No. 24-5092

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 OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the district court was required to suppress evidence, obtained pursuant to warrants authorizing the search of petitioners' Facebook accounts, of petitioners' involvement in a sex-trafficking conspiracy.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-39a) is reported at 94 F.4th 321. The opinions and orders of the district court (Pet. App. 40a-58a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on February 16, 2024. A petition for rehearing was denied on March 15, 2024 (Pet. App. 59a-61a). On June 11, 2024, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including July 13, 2024. The petition for a writ of

certiorari was filed on July 12, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Eastern District of Virginia, petitioners were each convicted on one count of conspiring to traffic a minor under the age of 14 for sex, and one count of trafficking of a minor under the age of 14 for sex, in violation of 18 U.S.C. 1591(a), (b)(1), and (c). Gonzales Judgment 1 (C.A. App. 1319); Molina-Veliz Judgment 1 (C.A. App. 1327); Morales Judgment 1 (C.A. App. 1311); Jonathan Zelaya-Veliz Judgment 1 (C.A. App. 1303); Moises Zelaya-Veliz Judgment 1 (C.A. App. 1295). Petitioners Gonzales, Molina-Veliz, Jonathan Zelaya-Veliz, and Moises Zelaya-Veliz were each convicted on one additional count of conspiring to transport a minor with intent to engage in criminal sexual activity, in violation of 18 U.S.C. 2423(a) and (e). Gonzales Judgment 1; Molina-Veliz Judgment 1; Jonathan Zelaya-Veliz Judgment 1; Moises Zelaya-Veliz Judgment 1. The district court sentenced Gonzales to 300 months of imprisonment, Morales to 192 months of imprisonment, Molina-Veliz to 180 months of imprisonment, Jonathan Zelaya-Veliz to 180 months of imprisonment, and Moises Zelaya-Veliz to 264 months of imprisonment, with each term to be followed by five years of supervised release. Gonzales Judgment 2-3; Morales Judgment 2-3; Molina-Veliz Judgment 2-3; Jonathan Zelaya-Veliz Judgment 2-3;

Moises Zelaya-Veliz Judgment 2-3. The court of appeals affirmed. Pet. App. 1a-39a.

1. Petitioners were members and associates of the transnational criminal street gang commonly referred to as MS-13. Pet. App. 5a. In 2018, petitioners, along with other members and associates of MS-13, worked together to sexually exploit and physically abuse a 13-year-old girl, known as Minor 2, and other underage victims in Northern Virginia and Southern Maryland. Ibid. Petitioners abused Minor 2 for more than six weeks, using drugs, threats, and physical violence to sell her for sex with other men. Id. at 9a. Minor 2 suffered infections from sexually transmitted diseases and psychological and physical trauma. Ibid.

The abuse began when, on August 27, 2018, Minor 2 ran away from a youth shelter in Fairfax County, Virginia after another resident in the shelter, known as Minor 3, convinced her that Minor 3 could use connections with MS-13 to seek protection. Pet. App. 5a. Minor 3 introduced Minor 2 to MS-13 members. Ibid. Minor 2 told the MS-13 members that she was 13 years old. Ibid. The gang promised to protect Minor 2 and her family if she became a member, and she agreed. Id. at 6a.

As part of Minor 2's initiation into MS-13, members of the gang beat her 26 times with a metal baseball bat. Pet. App. 5a. Although Minor 2 asked them to stop, they threatened to kill her and her family if she refused to undergo the full beating. Ibid. Several other gang members and Minor 1 -- a 14-year-old who was

being sex-trafficked by MS-13 -- witnessed the beating. Ibid. MS-13 members also threatened to kill Minor 2's family if she left the gang. Id. at 6a-7a.

For the next month and a half, petitioners subjected Minor 2 to physical abuse and sexual exploitation. Pet. App. 6a-9a. The gang first took Minor 2 to the apartment of petitioners Moises Zelaya-Veliz and Molina-Veliz, who each had sex with Minor 2 and forced her to engage in commercial sex with multiple men. Id. at 6a-7a. Moises Zelaya-Veliz and Molina-Veliz used Facebook to discuss sexually exploiting underage girls for money and sent explicit photographs -- including explicit images of Minor 2 -- in numerous messages and group chats, some of which included petitioners Jonathan Zelaya-Veliz and Gonzales. See, e.g., C.A. App. 832, 835-836, 839, 844, 847, 854-855, 860-861.

MS-13 then took Minor 2 to the home of another gang member in Virginia who gave her drugs, had sex with her, and sold her for sex to multiple men. Pet. App. 6a-7a. That gang member also used Facebook to communicate with Minor 2 and to coordinate commercial sex transactions involving her. See, e.g., C.A. App. 809-830, 832, 835-836, 839, 844, 860-861. When Minor 2 was found using a gang member's phone, MS-13 members beat her with a baseball bat another 26 times. Pet. App. 7a.

After several days, the gang took Minor 2 to Maryland, where Gonzales supervised Minor 2's sex trafficking. Pet. App. 7a-8a. He first brought Minor 2 to an apartment in Greenbelt, Maryland,

where she stayed for about two days. C.A. App. 569, 581-583. Gonzales had sex with Minor 2 and sold her for sex to several men, including Morales, in exchange for cash and cocaine. Pet. App. 7a.

