No. _____

In The

Supreme Court of the United States

VALENTINO CABRAL DAROSA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

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PETITION FOR WRIT OF CERTIORARI

Samuel B. Winthrop
Counsel of Record
WINTHROP AND GAINES MESSICK, PLLC
706 Hartness Road (Zip 28677)
P.O. Box 964 (Zip - 28687)
Statesville, North Carolina
(704) 872-9544 – Telephone
(704) 872-7712 – Facsimile
swinthroplaw@gmail.com

Counsel for Petitioner

*Gibson*Moore Appellate Services, LLC
206 East Cary Street ♦ P.O. Box 1460 (23218) ♦ Richmond, VA 23219
804-249-7770 ♦ www.gibsonmoore.net

QUESTIONS PRESENTED FOR REVIEW

A WHETHER THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT'S DECISION IN *UNITED STATES V. DAROSA* IS IN CONFLICT WITH THE DECISIONS OF OTHER UNITED STATES COURT OF APPEALS.

LIST OF THE PARTIES

VALENTINO CABRAL DAROSA., *Petitioner*

UNITED STATES OF AMERICA, *Respondent*

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Valentino Cabral Darosa (hereinafter "Petitioner") respectfully prays for a Writ of Certiorari to review the decision and judgment of the United States Court of Appeals for the Fourth Circuit.

OPINION BELOW

The opinion of the Fourth Circuit is reported at *United States of America v. Valentino Cabral Darosa*, (4th Cir. 22-4726). The decision has been published, and is recorded in *United States v. Darosa,* 102 F.4th 228 (4th Cir. 2024).

JURISDICTION

The United States Court of Appeals for the Fourth Circuit decided this case on 16 May 2024. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1), and this Petition is timely filed within ninety days of the underlying Judgment of the Fourth Circuit pursuant to United States Supreme Court Rule 13(1) and 28 U.S.C. § 2101.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A. 28 U.S.C. § 2101
B. 28 U.S.C. § 1254(1)
C. 18 U.S.C. § 2
D. 28 U.S.C. § 1291
E. 18 U.S.C. § 3742(a)

STATEMENT OF THE CASE

On January 20, 2021, the Grand Jury for the Western District of North Carolina indicted Valentino Cabral Darosa (hereinafter the "Appellant") for: (1) one count of knowingly and intentionally obstructing, delaying, and affecting commerce

as that term is defined in Title 18, United States Code, Section 1951(b)(3), and the movement of articles and commodities in such commerce, by robbery, as that term is defined in Title 18, United States Code, Section 1951, in that defendant did unlawfully take and obtain property belonging to Atlantic Metal Exchange, from the person and in the presence of one or more persons, against their will, and by means of actual and threatened force, violence, and fear of immediate and future injury to said persons, all in violation of Title 18, United States Code, Section 1951 (hereinafter "Count One"); and (2) one count of knowingly and unlawfully using and carrying one or more firearms, and in the furtherance of such crime of violence, did knowingly possess one or more of said firearms. It is further alleged that one or more of said firearms was brandished in violation of Title 18, United States Code, Section 924(c)(1)(a)(ii)) (hereinafter "Count Two"); and (3) one count of knowingly possessing one or more firearms, in and affecting commerce, while knowing he had previously been convicted of at least one crime punishable by imprisonment for a term exceeding one year, in violation of Title 18, United States Code, Section 922(g)(1) (hereinafter "Count Three"). (JA13-14).

Darosa pleaded not guilty to all counts, and a trial commenced on December 14, 2021. (JA55). The jury found Darosa guilty of all counts. (JA924-925). Darosa was sentenced on December 20, 2022 to a term of imprisonment of 204 months. (JA973). The judgment was filed on December 21, 2022. (JA980).

On December 20, 2022, Darosa filed a direct appeal of his conviction to this Court (JA979). Jurisdiction of the Court of Appeals is founded upon 28 U.S.C. § 1291

and 18 U.S.C. § 3742(a), as the appeal was timely filed within fourteen (14) days from which the judgment was entered.

On 16 May 2024, the Fourth Circuit Court of Appeals entered an Order finding no error of the District Court. (Doc. 55-2). Petitioner timely files this Writ of Certiorari before the United States Supreme Court.

STATEMENT OF THE FACTS

(A) Darosa's Motion to Suppress the Search Warrant

Darosa filed a Motion to Suppress the search warrant issued 7 May 2021, for failure to establish probable cause. (JA17). The affidavit states:

> Detective J Anderson #4858 has been a police Officer with the Charlotte Mecklenburg Police Department for over eight years. Detective Anderson is currently assigned to the Charlotte Mecklenburg Police Department's Armed Robbery Unit. Detective Anderson investigates various armed robberies and common law robberies throughout Charlotte, North Carolina. Prior to becoming a Detective, Detective Anderson worked as a patrol officer in the Charlotte Mecklenburg Police Department. During this time, Detective Anderson was responsible for answering 911 calls for service, conducting initial investigations of crimes reported by citizens, and taking detailed reports for citizens that were victims and witnesses of crime. Detective Anderson has attended training at the Charlotte Mecklenburg Police Department's academy for basic law enforcement. Detective Anderson has been trained in the identification of narcotics through the Charlotte Mecklenburg Police Department. Detective Anderson has been trained in the identification of narcotics through the Charlotte Mecklenburg Police Department. Detective Anderson has made multiple robbery with dangerous weapon, common law robbery, attempted first degree murder, assault with deadly weapon, and narcotic related arrests. Detective Anderson has interviewed numerous victims, witnesses, and suspects of various crimes. Detective Anderson has investigated hundreds of robbery with a dangerous weapon, common law robbery, and violent assault investigations throughout Charlotte, North Carolina. Detective Anderson has attained a certificate in Advanced Investigations through the Charlotte Mecklenburg Police Department. Detective Anderson has trained in the execution of high-risk search warrants through the

