No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

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MONTRESE SNUGGS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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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

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## QUESTION PRESENTED

Whether the Fourth Amendment authorizes warrantless, suspicionless searches of probationers as part of a condition of probation.

## RELATED PROCEEDINGS

*United States v. Snuggs,* 1:22CR229-1 (M.D.N.C.)
*United States v. Snuggs,* 2024 U.S. App. LEXIS 26068 (4th Cir. 2024)

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## TABLE OF AUTHORITIES

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## PETITION FOR WRIT OF CERTIORARI

Petitioner Montrese Snuggs respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

## OPINIONS BELOW

The opinion of the Fourth Circuit Court of Appeals is reported at *United States v. Montrese Antoine Snuggs*, 2024 U.S. App. LEXIS 26068 (4th Cir. 2024). The Fourth Circuit's Opinion and the Judgment are reproduced in Appendices A and C. (Pet. App. 1a-4a, 80a). The relevant order of the district court is unpublished but the transcript of the suppression hearing and the district court's oral order denying the motion to suppress is reproduced in Appendix B. (Pet. App. 5a-79a).

## JURISDICTION

The Judgment of the Fourth Circuit Court of Appeals was filed on October 16, 2024, and is reproduced in Appendix C. (Pet. App. 80a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution, U.S. Const. amend. IV, and relevant portion of the North Carolina General Statutes are reproduced in Appendix D. (Pet. App. 81a-82a.

## STATEMENT OF THE CASE

### A. Factual Background

On April 5, 2021, the Petitioner was placed on North Carolina probation for felony drug convictions. (Pet. App. 8a). As a condition of his probation, the Petitioner was subject to warrantless searches by his probation officer. (Pet. App. 10a, 88a-89a). North Carolina allows warrantless searches of probationers as a condition of probation. (Pet. App. 82a). Such searches are not required to be supported by reasonable suspicion. On April 6, 2021, the Petitioner signed a document acknowledging his understanding of the conditions of his supervised probation, including the warrantless search condition. (Pet. App. 10a, 88a-89a)

On May 13, 2022, the Petitioner was selected for a "compliance check" as part of his probation. (Pet. App. 19a, 28a-29a). A "compliance check" is an unannounced warrantless search conducted to ensure that an individual on supervised probation is in compliance with the conditions of their probation. (Pet. App. 21a). The Petitioner was selected for the warrantless search because he had tested positive for a controlled substance three or more times within the past 6 to 12 months. (Pet. App. 28a-29a). This fact was the sole criteria used to select the Petitioner for the warrantless search.

On May 13, 2022, three North Carolina probation officers and two police officers arrived at the Petitioner's residence to conduct the warrantless search. (Pet. App. 34a-37a). A probation officer went to the front door of the residence, which was open. (Pet. App. 29a-30a). The probation officer knocked on the glass screen door,

but no one responded. *Id.* The probation officer testified that through the open front door, he saw green vegetable matter which he suspected to be marijuana, in bags on top of a table. *Id.* He also testified that he smelled the odor of marijuana when he walked up to the front door of the residence. (Pet. App. 32a).

A second probation officer went to the rear of the Petitioner's residence. (Pet. App. 48a-49a). This probation officer saw a black bag being dropped out of the window of the residence and someone using a stick to push the bag down by a metal structure. *Id.* The probation officer who first approached the front door of the Petitioner's residence walked to the rear and saw a "black arm out the window with a brown-handled stick, pushing a bag down the side of the home in between the home and a metal object." (Pet. App. 30a). The probation officer yelled for the Petitioner[1] to come to the door, but then the "stick and arm went in and the window was shut and a blind was shut." *Id.* Without the Petitioner present, the probation officer searched the bag and saw another small bag containing green vegetable-like matter. (Pet. App. 30a-31a).

The probation officer then walked back to the front porch of the Petitioner's residence and saw him standing in his living room. (Pet. App. 31a). The probation officer opened the glass screen door and put the Petitioner in handcuffs. *Id.* The

[1] There was no testimony elicited at the suppression hearing that the Petitioner was the individual attempting to discard the bag out of the window. However, in the Factual Basis adopted by the district court, the Petitioner is identified as the individual who attempted to discard the bag. (Pet. App. 83a-86a).

probation officer advised the Petitioner that they were there to conduct a warrantless search, and a firearm was subsequently located.[2] *Id.*

