating the Petitioners' involvement in or support of the MS-13 gang. JA1242-1257. The government's opening statement and closing arguments were replete with references to the numerous exhibits of Facebook communications from the Petitioners' Facebook accounts. The government argued that the Facebook communications were conclusive evidence of all Petitioners' guilt. *See* JA207-208 (opening statement), JA1129-1153 (closing argument).

In its opening statement, the government previewed to the jury: "You are going to see extensive messages from Facebook because it was on Facebook where the

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JA1476-1480, JA1494-1498. The new laundry list also required Facebook to disclose any accounts "forensically linked" to the Petitioners' accounts through cookies, e-mail addresses, phone numbers, or other account information. JA1478, JA1496. That is, the FBI was trying with these later warrants to request everything "under the sun" as to regards to the Facebook accounts. Even though the warrants were more limited in time, the later warrants requested a larger universe of data and information.

petitioners discussed at length their plans." JA207. During the trial, the government introduced into evidence the Facebook profiles and numerous Facebook communications between the Petitioners. JA1242-1257. This amounted to over one hundred twenty-five (125) separate exhibits that formed the heart of the prosecution's case, reflecting much of the evidence at trial. JA1242-1257. In closing, the government told the jury that "when you look at the Facebook evidence that we have presented in this case, you will start to see what was really going on behind the scenes and what they were actually doing." JA1129. The government spent a significant amount of its closing emphasizing the numerous Facebook exhibits, *see* JA1129-1153, stating that they show "what was going on behind the scenes" and "who is involved with the sexual exploitation" alleged. JA1134. According to the government, the Facebook messages "paint[ed] the story" the prosecution was trying to tell. JA1146.

On June 23, 2022, the jury returned verdicts of guilty on all counts for all Petitioners. JA1280. On November 10, 2022, the Petitioners were sentenced to lengthy terms of imprisonment.[9]

Petitioners timely appealed their convictions to the Fourth Circuit arguing, among other claims, that the warrants issued for their Facebook accounts were impermissibly overbroad. In a published opinion, the Fourth Circuit upheld the

[9] Moises Zelaya-Veliz was sentenced to 264 months of incarceration (JA1295), Jonathan Rafael Zelaya-Veliz to 180 months (JA1303), Gilberto Morales to 180 months (JA1311), Luis Alberto Gonzales to 300 months (JA1319), and Jose Eliezar Molina-Veliz to 180 months (JA1237).

district court's rulings denying the Petitioners' motions to suppress the evidence obtained by the government through the warrants served on Facebook. 1a & 59a.

The Fourth Circuit agreed that all the "warrants compelled Facebook to turn over a wide swath of personal information attached to the accounts, including all private communications, most user activity, and, in the case of the later two warrants, all location information." *United States v. Zelaya-Veliz*, 94 F.4th at 337. Notwithstanding the broadness of the warrants, as to Petitioners Moises Zelaya-Veliz, Jonathan Zelaya-Veliz, Gilberto Morales, and Jose Molina-Veliz, the Fourth Circuit found the warrants sufficiently particularized where the warrants had a two-step process requiring disclosure of "a large amount of account data [but] then seize[] only the fruits, evidence, or instrumentalities of enumerated crimes," which the court found "crucial to the validity of social media warrants." The court analogized the search of Facebook accounts as to the search of a house: "As in a search of a house, the officers searching the Facebook account data at issue necessarily encountered a host of irrelevant materials. But, just like in a house search, the officers were authorized to seize only the fruits, evidence, or instrumentalities of the crimes for which they had established probable cause." *Id.* at 338.[10]

[10] The Fourth Circuit noted "[t]he validity of this two-step process is acknowledged by Federal Rule of Criminal Procedure 41(e)(2)(B)." *United States v. Zelaya-Veliz*, 94 F.4th 321, 338 (4th Cir. 2024). And dispensed with Petitioners contention that the government seized what it had demanded, the entire contents of their Facebook and kept them, citing that the Rule 41 has a remedy where "[t]he district court retained the authority to determine that prolonged retention of non-responsive data by the government violated the Fourth Amendment." *Id.* However, to this date, the Petitioners' non-responsive data has not been deleted or returned, to the knowledge of the Petitioners.

As to the warrant for Luis Gonzalez's Facebook accounts, the Fourth Circuit acknowledged the "total lack of a time period in a social media warrant raises a problem." Adding, "[a]s our society moves further into the digital age, Facebook and other social media accounts are beginning to contain decades of personal information and communications, often going back to an account holder's early teenage years. These social media accounts, much like cell phones, frequently contain 'a broad array of private information never found' during a traditional search of a home." *Id.* at 340 (citing *Riley v. California*, 572 U.S. 373, 397 (2014))(other internal citations omitted). The court noted that the imposition of a timeframe on a warrant is simple to administrate and the court found that Facebook can "filter data by time frame before disclosing it to the government" if it is so requested. *Id.*

Notwithstanding the obvious overbreadth of the Luis Gonzalez warrant, the panel (apparently assuming the warrant was illegal) framed the issue as a "novel question[] posed by digital technology" and found "Luis's motion to suppress was properly denied because the good faith exception to the exclusionary rule applies." *Id.* at 340. The panel stated "[g]iven the unsettled nature of whether a temporal limitation is required on a warrant authorizing the search and seizure of Facebook account data, we cannot say that 'a reasonably well-trained officer would have known that the search was illegal despite the magistrate's authorization.'" *Id.* at 340-41(citing *United States v. Leon*, 468 U.S. 897, 922-24 (1984)).

This petition follows.

REASONS FOR GRANTING THE WRIT

The chief evil that originally prompted the adoption of the Fourth Amendment was the indiscriminate and "exploratory rummaging in a person's belongings" conducted by the British and "abhorred by the colonists" under the authority of "general warrants." *Coolidge v. New Hampshire,* 403 U.S. 443, 467 (1971). A crucial purpose of the Fourth Amendment is, and since the founding of the country has always been, to issue warrants only where probable cause is properly established and the scope of the authorized search is set out with particularity. *See Kentucky v. King,* 563 U.S. 452, 459 (2011).

To this end, ten years ago, this Court required police to obtain warrants to search cell phones. *Riley v. California*, 573 U.S. 373, 403 (2014)("The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought. Our answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple – get a warrant."). In *Riley*, the Court found that a person's privacy interest is even greater for a phone than a home, due to the immense storage capacity of information on a phone. *Id.* at 396-97 ("Indeed, a cell phone search would typically expose to the government far more than the most exhaustive search of a house: A phone not only contains in digital form many sensitive records previously found in the home; it also contains a broad array of private information never found in a home in any form – unless the phone is.") General warrants authorizing a search of social media data are no less intrusive than

general warrants for the search of a cell phone. Indeed, many of the items this Court noted were contained on cell phones, making searches of them impermissible intrusions on privacy, are likewise found on Facebook. *See id.* at 394 (Noting that searches of cell phones are particularly insidious since they may contain "photographs, picture messages, text messages, Internet browsing history, a calendar, a thousand-entry phone book…;" all of this data may also be contained on Facebook.). Yet the Court has not yet considered whether an all-data social media warrant without temporal limitations, or with insufficient limitations, would violate the particularity requirement of the Fourth Amendment. Today, about 70% of U.S. adults use Facebook.[11] Considering increasing social media usage, digitization, and an ever-expanding number of products capable of storing electronic information, this case presents important questions for this Court to resolve.

I. THIS CASE PRESENTS IMPORTANT FEDERAL QUESTIONS

Tens of thousands of federal warrants are issued for Facebook data each year[12] and this case presents important questions: whether broad warrants for "all data" and warrants without time limitations for Facebook accounts violate the Fourth Amendment's particularly requirement. The Petitioners challenge three warrants, all

[11] Pew Research Center, Americans' Social Media Use (https://www.pewresearch.org/internet/2024/01/31/americans-social-media-use/).

[12] For example, for the first half of 2020, Facebook received 61,500 requests for data from United States authorities, covering 106,100 accounts. *See* Jack Nicas, *What Data About You Can the Government Get From Big Tech*, NEW YORK TIMES (July 14, 2021). https://www.nytimes.com/2021/06/14/technology/personal-data-apple-google-facebook.html

for Facebook accounts, and all of which are overbroad. One warrant at issue, for Petitioner Luis Gonzalez's Facebook accounts, had no temporal limitation whatsoever, such that it demanded the potential disclosure of fifteen (15) years of Petitioner Gonzalez's personal data and communications.[13] Two warrants for the Facebook accounts for the other four Petitioners demanded every conceivable type of account data held by Facebook, including GPS location data ("all-data warrants"), well before and after the timeframe of the alleged offense conduct. The Fourth Circuit in its opinion below found the warrant without any temporal limitation to be a "problem," but applied the good faith exception to the exclusionary rule despite such over-broad warrants being previously criticized by other courts since at least 2017.[14] The Fourth Circuit further found the other Petitioner's all-data warrants to be sufficiently particularized notwithstanding the vast breadth of the warrants.

Facebook can store an immense amount of personal data—including chats and messaging, photos, GPS location data-–much like a modern smartphone, if not more so, because Facebook is an online platform that "provides a single window through which almost every detail of person's life is visible." *United States v. Shipp,* 392 F. Supp. 3d 300, 308 (E.D.N.Y. 2019)(Stating "threat" of overbroad warrant "is further elevated in a search of Facebook data because, perhaps more than any other location

[13] Facebook was launched in 2004 and the warrant for Gonzalez's Facebook accounts was issued in 2019.

[14] *See United States v. Blake*, 868 F.3d 960, 974 (11th Cir. 2017)(Criticizing Facebook warrants essentially identical to the warrants at issue here, holding that the warrants "unnecessarily" required the disclosure of "every kind of data that could be found in a social media account.").

– including a residence, a computer hard drive, or a car – Facebook provides a single window through which almost every detail of a person's life is visible."); *see also Riley v. California*, 134 S. Ct. 2473, 2491 (2014)(Noting the immense privacy interests inherent in a cellphone search and finding that such searches would "typically expose to the government far *more* than the most exhaustive search of a house: A phone not only contains in digital form many sensitive records previously found in the home; it also contains a broad array of private information never found in a home in any form.")(emphasis added); *United States v. Payton,* 573 F.3d 859, 861-62 (9th Cir. 2009)("Searches of computers therefore often involve a degree of intrusiveness much greater in quantity, if not different in kind, from searches of other containers."). The core purpose of the Fourth Amendment's particularity requirement is to prohibit broad and general searches. "As to what is to be taken, nothing is left to the discretion of the officer executing the warrant." *Marron v. United States,* 275 U.S. 192, 196 (1927).

It is well-known that Facebook, now Meta, is the world's largest social media company that owns other major social media and communication platforms, such as Instagram and WhatsApp. The Eastern District of New York commented on the dangers that information from non-Facebook applications could also become part of a Facebook account:

> Particularly troubling, information stored in non-Facebook applications may come to constitute part of a user's 'Facebook account' – and thus be subject to broad searches – by virtue of corporate decisions, such as mergers and integrations, without the act or awareness of any particular user. It is thus hard to imagine many searches more invasive than a search of all the data associated with a Facebook account.

United States v. Shipp, 392 F. Supp. 3d 300, 308 (E.D.N.Y. 2019)(citations omitted), *aff'd*, 2d Cir. No. 21-1284-CR, 2022 WL 16543193 (2nd Cir. Oct. 31, 2022)(citations omitted). Thus the information gleaned from Facebook accounts goes far beyond the actual Facebook account for which the warrant is issued, making overbroad warrants even more malicious.[15]

Today, if any place or thing is especially vulnerable to worrisome exploratory rummaging by the government, it is social media accounts. This Court has not yet addressed the difficulties of applying the tangled requirements of particularity to the unique situation of social media data. As courts have observed, advances in technology and the centrality of social media in the lives of average people have rendered searches of social media as more invasive than an expansive search of a residence in terms of the scope and quantity of private information it may contain. *See e.g. United States v. Zelaya-Veliz*, 94 F.4th at 340 ("Facebook and other social media accounts are beginning to contain decades of personal information and communications, often going back to an account holder's early teenage years. These social media accounts, much like cell phones, frequently contain 'a broad array of private information never found' during a traditional search of a home."); *United States v. Shipp,* 392 F. Supp. 3d at 308 (E.D.N.Y. 2019)(Facebook is an online

[15] In this case, the warrants for the Facebook accounts of Petitioners Moises Zelaya-Veliz, Jonathan Rafael Zelaya-Veliz, Gilberto Morales, and Jose Eliezar Molina-Veliz also requested: "All other accounts which are forensically linked to the account identified in Attachment A through cookies, e-mail addresses, phone numbers, or other account information." JA 1428 & 1481.

platform that "provides a single window through which almost every detail of person's life is visible."). Therefore, where social media warrants are at stake, the particularity requirement assumes great importance. Although personal computers have existed for more than 40 years, technology continues to develop at a rapid pace, and standards for social media warrants continue to remain an unsettled area of the law.

This presents "an important question of federal law that has not been, but should be, settled by this Court…." U.S. Supreme Court Rule 10(c). The question whether broad warrants, one of which was not limited temporally, for immense swaths of data from Facebook violates the particularity requirement of the Fourth Amendment's Warrant Clause is vitally important in today's world of pervasive social media, and a question likely to occur time and again until resolved by this Court.