Charlotte Mecklenburg Police Department. Detective Anderson has written numerous search warrants and has successfully completed a search warrant class with the Charlotte Mecklenburg Police Department. Detective Anderson, having knowledge of this incident, swears to the following:

October 23, 2020, at 10:09 AM, Officers with the Charlotte Mecklenburg Police Department were dispatched to 11318 N Community House Rd, Suite 301, Charlotte, NC 28277 (Atlantic Metals Xchange) in response to an armed robbery call for service.

Upon arrival, Officers met with the victim who stated that a black male, who was tall, medium build, short black hair, wearing all black clothes, black gloves, and a black mask robbed him at gunpoint.

The victim stated that the defendant made him unplug the video surveillance's digital video recorder and open the safes. The defendant then handed the victim handcuffs and forced him to handcuff himself. The defendant then duct taped the victim's hands together. The defendant took $133,980 in property, consisting of platinum, gold, silver, diamonds, jewelry, US currency, a Smith and Wesson 9 mm handgun, the digital video recorder for the surveillance system, black backpack, white Apple iPhone X, vintage collectible currency, and the victim's wallet. These items were carried away, by the defendant, in the victim's black backpack and an empty cardboard box taken from the incident location.

The defendant left a notebook at the incident scene and it was seized as evidence. Fingerprints were lifted from the notebook and the defendant was identified as Valentino Darosa. Multiple warrants were issued for Darosa relating to this robbery incident.

On November 5, 2020 around 1:21 PM, CMPD Officers located and stopped Darosa in a black Infiniti M35 sedan displaying NC tag TCV-8809. The vehicle was stopped in a gated parking area near 4845 Ashley Park Ln for the warrants. It is probable to believe that evidence related to the crime of robbery with a dangerous weapon could be found inside the defendant's vehicle.

Darosa lives at 4845 Ashley Park Ln. Apartment 244 with his girlfriend. Darosa is on probation and that address is listed on his probation documentation.

> Through Detective Anderson's training and experience, he knows that the items taken during the robbery with a dangerous weapon incident could be difficult to sell or trade for the average person, making it probable that the defendant will still have these items. Detective Anderson also knows that persons involved in criminal activity often store and keep stolen items at their place of residence and/or inside of his or her vehicle.
>
> Based on the above information Detective Anderson believes there is probable cause to search the Infiniti sedan with NC tag TCV-8809 and Darosa's residence at 4845 Ashley Park Ln. Apartment 244 for the items stolen during this robbery incident and the items used to commit the robbery.

(JA45-47).

The District Court denied Darosa's Motion to Suppress on the briefs of the parties without oral argument. (JA44). This court stated that it analyzed "whether the facts conveyed to the magistrate provided a substantial basis for concluding there was a 'fair probability' evidence of the robbery would be found in the defendant's apartment and car." (JA48). The District Court found that the fingerprint on the notebook was sufficient to suspect him as the robber, which provided the Magistrate with a substantial basis to conclude that there was a fair probability that evidence of the crime would be found in his home. (JA48-49).

The District Court issued an Order and found Darosa's reliance on *United States v. Blakeney* to be misplaced, stating that the issue in *Blakeney* was whether the verdict was supported by competent evidence in the record and the issue before the court here is whether there is a fair probability evidence of the robbery could be found. *United States v. Darosa*, 2021 US Dist. LEXIS 166553, 7 (4th Cir. 2021). The District Court here noted that the standard in *Blakeney* "is much higher than

probable cause, which the Supreme Court describes as 'not a high bar.'" (JA48) Citing *Kaley v. United States*, 571 U.S. 320, 339, 134 S. Ct. 1090, 188 L. Ed. 2d 46 (2014).

The Fourth Circuit Court of Appeals agreed with the District Court that the motion to suppress was properly denied. *United States v. Darosa*, 102 F.4th 228, 233-34 (4th Cir. 2024). The *Darosa* opinion ultimately found that a fingerprint alone is sufficient to establish probable cause, with *Blakeney* being inapplicable to a probable cause determination. *Id.*

(B) Darosa's Motion to Exclude the Jail Calls

In Darosa's trial brief, he made a motion to exclude the jail calls and transcripts of those calls that the Government proposed to introduce between Darosa and others. (JA50-52). Darosa requested a hearing under Federal Rules of Evidence Rules 401 and 403, to verify the authenticity and quality of the calls. (JA51).