**B. Procedural Background**

The Petitioner was indicted by a grand jury for the Middle District of North Carolina and charged with the offense of possession of a firearm by a felon in violation of 18 U.S.C. § 922(g)(1). (Pet. App. 90a-91a). The Petitioner moved to suppress the firearm found as a result of the warrantless search at his residence, contending that the search was illegal. (Pet. App. 7a, 63a-72a). Following a suppression hearing, the district court denied the motion to suppress, concluding that the warrantless search was directly related to the Petitioner's probation supervision because of "all of these positive drug tests and [the Petitioner's] failure to complete drug treatment (Pet. App. 72a-77a). The district court also concluded that there was no constitutional violation because there was "some individualized suspicion" that justified the warrantless search. *Id.*

The court of appeals affirmed the district court. (Pet. App. 1a-4a). The court of appeals rejected the Petitioner's argument that the warrantless search was unlawful because the Petitioner was not present when the search commenced, as required by the North Carolina probation statute. *Id.* Further, the court of appeals held that the warrantless search was directly related to the Petitioner's probation as required by the North Carolina probation statute, because the Petitioner was "in

[2] There was no testimony elicited at the suppression hearing about where the firearm was located. However, the Factual Basis adopted by the district court indicates that the firearm was located inside a camera bag, which was inside the black garbage bag discarded out of the window. (Pet. App. 83a-86a).

violation of his probation for testing positive for a controlled substance at least three times in the preceding 6 to 12 months." *Id.*

The court of appeals failed to apply the *Knights* balancing test and examine whether there was sufficient reasonable suspicion to support the warrantless search. *Id.* The court held that a Fourth Amendment analysis was not required since the warrantless search was conducted in compliance with the North Carolina probation statute. *Id.* The court of appeals' failure to apply the *Knights* balancing test underscores the ambiguity left by *Knights* as to whether reasonable suspicion is always required to support a warrantless search of a probationer, even when the warrantless search comports with the statutory requirements for a probationer search.

## REASONS FOR GRANTING THE PETITION

It is well-settled that probationers have a significantly diminished privacy interest, simply by virtue of their status. *See Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987) ("To a greater or lesser degree, it is always true of probationers (as we have said it to be true of parolees) that they do not enjoy 'the absolute liberty to which every citizen is entitled, but only . . . conditional liberty properly dependent on observance of special [probation] restrictions.'" (quoting *Morrissey v. Brewer*, 408 U.S. 471, 480 (1972)). *See also United States v. Knights*, 534 U.S. 112, 119 (2001) (Probationers "do not enjoy 'the absolute liberty to which every citizen is entitled." (quoting *Griffin*, *supra*, at 874, in turn quoting *Morrissey, supra, Ibid.*)). Some intrusions on a probationer's diminished privacy interests are justified by the legitimate governmental interests in rehabilitation and fighting recidivism. *Knights*, at 120-121. In balancing these interests and examining the totality of circumstances, this Court has held that a warrantless search of a probationer is constitutional, if supported by reasonable suspicion and authorized by a condition of probation. *Knights*, at 122.

In *Knights,* however, this Court did not reach the question of whether a warrantless search of a probationer is reasonable under the Fourth Amendment if it solely predicated upon a condition of probation and not supported by reasonable suspicion. This question is clearly implicated here, because the lower court failed to analyze whether the warrantless search of the Petitioner's residence was supported by reasonable suspicion.

This case is of critical importance because the lower courts are divided in what standard to apply to warrantless searches of probationers. This conflict among lower courts has resulted in the disparate application of fundamental Fourth Amendment principles of jurisprudence. Whether the Fourth Amendment protects probationers against warrantless and suspicionless searches is a question of significant importance and the time has come for this Court to finally resolve the conflict among the lower courts and unequivocally affirm that Fourth Amendment protections apply to probationers and protect them from warrantless and suspicionless searches, regardless of whether such searches are authorized as a condition of probation.

### A. There is a Split Among the Lower Courts as to Whether a Warrantless and Suspicionless Search of a Probationer is Reasonable Under the Fourth Amendment.

This Court has considered the constitutionality of warrantless searches of probationers on only three occasions. In *Griffin v. Wisconsin*, this Court upheld the constitutionality of a Wisconsin regulation that allowed for warrantless searches of a probationer's home by his probation officer. *Griffin,* 483 U.S. at 871. This Court opined that a state's operation of a probation system presented "'special needs' beyond normal law enforcement that may justify departure from the usual warrant and probable-cause requirements." *Id.* at 873-874.