Next, Gonzales moved Minor 2 to an apartment in Mount Rainier, Maryland, where Jonathan Zelaya-Veliz lived. Pet. App. 8a. For the next two weeks, MS-13 again forced Minor 2 to engage in commercial sex with multiple men, including Jonathan Zelaya-Veliz, for up to seven hours a day. Ibid. Jonathan Zelaya-Veliz and Moises Zelaya-Veliz also helped Gonzales organize Minor 2's transportation to several locations in Maryland and Virginia for commercial sex transactions. Ibid.

Gonzales sedated Minor 2 with alcohol, marijuana, cocaine, and other drugs before making her have commercial sex. Pet. App. 8a. While Minor 2 was in Maryland, petitioners used Facebook to communicate with her, to send explicit photos and videos of her to others, and to discuss her commercial sex trafficking. See, e.g., id. at 7a, 11a-12a; C.A. App. 872-873, 876-877, 890-897, 909-910, 943-944, 956-957. In October 2018 alone, Morales contacted Minor 2 over the phone and on Facebook more than 130 times. Pet. App. 7a.

On October 11, 2018, police officers recovered Minor 2 outside of Jonathan Zelaya-Veliz's apartment complex. Pet. App. 8a. Although Minor 2 initially could not identify her abusers' full names or the exact locations where she had been trafficked, she

identified several perpetrators by photograph. Id. at 9a. She also helped the police find and rescue Minor 1, whom MS-13 was also sexually exploiting. Ibid.

2. In investigating the crimes, the Federal Bureau of Investigation (FBI) obtained multiple warrants, three of which authorized searches of various petitioners' Facebook accounts. Pet. App. 9a-16a. Each warrant followed a standard two-step search-and-seizure process. Id. at 10a-11a; see C.A. App. 1388-1390, 1425-1427, 1483-1489. The warrants first authorized the government to search specific categories of requested data disclosed by Facebook, and then authorized the government to seize only information that constituted evidence, instrumentalities, and fruits of federal offenses listed in the warrants. Pet. App. 10a-11a.

a. The first warrant, issued in June 2019, required Facebook to disclose nine categories of data associated with eight Facebook accounts, five of which belonged to petitioner Gonzales. Pet. App. 11a; C.A. App. 1385. The nine categories of data included contact information, subscriber information, Internet protocol information, and activity on Facebook, including photographs and all communications. C.A. App. 1388-1389. The warrant also authorized the government to seize all information that constituted evidence, instrumentalities, and fruits of violations of four federal criminal statutes -- sex trafficking of a minor by force, fraud, or coercion (18 U.S.C. 1591); travel or

use of the mail or facility of interstate commerce in aid of prostitution or other racketeering enterprises (18 U.S.C. 1952); coercion or enticement of a person to travel across state lines for prostitution or illegal sexual activity (18 U.S.C. 2422(a)); and interstate transportation of a minor for purposes of prostitution or illegal sexual activity (18 U.S.C. 2423(a)) -- as well as attempts and conspiracies to violate these statutes. Pet. App. 10a-12a; C.A. App. 1389-1390. The warrant provided specific examples of the types of information that would qualify as evidence, instrumentalities, or fruits of the listed crimes. C.A. App. 1389-1390.

The warrant was supported by an FBI agent's affidavit detailing the investigation of the listed federal offenses. Pet. App. 11a. The affidavit explained how Facebook works and how gangs like MS-13 use Facebook to engage in prostitution and sex trafficking, which generate revenue for the criminal organization. Ibid.; see C.A. App. 1395-1402. The affidavit also recounted MS-13's sexual exploitation of Minor 2 and -- citing, for example, screenshots of photographs and communications on Facebook -- described how Gonzales sold Minor 2 to customers, forced her to have sex with them, and sedated her with drugs and alcohol. Pet. App. 12a; see C.A. App. 1402-1422. The affidavit also described MS-13's sexual exploitation of other minors, including Minor 3. C.A. App. 1402-1413.

b. The second warrant, issued in July 2019, was directed at ten accounts, one of which belonged to petitioner Moises Zelaya-Veliz. Pet. App. 13a; C.A. App. 1428. The warrant listed 18 categories of data for disclosure, which encompassed the nine categories in the first warrant and others relating to user activity, device identifier logs, and all location information associated with the accounts. Pet. App. 13a; C.A. App. 1476-1478. The second warrant also limited the disclosure to the period running from January 1, 2018, to July 12, 2019. See Pet. App. 13a; C.A. App. 1428-1430. The warrant authorized law enforcement to seize all information that constituted evidence, instrumentalities, and fruits of the same four offenses listed in the June 2019 warrant, as well as one additional offense -- the commission of a violent crime in aid of racketeering, in violation of 18 U.S.C. 1959. Pet. App. 13a. The warrant provided specific examples of the type of information that could be seized. C.A. App. 1478-1480.