Darosa further objected to the introduction of the calls as irrelevant and objected to the hearsay statements of the female voice in the audios. *Id.*

(C) Trial

In the District Court trial, the Government produced eighteen (18) witnesses over four (4) days. In relevant part to this appeal, the Government heard from Matthew Schipani (hereinafter "Schipani"), the owner of Atlantic Metals Xchange (hereinafter "AMX") and the alleged victim in this case. (JA122). Schipani testified that he solely owned and operated AMX as a business that purchases gold, silver, platinum, and palladium from the public, as well as purchasing and selling investment gold and silver bars and coins. (JA123-124).

Schipani testified that on 23 October 2020, while at AMX as he was opening for the day and alone, an individual in a black suit, black gloves, and black mask knocked on the glass door. (JA154-155). Schipani testified that he opened the door and asked if he could help him, and the individual pulled out a notepad from his pocket and asked if he resided at 2200 Culp Farms Road in Rock Hill, South Carolina. (JA158-159). Schipani testified that he said no, and the individual repeated the same question before he heard him state that "it must be the other guy, the other guy who drove the grey car." *Id*.

Schipani then testified that he told the individual that no one else works for him and asked him "what the fuck he wanted." (JA160). Schipani testified that the individual responded by saying "I'll show you what the fuck is up and pulled a gun out of his waistband." *Id*. The individual then, according to Schipani's testimony, put the gun to his head and told him they were going back inside the business. *Id*.

Schipani described the gun used by the individual as a .45 having a long-barrel with a one-inch extension that was black. (JA 61 & JA263). The Government published a video to the jury of the individual on the outside of AMX, and shows Schipani open the door and appear to speak to an individual dressed in all black with a notebook at AMX. (JA162-163). The video does not show the individual pull a gun on Schipani. *Id*.

Schipani testified that after he and the individual moved inside of the building that he was taken to the back office of AMX where he was forced to give the security camera equipment to the individual before being handcuffed in stainless steel

handcuffs. (JA165-166). After he was handcuffed, he said that the individual made him answer questions about his safes and the individual took various items out of the safe's contents, including diamonds, gold, coins, bills, a firearm and cash. (JA167-187, JA263-264). He also testified that he was eventually told to lay down on the floor and was duct taped at his wrists and ankles. (JA168). Overall, he testified that $130,945 is the total value of what was taken from AMX. (JA210).

Jeremy Anderson (hereinafter "Anderson"), a Detective with the Armed Robbery Unit, responded to the crime scene and investigation of the alleged crime. (JA502-503). As he was walking through AMX, Anderson noticed a black notebook, which Schipani reported did not belong to him. (JA509-510). Anderson collected the notebook and ordered for it to be tested for latent fingerprints, and found that a fingerprint on the notebook matched Darosa's fingerprints. (JA525-527, JA533). The notebook also contained Dillulio's address. (JA511).

Law Enforcement searched Darosa's vehicle and apartment pursuant to the warrant, and introduced what was collected from the search into evidence:

(1) Two firearms; and

(2) A pair of silver handcuffs and keys; and

(3) Coins; and

(4) Bills; and

(5) A check from another gold exchange type of store.

(JA625-650). Counsel for Darosa in District Court objected to the Government's introduction of all evidence obtained from the search warrant. (JA628-657).

The Government also introduced several calls from jail that Darosa allegedly made while in custody. (JA775-776). During phone calls, Darosa said the words "lick", "hammer," and "bread". (JA791-792). Zackery Hagler (hereinafter "Hagler") testified for the Government about the definition of these words. (JA809-816) Hagler is a Detective with the Charlotte Mecklenburg Police Department in the Armed Robbery Unit. (JA798). He testified that "lick" is referred to as a robbery, "hammer" refers to a gun, and "bread" refers to money or proceeds. (JA809-816). However, Hagler was not admitted as an expert in this matter. (JA799) Counsel for Darosa in District Court objected to Hagler's testimony both before the trial in the Memorandum and during the trial since he was not admitted as an expert before offering his expert opinion on the robbery slang definitions of these words. (JA811-816).

Counsel for Darosa made a motion for judgment of acquittal, both at the close of the Government's evidence and the close of all evidence, which were denied. (JA819-820, JA855). After instructions and closing arguments, the jury deliberated and returned a verdict of guilty to all charged counts. (JA924-925). Darosa ultimately received at sentencing 204 months in federal custody. (JA973).

REASONS FOR GRANTING THE WRIT

A. WHETHER THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT'S DECISION IN *UNITED STATES V. DAROSA* IS IN CONFLICT WITH THE DECISIONS OF OTHER UNITED STATES COURT OF APPEALS RELATED TO THE PROBATIVE VALUE OF FINGERPRINT EVIDENCE ON MOVABLE OBJECTS.

1. Standard of Review

Rule 10 of the Rules of the Supreme Court of the United States provides that this court may exercise its judicial discretion to hear an appeal for compelling reasons, such as when a United States court of appeals has entered a decision in conflict with other decision of other United States court of appeals on an important matter. Rules of the Supreme Court of the United States, Rule 10. This appeal is brought forward on such a compelling basis. The Fourth Circuit Court of Appeals May 2024 opinion is inconsistent with opinions from other circuits in its conclusions regarding the trustworthiness of fingerprint evidence.