In the context of Wisconsin's warrantless search regulation, this Court noted there were safeguards built into the regulation which allowed the probationer to retain some expectation of privacy, rendering the exercise of the warrantless search supervisory function less adversarial. *Id.* at 876. Of significance to this Court was

that a probation officer and not a police officer conducted the warrantless search. *Id.* This Court noted that while a probation officer was supposed to have the public interest in mind, he also had the probationer's interest and well-being in mind[3]. *Id.* This Court held that the Wisconsin regulation was valid and that warrantless searches of probationers conducted pursuant to the regulation were reasonable within the meaning of the Fourth Amendment. *Id.* at 880.

This Court next considered the constitutionality of a warrantless search of a probationer in *United States v. Knights,* 534 U.S. 112 (2001) In *Knights*, the defendant was a California probationer and as part of his probation, the defendant signed and agreed to submit to warrantless searches at any time as a condition of his probation. *Id.* at 114. Three days after being placed on probation, a sheriff's detective conducted a warrantless search of the defendant's apartment, based on reasonable suspicion that the defendant and a friend were involved in the arson of a power transformer and telecommunications vault. *Id.* at 114-115.

In evaluating the reasonableness of the warrantless search, this Court chose not to employ the "special needs" analysis from *Griffin*. *Id.* at 122. Rather, it employed a "general Fourth Amendment approach" of "examining the totality of circumstances" to determine if the warrantless search of a probationer's apartment was reasonable. *Id*. at 118. The Court noted that the "touchstone of the Fourth

[3] "[W]hile assuredly charged with protecting the public interest, [the probation officer] is also supposed to have in mind the welfare of the probationer (who in the regulations is called a 'client,' HSS § 328.03(5)). The applicable regulations require him, for example, to 'provid[e] individualized counseling designed to foster growth and development of the client as necessary,' HSS § 328.04(2)(i), and '[m]onito[r] the client's progress where services are provided by another agency and evaluat[e] the need for continuation of the services,' HSS § 328.04(2)(o)." *Id.* at 876-877.

Amendment is reasonableness, and the reasonableness of a search is determined 'by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other hand, the degree to which it is needed from the promotion of legitimate government interests.'" *Id.* at 118-119, quoting *Wyoming v. Houghton*, 526 U.S. 295, 300 (1999). This Court held that when there is reasonable suspicion to believe that a probationer is engaged in criminal conduct, a warrantless search of the probationer's residence is reasonable because "there is enough likelihood that criminal conduct is occurring that an intrusion on the probationer's significantly diminished privacy interests is reasonable." *Id.* at 121

This Court most recently considered the constitutionality of warrantless searches, in the context of parolees, in *Samson v. California,* 547 U.S. 843 (2006). In *Samson*, an officer approached the defendant, who he knew to be on parole. *Id.* at 846. As a California parolee, the defendant was subject to a parole condition to submit to warrantless searches, with or without cause. *Id.* Based solely on the defendant's status as a parolee and not on any reasonable suspicion, the officer searched the defendant and located methamphetamine. *Id.* at 846-847.

This Court extended the *Knights* balancing test to warrantless and suspicionless searches of parolees. *Id.* at 850. In analyzing a parolee's expectation of privacy, this Court noted that parolees have fewer expectations of privacy than a probationer, because parole "is more akin to imprisonment than probation is to imprisonment." *Id.* Parole was "an established variation on imprisonment." *Id.* at 852.

Just as it did in *Knights*, this Court found "salient" that the warrantless search condition was clearly expressed to the defendant and accepted by him. *Id.* at 853. This Court found that the defendant's status as a parolee and the plain terms of the warrantless search condition acted to extinguish any legitimate expectation of privacy. *Id.* Based upon the totality of circumstances, including the State's "overwhelming interest" in supervising parolees, this Court concluded that a suspicionless search of a parolee subject to such a search condition did not violate the Fourth Amendment. *Id.* at 853, 857.

Against the backdrop of this legal framework, lower courts have inconsistently applied the principles of *Griffin* and *Knights* when evaluating the reasonableness of warrantless searches of probationers, and there is a split in the federal circuit courts on the appropriate legal standards to apply. Without the Court's guidance and clarity, the lower courts will continue to disparately analyze cases involving the warrantless searches of probationers.