II. THE FOURTH CIRCUIT'S DECISION CONFLICTS WITH OTHER CIRCUIT COURT, DISTRICT COURT, AND STATE COURT DECISIONS

Courts at all levels have struggled with how to apply the Fourth Amendment's particularity requirement to social media and smart phone warrants. This has led to a myriad of decisions and a split between courts at all levels. That is, the Fourth Circuit's decision below is "in conflict with the decision[s] of [other] United States court[s] of appeals on the same important matter [and] has decided [this] important federal question in a way that conflicts with … decision[s] by … state court[s] of last resort." U.S. Supreme Court Rule 10(a). This Court must develop a consistent policy on how the Fourth Amendment's particularity requirement applies to social media warrants, or courts will continue to interpret the Fourth Amendment variously.

A. The Circuit Divide

The Circuit Courts are divided as to whether all-data warrants for social media accounts and smart phones violate the Fourth Amendment's particularity requirement and have issued inconsistent rulings. Overall, the First, Second, Third, Sixth, Ninth, and Tenth Circuits emphasize the importance of temporal limitations to prevent digital warrants from being constitutionally overbroad. The Eleventh Circuit prefers temporal limitations for digital warrants, but has applied the good faith exception. The Second, Fourth, Sixth, and Seventh Circuits have held that searches for any and all phone data is justified due to the nature of criminal activity, permitting social media warrants without categorical or temporal limitations.[16] The Tenth Circuit instituted its own test to particularize social media warrants, limiting searches to the most obvious places.

In 2017, the Eleventh Circuit criticized Facebook warrants essentially identical to the warrants at issue here, holding that the warrants "unnecessarily" required the disclosure of "every kind of data that could be found in a social media account." *United States v. Blake*, 868 F.3d 960, 974 (11th Cir. 2017). The *Blake* court faulted the lack of timeframe in the warrants and noted that the warrants should have been circumscribed to the time of the offense conduct. *Id.* ("[T]he warrants should have requested data only from the period of time during which Moore was suspected of taking part in the prostitution conspiracy."). Notably, *Blake* was also a

[16] Albeit the Fourth Circuit in its opinion below in this case found the warrant for Gonzalez's Facebook account that had no temporal limitation to be a "problem." *United States v. Zelaya-Veliz*, 94 F.4th at 340.

sex trafficking case which involved multiple defendants and victims. *Id.* (Ultimately applying the good-faith exception because this was a question of first impression in 2017).

The Ninth Circuit has limited warrants to the time period when the suspected criminal activity took place, and also required the information sought to be seized be relevant to the investigation. *See United States v. Kow*, 58 F.3d 423, 427 (9th Cir. 1995)(Finding warrant for computers and computer files "wholly deficient" where "[t]he warrant should have been [but was not] limited by time, location, and relationship to specifically described suspected criminal conduct." "The government did not limit the scope of the seizure to a time frame within which the suspected criminal activity took place" and the "widespread seizure" "of essentially every business record" was unconstitutionally broad.).

In the First Circuit, a warrant for business records failed to meet the requirement of particularity since there was no description of the specific records to be seized and no temporal limitation. *United States v. Abrams*, 615 F.2d 541, 543 (1st Cir. 1980)("The warrant at issue fails to meet the requirement of particularity. The officers' discretion was unfettered, there is no limitation as to time and there is no description as to what specific records are to be seized…. It seems clear that the executing officers could not or made no attempt to distinguish bona fide records from fraudulent ones so they seized all of them in order that a detailed examination could be made later. This is exactly the kind of investigatory dragnet that the fourth amendment was designed to prevent.").

The Second Circuit held that a warrant to search computer equipment and electronic digital storage media lacked particularity since the warrant did not link the items to be searched and seized to the criminal behavior being investigated, and failed to place any temporal limit on the property to be seized. *United States v. Rosa*, 626 F.3d 56, 62-64 (2nd Cir. 2010)("[T]he search warrant in this case lacked the requisite specificity to allow for a tailored search of [defendant's] electronic media. The warrant was defective in failing to link the items to be searched and seized to the suspected criminal activity … and thereby lacked meaningful parameters on an otherwise limitless search of [defendant's] electronic media.").[17]

The Sixth Circuit has held that, generally, warrants lacking available temporal requirements and particularity are constitutionally overbroad, but has applied the standard inconsistently. In *United States v. Ford*, the court overturned a conviction where a warrant for financial documents, unlimited in time, authorized "a broader search than was reasonable given the facts in the affidavit supporting the warrant." *United States v. Ford,* 184 F.3d 566 (6th Cir. 1999)("Failure to limit broad descriptive terms by relevant dates, when such dates are available to the police, will render a warrant overbroad."). The court dismissed the government's argument that a broad warrant was necessary to establish which proceeds were legal and which were illegal, holding that "[t]his argument would allow virtually unlimited seizure of a lifetime's worth of documentation, which is extremely intrusive… [and] would allow

[17] The First, Second, and Third Circuits have all recognized that the lack of particularity and/or known temporal limitations may render a warrant overbroad if there are not other sufficient restrictions.

an extreme intrusion for evidence of very little probative value." *Id.* The court noted that "[t]he government at trial used the documents for an entirely difference purpose than" they argued. Finally, the court disapproved of the warrant because it required production of documents from a time period at least four months before the alleged criminal actions. *Id.*

Importantly, in *United States v. Abboud,* the Sixth Circuit held that, since, similarly to here, "law enforcement knew that the evidence in support of probable cause in the affidavit revolved only around a three-month period in 1999; the authorization to search for evidence irrelevant to that time frame could well be described as 'rummaging.'" *United States v. Abboud*, 438 F.3d 554, 576 (6th Cir. 2006). In a health care fraud case, the Sixth Circuit likewise found that that the seizure of all non-patient files without any limitation as to the specific patients, transactions, or time frame was unconstitutionally broad. *United States v. Lazar*, 604 F.3d 230, 238 (6th Cir. 2010). However, in *United States v. Bass,* the court dismissed the particularity requirement altogether, upholding a broad warrant to search "for any records of communication indicia of use, ownership, or possession" of a cell phone because criminals may "hide, mislabel, or manipulate files to conceal criminal activity…." *United States v. Bass*, 785 F.3d 1043 (6th Cir. 2015)("Federal courts, however, have 'rejected most particularity challenges to warrants authorizing the seizure and search of entire personal or business computers….")

The Third Circuit has held that the seizure of six entire computers was proper where "a broad seizure was required because evidence of financial crimes could have

been found in any location on any of the six hard drives, and this evidence very likely would have been disguised or concealed somewhere on the hard drive." *United States v. Stabile*, 633 F.3d 219, 237 (3rd Cir. 2011); *see also United States v. Yusuf*, 461 F.3d 374, 395 (3rd Cir. 2006)(Approving warrants where they "were drafted with sufficient particularity because they explicitly incorporated an affidavit detailing the items that the government intended to search and seize. The government further limited the scope of the warrants by focusing on enumerated white collar federal offenses and by limiting the nature of documents sought to specific corporate records at the … stores over a ten-year time period.").

While the Fourth Circuit, until the opinion below, and Seventh Circuit have apparently not directly addressed the question of temporal limitations for digital warrants, they have both upheld warrants authorizing searches of all electronic media belonging to a suspect. Both circuits have indicated that no limitations on the scope of an electronic search are permissible since law enforcement will need to view each file to see if it falls within the scope of the search. The Fourth Circuit appears to diminish the particularity requirement, upholding all-data warrants for computers without any restrictions other than listing the alleged offense. *See United States v. Williams*, 592 F.3d 511, 515-16 (4th Cir. 2010); *see also United States v. Cobb*, 970 F.3d 319, 330 (4th Cir. 2020)(Upholding warrant to search a computer where "a warrant may satisfy the particularity requirement either by identifying the items to be seized by reference to a suspected criminal offense or by describing them in a

manner that allows an executing officer to know precisely what he has been authorized to search for and seize.").

The Seventh Circuit has adopted a similarly broad understanding of particularity in the context of electronic searches, upholding an otherwise unrestricted warrant authorizing the search of digital media and computers. *United States v. Mann*, 592 F.3d 779, 780-81 (7th Cir. 2010); *see also United States v. Bishop*, 910 F.3d 335, 337 (7th Cir. 2018)(Upholding warrant for entire contents of cell phone where "[i]t is enough . . .if the warrant cabins the things being looked for by stating what crime is under investigation.").

The Tenth Circuit has struck down warrants lacking sufficient limitations when restrictions did not provide enough guidance for law enforcement. *United States v. Leary*, 846 F.2d 592, 604 (10th Cir. 1988)(Warrant facially overboard where it authorized a general search without any meaningful limitation); *United States v. Russian*, 848 F.3d 1239, 1245 (10th Cir. 2017)(Holding warrant invalid due to lack of particularity because it did not "specify what material (e.g., text messages, photos, or call logs) law enforcement was authorized to seize."). The Tenth Circuit thus affirmed that particularized warrants must include at least temporal limitations and specific categories of content information to be seized.

The Tenth Circuit has also distinguished physical searches as critically different from electronic searches. *United States v. Loera*, 923 F.3d 907 (10th Cir. 2019)(Noting that there are "fundamental differences between electronic searches and physical searches, including the fact that electronic search warrants are less

likely prospectively to restrict the scope of the search…."). In that case, the court clarified that investigators executing a search warrant can look anywhere that the evidence described in the warrant may conceivably be found. *Id.* at 196. The court noted that such limitations work well in the physical-search context to ensure that searches pursuant to warrants remain narrowly tailored, but are less effective in the electronic-search context where searches confront the needle-in-a-haystack problem. *Id.*

To promote particularized warrants that are not overbroad, the Tenth Circuit proposed a test for particularity of social media warrants. The Tenth Circuit focused on how the agents carried out the search. A warrant should reasonably direct an officer at uncovering the specified evidence. *United States v. Burgess*, 576 F.3d 1078, 1094 (10th Cir. 2009). Importantly, warrants should include narrowly tailored search methods by directing officers to look in the most obvious places, then direct the search to specific files or keywords. In that case, a computer warrant for a drug conspiracy first directed an officer to access photos on a hard drive pertaining to narcotics or co-conspirators. The court found that the warrant was not overbroad since it did not encompass a preview of all files. *Id.* This case is in direct conflict with the district court's decision here, where the district court stated that "the issue with respect to the particularity requirement is whether the warrant sufficiently identifies the items to be seized and not leave to the discretion of the executing officer whether an item is within the scope of the warrant." JA117; *see also Marron v. United States,* 275 U.S. 192, 196 (1927)(As to what is to be seized, nothing is meant to be left to the discretion

of the officer executing the warrant.); *United States v. Abrams*, 615 F.2d 541, 543 (1st Cir. 1980)(Warrant failed where the officers' discretion was "unfettered.").

Overall, there is clearly a circuit split, with a well-developed disagreement ready for this Court's intervention.

B. The District Court Divide

The U.S. District Courts have interpreted the particularity requirement differently. On one side are the courts which favor restricting overbroad warrants lacking categorical or temporal restrictions as unconstitutional, including district courts in Illinois, the District of Columbia, Georgia, and New York. *See, e.g., United States v. Winn*, 79 F. Supp. 3d 904 (S.D. Ill. 2015)(Police executed a phone warrant for public indecency charge but were not allowed to search all files since they did not have probable cause to believe that everything on the phone was evidence of the crime of public indecency.); *Matter of Black iPhone 4*, 27 F. Supp. 3d 74 (D.D.C. 2014)(Where a warrant was for the entire contents of phones without a particularized description of the information relevant to the government's investigation, the warrant was impermissibly overbroad); *United States v. Mercery*, 591 F. Supp. 3d 1369 (M.D. Ga. 2022)(For an overbroad Instagram warrant lacking any categorical or temporal restrictions, the court did not apply the good faith exception); *United States v. Burkhow*, No. 19-CR-59, 2020 WL 589536, at *10 (N.D. Iowa Feb. 6, 2020)("Some reasonable attempt could have been made to narrow the scope of this search, particularly by setting date limitations if not restrictions to specific account activities or interactions with particular persons."); *United States v. Chavez*, 423 F. Supp. 3d

194, 207 (W.D.N.C. 2019)("[T]he Government compelled Facebook to disclose sixteen broad categories of evidence, without limiting disclosure to the purported members or purported dates."); *United States v. Shipp*, 392 F. Supp. 3d 300, 310-312 (E.D.N.Y. 2019)(A temporal limitation "could have mitigated the court's concerns about the breadth of this warrant," but applying good faith exception and collecting cases regarding the same.).

The Eastern District of New York in *United States v. Shipp* went so far as to state that Facebook warrants are of more concern than any other location:

> This court has serious concerns regarding the breadth of Facebook warrants…. This threat is further elevated in a search of Facebook data because, perhaps more than any other location – including a residence, a computer hard drive, or a car – Facebook provides a single window through which almost every detail of a person's life is visible. Indeed, Facebook is designed to replicate, record, and facilitate personal, familial, social, professional, and financial activity and networks. Users not only voluntarily entrust information concerning just about every aspect of their lives to the service, but Facebook also proactively collects and aggregates information about its users and non-users in ways that we are only just beginning to understand.