2. The Circuits have consistently held that fingerprint evidence on a movable object is unreliable

The Fourth Circuit Court of Appeals erred in finding that the District Court did not err in denying Darosa's motion to suppress the evidence seized as a result of the search warrant.

The Fourth Amendment of the United States Constitution protects against unreasonable search and seizure. Typically, the search of an individual's home requires a search warrant. *Id*., citing *Fernandez v. California*, 571 U.S. 292, 298, 134 S. Ct. 1126, 188 L. Ed. 2d 25 (2014). The Fourth Amendment states that "no warrants shall be issued, 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." *Id*., citing U.S. Const. amend. IV. A review of probable cause requires "'practical, common-sense decision,' based on sworn facts, whether '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, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983). However, "the ultimate touchstone of the Fourth Amendment is reasonableness.'" *Id*., citing *Fernandez,* 571 U.S. at 298.

The opinion here of the Fourth Circuit acknowledges that *United States v. Corso*, 439 F.2d 956 (4th Cir. 1971) and *United States v. Strayhorn*, 743 F.3d 917 (4th Cir. 2014) have established that fingerprint evidence alone found on a movable object at a crime scene is insufficient to sustain a conviction, but fails to apply the same common-sense principles from the prior opinions to the case here. Instead, the Fourth Circuit Court of Appeals opinion incorrectly found probable cause based on only a fingerprint found on a movable object at the crime scene.

In *Corso* and *Strayhorn*, the Fourth Circuit held that fingerprint evidence on a movable object that was not impressed during the commission of the crime is unreliable evidence that could not alone support a conviction beyond a reasonable doubt. *Cors*o, at 957 (4th Cir. 1971) and *Strayhorn*, 743 F.3d 917, 923 (4th Cir. 2014). Similarly, *United States v. Bryant*, 454 F.2d 248 (4th Cir. 1972) finds that "a fingerprint on a readily movable object is of highly questionable probative value." *Bryant* at 250. *United States v. VanFossen*, 460 F.2d 38 (4th Cir. 1972) also finds that

"the probative value of an accused's fingerprints upon a movable object is highly questionable." *VanFossen*, at 40.

These holdings from the Fourth Circuit are consistent with the rationale of other circuits on this issue. In *Travillion v. Superintendent Rockview SCI*, 982 F.3d 896 (3d Cir. 2020), the court of the Third Circuit found that "[e]vidence that Travallion's fingerprints were found on the easily movable Manila folder and a paper inside the folder carried into the store by the robber and a witness' description of the robber that does not match Travallion but doesn't necessarily exclude him is not sufficient evidence for a rational trier of fact to place Travallion at the scene of the crime at the time the crime was committed beyond a reasonable doubt." *Travallion*, at 903-4. The *Darosa* opinion fails to apply the analogous facts of *Travallion* to the case here, wherein a fingerprint on a movable object, in addition to a description of the perpetrator by the victim that is inconsistent with the description of the defendant, was found to not be reliable evidence.

The Sixth Circuit has said that any inference that an individual be tied to a crime based on a fingerprint on a movable object from a crime scene would be "pure speculation unsupported by any positive proof in the record." *Tucker v. Rewerts*, 2024 U.S. Dist. Lexis 136537 (6th Cir. 2024). The Sixth Circuit cited the Ninth Circuit opinion of *Schell v. Witek*, 218 F.3d 1017 (9th Cir. 2000), in holding that "[w]hen a trace is located on an easily movable object, 'particularly when there is testimony that the trace could have persisted on the object for a lengthy period; or indefinitely, then in the absence of other evidence about when the trace was deposited, proof merely

that the object was recovered at the scene does not support a reasonable inference that the trace was deposited during the commission of the crime." *Tucker,* at 11-12; citing *Schell* at 1023.

The Eighth Circuit has similarly found that when the Government links an individual to a crime based on a fingerprint that is found on a movable object, the Government must establish at trial beyond a reasonable doubt that (1) the object on which the fingerprint was found was connected to the crime; and (2) the object was inaccessible to the defendant prior to the crime, such that the fingerprint 'could only have been impressed during the commission of the crime.'" *United States v. Bratten*, 2018 U.S. Dist. LEXIS 106233 at 11 (8th Cir. 2018).

While these cases all relate to the conviction of a criminal defendant based solely on fingerprint evidence, they are applicable to the facts at hand in this case and to hold otherwise would create inconsistencies among the jurisdictions. In each of these cases, the circuits have focused in these opinions about the unreliability of this type of evidence. In *Tucker*, the Sixth Circuit said that the use of this evidence as the sole indicator of guilt of a crime is "pure speculation." *Tucker*, at 17. In *Schell*, the Ninth Circuit held this evidence "does not support a reasonable inference that the trace was deposited at the scene of the crime." *Schell*, at 1022. The Fourth Circuit has noted similar indica of unreliability in this evidence, finding that this type of evidence is "not sufficient" for a trier of fact to place a criminal defendant at the "scene of the crime." *Travallion*, at 903. The *Bryant* Court said that this evidence is "of highly questionable probative value." *Bryant*, at 250.