The affidavit accompanying the July 2019 warrant provided information on the mechanics of Facebook, MS-13's use of Facebook to facilitate its criminal activity, and screenshots and transcripts of conversations about Minor 2's exploitation and sex-trafficking by the gang. See, e.g., Pet. App. 13a-14a. The affidavit also detailed Moises Zelaya-Veliz's involvement in, and online discussion about, the sex-trafficking of Minor 2 and MS-

13's sexual exploitation of Minor 1 and Minor 3. Ibid.; C.A. App. 1469-1471.

c. The final warrant, issued in February 2020, authorized the search of 22 Facebook accounts, including accounts belonging to petitioners Jonathan Zelaya-Veliz, Molina-Veliz, and Morales. Pet. App. 14a-16a. That warrant required the disclosure of the same 18 categories of information from Facebook as the July 2019 warrant and limited the government's seizure to evidence, instrumentalities, and fruits of the same five offenses. Id. at 14a. It also limited Facebook's disclosure to the period between January 1, 2018, and February 20, 2020. See ibid.; C.A. App. 1481-1490.

Consistent with the prior affidavits, the affidavit accompanying the February 2020 warrant described the mechanics of Facebook, MS-13's prostitution enterprise, and the gang's use of Facebook to facilitate its criminal activities. Pet. App. 14a. Citing evidence obtained from earlier searches, the affidavit detailed MS-13's sex trafficking of Minors 1, 2, and 3; each relevant petitioner's involvement in the trafficking and sexual exploitation of children, including Minor 2; and those petitioners' facilitation and discussion of their sex-trafficking activities through Facebook. Id. at 14a-15a.

3. In August 2020, a grand jury in the Eastern District of Virginia charged each petitioner with one count of conspiring to traffic a minor under the age of 14 for sex, and one count of

trafficking of a minor under the age of 14 for sex, in violation of 18 U.S.C. 1591(a), (b)(1), and (c). Indictment 9-12 (D. Ct. Doc. 48); see C.A. App. 181, 187-190 (superseding indictment with same charges). Petitioners Moises Zelaya-Veliz, Jonathan Zelaya-Veliz, Gonzales, and Molina-Veliz were each also charged with an additional count of conspiring to transport a minor with intent to engage in criminal sexual activity, in violation of 18 U.S.C. 2423(a) and (e). Indictment 13.

Before trial, petitioners moved to suppress the evidence seized pursuant to the three warrants, asserting in pertinent part that the warrants were overbroad and not sufficiently particular. Pet. App. 17a. The district court denied petitioners' motions. Id. at 48a-58a. The court found that the affidavits "clearly establish" an "extensive ongoing interstate criminal enterprise of uncertain beginnings" that "easily encompasses criminal activity both before and beyond the time period identified by Minor Victim 2," which justified the scope of the warrants. Id. at 51a, 54a-56a. The court also found that officers' reliance on the warrants was based on "an objectively good faith belief" in their validity and "objectively reasonable." Id. at 57a; see United States v. Leon, 468 U.S. 897, 920 (1984).

The jury found petitioners guilty on all counts. Verdict 1-4, 7-8, 11-14. The district court sentenced Gonzales to 300 months of imprisonment, Morales to 192 months of imprisonment, Molina-Veliz to 180 months of imprisonment, Jonthan Zelaya-Veliz to 180

months of imprisonment, and Moises Zelaya-Veliz to 264 months of imprisonment, each to be followed by five years of supervised release. Gonzales Judgment 2-3; Morales Judgment 2-3; Molina-Veliz Judgment 2-3; Jonathan Zelaya-Veliz Judgment 2-3; Moises Zelaya-Veliz Judgment 2-3.

4. The court of appeals affirmed. Pet. App. 1a-39a.

The court of appeals first found that each warrant was sufficiently particularized. Pet. App. 26a-31a. The court observed that the warrants authorized the government to seize only "the fruits, evidence, or instrumentalities of violations of enumerated federal statutes." Id. at 28a. And the court explained that the limitation "appropriately 'confined the executing officers' discretion,' by restricting them from rummaging through [petitioners]' social media data in search of unrelated criminal activities." Ibid. (quoting United States v. Cobb, 970 F.3d 319, 328 (4th Cir. 2020), cert. denied, 141 S. Ct. 1750 (2021)).

The court of appeals observed that petitioners' arguments had overlooked the "distinction between what may be searched and what can be seized." Pet. App. 28a. Citing the "two-step process * * * acknowledged by Federal Rule of Criminal Procedure 41(e)(2)(B) and its commentary," the court explained that "officers, in searching electronically stored information pursuant to a warrant," may first "'seize or copy the entire storage medium'" and, second, "review it later to determine what electronically stored information falls within the scope of the

warrant." Id. at 29a (citation omitted). The court made clear that law enforcement in this case "help[ed] to mitigate particularity concerns in the social media warrant context" by following that established process. Ibid.

The court of appeals next found that the scope of each warrant was justified by the breadth of petitioners' sex-trafficking enterprise. Pet. App. 30a-31a. The court explained that the affidavits reasonably established the existence of a wide-ranging conspiracy involving the sex-trafficking and exploitation of at least three underage girls by a transnational criminal organization that committed such offenses to fund its operations, and that the conspirators frequently used Facebook "to communicate with co-conspirators, victims, and customers in furtherance of the conspiracy" under investigation. Ibid.