Shipp, 392 F. Supp. 3d 300, 308 (E.D.N.Y 2019)(emphasis in original).

On the other side**,** some district court have found that all-data warrants do not violate the Fourth Amendment's particular requirements. *United States v. Daprato*, 2022 WL 1303110 (D.Me. 2022)(Upholding Facebook warrant seeking five months of Facebook data from 17 categories of information); *United States v. Skinner*, 2021 WL 1725543 at *11 (E.D.Va. Apr. 29, 2021)(Upholding search warrant for cell phones where "[t]he Cell Phones Warrant adequately "confine[d] the executing [officers'] discretion by allowing them to seize only evidence of [] particular crime[s]."); *United*

States v. Franklin, 2022 WL 3572498, at *1 (W.D. Mo. Aug. 18, 2022)("[T]he warrant, which sought the entirety of Defendant's Instagram account, was not deficient as a general warrant."); *United States v. Westley*, 2018 WL 3448161, at *16 (D. Conn. July 17, 2018)(Even if the absence of a date restriction made the warrants [Facebook records] overbroad," the good faith exception applies). *United States v. Sharp*, 2015 WL 4641537, at *15 (N.D. Ga. Aug. 5, 2015)(Rejecting Facebook overbreadth arguments where Facebook disclosed the "entire cache of information" without limits based on time and stating "[t]he fact that [a] warrant call[s] for seizure of a broad array of items does not, in and of itself, prove that the warrant fails to meet this requirement of particularity.").

Thus, the federal courts have repeatedly addressed the question of whether a warrant authorizing a broad search of a suspect's entire store of digital media is sufficiently particular and/or whether the good faith exception should be applied. Without this Court's intervention, as more and more information is stored in digital format, and as more devices become capable of digital storage, the number of cases raising this issue will continue to increase. That is, there is a well-developed disagreement ready for this Court's intervention.

C. State Court Decisions

An increasing number of the highest state courts across the country have condemned "all-data" warrants for cell phones, which hold vast amounts of data similar to social media accounts, which appears in direct tension with federal courts that have justified broad warrants for smart phones because the warrants list and/or

seize evidence of the crimes under investigation.[18] *Burns v. United States*, 235 A.3d 758 (D.C. 2020) (Allowing searches of "any evidence on a phone" is a general warrant, and thus, a warrant needs to specify the narrow items of evidence for which probable cause exists); *Wheeler v. State,* 135 A.3d 282 (Del. 2016) (A warrant lacking known temporal requirements is constitutionally overbroad.); *Taylor v. State*, 260 A.3d 602, 615–16 (Del. 2021)(Search warrant that authorized "a top-to-bottom search" of "[a]ny and all store[d] data" of the digital contents of smart phones held to be overbroad.); *State v. Henderson*, 854 N.W.2d 616 (Neb. 2014) (Any and all cell phone contents search lacked particularity.); *State v. Keodara*, 364 P.3d 777(Wash. App. 2015)(Where there was no limit on the topics of information for which the police could search for on cell phone, nor did the warrant limit the search to information generated close in time to incidents for which the police had probable cause, the warrant was impermissibly broad.); *State v. Smith*, 344 Conn. 229, 252, 278 A.3d 481, 497 (2022) (Search warrant did not comply with the particularity requirement because it did not sufficiently limit the search of the contents of the cell phone by description of the areas within the cell phone to be searched, or by a time frame reasonably related to the crimes.); *Richardson v. State*, 481 Md. 423, 282 A.3d 98 (2022)(Search warrant

[18] *See e.g. United States v. Bishop*, 910 F.3d 335, 337 (7th Cir. 2018)(Upholding warrant for entire contents of cell phone where "[i]t is enough . . .if the warrant cabins the things being looked for by stating what crime is under investigation."); *See e.g. United States v. Kamara*, 2023 WL 8357946, at *8 (E.D. Va. Dec. 1, 2023)("The Court thus finds that it was enough that the iPhone Search Warrant "confine[d] the executing [officers'] discretion by allowing them to seize only evidence of ... particular crime[s]."")(citing *See e.g. United States v. Cobb*, 970 F.3d 319, 330 (4th Cir. 2020)).

authorizing officers to search and seize "all information" and "any other data stored or maintained inside of" cell phone violated Fourth Amendment's particularity requirement, because warrant and affidavit contained impermissibly broad "catchall" language, and detective did not include any temporal restrictions or any other limitations, such as restrictions relating to application or other communication applications, call logs, or navigation/location data for evidence relating to robbery.); *State v. Bock*, 310 Or. App. 329, 334–36, 485 P.3d 931, 935–36 (2021) (Search warrant that authorized seizure of any item on a cell phone that might later serve as circumstantial evidence of the device owner or user was tantamount to a general warrant and thus overbroad.); *People v. Clarke*, 156 N.Y.S.3d 830 (N.Y. Sup. Ct. 2021)(Warrant was overbroad and failed to satisfy the particularity requirement where it authorized a search of nearly all files and data on the petitioner's cell phone and failed to specify any date restriction of the files and data to be searched); *Commonwealth v. Holley*, 87 N.E.3d 77 (Mass. 2017)(Warrant for all electronic communications and location data was deemed overbroad and lacking particularity.); *State v. Henderson*, 854 N.W.2d 616 (Neb. 2014)(Any and all cell phone contents search lacked particularity.); *State v. Castagnola*, 46 N.E.3d 638 (Ohio 2015)(Warrant of computer invalid where it did not describe specific records/documents to be searched.); *but see Hedgepath v. Commonwealth*, 441 S.W.3d 119 (Ky. 2014)(Warrant that encompassed all cell phone content was sufficiently particular and not overbroad as the police were expected to pick out only information relevant to the crime when executing warrant).

III. THIS CASE IS AN APPROPRIATE VEHICLE FOR DETERMINATION OF THE QUESTIONS PRESENTED

This case, with its clear and complete trial record, is an excellent vehicle to resolve the questions presented. *First*, the language in the warrants provided for a laundry list of excessive categories of Facebook content, including past and present Facebook profile information, private messages, photos, videos, user activity, personal identification, privacy settings, chat history, video calling history, contacts, activity logs, ad content, status updates, articles, notes, friend lists, search history, marketplace transactions, payments, blocked accounts, posts (liked and tagged), news feed information, and for all Petitioners except Luis Gonzalez, GPS location data for broad time periods. *Second*, the warrant for Petitioner Luis Gonzalez's Facebook account lacked a temporal limitation and the temporal limitations for the other Petitioners' Facebook accounts were so broad that the warrants allowed the Government to scrutinize enormous amounts of data, including GPS location information, from almost nine months before the offense conduct. In the case of Gonzalez, the data demanded to be disclosed could have reached back 15 years before the offending. *Third,* while the warrants for Petitioners Moises Zelaya-Veliz, Jonathan Zelaya-Veliz, Gilberto Morales and Jose Eliezar Molina-Veliz contained overbroad temporal limitations, those warrants also expanded the laundry list of data sought as compared the warrant for Gonzales's Facebook (which Petitioners contend was meant to be all inclusive). Importantly, the offense conduct clearly occurred only over a less than two-month period, from August 27, 2018, to October 11, 2018.

There are also no harmless error issues because during trial, the government introduced exhaustive amounts of Facebook evidence, including 125 exhibits from the Petitioners' Facebook accounts, ranging from profile information to extensive amounts of private messages. While a warrant for the Petitioners' Facebook photos, communications, and perhaps other Facebook data from the August to October 2018 timeframe may have represented a sufficiently particularized search, not so a warrant for so many additional categories of social media data without temporal limitation or overly broad temporal constraints.

Petitioners challenge the overbroad Facebook warrants lacking sufficient temporal or categorial limitations. The social media data warrants clearly violate the Fourth Amendment's particularity requirement. The all-data social media warrants led to evidence that was critical to the prosecution and the conviction of the Petitioners. Thus, the Court should take the opportunity to address the important questions presented.

IV. THE WARRANTS IN THE INSTANT CASE WERE UNCONSTITUTIONALLY OVERBROAD

The Fourth Circuit acknowledged that the warrant for Petitioner Luis Gonzalez's Facebook that had no temporal limitation was a "problem" where social media accounts "frequently contain 'a broad array of private information never found' during a traditional search of a home." *Zelaya-Veliz*, 94 F.4th at 340 (citing *Riley v. California*, 573 U.S. 373, 397 (2014))(other internal citations omitted). The court acknowledged that including a timeframe was simple where Facebook can "filter data by time frame before disclosing it to the government" if it is so requested. *Id.*

Nonetheless, the court applied the good faith exception to a warrant issued five years after *Riley* reasoning that imposing a temporal limitation was not settled law because it was "novel question[] posed by digital technology." *Id.* Digital technology is no longer novel and this Court should definitively state that the good faith exception is inapplicable to untethered warrants for social media accounts like the one for Petitioner Gonzalez's Facebook accounts.

Regarding the other Petitioners, as argued in the Fourth Circuit in their opening brief:

> The warrants issued on July 12, 2019, and February 20, 2020,[19] used a different, updated template that had at least some temporal limitation – seeking Facebook records from January 1, 2018 (almost 9 months prior to the offense conduct) to the date of the warrants' issuance such that the successive warrant with the new template grabbed more data than the prior warrant. JA1475, JA1492. The updated templates sought an even greater laundry list of data (18 different categories) to include GPS location information for the entire timeframe of the warrant—every time a person logs on to Facebook, Facebook records the location from which the persons logs on. JA1476-1480, JA1494-1498. The new laundry list also required Facebook to disclose any accounts "forensically linked" (whatever that means) to the petitioners' accounts through cookies, e-mail addresses, phone numbers, or other account information. JA1478, JA1496. That is, the FBI was trying request with both warrants everything "under the sun" as to regards to all Facebook accounts.

Appellant's Opening Brief at 4, n. 2.[20]

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[19] The warrant issued on July 12, 2019 ordered Facebook to disclose Moises Zelaya-Veliz's Facebook account and the warrant issued on February 2020 ordered Facebook to disclose the accounts of Jose Eliezar Molina-Veliz, Gilberto Morales, and Jonathan Rafael Zelaya-Veliz.

[20] United States v. Moises Zelaya-Veliz, No. 22-4656, U. S. Court of Appeals for the Fourth Circuit. ECF 31.

In Petitioners' view, the disclosure of GPS data for more than eight months before they were suspects in the crimes at issue and a host of other categories of information was particularly egregious. Further, Facebook was ordered to provide the government GPS location of the Petitioners for a total time period of from 18 to 26 months for offense conduct that spanned from August 27, 2018, and October 11, 2018. In short, all the "Facebook warrants were the internet-era version of a 'general warrant.'" *See United States v. Blake*, 868 F.3d 960, 974 (11th Cir. 2017)(citing *Coolidge v. New Hampshire*, 403 U.S. 443, 476 (1971); *cf. Riley v. California*, 573 U.S. 373, 394 (2014)("The sum of an individual's private life can be reconstructed through a thousand photographs labeled with dates, locations, and descriptions….").

In sum, these cases no longer warrant applying the good-faith exception or a loose application of the particularity requirement. Further, this Court should reconcile the tests for particularity to create a consistent rule in preventing social media warrants from being overbroad, and this case is an appropriate case for the Court to consider.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted this 12th day of July, 2024.

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APPENDIX

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PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-4656

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

MOISES ORLANDO ZELAYA-VELIZ, a/k/a Moises Zelaya-Beliz, Moizes Zelaya Bonilla, a/k/a Zelaya Hernandez,

Defendant – Appellant.

22-4659

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

JONATHAN RAFAEL ZELAYA-VELIZ, a/k/a Rafael Zelaya, a/k/a Jonathan Zelaya,

Defendant – Appellant.

22-4669

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

GILBERTO MORALES, a/k/a Chapin, a/k/a Chucha,

Defendant – Appellant.

22-4670

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

LUIS ALBERTO GONZALES, a/k/a Luis Figo, a/k/a China, a/k/a Chinita,

Defendant – Appellant.

22-4684

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

JOSE ELIEZAR MOLINA-VELIZ, a/k/a Jose Eliezar Hernandez,

Defendant – Appellant.

22-4685

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

SANTOS ERNESTO GUTIERREZ CASTRO, a/k/a Gutierrez Hernestho,

Defendant - Appellant.

Appeals from the United States District Court for the Eastern District of Virginia, at Alexandria. Anthony John Trenga, Senior District Judge. (1:20-cr-00196-AJT-1; 1:20-cr-00196-AJT-10; 1:20-cr-00196-AJT-9; 1:20-cr-00196-AJT-6; 1:20-cr-00196-AJR-4; 1:20-cr-00196-AJT-5)

Argued: December 8, 2023 Decided: February 16, 2024

Before WILKINSON, WYNN, and RICHARDSON, Circuit Judges.

Affirmed by published opinion. Judge Wilkinson wrote the opinion, in which Judge Wynn and Judge Richardson joined.