The circuit courts have used strong language to describe the unreliability of fingerprint evidence on a movable object found from a crime scene. The Eighth Circuit has even limited the ability of the Government to use this evidence in trial unless it is shown that this was either impressed during the commission of a crime or the object was unavailable to the defendant prior to the commission of the crime. *Bratten*, at 25. However, the holding here allows this evidence, otherwise considered broadly across this country to be purely speculative and of a highly questionable probative value, to be used to prove exactly what has already been forbidden by the Fourth Circuit – to allow a State Court Magistrate to use this evidence solely to place a criminal defendant at the scene of the crime.

Here, the Affidavit alleges (1) Detective Anderson's experience with robberies; (2) that on October 23, 2020 officers were dispatched to Atlantic Metals Xchange for a robbery; (3) that the victim described the individual as a "black male who was tall, medium build, short black hair, wearing all black clothes, black gloves, and a black mask" (JA45-77); (4) how the robbery occurred; (5) a general description of how much, and what, was taken; (6) that "[t]he defendant left a notebook at the incident scene and it was seized as evidence. Fingerprints were lifted from the notebook and the defendant was identified as Valentino Darosa." *Id*.; (7) that law enforcement officials have stopped Darosa while in his vehicle and believe they will find items related to the robbery in the vehicle; and (8) that law enforcement officials believe items related to the robbery could also be located inside Darosa's home. *Id*. Therefore, the sole

connection from the Affidavit tying Darosa to this crime is the fingerprint found on the notebook.

Surely evidence that is purely speculative or said to have a highly speculative probative value, is not reasonably a strong enough connection to a crime scene to corrode the protections afforded to the citizens of the United States through the Fourth Amendment. Even more, surely evidence that would never be sufficient to convince a trier of fact that an individual was at a crime scene, cannot then also be the same evidence that shows a "fair probability that contraband or evidence of a crime will be found in a particular place." *Gates*, at 238.

In *Darosa* the Fourth Circuit Court of Appeals incorrectly applies the logic which formed the basis of prior holdings, and instead focused on prior holdings that centered around whether fingerprint evidence alone can sustain a conviction. Even though the burden of proof is higher at conviction than it is for the issuance of probable cause, the logic which forms the basis of the holding must be applied consistently. The *Darosa* opinion fails to follow the advice of courts across the country to consider fingerprint evidence alone on a movable object to be unreliable and speculative. Pure speculation should never be a basis to eliminate the rights and safeguards of the Fourth Amendment.

While the burden of proof at trial is higher than the burden of proof required to issue a warrant, the precedent establishes a commonsense principle that should be equally and uniformly applied. This decision by the Fourth Circuit is inconsistent with prior decisions from the Fourth Circuit, and other circuits across the country. It

finds that the bar is so low for the issuance of a warrant, that it can be based on evidence that is widely considered to be purely speculative. The Petitioner here asks this Court to take up this matter to resolve this inconsistency and protect the safeguards afforded by the Fourth Amendment.

3. The Fourth Circuit opinion in *Darosa* incorrectly applies the good faith exception and contradicts the precedent of other circuits

a. The Affidavit attached to the Search Warrant is bare bones, and contradicts both Fourth Circuit and the precedent of other circuit courts

When evidence obtained without probable cause was seized in good faith reliance on a facially valid warrant issued by a magistrate, the Supreme Court found that it should not be excluded. *United States v. Leon*, 468 U.S. 897 (1984). However, this exception to the exclusion of evidence does not apply when (1) "a reasonably well-trained officer would have known that the search was illegal despite the magistrate's authorization" *United States v. Warren*, 2022 U.S. App. LEXIS 561 (4th Cir. 2022), citing *Leon*, 468 U.S. 897 (1984); (2) when "the magistrate or judge in issuing a warrant was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth." *Leon*, at 923 (1984); or (3) when a warrant is facially deficient. *Id*.

First, the Affidavit here was bare bones, facially deficient, and therefore insufficient. Pursuant to precedent of the Fourth Circuit, a bare bones affidavit "is one that contains 'wholly conclusory statements, which lack the facts and circumstances from which magistrates can independently determine probable

cause.'" *United States v. Wilhelm*, 80 F.3d 116, 121 (1996), *quoting United States v. Laury*, 985 F.2d 1293, 1311 n. 23 (5th Cir. 1993). Similarly, the Sixth Circuit has found a bare boned affidavit is "conclusory in that they assert 'only the affiant's belief that probable cause existed' or 'a mere guess that contraband or evidence of a crime would be found.'" *United States v. Burrus*, 2024 U.S. Dist. LEXIS 126938 (6th Cir. 2024), citing *United States v. White*, 874 F.3d 490, 496 (6th Cir. 2017). The Sixth Circuit applied this standard in *United States v. Sinclair*, 631 Fed. Appx. 344, 350 (6th Cir. 2015) to find the good faith exception applies "where the affidavit demonstrates a 'minimally sufficient nexus between the illegal activity and the place to be searched to support an officer's good-faith believe in the warrant's validity." *Id.*

Here, the sole connection in the Affidavit between Darosa and the perpetrator of the crime is the fingerprint on the notebook. (JA45-47). The Affidavit simply alleges his print is on the notebook, and fails to provide "any meaningful corroboration" that the fingerprint on the movable object means that Darosa committed the robbery. (JA42). For the reasons set forth above, fingerprint evidence is unreliable evidence, which alone, cannot provide corroboration between Darosa's apartment and car to the robbery. To find this evidence creates such a meaningful corroboration would run contradictory to both the Fourth Circuit and other circuit court of appeals opinions related to the reliability of fingerprint evidence on a movable object, as well as the caselaw related to applying the good faith exception to bare bones affidavits.