The court of appeals rejected petitioners' assertion that the timeframes of the second (July 2019) and third (February 2020) warrants were overbroad. Pet. App. 31a-35a; see C.A. App. 1428, 1490. The court found that the timeframes outlined in the second and third warrants -- from January 2018 until July 12, 2019 and February 20, 2020, respectively -- were "appropriately particularized" because: the evidence in the affidavits "suggested that Minor-2 had been sexually abused by affiliates of MS-13 starting during or before June 2018"; the "MS-13 members and affiliates" identified in the warrants "were engaged in * * * an extensive ongoing interstate criminal enterprise of uncertain

beginnings" with multiple victims; "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"; and "multiple [petitioners] continued to use Facebook to message [Minor 2] after she was recovered by law enforcement in October 2018." Pet. App. 32a (citation and internal quotation marks omitted).

As to the first (June 2019) warrant, which did not contain an express temporal limitation and did not apply to any petitioner except Gonzales, the court of appeals determined that Gonzales's motion to suppress was "properly denied" under "the good faith exception to the exclusionary rule." Pet. App. 34a; see id. at 34a-35a. The court stated that a "total lack of a time period in a social media warrant raises a problem," id. at 33a, but observed that it need not address that issue, because the investigators had acted in objectively reasonable and good-faith reliance on the warrant, id. at 34a.

The court of appeals explained that it "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 [the court] cannot anticipate all future circumstances." Pet. App. 34a. The court found it "advisable to proceed with caution" due to novel questions posed by digital technology, and emphasized that its ruling was "narrow" and was "not greenlight[ing] all warrants for and searches of social media data" without temporal limits. Id.

at 34a-35a. The court made clear that its decision instead turned on "the circumstances at issue" in this case. Ibid.

ARGUMENT

Petitioners renew their contention (Pet. 15-20, 34-36) that they were entitled to suppression of evidence from the warrant-based searches of their Facebook accounts. The court of appeals correctly rejected that contention, and its fact-bound and context-specific decision does not conflict with any decision of this Court, another court of appeals, or a state court of last resort. In addition, this case would be a poor vehicle for considering petitioners' arguments because they would not be entitled to relief even if this Court agreed with them.

This Court has repeatedly and recently denied review of petitions raising similar questions. See, e.g., McCall v. United States, 144 S. Ct. 1042 (2024) (No. 23-6609); Purcell v. United States, 142 S. Ct. 121 (2021) (No. 20-7482); Moore v. United States, 583 U.S. 1097 (2018) (No. 17-7118); Flores v. United States, 580 U.S. 827 (2016) (No. 15-8510). It should follow the same course here.

1. The court of appeals correctly determined that the warrants here did not justify application of the exclusionary rule.

a. The Fourth Amendment provides that "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. The

probable cause requirement ensures "a careful prior determination of necessity" for a search or seizure. Coolidge v. New Hampshire, 403 U.S. 443, 467 (1971). The principal purpose of the particularity requirement, in turn, is to prevent general searches. Maryland v. Garrison, 480 U.S. 79, 84 (1987). By "limiting the authorization to search to the specific areas and things for which there is probable cause to search, the requirement ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit." Ibid.

Suppression of evidence under the "'judicially created remedy'" of the exclusionary rule is "designed to deter police misconduct rather than to punish the errors of judges and magistrates." United States v. Leon, 468 U.S. 897, 906, 916 (1984) (citation omitted). To justify suppression, a case must involve police conduct that is "sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system" in suppressing probative evidence of criminal activity. Herring v. United States, 555 U.S. 135, 144 (2009). Suppression is justified "only if it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment." Leon, 468 U.S. at 919 (citation omitted).

The court of appeals correctly applied those principles in determining that suppression was unjustified here. The court recognized that the warrants authorized the government to seize only "the fruits, evidence, or instrumentalities of violations" of "enumerated federal statutes" described in the warrants and accompanying affidavits. Pet. App. 28a. As the court explained, the warrants' implementation of the "two-step process" for seizing and searching electronically stored information, as set out in "Federal Rule of Criminal Procedure 41(e)(2)(B) and its commentary," "help[ed] to mitigate" any particularity concerns. Id. at 29a. And the court correctly recognized that the scope of the warrants was supported by the expansive nature of petitioners' sex-trafficking conspiracy, which involved extensive use of Facebook "to communicate with co-conspirators, victims, and customers in furtherance of the conspiracy." Id. at 30a-31a. Petitioners do not meaningfully dispute those points in this Court.

b. Petitioners instead assert (Pet. 16-17, 20, 34-36) that the warrants' breadth made the warrants the equivalent of unconstitutional "general warrants." That assertion lacks merit. A warrant is not impermissibly general, and does not violate the particularity requirement, unless it lists "vague categories of items," and thereby "'vest[s] the executing officers with unbridled discretion to conduct an exploratory rummaging through [a defendant's] papers.'" United States v. $92,422.57, 307 F.3d 137, 149 (3d Cir. 2020) (Alito, J.) (citation omitted); see

Coolidge, 403 U.S. at 467 ("[T]he problem is not that of intrusion per se, but of a general, exploratory rummaging in a person's belongings") (emphasis omitted); see also, e.g., Stanford v. Texas, 379 U.S. 476, 481 (1965) (describing "general warrants" that gave "customs officials blanket authority to search where they pleased for goods imported in violation of the British tax laws"); Marcus v. Search Warrant of Prop. at 104 E. Tenth St., 367 U.S. 717, 727 (1961) (describing "general warrants" that authorized "the seizure of all the papers of a named person alleged to be connected with the publication of a libel"). And a warrant is not "overly broad" unless it "authorizes the seizure of items as to which there is no probable cause," $92,422.57, 307 F.3d at 149 -- which petitioners do not argue was the case here.