ARGUED: Joseph Douglas King, KING CAMPBELL PORETZ & THOMAS, PLLC, Alexandria, Virginia, for Appellants. Maureen Catherine Cain, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee. **ON BRIEF:** Christopher B. Amolsch, Reston, Virginia, for Appellant Jonathan Rafael Zelaya-Veliz.

Donna L. Biderman, LAW OFFICE OF DONNA L. BIDERMAN, Fairfax, Virginia, for Appellant Gilberto Morales. Donald E. Harris, HARRIS LAW FIRM, Alexandria, Virginia, for Appellant Jose Eliezar Molina-Veliz. Dwight E. Crawley, LAW OFFICE OF DWIGHT CRAWLEY, Washington, D.C., for Appellant Ernesto Santos Gutierrez Castro. Jeffrey D. Zimmerman, JEFFREY ZIMMERMAN, PLLC, Alexandria, Virginia, for Appellant Luis Alberto Gonzales. Jessica D. Aber, United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee.

WILKINSON, Circuit Judge:

After a seven-day trial, six men affiliated with the transnational criminal organization MS-13 were convicted of sex trafficking a thirteen-year-old girl by force, fraud, or coercion, and conspiracy to do the same. Five of the men appeal the district court's denial of their motions to suppress evidence obtained from Facebook warrants, contending the warrants failed the probable cause and particularity requirements of the Fourth Amendment. The sixth man appeals the district court's denial of his motion for acquittal, contending that the evidence presented at trial was insufficient to sustain his conviction. For the following reasons, we reject these claims and affirm each of the convictions.

I.

A.

The six appellants are members and associates of the transnational criminal street gang Mara Salvatrucha (MS-13). In 2018, they worked together to sexually exploit and physically abuse a thirteen-year-old girl—referred to in this opinion as Minor-2—and other underage victims in Northern Virginia and Southern Maryland.

On August 27, 2018, Minor-2 ran away from a youth shelter in Fairfax County, Virginia in search of a better living situation. Minor-2 had been in the shelter for just over two months before leaving. While at the shelter, she met sixteen year old Minor-3, who told Minor-2 that she could use her connections with MS-13 to have the gang protect them if they ran away.

The girls proceeded to meet up with MS-13 members. Minor-3 introduced Minor-2 to them, and the members asked Minor-2 her age. She told them she was thirteen years old.

Nevertheless, they decided to enlist her in the gang, promising that they would protect her and her family. The gang members proceeded to initiate Minor-2 into MS-13 by beating her with a metal baseball bat. The first hit was so painful that Minor-2 begged them to stop, but the gang members said that if they stopped they would have to kill her and her family. She was struck a total of twenty-six times. The pain was so excruciating that Minor-2 later reported that she thought she was going to die. After the beating finished, Minor-2 wanted to run but couldn't muster the strength to move her battered legs.

At least four MS-13 members participated in the beating. They struck Minor-2 with the metal bat in front of at least five witnesses including Minor-3 and Minor-1, a fourteen-year-old who was also a victim of MS-13's child sex trafficking. A detective testified at trial that Minor-2's treatment was representative of how MS-13 initiates females into the gang: by beating them in multiples of thirteen and sexually exploiting them.

After Minor-2 was beaten, she was taken to an apartment in Woodbridge, Virginia where appellants Moises Zelaya-Veliz and Jose Eliezar Molina-Veliz harbored her. Moises, who was a full-fledged member of MS-13, was aware Minor-2 had been beaten by his gang. The two men kept Minor-2 confined in their house out of fear that she would report them or their gang to the police.

Moises and Jose both engaged in sexual intercourse with Minor-2 in the apartment. They also sold her for sex to friends and acquaintances. On one occasion, at least five men engaged in sexual intercourse with Minor-2 outside the apartment complex as Moises watched from his porch. Minor-2 repeatedly pleaded for them to let her go home, but they refused. To dissuade her from running away, MS-13 members threatened that they would

kill her family if she left. Later, when an MS-13 member found Minor-2 using another gang member's phone, she was taken back to the site of her first beating and beaten an additional twenty-six times with the same metal bat as punishment.

Appellant Santos Ernesto Gutierrez Castro met Minor-2 at Moises and Jose's apartment. Santos subsequently took Minor-2 to his house and gave her marijuana. He wanted to sell Minor-2 for sex, and so he began making calls to potential customers, offering them the opportunity to have sex with Minor-2 for $100 an hour. The first day, Santos sold Minor-2 for sex to more than ten men. He kept Minor-2 at his house for at least three more days, during which time he had sex with her himself and continued to sell her for sex with others. When he was finished, he took Minor-2 to a co-conspirator's house in Maryland.

Upon her arrival in Maryland, Minor-2 was still limping and bruised from the two beatings. But the gang was undeterred. Appellant Luis Alberto Gonzales, who was a member of MS-13, took over the trafficking. He shuffled Minor-2 between several different Maryland residences where he sold her for sex in exchange for cash and cocaine.

Appellant Gilberto Morales met Minor-2 at one of those Maryland residences. He gave Luis several grams of cocaine so that he could have sex with Minor-2. After the transaction, Gilberto stayed in contact with Minor-2. They communicated with each other over the phone and on Facebook more than 130 times during October 2018.

Gilberto was not the only one who tried to establish a more "personal" connection with Minor-2. Luis worked to convince Minor-2 that he was her friend and boyfriend. But all the while he continued to sell her for sex to other men and to have sex with her himself.

Eventually, Luis took Minor-2 to an apartment complex in Mount Rainier, Maryland, where appellant Jonathan Zelaya-Veliz and other co-conspirators resided. Minor-2 was confined there for about two weeks by Luis and Jonathan. During Minor-2's trafficking, Jonathan had sex with her and was involved, along with Luis, Moises, and Santos, in coordinating her transportation to various locations in Virginia and Maryland where she was sold for sex. On the first night in Mount Rainier, at least five men came to the apartment and forced Minor-2 to have sex with them. She cried the entire time, but the men kept going. Their abuse caused such excruciating pain that she later reported she wanted to die to end the suffering.

Over the following two weeks, Luis and a co-conspirator set up prostitution dates for Minor-2 with nearby customers. They sold her for sex up to seven hours a day. Luis would sedate Minor-2 with alcohol and drugs, including marijuana and cocaine, before driving her to customers' homes and making her have sex with them. One of these men sent Luis a video of him sexually penetrating Minor-2.

Minor-2 longed to escape, but feared that doing so would jeopardize her and her family's safety. Luis kept threatening her, telling her that there were many gang members around the apartment complex that would find her if she tried to run away. She was also told that Luis could see anyone she talked to on the phone he gave her.

Nevertheless, Minor-2 managed to escape. On October 11, 2018, she was recovered by law enforcement outside the Mount Rainier apartment complex.

* * *

Through physical violence and under the threat of her and her family's death, Minor-2 was forced by the appellants and other MS-13 associates to have sex with dozens of adult men. They confined her to their residences, trafficked her across state lines, and used her body at will. Over the more than six weeks she spent at the mercy of her traffickers, Minor-2 was beaten viciously, infected with sexually transmitted diseases, and subjected to unconscionable psychological trauma.

B.

In meetings with local law enforcement officers after her escape, Minor-2 was unable to identify the full names of her abusers. She also had difficulty identifying the locations where she was trafficked. She was, however, able to identify numerous perpetrators based on photos of men that law enforcement suspected of being involved in her trafficking. Minor-2 also relayed that Minor-1 was being sexually exploited by MS-13 and provided information to help identify her. This led to law enforcement locating and recovering Minor-1 from a known MS-13 location, where she was found with an MS-13 member.

As the scope of MS-13's sex trafficking conspiracy became apparent, the matter escalated into a federal investigation led by FBI Special Agent Jeremy Obie of the Bureau's Child Exploitation and Human Trafficking Task Force in Washington, D.C. Based on information that local law enforcement had earlier gathered, Special Agent Obie determined that the suspects were likely using Facebook to sex traffic Minor-1, Minor-2, and other victims. Thus, over the course of the multi-month investigation, Special Agent

Obie obtained four so-called Facebook warrants, which compelled Facebook to turn over data on specified social media accounts.

The following paragraphs describe the four Facebook warrants, as their constitutionality is central to the appellants' appeal.

The First Warrant

The first Facebook warrant was approved on March 14, 2019 by U.S. Magistrate Judge John F. Anderson in the Eastern District of Virginia. The warrant ordered Facebook to give the government nine categories of information on five different Facebook accounts, including all private communications made or received by the accounts. Four of the accounts were operated by MS-13 member Sioni Alexander Bonilla Gonzalez, who pled guilty before trial for his involvement in the sex trafficking conspiracy and is not a party to this appeal. The fifth account was operated by a person who was known to have communicated over Facebook with Minor-1 but who is also not a party to this appeal. The warrant contained no time limitations, and thus impliedly authorized the government to search all account data disclosed by Facebook from the time since the accounts' respective dates of creation until the time that the warrant was sworn out.

The warrant followed a standard two-step search and seizure process. It first authorized the government to search the entirety of the data disclosed by Facebook. It then authorized the seizure of specific categories of information revealed during that search; namely, information that constituted fruits, evidence, or instrumentalities of violations of four federal criminal statutes—18 U.S.C. § 1591 (sex trafficking of a minor by force, fraud, or coercion); 18 U.S.C. § 1952 (travel or use of the mail or facility of interstate commerce

in aid of prostitution or other racketeering enterprises); 18 U.S.C. § 2422(a) (coercion or enticement of a person to travel across state lines for prostitution or illegal sexual activity); and 18 U.S.C. § 2423(a) (interstate transportation of a minor for purposes of prostitution or illegal sexual activity)—and attempts and conspiracies to violate these statutes.

The affidavit supporting the warrant provided an overview of the four federal crimes under investigation. It discussed the mechanics of Facebook and the types of data created and stored on the platform. It further explained how Special Agent Obie had learned through training and experience that violent gangs like MS-13 engage in human sex trafficking as a source of revenue. Additionally, the affidavit relayed that individuals engaged in sex trafficking will often use Facebook to facilitate such criminal activity, and that MS-13 members were generally known to use Facebook to coordinate and arrange prostitution and other crimes.

The affidavit went on to provide case-specific information to establish probable cause for the search and seizure of data from the five Facebook accounts. It explained that adult men, including Sioni, had discussed commercial sex activities with Minor-2 on Facebook. It also established that Sioni had engaged in sexual activity with Minor-1.

The Second Warrant

Special Agent Obie obtained a second warrant in the Eastern District of Virginia, signed by U.S. Magistrate Judge Ivan D. Davis, on June 5, 2019. This warrant ordered Facebook to give the government the same nine categories of information as in the first warrant, but this time on eight new Facebook accounts. Five of these accounts belonged to appellant Luis Gonzales, and the other three belonged to co-conspirators who are not

parties to this appeal. Just like the first warrant, this one authorized the search of all account data going back to the accounts' respective dates of creation, and it permitted the seizure of information that constituted fruits, evidence, or instrumentalities of the same four federal offenses.

The affidavit supporting this warrant provided the same information as did the first warrant regarding the statutory offenses, the mechanics of Facebook, and MS-13's operation of prostitution enterprises. It also provided twenty pages of investigative findings, photos, and screenshots of communications which detailed MS-13's exploitation of Minor-2. Some of this evidence was derived from the previous warrant-backed seizure of Facebook account data.

The affidavit discussed photographs of Luis Gonzales that had been posted by five different Facebook accounts. Each of the accounts was named "Luis Figo." Minor-2 identified these photographs to be pictures of "Luis," whom she said was an MS-13 member integral to her physical abuse and sex trafficking. The affidavit described how Luis had sold Minor-2 to customers, forced her to have sex, and sedated her with drugs and alcohol before prostitution dates. It further described how the investigation had unearthed that a credit card in Luis's name was used to pay for the phone bill of the cell phone that Minor-2 possessed when she was recovered by law enforcement. The affidavit also revealed that Luis had spent significant time at the apartment complex where Minor-2 was recovered.

The Third Warrant

The next Facebook warrant obtained by Special Agent Obie was signed by Judge Anderson on July 12, 2019. It ordered Facebook to disclose information associated with ten accounts. One of the accounts belonged to appellant Moises Zelaya-Veliz. Four of the accounts belonged to MS-13 affiliates who were unindicted co-conspirators. The remaining five accounts belonged to Minor-1, Minor-2, and Minor-3.

While the first two warrants contained no temporal limitation on what data could be searched, this warrant ordered Facebook to disclose information from January 1, 2018 to the date the warrant was sworn out. The warrant also broadened the scope of the information that Facebook was required to turn over. It mandated disclosure of eighteen different categories of data from Facebook, including a broader set of user activity, IP addresses, device identifier logs, and all location information associated with the accounts.

Just like the first two warrants, this warrant only permitted the government to seize information that constituted fruits, evidence, or instrumentalities of the four previously enumerated offenses plus one additional offense: 18 U.S.C. § 1959 (violent crimes in aid of racketeering).

Special Agent Obie's affidavit provided general information on the statutory offenses at issue, the mechanics of Facebook, and MS-13's operation of prostitution enterprises. It also provided a glossary of terminology frequently used by MS-13.