The Affidavit also contains a conclusory statement that Darosa "left the notebook at the crime scene." (JA45-47). Perhaps the *perpetrator* left the notepad at

the crime scene, but there was no evidence that Darosa was the perpetrator other than the fingerprint on the portable notepad. Fingerprints stay on an object for a long time, which is why this Court has found fingerprint evidence on movable objects to be "highly questionable" and "purely speculative." Small notebooks are movable objects, used by people on the "go" to jot notes, exchange phone numbers, addresses, and write grocery lists. Darosa's finger print, absent any other indica of reliability, is not enough to reasonably prove he was the perpetrator. This creates an inconsistency with prior holdings of the Fourth Circuit and other circuits, as stated above, which have found that this evidence alone is purely speculative and highly questionable.

The warrant was so bare-boned, and lacking in proof of probable cause, that the magistrate's belief and determination that probable cause existed was unreasonable. The Magistrate should be aware of Fourth Circuit opinions that explain how speculative fingerprint evidence is when it appears on movable objects not clearly impressed in the commission of the crime or without other corroborating evidence. With no other presented corroborating evidence in the Affidavit, the magistrate should know this is insufficient to establish probable cause. The failure to find this makes this ruling inconsistent with precedent of the Fourth Circuit and other circuits.

To get around this inconsistency, the Fourth Circuit Court of Appeals incorrectly cited *United States v. Thomas*, 908 F.3d 68 (4th Cir. 2018), which holds that the court "may consider facts known to the officer but omitted from the affidavit

when analyzing whether the good-faith exception applies". *Darosa*, at 235 (4th Cir. 2024), citing *Thomas* at 73 (4th Cir. 2018). This court found that

> Anderson had seen security camera footage from a neighboring store and saw the robber writing in a notebook. He knew that the robber had asked Schipani whether he lived at a certain address and that Darosa's fingerprint was found on the same page of the notepad containing this address.

Darosa, at 235. However, the court had a footnote to these facts which said

> Anderson didn't expressly testify to knowing this. But it's obvious from his testimony that he knew. He testified that he submitted the fingerprint request and 'got the response.'(JA526). He explained that the police department has a 'reporting system' which would give him a 'notification for a case,' and once he clicked on it, he could 'look at the lab requests and see what response came back.' (JA527). And he 'learned that the right thumbprint of Mr. Darosa was on the notepad.'(JA 527). And of course, the right thumbprint was found on the page with the address.
>
> (JA364); (SA003-005).

Darosa, at 238.

The court's rationale here, and reliance on the surveillance camera showing the perpetrator writing in the notebook, is faulty because it fails to recognize what was both written into the Affidavit attached to the search warrant and stated by the victim: the perpetrator was wearing black gloves. (JA528). It does not bolster the connection of the defendant to the crime in the Affidavit because the perpetrator clearly did not impress the fingerprint onto the notebook during the commission of the crime because he was wearing gloves during the crime. There is no evidence that he ever took the gloves off during the crime. There is also no evidence that he was not wearing the gloves in the surveillance video.

The Fourth Circuit opinion incorrectly relies on facts that are not in the record, and do not, in fact, add any other corroborating evidence connecting Darosa to the crime. This corroborating evidence is critical to the protection of Darosa's Fourth Amendment guarantees. The opinion here, without corroborating evidence in the record, makes the Fourth Circuit opinion in *Darosa* inconsistent with opinions from other circuits.

b. The statements in the Affidavit misled the magistrate and conflict with Fourth Circuit and Seventh Circuit precedent

The Fourth Circuit opinion ultimately holds that the Affidavit is not misleading. More specifically, the Fourth Circuit here found "[t]hat the affidavit could have been written more clearly provides no basis for reversal." *Darosa*, 102 F.4th 228, 235 (4th Cir. 2024). However, the Fourth Circuit opinion is incorrect because the Affidavit misleads the magistrate when it identifies the defendant as Valentino Darosa solely based on the fingerprint found on a movable object. (JA45-47). Solely because a fingerprint was found on the notebook, does not mean that the notebook in fact belongs to that person. This conclusion contradicts the conclusion of *Tucker* in the Sixth Circuit that found this evidence to be pure speculation, the conclusion from *Schell* in the Ninth Circuit that it "does not support a reasonable inference that the trace was deposited at the scene of the crime." *Schell*, at 1021, or the Fourth Circuit finding from *Travallion* that this type of evidence is "not sufficient evidence for a rational trier of fact to place Travallion at the scene of the crime at the time the crime

was committed beyond a reasonable doubt." *Travallion*, at 904. The conclusion that this is not misleading clashes the holdings of the Sixth, Ninth, and Fourth Circuits.