Courts have thus consistently recognized that a warrant satisfies the Fourth Amendment's particularity requirement when the warrant -- like the ones here -- seeks evidence or information related to the commission of specifically identified crimes. For example, in United States v. Purcell, 967 F.3d 159 (2020), cert. denied, 142 S. Ct. 121 (2021), the Second Circuit rejected the argument (repeated by petitioners) that a warrant targeting "virtually all data associated with a Facebook account" was "insufficiently particularized" or "overbroad" where the warrant "identified the target Facebook account to be searched and the specific kinds of data from that account to be seized" and "the application materials" provided "reason to believe that the

suspected criminal activity pervaded that entire account." Id. at 180-181 (brackets, citation, and internal quotation marks omitted); see, e.g., United States v. Christie, 717 F.3d 1156, 1165 (10th Cir. 2013) (Gorsuch, J.) ("[W]arrants may pass the particularity test if they limit their scope either 'to evidence of specific federal crimes or to specific types of material'") (brackets and citation omitted); United States v. Meek, 366 F.3d 705, 715-716 (9th Cir. 2004) (warrant authorizing search of electronic devices was sufficiently particular where scope was limited to evidence of a specific crime "explicitly described in the supporting affidavit").

As the court of appeals observed, the warrants challenged in this case listed specific categories of information and limited the items to be seized to "evidence of enumerated offenses," which "appropriately 'confined the executing officers' discretion' by restricting them from rummaging through [petitioners]' social media data in search of unrelated criminal activities." Pet. App. 28a (citation omitted). Although the categories of Facebook data may have included "a wide swath" of information, id. at 27a, the warrants' scope was proper because petitioners' widespread sex-trafficking activity pervaded their Facebook accounts, id. at 30a-31a.

The warrant-application materials detailed petitioners' use of Facebook to "engage[] in sexually explicit communications * * * with Minor-2 and Minor-3 during the period that the two girls were

being exploited"; to "coordinate Minor-2's transportation for sex"; and to "communicate * * * about having sex with Minor-2." Pet. App. 13a-16a; see also pp. 3-9, supra. And the court of appeals correctly recognized that, because probable cause supported the belief that the types of information to be searched contained evidence of crimes involving far-reaching schemes, a broad search and the seizure of substantial data would be permissible. Pet. App. 31a; see, e.g., Purcell, 967 F.3d at 181 ("Because there was reason to believe that the suspected criminal activity 'pervaded that entire' [Facebook] account, 'seizure of all records of the account was appropriate.'") (brackets omitted) (quoting USPS v. C.E.C. Servs., 869 F.2d 184, 187 (2d Cir. 1989)).

c. Petitioners' assertion (Pet. 16-17, 33-36) that the timeframes covered by the warrants were fatally overbroad is likewise mistaken. Petitioners insist (Pet. 33) that each warrant should have been limited to a period beginning no earlier than August 27, 2018, the date on which MS-13 began abusing Minor 2. But that argument ignores the duration and complexity of the conspiracy under investigation. See Pet. App. 32a. As the court of appeals recognized, the warrant materials established that petitioners "were engaged in * * * an extensive ongoing interstate criminal enterprise of uncertain beginnings." Ibid. The affidavits recounted evidence that Minor 2 may have been sexually abused by MS-13 before August 2018, and that Minor 2 was a victim of a broader sex-trafficking conspiracy involving other

victims, some of whom had already been in close contact with, and may have been trafficked by, the gang before they began their abuse of Minor-2. Ibid.

Petitioners' suggestion (Pet. 33) that the warrants violated the Fourth Amendment by seeking data after October 11, 2018, the date on which Minor 2 escaped the gang, is similarly misplaced. Police officers identified or recovered additional underage victims of petitioners' sex-trafficking ring after that date, Pet. App. 9a-10a, and several petitioners continued to communicate with Minor 2 through Facebook even after she had escaped, id. at 7a, 32a; see, e.g., United States v. Fallon, 61 F.4th 95, 107-108 (3d Cir. 2023) ("Where a warrant affidavit provides probable cause to believe that it will uncover evidence of a wide-ranging and long-lasting scheme with multiple participants, an equally broad search for such evidence is permissible.").

d. Gonzales errs in asserting (Pet. 33-35) that officers could not have relied on the first (June 2019) warrant, concerning his accounts, in good faith. This Court has emphasized that the good-faith exception to the exclusionary rule is "particularly" apt "when an officer acting with objective good faith has obtained a search warrant from a judge or magistrate and acted within its scope." Leon, 468 U.S. at 920. Here, reliance on the June 2019 warrant and attached affidavit falls within the good-faith exception because it was "objectively reasonable," id. at 922, given the warrant's express inclusion of a list of examples of

particular data types to be searched and the specific offenses being investigated.