The affidavit went on to offer thirty pages of case-specific information, including screenshots and transcripts of conversations about the sex trafficking of Minor-2. It explained that Minor-2 told law enforcement that she had been taken to the home of Moises Zelaya-Veliz after her initial beating. It described how investigating officers knew Moises

operated the Facebook account targeted by the search warrant, which used the name "Moizes Zelaya Bonilla," because his Facebook profile picture matched pictures in a law enforcement database. The affidavit additionally relayed that the warrant-backed search of Sioni Gonzalez's Facebook account had revealed that Moises had used Facebook to send photos of firearms, illegal drugs, and MS-13 gang signs.

The Fourth Warrant

The fourth and final Facebook warrant was signed by then U.S. Magistrate Judge Michael S. Nachmanoff on February 20, 2020. This warrant authorized the search of information from twenty-two Facebook accounts, including accounts belonging to four appellants—Jose Molina-Veliz, Santos Gutierrez Castro, Jonathan Rafael Zelaya-Veliz, and Gilberto Morales—as well as multiple accounts of unindicted co-conspirators.

Like the third warrant, the final warrant required Facebook to provide account information from January 1, 2018 to the date the warrant was sworn out. The warrant used the same list of eighteen types of information for Facebook to disclose as in the third warrant. And, just like the previous warrant, it limited the government's seizure to include only information discovered during the search that constituted fruits, evidence, or instrumentalities of the five enumerated offenses.

Special Agent Obie's affidavit, as in his previous warrant applications, described the statutory offenses at issue, the mechanics of Facebook, and MS-13's operation of prostitution enterprises. By the time of the affidavit's filing, over ten months after the initial Facebook warrant, the government had compiled a substantial investigative record into MS-13's sex trafficking of Minor-1, Minor-2, and Minor-3. The affidavit thus provided

over fifty pages of case-specific information, which included descriptions, images, and transcripts of the illicit activities of the appellants and their co-conspirators. The affidavit's detailed account revealed how each of the four appellants targeted by this warrant had participated in the sex trafficking of Minor-2.

With respect to Jose Eliezar Molina-Veliz, whose Facebook account used the name "Jose Eliezar Hernandez," the affidavit used returns from previous Facebook warrants to describe how he had engaged in sexually explicit communications over Facebook with Minor-2 and Minor-3 during the period that the two girls were being exploited by MS-13. It also recounted how he had used Facebook to coordinate Minor-2's transportation for sex.

With respect to Santos Gutierrez Castro, who went by "Gutierrez Hernestho" on Facebook, the affidavit explained that Minor-2 had taken a photo of Minor-3 and Santos the day after Minor-2 had initially been beaten in the garage, and subsequently posted that photo on her Facebook. The affidavit further relayed that Santos had used Facebook to solicit sexually explicit photos and in-person sexual acts from Minor-2 in exchange for money and illegal drugs. It shared evidence that Santos was using Facebook to coordinate sending multiple prostitution customers to Minor-2 so that they could sexually exploit her. And it discussed how a phone number known to be used by Santos was linked to the targeted Facebook account.

With respect to Jonathan Rafael Zelaya-Veliz—who operated four Facebook accounts under the names "Jonathan Zelaya" and "Rafael Zelaya"—the affidavit explained that Minor-2 knew Jonathan as Moises Zelaya-Veliz's brother. It identified Jonathan as living at the apartment complex where Minor-2 had been held during the final two weeks

of her exploitation. And it explained that Jonathan had used Facebook to communicate with Moises about having sex with Minor-2.

With respect to Gilberto Morales, the affidavit discussed how Minor-2 had identified him as one of the men who sexually abused her. It explained that Gilberto had been in regular contact with Minor-2 during her abuse. And it shared a transcript of a conversation in which Gilberto admitted to being business partners with Luis Gonzales in the sex trafficking of Minor-2 and sought out an additional partner for the operation.

Summary of Facebook Warrants

The following table summarizes the four Facebook warrants executed by the government. *See* Appellants' Brief at 9–10.

Date of issuance	**No. of accounts searched**	**Appellants' accounts searched**	**Data disclosed**	**Temporal limitation**
Mar. 14, 2019	5	None	Short list[1]	None
Jun. 5, 2019	8	Luis Gonzales	Short list	None
Jul. 12, 2019	10	Moises Zelaya-Veliz	Long list[2]	January 1, 2018 to date of warrant execution
Feb. 20, 2020	22	Jose Eliezar Molina-Veliz, Santos Ernesto Gutierrez Castro, Gilberto Morales, and Jonathan Rafael Zelaya-Veliz	Long list	January 1, 2018 to date of warrant execution

[1] Nine categories of information, including all communications sent to and from the accounts.

[2] Eighteen categories of information, including all of the accounts' communications and location information.

C.

On August 27, 2020, a grand jury in the Eastern District of Virginia returned a multi-count indictment against the six appellants and five additional defendants, charging them with child sexual exploitation-related offenses in violation of 18 U.S.C. §§ 1591, 1594, and 2423, and assault with a dangerous weapon in aid of racketeering activity in violation of 18 U.S.C. § 1959. A superseding indictment issued on April 19, 2022.

Before trial, Moises Zelaya-Veliz, Jose Molina-Veliz, Luis Gonzales, Gilberto Morales, and Jonathan Zelaya-Veliz moved to suppress the evidence obtained from the Facebook warrants. They argued the warrants lacked probable cause and were insufficiently particularized.

The district court denied the motions to suppress in a ruling from the bench. It found that the Facebook warrants were supported by probable cause, stating that "the magistrate judges [who issued the warrants] in each instance did have a substantial basis for concluding, as to each of the defendants, a sufficient nexus existed between the Facebook accounts to be searched and the crimes under investigation." J.A. 114–15. The court next found that the warrants were sufficiently particular in timeframe and scope. The timeframe of the warrants was reasonable, according to the court, because the searches supported an investigation beyond Minor-2's abuse into an "extensive ongoing interstate criminal enterprise of uncertain beginnings," and because the government narrowed the timeframe of the information sought as the investigation progressed. J.A. 115. And the court found that the scope of the information sought was reasonable because, based on the information submitted to the magistrates, there was a substantial basis to believe that all of the

categories of information sought were relevant to establishing the identities of perpetrators and revealing their criminal activities.

The six appellants proceeded to a jury trial on June 1, 2022. During the course of the seven-day trial, the government extensively employed information that it had obtained from the Facebook warrants. It admitted dozens of exhibits of Facebook-warrant-derived evidence and discussed this evidence at length in its opening and closing statements.

The jury deliberated for three days before returning convictions for each appellant. Santos Gutierrez Castro, Luis Gonzales, Jose Molina-Veliz, Jonathan Zelaya-Veliz, and Moises Zelaya-Veliz were each convicted of sex trafficking a minor under the age of fourteen, conspiracy to do the same, and conspiracy to transport a minor across state lines for purposes of prostitution or other illegal sexual activity. Gilbert Morales was convicted of sex trafficking of a minor under the age of fourteen and conspiracy to do the same.

After trial, all appellants made oral motions for judgment of acquittal under Federal Rule of Criminal Procedure 29. The court denied those motions on October 7, 2022.

The district court sentenced the appellants on November 10, 2022. Their respective terms of imprisonment were 300 months for Luis Gonzales, 264 months for Moises Zelaya-Veliz, and 180 months each for Santos Gutierrez Castro, Jose Molina-Veliz, Gilberto Morales, and Jonathan Zelaya-Veliz.

The appellants timely appealed. The five appellants who had moved to suppress evidence derived from the Facebook warrants challenge the district court's denial of their motions to suppress, claiming that the warrants lacked probable cause and were insufficiently particularized. The sixth appellant, Santos Gutierrez Castro, challenges the

district court's denial of his motion for acquittal, claiming that insufficient evidence was presented at trial to sustain his convictions.

II.

We start with the appellants' contention that the district court erred in denying their motions to suppress evidence from the Facebook warrants. Before analyzing their specific claims, we first determine which warrants the appellants have Fourth Amendment standing to challenge. We next address the appellants' claims that the warrants lacked probable cause and were insufficiently particularized, taking each issue in turn.

A.

As an initial matter, we note that a defendant can only challenge a warrant that authorizes the search or seizure of items in which he had a protected Fourth Amendment interest. It is insufficient for the defendant to show that a third party had a protected interest in the information searched because "it is proper to permit only defendants whose Fourth Amendment rights have been violated to benefit from the rule's protections." *Rakas v. Illinois*, 439 US 128, 134 (1978). Thus, to prevail in a motion to suppress evidence obtained from a search, a defendant has the burden of showing that the government implicated a protected interest of his in conducting that search. *See id.* at 130 n.1 (1978). Courts often refer to the requirement that a defendant show that a search implicated his protected interest as "Fourth Amendment standing," although it "should not be confused with Article III standing" because it is "not a jurisdictional question and hence need not be addressed before addressing other aspects of the merits of a Fourth Amendment claim." *Byrd v. United States*, 584 U.S. 395, 410–11 (2018).

As the defense conceded at oral argument, none of the appellants has Fourth Amendment standing to challenge the first Facebook warrant. That warrant only targeted accounts belonging to two co-conspirators who are not parties in this appeal. Because no protected interest of the appellants was implicated by the first warrant, we need not assess its constitutionality.

In contrast, each of the subsequent Facebook warrants targeted accounts that belonged to at least one appellant. The second warrant targeted Luis Gonzales's accounts. The third warrant targeted Moises Zelaya-Veliz's account. And the fourth warrant targeted accounts belonging to Jose Molina-Veliz, Santos Gutierrez Castro, Jonathan Zelaya-Veliz, and Gilberto Morales. Given this, the government and defense both accepted that the appellants had Fourth Amendment standing to challenge these warrants.

In adopting the litigants' assumption that Fourth Amendment standing exists here, we note that each of the warrants at issue required the disclosure of the appellants' private communications. Most federal courts to rule on the issue have agreed that Facebook and other social media users have a reasonable expectation of privacy in content that they exclude from public access, such as private messages. *See United States v. Bledsoe*, 630 F. Supp. 3d 1, 18 (D.D.C. 2022) (finding the "weight of persuasive authority hold[s] that non-public content held on social media accounts is protected under the Fourth Amendment" and citing cases); *United States v. Chavez*, 423 F. Supp. 3d 194, 201–205 (W.D.N.C. 2019); *United States v. Irving*, 347 F. Supp. 3d 615, 623 (D. Kan. 2018).

Such an approach reflects the consensus of federal courts that private electronic communications are generally protected by the Fourth Amendment, even when transmitted

over third-party platforms. *See, e.g.*, *United States v. Wilson*, 13 F.4th 961, 980 (9th Cir. 2021) (holding examination of defendant's email attachments without a warrant violated his Fourth Amendment right to be free from unreasonable searches); *United States v. Hasbajrami*, 945 F.3d 641, 666 (2d Cir. 2019) (assuming for the purposes of the appeal that "a United States person ordinarily has a reasonable expectation in the privacy of his e-mails"); *United States v. Warshak*, 631 F.3d 266, 284–88 (6th Cir. 2010) (holding the Fourth Amendment protects private email communications); *United States v. Richardson*, 607 F.3d 357, 363–64 (4th Cir. 2010) (suggesting that before a government agent searches emails, "probable cause and a warrant [a]re required"); *see also Katz v. United States*, 389 U.S. 347, 352–53 (1967) (finding persons have a protected Fourth Amendment interest in the content of their phone conversations, despite the ability of an operator to listen in); *Ex parte Jackson*, 96 U.S. 727, 733 (1877) (holding that the contents of postal letters are entitled to Fourth Amendment protection, despite the fact that letters are entrusted to intermediaries).

It cannot be the rule that the government can access someone's personal conversations and communications without meeting the warrant requirement or one of the Supreme Court's delineated exceptions to it. The judiciary would not allow such a trespass upon privacy at its core.

B.

We thus turn to the appellants' claims that the second, third, and fourth warrants were constitutionally deficient. Their first contention is that the district court erred in

denying their motions to suppress because the Facebook warrants were issued without probable cause. We disagree.

1.

The Fourth Amendment requires that warrants be supported by probable cause. U.S. Const. amend. IV. There is probable cause when, "given all the circumstances set forth in the affidavit . . . , there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238 (1983). Probable cause is a "fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules." *Id*. at 232. Courts thus must not invalidate a warrant based on "a hypertechnical, rather than a commonsense," interpretation of the warrant affidavit, *id.* at 236, but must instead take into account "'the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'" *Ornelas v. United States*, 517 U.S. 690, 695 (1996) (quoting *Gates*, 462 U.S. at 231).

Reviewing courts must determine whether "the magistrate had a substantial basis for concluding that a search would uncover evidence of wrongdoing." *Gates*, 462 U.S. at 236 (internal quotations omitted); *see also Massachusetts v. Upton*, 466 U.S. 727, 732–33 (1984). In doing so, "[w]e afford initial probable cause determinations 'great deference' when, as here, a 'neutral and detached magistrate' finds probable cause to support a warrant." *United States v. Orozco*, 41 F.4th 403, 407 (4th Cir. 2022) (quoting *Gates*, 462 U.S. at 236, 240).

2.

The magistrates who approved the three Facebook warrants at issue each had a substantial basis for concluding that the searches would uncover evidence of wrongdoing. They each reasonably determined, based on the information averred in the supporting affidavits, that there was a fair probability that evidence of MS-13's sex trafficking crimes would be found on the appellants' Facebook accounts.