The Fourth Circuit opinion fails to consider that the Affidavit also does not contain the information that was known to law enforcement about the suspect's image, which coincidentally differed from Darosa's. (JA45-47). There was a surveillance video of the suspect that shows him as thin with mid-length braided hair. (JA39). Darosa, on the other hand, is a stout man, with a very short buzz haircut. (JA39). The Affidavit also fails to clearly state that the fingerprint left on the notebook could not have been left by the perpetrator at the scene of the crime, as the perpetrator never removed his black gloves worn during the robbery. Ultimately, these excluded facts from the Affidavit are facts that are not helpful to the conclusion that Darosa was the defendant who left the notebook at the crime scene (as the Affidavit concludes).

The misleading statements, both what was stated and omitted, harm Darosa because it is the only statement in the Affidavit that connects Darosa to the crime, and clearly would have swayed any determination made by the magistrate. The grant of this search warrant, based on this misleading statement, harmed Darosa, who was convicted based on other evidence found from the search. Giving law enforcement the power to search the car and home of *anyone* whose fingerprints are found on a notepad at a crime scene, with no additional or corroborating evidence that the person was the robber "implicates the central concern underlying the Fourth Amendment

– the concern about giving police officers unbridled discretion to rummage at will among a person's private effects." *Arizona v. Gant*, 556 U.S. 332, 345 (2009).

The Fourth Circuit incorrectly failed to consider Anderson's withholding of vital information from the victim describing the perpetrator as someone with an appearance who does not look like the subject of the search. It also failed to hold consistently with other jurisdictions that fingerprint evidence alone on a movable object is unreliable, speculative, and insufficient to connect someone to a crime. Darosa therefore asks this court to grant this Writ of Certiorari to resolve the inconsistencies created through the application of the good faith exception.

B. WHETHER THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT'S DECISION IN *UNITED STATES V. DAROSA* IS IN CONFLICT WITH THE DECISIONS OF OTHER UNITED STATES COURT OF APPEALS IN ALLOWING EXPERT INFORMATION TO BE PRESENTED THROUGH A LAY WITNESS.

1. Standard of Review

Rule 10 of the Rules of the Supreme Court of the United States allows this court to review a decision of a federal Court of Appeals that is in conflict with other decision of other United States court of appeals on an important matter. Rules of the Supreme Court of the United States, Rule 10. This appeal is brought forward on such a compelling basis. The Fourth Circuit Court of Appeals May 2024 opinion is inconsistent with opinions from the Fourth Circuit and other circuits in its conclusions regarding the admissibility of a lay witness's opinion testimony as to the meaning of jargon used that is associated with robberies.

2. Allowing lay witness opinion testimony to the meaning of jargon used in connection with robberies is inconsistent with the Federal Rules of Evidence, Rules 701 & 702 and *United States v. Walker*, 32 F.4th 377 (4th Cir. 2022).

"The Supreme Court has recognized that Fed. R. Evid. 702 requires district courts to perform critical 'gatekeeping' function concerning the admissibility of expert scientific evidence. *United States v. Mosby*, 2022 U.S. Dist. LEXIS 163001 at 587 (4th Cir. 2023). "Given this, it is the court's responsibility to 'ensur[e] that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand.'" *Id.*, citing *Nease v. Ford Motor Co.*, 848 F.3d 219, 229 (4th Cir. 2017).

The Federal Rules of Evidence, Rule 701, governs the opinion of laypersons. Rule 701 states that "[i]f the witness is not testifying as an expert, the witness testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue." Fed. R. Evid. 701.

The Federal Rules of Evidence, Rule 702, governs the expert testimony of witnesses. Rule 702 states that "if scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Fed. R. Evid. 702.

"[W]e have recognized that the line between lay opinion testimony under Rule 701 and expert testimony under Rule 702 is a fine one, [and] the guiding principle in

distinguishing lay from expert opinion is that lay testimony must be based on personal knowledge." *United States v. Smith*, 833 Fed. App. 516, 519 (4th Cir. 2020); *citing United States v. Farrell*, 921 F.3d 116, 143 (4th Cir. 2019). "Other facts…. distinguishing lay testimony from expert opinion include '(1) whether the proposed testimony relies on some specialized knowledge or skill on education that is not in the possession of the jurors, and (2) whether the proposed testimony is in the form of response to hypothetical or like questions.'" *Id* at 144.

The Fourth Circuit has analyzed when a law enforcement officer can testify as to the meaning of slang terms used by alleged criminal defendants. This Court has stated that "a witness's understanding of what the defendant meant by certain statements is permissible lay testimony, so long as the witness's understanding is predicated on his knowledge and participation in the conversation." *United States v. Smith*, 833 Fed. App. 516, 520 (4th Cir. 2020); *citing United States v. Hassan*, 742 F.3d 104, 136 (4th Cir. 2014). In *Smith*, the law enforcement officers testified as to the meaning of jargon used in conversations *for which they were a part of*. *Id*.