In addition, courts have generally recognized that a warrant need not be limited by "specific time periods" when "[t]he dates of specific documents could not have been known to the Government." United States v. Schilling, 826 F.2d 1365, 1369 (4th Cir. 1987) (per curiam), cert. denied, 484 U.S. 1043 (1988), abrogated on other grounds by Staples v. United States, 511 U.S. 600 (1994); accord United States v. Banks, 556 F.3d 967, 972-973 (9th Cir. 2009) ("[Defendant's] contention that the warrant's lack of a time frame rendered it insufficiently particular is unpersuasive because the record and affidavit do not demonstrate knowledge on the part of the government that the illegal conduct was limited to any particular time frame."). Such uncertainty is particularly likely earlier in an investigation, as when the June 2019 warrant was issued; later in the investigation, officers may have a better sense of the time period at issue, enabling more specificity of the sort that the latter two warrants here exhibited.

The evidence recounted in the affidavit accompanying the June 2019 warrant established an extensive conspiracy of "uncertain beginnings," Pet. App. 32a, that "easily encompasse[d] criminal activity both before and beyond the time period identified by Minor Victim 2," id. at 55a; see pp. 6-7, supra. Given the uncertainty surrounding the initial stages of the investigation, Gonzales's longstanding affiliation with a transnational gang engaged in an

ongoing sex-trafficking scheme -- as well as "the unsettled nature" of temporal-limitation requirements for social media warrants -- a reasonable officer could have believed that the affidavit provided probable cause to search Gonzales's Facebook accounts for the entirety of their existence. Pet. App. 34a-35a; see Leon, 468 U.S. at 922-923; see also Gov't C.A. Br. 45-48 (explaining that the warrant was not overbroad).

Gonzales's reliance (Pet. 15-16, 35-36) on Riley v. California, 573 U.S. 373 (2014), is misplaced. Riley involved a search of a cellphone "without a warrant." Id. at 378 (emphasis added); see id. at 401 ("Our holding, of course, is not that the information on a cell phone is immune from search; it is instead that a warrant is generally required before such a search."). It in no way undermines the objective reasonableness of investigators' reliance on a duly issued warrant that listed specific offenses and identified particular categories of data during an investigation into an expansive sex-trafficking conspiracy that petitioners discussed, planned, and advanced on Facebook.

2. The court of appeals' fact-bound disposition does not implicate any conflict with the decisions of other court of appeals or state courts of last resort that warrants this Court's review.

a. Contrary to petitioners' contention (Pet. 21-22), the decision below does not conflict with the Eleventh Circuit's decision in United States v. Blake, 868 F.3d 960 (2017), cert.

denied, 583 U.S. 1097, and 584 U.S. 944 (2018). While the Eleventh Circuit in Blake did suggest that the government could have obtained more targeted warrants for specific evidence within the defendant's Facebook account, the court did "not decide whether the Facebook warrants violated the Fourth Amendment because, even if they did," the "'good-faith exception' to the exclusionary rule" applied. Id. at 974; see id. at 975 ("[W]hile the warrants may have violated the particularity requirement, whether they did is not an open and shut matter; it is a close enough question that the warrants were not 'so facially deficient' that the FBI agents who executed them could not have reasonably believed them to be valid."). The result in Blake is fully consistent with the decision below.

Petitioners also contend (Pet. 21-28) that the decision below conflicts with decisions from the First, Second, Third, Sixth, Ninth, and Tenth Circuits, but petitioners cannot show that they would have prevailed in any of those circuits. None of the cases petitioners cite involved social-media warrants, and in each instance the court of appeals either declined to apply the exclusionary rule or identified constitutional defects that are absent from the warrants at issue here.

In United States v. Abrams, 615 F.2d 541 (1980), the First Circuit took the view that a warrant issued during an investigation into healthcare fraud was insufficiently particular because it permitted seizure of all records in a doctor's office, provided no

description of the records to be seized, contained no temporal limitation, and was supported by an affidavit that did not establish that the business was pervaded with fraud or that the fraud spanned a significant period. Id. at 543-546. Those case-specific circumstances bear no resemblance to the warrants and affidavits here, which targeted an extensive conspiracy, detailed how petitioners used Facebook in violating particular statutes, identified individual underage victims of those crimes, and specified the areas to be searched and the information to be seized. See pp. 6-9, supra.

Nor does the decision below conflict with United States v. Rosa, 626 F.3d 56 (2d Cir. 2010). In Rosa, the Second Circuit concluded that a warrant in a child-pornography investigation was "defective in failing to link the items to be searched and seized to the suspected criminal activity" and thus "provided [officers] no guidance as to the type of evidence sought." Id. at 62. But as noted above, those facts differ sharply from the warrants and affidavits at issue in this case. And consistent with the decision below, Rosa declined to suppress the evidence at issue, based on the good-faith exception to the exclusionary rule. Id. at 64-66. The Second Circuit, moreover, recently rejected petitioners' view that a warrant seeking "virtually all data associated with a Facebook account" is "the digital equivalent of a prohibited general warrant." Purcell, 967 F.3d at 180. The court instead recognized that an "unquestionably broad" warrant for Facebook

data may be "adequately particularized" if it "identifie[s] the kinds of data subject to seizure with specificity," ibid., and that such a warrant is "not overbroad" when "there [i]s reason to believe that the suspected criminal activity "'pervade[d] that entire' [Facebook] account." Id. at 181 (citation omitted).