The affidavits all explained how Special Agent Obie's training and experience made him aware that MS-13 uses social media platforms such as Facebook to conduct and communicate about criminal activities, including commercial sex trafficking. The magistrates were well within their discretion to rely on an officer's "assertion of training- and experience-based knowledge" to help substantiate the nexus between the sex trafficking crimes listed by the warrants and the Facebook accounts to be searched. *United States v. Williams*, 548 F.3d 311, 319–20 (4th Cir. 2008). This reliance is particularly appropriate where, as here, the averred facts based on training and experience were substantiated by examples in case law of MS-13 using social media to advance its criminal activities. *See, e.g.*, *United States v. Ruiz*, 623 F. App'x 535, 536 (11th Cir. 2015) (per curiam); *United States v. Juvenile Male*, 269 F. Supp. 3d 29, 38 (E.D.N.Y. 2017); *United States v. Contreras*, 2017 WL 6419136, at *1 (D. Md. Oct. 19, 2017).

The appellants contend that training and experience alone are insufficient to establish a nexus between the location of the proposed search and the alleged criminal activity, citing *United States v. Schultz*, 14 F.3d 1093, 1097–98 (6th Cir. 1994). But far from relying merely on averments about the typical uses of social media by gang members,

each affidavit provided copious details linking the appellants' use of Facebook to the sex trafficking enterprise under investigation.

Take first the affidavit supporting the second warrant. This affidavit identified Luis Gonzales as the user behind the five targeted Facebook accounts bearing the name "Luis Figo." It stated that Minor-2 had, during an interview with law enforcement, identified a photo posted by each of the Facebook accounts as depicting someone she called "Luis," whom she explained was an integral participant in her physical and sexual abuse. And it discussed how Luis's credit card had been used to pay for the phone bill of the cell phone recovered on Minor-2's person. Moreover, the affidavit showed Luis's associates in MS-13 using Facebook to discuss the first bat beating of Minor-2. This combination of evidence established that (1) Luis was involved in the sex trafficking of Minor-2; (2) he was operating multiple Facebook accounts under an assumed last name; and (3) his MS-13 associates used Facebook to facilitate Minor-2's trafficking and physical abuse. The affidavit thus provided ample support for the magistrate's determination that there was a sufficient nexus between the five accounts to be searched and the evidence of sex trafficking to be seized.

Next, consider the third warrant. Here too a substantial basis existed for the magistrate's finding, in authorizing the warrant, that probable cause existed to search Moises Zelaya-Veliz's Facebook account. The affidavit provided a detailed description, based on interviews with Minor-2, of how Moises was central to the sex trafficking conspiracy. And, according to the affidavit, the warrant-backed search of Sioni Gonzalez's Facebook account had revealed that Moises used his Facebook account to advance MS-

13's other criminal endeavors. These endeavors involved the use of firearms, and were depicted through the transmission of photographs of firearms, illegal drugs, and gang signs.

Finally, take the fourth warrant. The magistrate had a substantial basis for concluding that probable cause existed to search the Facebook accounts of the four appellants the warrant targeted. Submitted to the court on February 20, 2020—over ten months into the investigation—the affidavit supporting this warrant provided voluminous information on the sex trafficking conspiracy and directly tied the use of Facebook by each of the four appellants to their criminal activities. In doing so, the affidavit made extensive use of the Facebook records produced pursuant to the previous warrants.

For Santos Gutierrez Castro, the affidavit provided Facebook transcripts of his conversations coordinating prostitution customers for Minor-2 and soliciting sexually explicit photos and in-person sexual acts from Minor-2 in exchange for money and drugs. For Jose Molina-Veliz, the affidavit transcribed Facebook conversations consisting of sexual advances towards Minor-2 and Minor-3 during the period that the two girls were being exploited by MS-13. For Jonathan Zelaya-Veliz, it shared evidence of his discussing with his brother Moises the sex trafficking and exploitation of Minor-2. And for Gilberto Morales, the affidavit disclosed that he partnered with Luis Gonzales in trafficking Minor-2, that he sexually abused Minor-2, and that he sought regular contact with Minor-2 during her confinement and exploitation.

Contributing further to the affidavits' credibility and the establishment of probable cause was the information that Minor-2 bravely relayed to law enforcement during her post-recovery interviews. Her decision to share the details of her abuse with the authorities

was an act of genuine courage. Providing information to law enforcement on gang-related offenses can subject a victim to retribution and revenge, and multiple MS-13 members had threatened Minor-2 with death for her and her family. The strength with which this thirteen-year-old victim shared the grim facts about her abuse is therefore firm evidence of her credibility. Indeed, the circumstances under which Minor-2 talked to law enforcement make the information she shared tantamount to statements against interest, which the Federal Rules of Evidence regard as indicative of reliability. *See* Fed. R. Evid. 804(b)(3) (stating that certain statements are so contrary to a declarant's own interest that a reasonable person would only make such statements if they believed them to be true).

The warrant affidavits in this case were well-sourced. They incorporated information from a reliable witness, the experience of an agent well-versed in the workings of MS-13, and—with each successive warrant—an increasingly incriminating chain of messages that tethered successive Facebook accounts to the larger conspiracy. In light of the thoroughness of the affidavits, the magistrates quite properly found probable cause.

C.

Next, the appellants contend the Facebook warrants were insufficiently particularized in two ways. First, they claim the scope of the warrants should have included fewer categories of data from the Facebook accounts. Second, they claim that the timeframe of the warrants should have been limited to include only information during the trafficking of Minor-2 instead of information from before and after that period.

1.

The Fourth Amendment requires that warrants "particularly describ[e] the place to be searched, and the person or things to be seized." U.S. Const. amend. IV. This requirement stems from our Founders' disdain for "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." *Riley v. California*, 573 U.S. 373, 403 (2014); *see also Marron v. United States*, 275 U.S. 192, 195–96 (1927). By having to state with particularity the scope of the authorized search, a warrant prohibits the government from having "unbridled discretion to rummage at will among a person's private effects." *Arizona v. Gant*, 556 U.S. 332, 345 (2009); *see also Andresen v. Maryland*, 427 U.S. 463, 480 (1976); *United States v. Blakeney*, 949 F.3d 851, 861 (4th Cir. 2020).

At the same time, the particularity requirement is not a "constitutional straight jacket," *United States v. Williams*, 592 F.3d 511, 519 (4th Cir. 2010), and it should be not read to create "a too-cramped understanding of the scope of a proper warrant." *United States v. Jones*, 952 F.3d 153, 158 (4th Cir. 2020). Because the particularity requirement is "a pragmatic one," "[t]he degree of specificity required when describing the goods to be seized may necessarily vary according to the circumstances and type of items involved." *United States v. Cobb*, 970 F.3d 319, 327 (4th Cir. 2020) (quoting *United States v. Jacob*, 657 F.2d 49, 52 (4th Cir. 1981)).

2.

With this background in mind, we turn to the appellants' argument that the warrants were insufficiently particularized with respect to the scope of the information that they required Facebook to disclose. The warrants compelled Facebook to turn over a wide swath

of personal information attached to the accounts, including all private communications, most user activity, and, in the case of the latter two warrants, all location information. But each warrant "'identif[ied] the items to be seized by reference to [the] suspected criminal offense[s],'" namely, 18 U.S.C. §§ 1591, 1952, 2422(a), and, with respect to the latter two warrants, also 18 U.S.C. § 2423(a). *Cobb*, 970 F.3d at 329 (quoting *Blakeney*, 949 F.3d at 863). So while the warrants authorized the government to search all of the information disclosed by Facebook, they only permitted the subsequent seizure of the fruits, evidence, or instrumentalities of violations of enumerated federal statutes. We have previously found that a warrant's particularity is bolstered where, as here, the scope of the seizure it authorized was limited to evidence of enumerated offenses. *See id.* at 328–29; *Blakeney*, 949 F.3d at 863; *United States v. Jones*, 31 F.3d 1304, 1313 (4th Cir. 1994). The warrants in this case thus appropriately "confined the executing officers' discretion," *Cobb*, 970 F.3d at 328, by restricting them from rummaging through the appellants' social media data in search of unrelated criminal activities.

This distinction between what may be searched and what can be seized counsels the government to execute social media warrants through a two-step process. This process—whereby the government first obtains a large amount of account data then seizes only the fruits, evidence, or instrumentalities of enumerated crimes—is crucial to the validity of social media warrants. As in a search of a house, the officers searching the Facebook account data at issue necessarily encountered a host of irrelevant materials. But, just like in a house search, the officers were authorized to seize only the fruits, evidence, or instrumentalities of the crimes for which they had established probable cause.

The validity of this two-step process is acknowledged by Federal Rule of Criminal Procedure 41(e)(2)(B) and its commentary, which permit officers, in searching electronically stored information pursuant to a warrant, to "seize or copy the entire storage medium and review it later to determine what electronically stored information falls within the scope of the warrant." Fed. R. Crim. P. 41(e)(2)(B) Committee Notes on Rules—2009 Amendment. While "the Fourth Amendment generally leaves it 'to the discretion of the executing officers to determine the details of how best to proceed with the performance of a search authorized by warrant,'" *Cybernet, LLC v. David*, 954 F.3d 162, 168 (4th Cir. 2020) (quoting *Dalia v. United States*, 441 U.S. 238, 257 (1979)), the two-step process, as laid out in Rule 41, helps to mitigate particularity concerns in the social media warrant context. *See United States v. Mercery*, 591 F. Supp. 3d 1369, 1382 (M.D. Ga. 2022) (noting the "general practice for agents to comply with Rule 41 by creating a two-step process—the 'search' wherein the warrant will compel the third party to produce a broad array of electronic information, and the 'seizure' wherein the warrant will authorize the seizure of [] specified information.").

Contrary to the appellants' claims, this two-step process is not toothless. Rule 41 and the terms of the warrants at issue ensured that the government executed the warrant in a reasonable manner. The district court retained the authority to determine that prolonged retention of non-responsive data by the government violated the Fourth Amendment. *See* J.A. 120 (finding that "the Government was authorized and is authorized to proceed with this two-step procedure, and that at this point it cannot be said that the time period to complete that process has expired."). This authority derives from the fact that, "[i]n the

[warrant] execution context, as elsewhere, Fourth Amendment reasonableness kicks in." *Cybernet*, 954 F.3d at 168. Courts have applied this reasonableness standard to suppress evidence when the government delayed unreasonably in sifting through social media warrant returns for relevant evidence. *See, e.g.*, *United States v. Cawthorn*, 2023 WL 5163359, at *5–7 (D. Md. July 13, 2023) (finding Fourth Amendment violated when government waited two years after executing warrant to review social media account data and did not justify delay). These safeguards help ensure that, despite the large scope of information that the warrants here returned, the searches and seizures they authorized were not insufficiently particularized.

The wide-ranging nature of the sex trafficking conspiracy under investigation further mitigates any concern that the scope of the warrant was impermissibly broad. The FBI was investigating the multi-month sex trafficking of at least three underage girls by force and coercion. By the time the first warrant at issue was sought, that investigation had produced evidence that a host of gang-affiliated suspects had helped sex traffic the minors, and many more had engaged in illegal sexual activity with them. And these were not just "ordinary" gang members. The suspects were members of or otherwise affiliated with MS-13, a transnational criminal organization that "defined its primary mission as killing rivals" and that committed numerous murders across the United States. *See United States v. Perez-Vasquez*, 6 F.4th 180, 187 (1st Cir. 2021). A reasonable inference from the evidence in the warrant affidavits was that the sex trafficking conspiracy was ongoing, as at least some of the suspects appeared willing to sex traffic minors under the threat of death as a matter of course so that they could fund their lifestyles and MS-13's operations.

Moreover, the affidavit showed how the conspirators were using Facebook extensively to communicate with co-conspirators, victims, and customers in furtherance of the conspiracy. Under such circumstances, it did not violate the Fourth Amendment's particularity requirement for law enforcement to obtain detailed Facebook user activity data on the sex trafficking suspects. *See, e.g.*, *United States v. Allen*, 2018 WL 1726349, at *2, *6 (D. Kan. Apr. 10, 2018) (holding Facebook warrant that produced 28,000 pages of records was sufficiently particularized in the context of an investigation into a complex criminal conspiracy to use a weapon of mass destruction); *United States v. Daprato*, 2022 WL 1303110, at *7 (D. Me. May 2, 2022) (rejecting particularity challenge to a warrant that compelled disclosure of broad array of Facebook account data to help "reveal [a defendant's] additional connections with the codefendants or victims"). The sheer magnitude of the sex trafficking conspiracy here justified a concomitant breadth in the scope of the warrants, particularly as the seizures they authorized were limited to evidence of the specified offenses for which probable cause existed.

3.