The Fourth Circuit also looked at this issue in a 2022 case, *United States v. Walker*, 32 F.4th 377 (4th Cir. 2022). In *Walker*, this Court stated that "if the Government seeks to introduce a law enforcement agent's testimony about statements made during recorded telephone calls and the agent was neither a party to the conversation nor contemporaneously listening to the conversation, the law enforcement agent should generally be proffered as an expert witness." *Walker*, 32 F.4th 377, 392 (4th Cir. 2022). The Court went further to state that "a law

enforcement officer's narrative gloss that consists almost entirely of her personal opinions of what the conversations meant - based on her investigation after the fact, not on her perception of the facts is not admissible. *Id.* at 391, citing *United States v. Jackson*, 617 F.3d 286, 293 (4th Cir. 2010).

The Fifth Circuit also allows non-expert opinion testimony to that which is "(a) rationally based on the witness's perception; and (b) helpful to clearly understanding the witness's testimony or determining a fact in issue." *United States v. Koen*, 2024 U.S. App. LEXIS 13318 at 2 (7th Cir. 2024). This court reasoned that Rule 701 "'has the effect of describing something that the jurors *could not otherwise experience for themselves* by drawing upon the witness's sensory and experiential observations that were made as a first-hand witness to a particular event.'" *Id.*, citing *United States v. Haines*, 803 F.3d 713, 733 (5th Cir. 2015).

Here, Hagler testified as a lay person as to the jargon of three specific terms: (1) "hammer"; (2) "licks"; and (3) "bread." (JA811-813, JA816). Darosa, through counsel, objected to this evidence. This was the only evidence presented at trial, which explains the jargon of these terms, and Darosa has been substantially harmed through the allowance of this testimony.

In the trial, Hagler explained to the jury what he understood the words to be, which were all words affiliated with robberies. However, Hagler was not a party to the conversation, and did not contemporaneously listen to the conversation. The only way that he could have explained various terms used in the phone call was through his specialized training and education as a law enforcement officer. The admission of

this testimony directly violates the precedent of the Fourth Circuit and Fifth Circuit, as well as the Federal Rules of Evidence, Rules 701 and 702.

The Fourth Circuit incorrectly relied on the *United States v. Smith*, 962 F.3d 755 (4th Cir. 2020), which holds that "the wrongful admission of expert testimony is harmless 'if the same testimony could have been offered under Rule 702 in the first instance.'" *Darosa,* at 237, citing *Smith* at 768 (4th Cir. 2020). Relying on this holding here, where Darosa was not notified on the government's intent to introduce an expert witness related to the meaning the slang terms used, prevents him from confronting the witnesses against him during his criminal trial.

The Confrontation Clause of the Sixth Amendment provides a defendant in a criminal trial with the right to confront and cross-examine the witnesses against him. U.S. Const. amend. VI. This constitutional right is critical to provide the accused a due process "right to a fair opportunity to defend against the State's accusations." *Chambers v. Miss*, 410 U.S. 284, 294 (4th Cir. 1973). "'A person's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense – a right to his day in court – are basic in our system of jurisprudence; and these rights include, as a minimum, a right to examine the witnesses against him, to offer testimony, and to be represented by counsel." *Id*., See also *Moorissey v. Brewer*, 408 U.S. 471, 488-89 (1972); *Jenkins v. McKeithen*, 395 U.S. 411, 428-29 (1969); *Specht v. Patterson*, 386 U.S. 605, 610 (1967). The Fourth Circuit's application of the *Smith* holding here prevents Darosa from fairly cross-examining Hagler as an expert witness and preparing and mounting a defense to such testimony. The Fourt Circuit Court of

Appeals opinion also creates inconsistencies in the application of the Rules of Evidence, the United States Constitution, and the Supreme Court rulings earmarking the importance of an accused's right to cross examine witnesses against him in a meaningful manner.

The Fourth Circuit Court of Appeals also found that admission of this opinion testimony did not harm Darosa; however, this evidence has substantially harmed Darosa because it created an implication that he was implicit in covering up the crimes for which he was charged. It also prevented Darosa from preparing for this sort of expert witness testimony in trial, as Hagler was not given notice by the Government that this sort of expert opinion would be offered. The admitted audio calls were even more harmful and prejudicial to Darosa, and affected the fairness of the judicial proceeding because it allowed the jury to become aware that he was in custody during the course of the trial and exposed the jury to Darosa's use of profane language. It was even more prejudicial in that, some of the sound quality of the audio recordings was hard to understand, and the full context of the conversations cannot be fully understood.

The admission of jargon testimony, over Darosa's objection, was an abuse of discretion and not harmless error as was determined by the Fourth Circuit in *Darosa*. Darosa asks this Court to grant this Writ of Certiorari to address the inconsistencies created by the *Darosa* opinion.

CONCLUSION

For the foregoing reasons, Petitioner respectfully submits that the United States Supreme Court should grant the Petition for Writ of Certiorari.

RESPECTFULLY SUBMITTED,

/s/Samuel B. Winthrop
Samuel B. Winthrop
Counsel of Record
WINTHROP AND GAINES MESSICK, PLLC
706 Hartness Road (Zip 28677)
P.O. Box 964 (Zip - 28687)
Statesville, North Carolina
(704) 872-9544 – Telephone
(704) 872-7712 – Facsimile
swinthroplaw@gmail.com

Counsel for Petitioner
Valentino Cabral Darosa