The Seventh and the Eighth Circuits have utilized the *Knights* balancing test and upheld warrantless searches of probationers that were supported by reasonable suspicion, if the probationer is subject to a warrantless search condition as part of his probation. In *United States v. Hagenow*, 423 F.3d 638 (7th Cir. 2005), the Seventh Circuit upheld the warrantless search of a probationer's residence where the probationer was subject to warrantless searches as a condition of his probation, and where the probation officer had reasonable suspicion that the probationer was engaged in criminal conduct. And in *United States v. Rodriguez*, 829 F.3d 960 (8th

Cir. 2016), the Eighth Circuit upheld the warrantless search of a probationer's vehicle where the probationer was subject to warrantless searches as a condition of his probation, and where the probation officer had reasonable suspicion that the probationer was breaking the law and in violation of his probation.

Several circuits have upheld warrantless searches of probationers using a lower standard than that articulated in *Knights*[4]. In *United States v. Graham*, 553 F.3d 6 (1st Cir. 2009), the First Circuit considered the constitutionality of the warrantless search of a probationer who was subject to a warrantless search condition as part of his probation, which authorized a search if the probation officer had reasonable suspicion to believe that a condition of probation had been violated. The First Circuit upheld the warrantless search, finding no Fourth Amendment violation. *Id.* at 27.

The Tenth Circuit also upheld such a search in *United States v. Carter*, 511 F.3d 1264 (10th Cir. 2008). In *Carter*, the probation officer had reasonable suspicion to believe the defendant was violating the terms of his probation by refusing to take a drug test, associating with people who used drugs, and possibly planning to move. *Id.* at 1266-1267, 1269. Under the terms of the defendant's probation agreement, he was subject to warrantless searches "upon reasonable suspicion to ensure compliance with the conditions of the Probation Agreement." *Id.* at 1266. The Tenth Circuit held

[4] *Knights* upheld a warrantless search of a probationer where such a search was based on reasonable suspicion that criminal conduct is occurring and where the probationer is subject to a warrantless search condition. *Knights*, 534 U.S. at 121-122. As part of Knights's probation, he was subject to warrantless searches of his "person, property, place of residence, vehicle, [and] personal effects, . . . at anytime, with or without a search warrant, warrant of arrest or reasonable cause." *Id.* at 115.

that the warrantless search of the probationer's residence did not violate the Fourth Amendment because it was supported by the requisite lower standard of reasonable suspicion of a violation of a condition of probation. *Id.* at 1269.

Two circuits allow for warrantless searches of probationers if supported by reasonable suspicion of criminal conduct, even if the probationer is not subject to a warrantless search condition. In *United States v. Keith*, 375 F.3d 346 (5th Cir. 2004), the Fifth Circuit considered whether the warrantless search of a probationer's home, when supported by reasonable suspicion, violated the Fourth Amendment. *Id.* at 348. In *Keith*, the defendant was not subject to a warrantless search condition as part of his probation. *Id.* at 350.

The Fifth Circuit reasoned that though the defendant did not agree to warrantless searches as a condition of his probation, and though there was no state regulation permitting warrantless searches of probationers, Louisiana probationers were nevertheless aware of their diminished expectation of privacy because Louisiana state courts had "consistently approved the practice of searching probationers' homes based on reasonable suspicion." *Id.* The Fifth Circuit did not read *Knights* as to expressly require a warrantless search condition of probation as a condition precedent to applying the totality balancing test. *Id.* Thus, the court concluded that a warrantless search of a probationer's residence supported by reasonable suspicion did not violate the Fourth Amendment. *Id.*

In *United States v. Carter*, 566 F.3d 970 (11th Cir. 2009), the defendant was on state probation and subject to a condition requiring him to submit to home visits by

his probation officer. *Id.* at 975. The defendant's probation officer developed reasonable suspicion that the defendant was engaged in criminal activity and conducted a warrantless search of the defendant's residence. *Id.* at 972.

The Eleventh Circuit applied the *Knights* balancing test to evaluate whether the warrantless search was permissible. *Id.* at 974. The Eleventh Circuit noted that although the defendant was not subject to a warrantless search condition of his probation, he nevertheless had a reduced expectation of privacy because he was subject to home visits by his probation officer. *Id.* at 975. Balanced against the defendant's diminished expectation of privacy was the government's high interest in monitoring a probationer, especially one with a history of drug and violence-related offenses, such as the defendant. *Id.* The Eleventh Circuit held that in applying the *Knights* balancing test, there was reasonable suspicion to support the warrantless search of the probationer's residence. *Id.* at 975-76.