We next consider the appellants' claim that the timeframe of the warrants was fatally overbroad. The appellants contend that the second warrant was insufficiently particularized because it had no temporal limitation, and that the third and fourth warrants were insufficiently particularized because their temporal limitations far exceeded the two-month period of time during which Minor-2 was sex trafficked. Other courts have found that a temporal limitation can help particularize warrants that authorize the search and seizure of Facebook account data. *See, e.g.*, *Chavez*, 423 F. Supp. 3d at 207; *see also United States v.*

McCall, 84 F.4th 1317, 1328 (11th Cir. 2023) ("By narrowing a search to the data created or uploaded during a relevant time connected to the crime being investigated, officers can particularize their searches to avoid general rummaging.").

We start with the third and fourth warrants, both of which were timebound. They limited the period of disclosure from January 2018 to their respective dates of service. This timeframe was appropriately particularized as (1) the affidavits suggested that Minor-2 had been sexually abused by affiliates of MS-13 starting during or before June 2018; (2) Minor-2's abuse was part of a broader sex trafficking conspiracy involving multiple minors, including Minor-3, who was already in close contact with MS-13 members before she met Minor-2 and who may have already been sex trafficked by them; (3) each affidavit explained how gang members involved in a sex trafficking conspiracy often use social media to discuss the conspiracy before, during, and after its execution; (4) multiple appellants continued to use Facebook to message Minor-2 after she was recovered by law enforcement in October 2018; and (5) it was appropriate for the magistrates to infer from the affidavits that the targeted MS-13 members and affiliates were engaged in what the district court called an "extensive ongoing interstate criminal enterprise of uncertain beginnings." J.A. 115. The extensive nature of the conspiracy being investigated in this case meant that "less temporal specificity [wa]s required here than in other contexts where evidence can more readily be confined to a particular time period." *United States v. Manafort*, 323 F. Supp. 3d 768, 782 (E.D. Va. 2018). As the Tenth Circuit has rightly noted, "[w]arrants relating to more complex and far-reaching criminal schemes may be deemed legally sufficient even though they are less particular than warrants pertaining to

more straightforward criminal matters." *United States v. Cooper*, 654 F.3d 1104, 1127 (10th Cir. 2011).

The second warrant that targeted Luis Gonzales's Facebook accounts, on the other hand, lacked a temporal limitation. This total lack of a time period in a social media warrant raises a problem. As our society moves further into the digital age, Facebook and other social media accounts are beginning to contain decades of personal information and communications, often going back to an account holder's early teenage years. These social media accounts, much like cell phones, frequently contain "a broad array of private information never found" during a traditional search of a home. *Riley*, 573 U.S. at 397; *see also United States v. Galpin*, 720 F.3d 436, 447 (2d Cir. 2013) ("Where a warrant authorizes the search of a residence, the physical dimensions of the evidence sought will naturally impose limitations on where an officer may pry[.] . . . Such limitations are largely absent in the digital realm[.]"). That is why one court has stated that Facebook warrants pose "an especially potent threat to privacy" because they can "provide[] a single window through which almost every detail of a person's life is visible." *United States v. Shipp*, 392 F. Supp. 3d 300, 307–08 (E.D.N.Y. 2019).

Moreover, the imposition of a temporal limitation on the information that Facebook must disclose does not pose the administrability concerns that an analogous limitation would pose in a traditional search of a home. That is because it is possible for Facebook to filter data by time frame before disclosing it to the government, while an officer searching a home often has no idea when each item was last used. *See McCall*, 84 F.4th at 1328.

Thus, "a time-based limitation [is] both practical and protective of privacy interests" in the context of social media warrants. *Id.*

We need not go so far as to mandate a temporal restriction in every compelled disclosure of social media account data for the simple reason that we cannot anticipate all future circumstances. Nor do we invalidate the warrant-backed search and seizure of Luis Gonzales's Facebook account information. Rather, in applying the Fourth Amendment to novel questions posed by digital technology, we find it advisable to proceed with caution. "The judiciary risks error by elaborating too fully on the Fourth Amendment implications of emerging technology before its role in society has become clear." *City of Ontario, Cal. v. Quon*, 560 U.S. 746, 759 (2010). We therefore hold that Luis's motion to suppress was properly denied because the good faith exception to the exclusionary rule applies. *See United States v. Leon*, 468 U.S. 897, 922–24 (1984).

Given the unsettled nature of whether a temporal limitation is required on a warrant authorizing the search and seizure of Facebook account data, we cannot say that "a reasonably well trained officer would have known that the search was illegal despite the magistrate's authorization." *Id.* at 922 n.23. Rather, law enforcement here acted pursuant to a warrant that was not "so facially deficient . . . that the executing officers [could not] reasonably presume it to be valid." *Id.* at 922–23. It is axiomatic that "'[c]ourts should not punish law enforcement officers who are on the frontiers of new technology simply because they are at the beginning of a learning curve and have not yet been apprised of the preferences of courts on novel questions.'" *Cawthorn*, 2023 WL 5163359, at *4 (quoting *Chavez*, 423 F. Supp. 3d at 208). As Special Agent Obie relied on his good faith belief in

the warrant's validity, we hold that the district court did not err in denying the appellants' motions to suppress. We note, however, that future warrants enhance their claims to particularity by "request[ing] data only from the period of time during which [the defendant] was suspected of taking part in the [criminal] conspiracy." *United States v. Blake*, 868 F.3d 960, 974 (11th Cir. 2017).

Our ruling is a narrow one, and we do not greenlight all warrants for and searches of social media data.[3] Because "the ultimate touchstone of the Fourth Amendment is reasonableness," *Fernandez v. California*, 571 U.S. 292, 298 (2014), the validity of any warrant depends on an analysis of the circumstances at issue. This is no less true in the social media context than in a search in the Founders' day.

III.

Finally, Santos Gutierrez Castro claims the district court should have granted his motion for acquittal because insufficient evidence was presented at trial to sustain his convictions. *See* Fed. R. Crim. P. 29. We review the denial of such a motion de novo. *United States v. Gallimore*, 247 F.3d 134, 136 (4th Cir. 2001). If, viewing the evidence in the light most favorable to the prosecution, the guilty verdict at trial was supported by substantial evidence, we are required to sustain it. *United States v. Burgos*, 94 F.3d 849, 862 (4th Cir. 1996) (en banc).

[3] We do not, for example, address the question of whether officers sifting through Facebook account data for the fruits and instrumentalities of sex trafficking could lawfully build a different case under a plain view discovery of a distinct offense.

We reject Santos's sufficiency challenge and affirm his convictions. Substantial evidence supported the jury's conclusion that Santos was guilty of (1) conspiracy to engage in sex trafficking of a minor under fourteen or of a minor by force, fraud, or coercion in violation of 18 U.S.C. §§ 1591(a)(1) and 1594(c); (2) sex trafficking of a minor under fourteen or of a minor by force, fraud, or coercion in violation of 18 U.S.C. §§ 1591(a)(1) and 1591(b)(1); and (3) conspiracy to transport a minor in interstate commerce with intent for the minor to engage in prostitution or illegal sexual activity in violation of 18 U.S.C. § 2423(e). The jury heard evidence that Santos harbored Minor-2 in his house for multiple days, had sex with her there despite knowing she was underage, and allowed multiple other men to do the same in exchange for money. The jury also received Facebook records showing that Santos coordinated with co-conspirators to sex traffic Minor-2, including by circulating risqué photos of her and discussing where to transport her so that customers could sexually exploit her.

Santos claims on appeal that "[n]ot one witness testified" that he received anything of value in return for sexual acts by Minor-2. Appellants' Brief at 40. Yet Minor-2 herself testified that, while she was in Santos's home, she heard him telling people over the phone that if they were going to have sex with her, they had to pay $100 per hour. The same day that she overheard this call, Minor-2 was forced to have sex with more than ten men in Santos's home. Santos disputes the validity of this testimony, noting that in Minor-2's initial interviews with law enforcement, she said she did not recall whether Santos received money in exchange for her having sex. But, viewing the evidence in the light most

favorable to the prosecution, it was well within the jury's discretion to credit Minor-2's trial testimony.

Beyond Minor-2's testimony, copious Facebook records and interview transcripts support the jury's verdict. Santos himself openly admitted in a *Mirandized* interview with FBI agents that he had engaged in sex with Minor-2, whom he knew was underage, while she was at his house. This admission is substantiated by multiple Facebook conversations between Santos and Minor-2 in which he discussed meeting up with her to have sex. In Facebook conversations between Santos and Jose Molina-Veliz, they talked about the possibility that one of them had impregnated Minor-2. The two also discussed, around the time of Minor-2's second bat beating, meeting up so they could beat Minor-2 on the chest. What's more, Facebook conversations with additional co-conspirators show Santos coordinating the transportation of Minor-2 to different prostitution customers, including one conversation in which he refers to Minor-2 as a female prisoner.

To summarize, the extensive Facebook records presented at trial, combined with Minor-2's testimony and Santos's admissions to the FBI, provided substantial evidence on which the jury was entitled to find him guilty of conspiracy to transport Minor-2 in interstate commerce with the intent that she engage in illegal sexual activity; sex trafficking of Minor-2 as a person under fourteen or by force, fraud, or coercion; and conspiracy to do the same. His was not a close case, and the district court properly denied Santos's motion for acquittal.

IV.

As the tragic facts of this case reveal, social media provides an all-too-easy avenue for the coordination of sex trafficking conspiracies. Even more troubling, sex traffickers are able to use social media to lure underage victims into their grasp. The reasonableness standard that is so central to the Fourth Amendment necessitates that we permit the government to thwart these emerging criminal tactics with novel investigatory tools of its own. Warrants for social media data are one such tool, as they empower law enforcement officers to reveal the activities of criminal conspirators, disrupt their illicit plots, and bring them to justice. But while social media warrants can support invaluable police work, as they did in this case, they also provide significant potential for abuse. We cannot read the Fourth Amendment to allow the indiscriminate search of many years of intimate communications. And because of the inherent interconnectedness of social media, permitting unbridled rummaging through any one user's account can reveal an extraordinary amount of personal information about individuals uninvolved in any criminal activity.

It is not only courts that are struggling to strike a balance between privacy and security in the rapidly changing digital domain, but society as a whole. When criminal offenders use social media to organize their enterprises and evade detection, it would seem unreasonable to disable law enforcement from using those same media to apprehend and prosecute them. To hold otherwise would arbitrarily tip the scales away from law and justice for the benefit of increasingly sophisticated criminal schemes. But at the same time, there comes a point when the Fourth Amendment must emphatically yell STOP, lest we render obsolete the hallowed notion of a secure enclave for personal affairs.

V.

For the foregoing reasons, the judgment of the district court is in all respects affirmed.

AFFIRMED.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. MOISES ORLANDO ZELAYA-VELIZ, *et al.*, Defendants.	Case 1:20-cr-196 Alexandria, Virginia October 27, 2021 11:24 a.m. Pages 1 - 39

TRANSCRIPT OF MOTIONS

BEFORE THE HONORABLE ANTHONY J. TRENGA

UNITED STATES DISTRICT COURT JUDGE

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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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The Court at this point concludes that the evidence would, in large part, be relevant to all of the charges and that there's a relationship between these charges and the other charges such that the case should proceed.

The Court has also considered any possible prejudice to Defendant Villatoro and finds that there simply is not sufficient prejudice that would warrant severing him that would require essentially a duplication, in large part, of evidence in both cases. The Court, therefore, will deny that motion.

Let me take up Defendant Gonzales' motion to suppress Facebook evidence, which is joined in by Defendant Villatoro. That would be Docket Nos. 143 and 158.

Yes, Mr. Zimmerman. Anything further you would like to say on this? I understand you're doing it for the record for the most part.

MR. ZIMMERMAN: I am, Your Honor. I was present during that extensive motions hearing. We would adopt all of the arguments made on the record regarding the lack of probable cause and the overbreadth of all of the search warrants that did not meet the particularity requirement. We assert the good faith exception would not apply and want to make a

record that we object on that basis to the admission of all of the Facebook evidence.

THE COURT: All right. Thank you.

Ms. Van Pelt, anything further you want to say on this?

MR. ZIMMERMAN: Thank you.

THE COURT: Ms. Van Pelt, anything further you want to say on this?

MS. VAN PELT: No, Your Honor.

THE COURT: The Court has reviewed the motion to suppress Facebook evidence based on the motion of Defendant Gonzales joined in by Defendant Villatoro. For the reasons previously stated by the Court in denying the same motions that have been previously filed by the other defendants, that motion is denied.

Let me take up Defendant Gonzales' motion to compel disclosure of statements made by codefendants which incriminate defendant, Docket No. 144, also joined in by Defendant Villatoro.

MR. ZIMMERMAN: Just briefly, Your Honor.

THE COURT: Yes. You can come to the podium.

MR. ZIMMERMAN: Sure, Judge.

Your Honor, this of course is a *Bruton* motion. The government has identified two of the codefendants who have made incriminating statements

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA, Plaintiff	:	
v.	:	Criminal Case
MOISES ORLANDO ZELAYA-VELIZ,	:	No. 20-CR-00196-AJT
SIONI ALEXANDER BONILLA GONZALEZ,	:	
CARLOS JOSE TURICIOS VILLATORO,	:	
JOSE ELIEZAR MOLINA-VELIZ,	:	August 27, 2021
SANTOS ERNESTO GUTIERREZ CASTRO,	:	11:00 a.m.
LUIS ALBERTO GONZALES,	:	
REINA ELIZABETH HERNANDEZ, NELSON EZEQUIEL CABALLERO PORTILLO,	:	
GILBERTO MORALES, JONATHAN RAFAEL ZELAYA-VELIZ, ORLANDO ALEXIS SALMERON FUNEZ,	:	
Defendants	:	
.....	:	.....