Petitioners also invoke (Pet. 24-25) the Third Circuit's decisions in United States v. Stabile, 633 F.3d 219, cert. denied, 565 U.S. 942 (2011), and United States v. Yusuf, 461 F.3d 374 (2006), cert. denied, 549 U.S. 1338 (2007), but those decisions -- if anything -- suggest circuit accord. Stabile affirmed the denial of a suppression motion, explaining that the seizure of "six entire hard drives" in a bank-fraud investigation was not "unconstitutionally overbroad" 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." 633 F.3d at 233-234. Similarly, Yusuf rejected the defendants' particularity and overbreadth challenges because the warrants at issue had "explicitly incorporated an affidavit detailing the items that the government intended to search and seize." 461 F.3d at 397. The court also emphasized that "the breadth of items to be searched depends upon the particular factual context of each case and also the information available to the investigating agent that could limit the search at the time the warrant application is given to the magistrate." Id. at 395.

The Sixth Circuit's case-specific application of the exclusionary rule in United States v. Lazar, 604 F.3d 230 (2010), cert. denied, 562 U.S. 1140 (2011), United States v. Abboud, 438 F.3d 554 (2006), and United States v. Ford, 184 F.3d 566 (1999), does not indicate the existence of circuit division either. In Lazar, a healthcare-fraud case, the Sixth Circuit affirmed the suppression of non-patient files seized under a warrant that sought, inter alia, "'[a]ny and all information and data[] pertaining to the billing of services,'" 604 F.3d at 233, and "referenced no specific patients," "no specific transactions, and most importantly, no time frame," id. at 238 (citation omitted). But the court found that "the warrant was particularized insofar as it described -- and thus allowed seizure of -- patient records based on any patient" identified on a "list that came before the issuing Magistrate Judge." Ibid. (emphasis added). Similarly, in Abboud, the court of appeals concluded that a warrant was overbroad to the extent "law enforcement knew that the evidence in support of probable cause in the affidavit revolved only around a three-month period," yet the warrant allowed the search and seizure of materials that predated that period by three years. 438 F.3d at 576 (emphasis added). But the court emphasized that any "evidence relevant to [the three-month] period" should not be suppressed. Ibid.

Ford, in turn, found that a warrant targeting an illegal bingo business was overbroad because it had permitted the search and

seizure of documents predating the gambling business's "incorporat[ion]" without any "indication in the affidavit of criminal activity before that date." 184 F.3d at 576. The court observed, however, that "[t]he degree of specificity required in a warrant depends on what information is reasonably available to the police in the case," id. at 575, and had no occasion to apply the good-faith exception because that issue had not been briefed, id. at 578 n.3. The decision below thus does not conflict with Ford, or with Lazar or Abboud: As discussed, the warrants and affidavits here identified specific categories of information pertaining to listed offenses, specific victims, and petitioners' own conduct. They also provided ample grounds to believe, based on the evidence available at the time, that petitioners' sex-trafficking conspiracy had begun before, and continued after, MS-13's exploitation of Minor 2. See pp. 6-9, supra.*

Petitioners are also mistaken in claiming (Pet. 22) that the decision below conflicts with the fact-bound disposition in United States v. Kow, 58 F.3d 423 (9th Cir. 1995). Kow affirmed the suppression of evidence recovered under a warrant that had authorized the seizure of "virtually every document and computer

* Petitioners suggest (Pet. 24) that United States v. Bass, 785 F.3d 1043 (6th Cir. 2015), shows the existence of an intracircuit conflict. That is incorrect: the court in Bass rejected an overbreadth challenge on plain-error review and "under the circumstances" presented in that particular case. Id. at 1050. And even if intracircuit disagreement existed, it would not warrant this Court's review. See Wisniewski v. United States, 353 U.S. 901, 902 (1957) (per curiam).

file" at a business without "specif[ying] the suspected criminal conduct" or identifying a timeframe, despite statements in the affidavit "indicat[ing]" the government's knowledge of when the "alleged criminal activity began." Id. at 427-428. The court also found that the affidavit did not establish that the business was "'permeated with fraud,'" as would have been necessary "to justify the wholesale seizure" that occurred. Id. at 430.

Here, in contrast, the warrant materials established that petitioners used Facebook extensively to further a complex conspiracy with unknown beginnings. See pp. 6-9, supra. Regardless, Kow did not purport to adopt a categorical rule, and the Ninth Circuit has rejected arguments of the sort that petitioners reprise here. See United States v. Flores, 802 F.3d 1028, 1044-1046 (2015) (explaining that a comprehensive Facebook warrant was not overbroad insofar as it "allowed the government to search only the Facebook account associated with [defendant]'s name and email address, and authorized the government to seize only evidence of violations of [enumerated statutes]" and finding that any "lack of a temporal limit" did not support reversal), cert. denied, 580 U.S. 827 (2016).