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE ANTHONY J. TRENGA
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THE COURT: Ms. Amato, anything else you would like to say?

MS. AMATO: Your Honor, I just wanted to correct. I thought that the -- so Ms. Cain had mentioned in response that there was -- one of the individuals who spoke to -- communicated with Minor 2 saying that Mr. Salmeron asked for a video of her. But I believe it was -- according to the affidavit, that he had asked, supposedly, for a photo of the minor.

So the fact that some video was taken after that has nothing do with the statement that supposedly Salmeron had asked for a photo. I believe it was a photo, not a video.

THE COURT: All right. Mr. Amolsch, anything else?

MR. AMOLSCH: No, Your Honor.

THE COURT: Mr. Hadeed, anything further?

MR. HADEED: No, Your Honor.

THE COURT: Let me deal first with this group of motions. I reviewed the extensive briefing in this case, and in particular the affidavits that were submitted to the magistrate judges in connection with each of the warrants, and have assessed the issues pertaining to each warrant based on the specific information that was applied to each of these defendants.

In that regard, the motions to suppress Facebook records are based on the following warrants: A warrant issued on March 14, 2019, with respect to Defendant Sioni Alexander

Bonilla-Gonzalez, which is docket number 116; a warrant issued on June 5, 2019, with respect to the Facebook accounts associated with Reina Elizabeth Hernandez and Luis Alberto Gonzalez, which is Document Number 116-1; a warrant issued on July 12th, 2019, with respect to the Facebook accounts associated with Moises Orlando Zelaya-Veliz, which is Document Number 116-2; and a warrant issued on February 20, 2020, with respect to the Facebook accounts associated with Defendants Orlando Alexis Salmeron Funez, Defendant Nelson Ezequiel Caballero Portillo, Defendant Jonathan Rafael Zelaya-Veliz, Defendant Jose Eliezar Molina Veliz, and Defendant Gilberto Morales, which is Document Number 116-3.

All of these defendants have challenged their respective warrants based on lack of probable cause to have the warrants issued, lack of sufficient particularity with respect to the contents of the warrant, that the warrants are overbroad and are based on stale information, and some of the defendants have also alleged a *Franks* violation in connection with the issuance of those warrants.

Let me take up those issues separately. With respect to a probable cause requirement of the Fourth Amendment, it's settled that probable cause is a dynamic fluid concept turning on the assessment of probabilities in a particular factual context, and requires only that based on a practical common

sense assessment under all the circumstances, as set forth in the affidavits presented, there is a fair probability that contraband or evidence of a crime would be found in a particular place.

And in that regard, a reviewing court does not review a magistrate judge's decision *de novo*, but rather must determine whether the magistrate judge had a substantial basis for concluding that the search would uncover evidence of wrongdoing, and the magistrate judge's determination of probable cause is to be given great deference by a reviewing court.

The core issue here with respect to probable cause is whether the affidavits presented to the magistrate judges presented a sufficient nexus between the criminal conduct evidence in the affidavits, on the one hand, and the items to be seized and the place to be searched, namely the listed Facebook accounts and the items to be seized from those accounts. And in making that assessment, the magistrate judge may rely upon the agents, the presenting agent's training and experience, when coupled with the facial reasonableness of the inferences to be drawn from the information presented.

This court, as I've mentioned, has reviewed in detail the substantial affidavit submitted in support of each of the warrants, and while they certainly are in many ways duplicative, they nevertheless are relevant to each of the defendants' issues in this case. And the Court concludes that the magistrate

judges in each instance did have a substantial basis for concluding, as to each of the defendants, a sufficient nexus existed between the Facebook accounts to be searched and the crimes under investigation.

Each affidavit lists the experience and training of the submitting officer as it relates to MS-13 criminal activity, including the various methods and means by which MS-13 gang members and their associates conduct commercial human-trafficking operations, and the role of social media, such as Facebook and other mediums are used in connection with those activities, including the frequency with which photographs pertaining to that exploitation are posted, the communications that often occur both before, during, and after that criminal activity, and the affidavits also provide specific information pertaining to the specific use of social media and Facebook as it related to particular defendants, and also with respect to particular minor victims.

Those affidavits evidenced an ongoing -- extensive ongoing interstate criminal enterprise of uncertain beginnings, but one that nevertheless was continuing and involved a substantial number of people, including the specific defendants as to whose accounts those warrants were issued.

As I indicated, overall, the information presented provided a substantial basis for the magistrate judge to conclude, with respect to each warrant and each defendant, that

the Facebook accounts and other searched accounts would provide relevant information, including photographs and communications that would depict and otherwise corroborate the abuse and other statements of the minor victims, the true identities of the defendants, their aliases, as well as others who may have been involved in criminal activity.

The warrants issued after the initial warrant were also further supported by the information obtained from the Facebook accounts covered by the warrants that had preceded them. Based on all of the evidence presented to the magistrate judges, again the Government presented a sufficient nexus between the criminal activity and the contents of the Facebook accounts to establish probable cause to believe the relevant evidence would be located in those listed Facebook accounts.

The Court has also considered specifically the objection made by Defendant Salmeron with respect to the warrant issued on February 20th on the grounds that the warrant was undermined by the Government's omission of the complete exchange between Salmeron and other defendants on Facebook. The Court has looked at that objection, has considered the Government's explanation for the omission, and concludes that the omitted part of the exchange, even if it had been excluded, would not have affected the magistrate judge's assessment of probable cause, given the ambiguous nature of the omitted language and the amount of supporting information otherwise provided in the

affidavit, and including information that had already been obtained through the earlier warrants.

With respect to particularity and overbreadth, there's no doubt that these warrants were broad, but the issue with respect to the particularity requirement is whether the warrant sufficiently identifies the items to be seized and not leave to the discretion of the executing officer whether an item is within the scope of the warrant.

That said, the Supreme Court has made clear that probable cause must be examined in terms of whether there's cause to believe that the items sought will aid law enforcement in connection with the apprehension of a person sufficiently believed to have been involved in criminal activity, or the conviction of such persons.

And the Fourth Circuit has likewise made clear that the particularity requirement must necessarily be assessed based on the particular circumstances of the case, and that a warrant that describes items to be seized broadly may be valid if the description is as specific as the circumstances and the nature of the activity under investigation allows.

Here, the defendants object to a lack of probable cause to allow law enforcement to search such categories of information such as the defendants' likes, defendants' security questions, GIFs, tags, privacy settings, credit card numbers, and location data outside the period of the offense conducted --

the period of the offense conduct presented to the magistrate judges.

The Court has reviewed the objected-to categories and concludes, based on all of the circumstances and information submitted to the magistrate judges, that there was a substantial basis for each magistrate judge to find probable cause to believe that all of the categories of information were potentially relevant and useful in establishing, among other things, the identity and aliases of those involved in criminal activity, the substance of communications pertaining to criminal activity, the dates, times, places, and participants in criminal activity, as well as the potential additional sources of information.

As I indicated, the affidavits clearly establish an extensive ongoing interstate criminal enterprise, and the scope of the warrants must be assessed in light of that information.

Nor does the Court find that the warrants are overbroad based on a lack of a timeframe that limited the information to be searched. In that regard, the defendants contend that the warrants should have been listed to the time periods identified by Minor Victim 2 or the time periods designated in the indictment, which was August 27th, 2018 to October 11, 2018.

Again, the information provided to the magistrate judges, including information beyond that provided by Minor Victim 2, indicated that the investigation extended beyond

Minor Victim 2 and pertained to a broader criminal enterprise that easily encompasses criminal activity both before and beyond the time period identified by Minor Victim 2. And as more information was obtained, a time range was, in fact, included in later warrants.

Defendant Hernandez, Reina Hernandez, argues that the search of her Facebook accounts was based on stale information. While a valid search warrant must be based on facts sufficiently closely related to the time the warrant was issued, to support probable cause, the Court must assess the probative value of any information submitted based on the nature of the unlawful activity, the length of time it has been ongoing and the prospects that it is ongoing, as well as the nature of the items to be seized.

Here, the criminal activity presented to the magistrate judges was ongoing, and the information used to support probable cause continued to have relevance and currency with respect to the items to be searched and seized.

With respect to overbreadth, Defendant Hernandez contends that the Government improperly seized information pursuant to this two-step process in Attachment B, as have other defendants. The Court concludes, however, that the two-step procedure was within the procedure authorized under Federal Rule of Criminal Procedure 41(e)(2)(b). Under that section, a warrant authorized under 41(e)(2)(b), as the ones here,

authorize the seizure of electronic storage information, or the seizure or copying of electronically stored information, and unless otherwise specified, the warrant authorizes a later review of the media or information consistent with that warrant.

There's no time limit for the subsequent review, and courts have found that the Fourth Amendment is satisfied when that review is completed within a reasonable period of time, as determined by all the circumstances of the case. Based on the circumstances of this case, the Court concludes that the Government was authorized and is authorized to proceed with this two-step procedure, and that at this point it cannot be said that the time period to complete that process has expired.

Defendants have also asserted Fourth Amendment violations, and in that regard seek a *Franks* hearing based on the contention that the Government engaged in a *Franks* violation. In order to establish a *Franks* violation as to the challenged statement in a facially valid search warrant, a defendant must make a substantial showing that the affiant made a false statement intentionally or with reckless disregard for the truth; and secondly, that the offending information is essential to the probable cause determination.

In order to make a successful *Franks* objection based on an omitted piece of information, a defendant must show first that the omission is a product of a deliberate falsehood or a reckless disregard of the truth; and secondly, inclusion of the

omitted statement in the affidavit would defeat probable cause. In either case, a *Franks* violation requires proof of both intentionality and materiality.

In support of her position, Defendant Hernandez alleges that the Government misstated one Facebook account, and also the Facebook account number that the photograph of her in a black and white dress came from, and also that the Government omitted that the photo was posted in December of 2017.

The Government concedes that it misstated the account numbers and omitted the date of posting, but based on all of the evidence presented, the Court must conclude that none of those errors, either separately or collectively, would have altered the probable cause determination of Magistrate Judge Davis.

Finally, the Court has considered the good faith exception. There is no doubt that the law pertaining to the scope of warrants with respect to social media such as Facebook is evolving, and the Court will welcome some additional appellate guidance in this area. But the Court has considered the good faith exception based on the current state of the law, and in that regard, the Court concludes that to the extent there was a Fourth Amendment violation, the executing officers had an objectively good faith belief in the validity of the warrants, and the officers' reliance on the warrants were objectively reasonable.

In that regard, there is no evidence that the

magistrate judge was misled by information in the affidavit, that the officer knew was false, or would have known was false except for the officer's reckless disregard of the truth. There's no evidence that the magistrate wholly abandoned his judicial role immediately by simply rubber stamping the application, and there's no evidence that the warrant was based on an affidavit that was so lacking in any evidence of probable cause as to render any official belief in the existence entirely unreasonable, or that the warrant was so facially deficient by failing to particularize the place to be searched or the things to be seized, such that the executing officer could not possibly have reasonably presumed it to be valid.

So for all those reasons, the Court denies the motions to suppress the information obtained from the Facebook accounts.

Let me now take up the motions to suppress evidence based on the search warrants, the searches of the residences. That would be Ms. Amato's motion.

MS. AMATO: Thank you, Your Honor. The basis of the motion - and I did submit a reply to this motion - is the issue of staleness. Law enforcement sought a warrant to search Mr. Salmeron's residence almost two years after the alleged -- the averments show any connection of Mr. Salmeron to the charged offense in this case. And by the time law enforcement had sought to seek the search warrant of his residence, they did have, obviously, the Facebook records of Mr. Salmeron, and they

FILED: March 15, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-4656 (L)
(1:20-cr-00196-AJT-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MOISES ORLANDO ZELAYA-VELIZ, a/k/a Moises Zelaya-Beliz, Moizes Zelaya Bonilla, a/k/a Zelaya Hernandez

Defendant - Appellant

No. 22-4659
(1:20-cr-00196-AJT-10)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

JONATHAN RAFAEL ZELAYA-VELIZ, a/k/a Rafael Zelaya, a/k/a Jonathan Zelaya

Defendant – Appellant

No. 22-4669
(1:20-cr-00196-AJT-9)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

GILBERTO MORALES, a/k/a Chapin, a/k/a Chucha

Defendant - Appellant

No. 22-4670
(1:20-cr-00196-AJT-6)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

LUIS ALBERTO GONZALES, a/k/a Luis Figo, a/k/a China, a/k/a Chinita

Defendant - Appellant

No. 22-4684
(1:20-cr-00196-AJT-4)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

JOSE ELIEZAR MOLINA-VELIZ, a/k/a Jose Eliezar Hernandez

Defendant - Appellant

No. 22-4685
(1:20-cr-00196-AJT-5)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

SANTOS ERNESTO GUTIERREZ CASTRO, a/k/a Gutierrez Hernestho

Defendant - Appellant

O R D E R

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Nwamaka Anowi, Clerk