Finally, petitioners err in asserting (Pet. 26) that the judgment below conflicts with the Tenth Circuit's decision in United States v. Russian, 848 F.3d 1239 (2017). Russian reasoned that a warrant authorizing a search of the defendant's apartment did not permit police officers to search and seize data from the

defendant's cell phones, which were already in the officers' possession and not described in any warrant materials. Id. at 1243-1245. And in any event, the court declined to suppress the contested evidence, based on the good-faith exception to the exclusionary rule. Id. at 1246-1248. Those facts and disposition provide no sound basis to conclude that the Tenth Circuit would have granted petitioners relief.

b. Petitioners also cite (Pet. 30-32) decisions of state courts, some of which are state courts of last resort, but petitioners provide no meaningful explanation of how those decisions conflict with the decision below. The cited decisions either affirmed the denial of a motion to suppress or involved warrants with defects that are not present here.

The courts in State v. Henderson, 854 N.W.2d 616 (Neb. 2014), cert. denied, 576 U.S. 1025 (2015), and Richardson v. State, 282 A.3d 98 (Md. 2022), applied the good-faith exception to "all data" warrants. See Henderson, 854 N.W.2d at 632-635; Richardson, 282 A.3d at 124-126. In Commonwealth v. Holley, 87 N.E.3d 77 (Mass. 2017), the court affirmed the denial of a motion to suppress evidence seized pursuant to a warrant for "all stored contents of electronic or wire communications" and "stored files" in the defendant's cellphone records because any lack of particularity was harmless. Id. at 92-93. Those dispositions accord with the disposition below in this case.

In State v. Smith, 278 A.3d 481 (Conn. 2022), the court found that a warrant to search a cell phone was insufficiently particular where, unlike the warrants here, it had failed to identify "the types of data" that the State was seeking and "included no time parameters" that otherwise might have "cabin[ed] the scope of the search." Id. at 497; see id. at 500 (declining to reach particularity question regarding a second warrant). And the courts in Burns v. United States, 235 A.3d 758 (D.C. 2020), and State v. Castagnola, 46 N.E.3d 638 (Ohio 2015), declined to uphold warrants authorizing officers to seize any data on the defendants' computers or phones without any limitations whatsoever. Burns, 235 A.3d at 774-780; Castagnola, 46 N.E.3d at 655-661. Here, in contrast, the warrant materials did list particular types of data that were sought, and two of them had a specific date range. Pet. App. 26a-32a.

Finally, petitioners cite (Pet. 31) a pair of Delaware high-court opinions, see Wheeler v. State, 135 A.3d 282 (2016); Taylor v. State, 260 A.3d 602 (2021), but those decisions are not instructive because they involved claims arising under the Delaware Constitution. And Delaware's version of the Fourth Amendment "provides a greater protection * * * than the United States Constitution" does, and "the 'good faith' exception to the exclusionary rule d[oes] not apply in Delaware." Wheeler, 135 A.3d at 298 n.71; see Taylor, 260 A.3d 602 at 614-615 (relying in part on Wheeler).

c. Petitioners also cite (Pet. 28-30) various nonprecedential district court decisions. But even if they were inconsistent with the decision below, they would provide no basis for this Court's review. Sup. Ct. R. 10(a); cf. Camreta v. Greene, 563 U.S. 692, 709 n.7 (2011) ("A decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case.") (citation omitted).

3. At all events, this case would be a poor vehicle in which to address the question presented because petitioners would not be entitled to relief even if it were resolved in their favor.

Under the "severance doctrine," the "constitutionally infirm portion of a warrant -- usually for lack of particularity or probable cause -- is separated from the remainder and evidence seized pursuant to that portion is suppressed; evidence seized under the valid portion may be admitted." United States v. Cobb, 970 F.3d 319, 330 (4th Cir. 2020) (citation and internal quotation marks omitted), cert. denied, 141 S. Ct. 1750 (2021). Courts have applied the severance doctrine where, for example, a warrant is allegedly overbroad because it authorizes the seizure of items without a sufficient limitation on timeframe. See, e.g., Flores, 802 F.3d at 1045-1046; Abboud, 438 F.3d at 576; $92,422.57, 307 F.3d at 151.

The severance doctrine makes clear that, even if the warrants at issue here lacked particularity or were overbroad, petitioners'

convictions would be unaffected. The Facebook evidence introduced at trial was almost exclusively date-stamped from August 27 through October 11, 2018, a timeframe that petitioners appear to acknowledge was appropriate. See C.A. App. 1245-1257; Pet. 2-5, 8, 33-34, 36. Because that evidence would not be suppressed in any event, petitioners' convictions should still be affirmed. See Cobb, 970 F.3d at 330; Flores, 802 F.3d at 1045–1046; Abboud, 438 F.3d at 576; $92,422.57, 307 F.3d at 151; see also, e.g., Chambers v. Maroney, 399 U.S. 42, 52-53 (1970) (applying harmless-error analysis to the admission of evidence obtained in violation of the Fourth Amendment).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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