In contrast, other circuits have issued opinions directly in conflict with the First, Fifth, Seventh, Eighth, Tenth, and Eleventh Circuits, holding that suspicionless searches of probationers do not violate the Fourth Amendment. In *United States v. Tessier*, 814 F.3d 432 (6th Cir. 2016), the defendant was subject to a probation condition that authorized warrantless searches for any purpose. *Id.* at 433. Child pornography was found during a suspicionless search of the defendant's residence. *Id.* at 433. The Sixth Circuit, considering on first impression whether a probationer subject to a warrantless search condition could be subjected to a suspicionless search, noted that this question was left unanswered by *Knights*. *Id.*

Employing very little analysis, the Sixth Circuit found the suspicionless search constitutional. *Id.* at 435.

The Ninth Circuit also considered suspicionless searches of probationers in *United States v. King*, 736 F.3d 805 (9th Cir. 2013). In *King*, the defendant was subject to a probation condition that authorized warrantless searches for any purpose. *Id.* at 806. A suspicionless search of the defendant's residence yielded a shotgun. *Id.* at 807.

Applying the *Knights* balancing test, the Ninth Circuit first recognized the well-settled principle that the defendant, as a probationer, had a reduced expectation of privacy. *Id.* at 808. The court noted that although this reduced expectation of privacy was greater than that of a parolee like in *Samson*, the defendant's expectation of privacy nonetheless was "small, in light of the serious and intimate nature of his underlying conviction for the willful infliction of corporal injury on a cohabitant." *Id.* at 809. Since the defendant's expectation of privacy was small, the court reasoned that a suspicionless search was only a slight intrusion. *Id.*

The court reasoned that the government's interests in discovering criminal activity, combatting recidivism of probationers, and promoting the rehabilitation of probationers were "substantial" and would be promoted through suspicionless searches of probationers. *Id.* Balancing the government's substantial interests against the slight intrusion on the defendant's reduced expectation of privacy, the Ninth Circuit held that a suspicionless search of a violent felon subject to a warrantless search condition of probation was permissible. *Id.* The Ninth Circuit's

decision in *King* was limited and only applied to violent felons subject to a warrantless search condition of probation. *Id.*

The Ninth Circuit reached a different conclusion in *United States v. Lara*, 815 F.3d 605 (9th Cir. 2016). In *Lara*, the Ninth Circuit considered the reasonableness of the suspicionless search of a non-violent probationer's cell phone pursuant to a condition of probation. *Id.* at 614.

In *Lara*, the Ninth Circuit found that the defendant's acceptance of a warrantless search condition as part of his probation was not dispositive but instead was only a factor to consider in determining the reasonableness of the search. *Id.* at 609. The Court also found that it was unclear whether the warrantless search condition that the defendant was subject to encompassed a search of the defendant's cell phone. *Id.* The court noted that the defendant retained a diminished yet substantial privacy interest in his cell phone because of the unique nature of cell phones. *Id.* at 611-612.

The court held that the suspicionless search was unreasonable because the defendant's substantial privacy interests in his cell phone outweighed the government's interests in conducting suspicionless searches of cell phones where the defendant, a non-violent offender, did not unambiguously consent to the warrantless cell phone search at issue. *Id.* at 612-613. The holding in *Lara* creates tension within the Ninth Circuit and although this is not a basis for this Court to invoke its jurisdiction, *Wisniewski v. United States*, 353 U.S. 901 (1957), it does further demonstrate the extent of the confusion and conflict among the lower courts.

In addition to *Tessier* and *King*, the Eleventh Circuit in an unpublished decision in *United States v. Williams*, 650 Fed. Appx. 977 (11th Cir. 2016) (unpublished), affirmed the constitutionality of a suspicionless search of a probationer subject to a warrantless search condition[5]. And in *United States v. Barnette*, 415 F.3d 690 (7th Cir. 2005), the Seventh Circuit indirectly and tacitly affirmed the constitutionality of a suspicionless search of a probationer who was subject to a warrantless search condition, on the theory that the probationer lawfully waived the protections of the Fourth Amendment as part of a plea bargain and therefore consented to suspicionless searches as a condition of probation[6]. *Id*. at 691-693. The consent rationale employed by the Seventh Circuit in *Barnette* appears to be an outlier, with most other lower courts employing the *Knights* balancing test to analyze the reasonableness of a suspicionless search of a probationer.

The Fourth Circuit, like the Ninth Circuit, is also split on this issue. The Fourth Circuit considered the constitutionality of a warrantless search of a probationer conducted pursuant to a North Carolina statute authorizing such searches in *United States v. Midgette*, 478 F.3d 616 (4th Cir. 2007). In *Midgette*, the defendant was a probationer who was subject to a North Carolina statute requiring him to "submit at reasonable times to warrantless searches by a probation officer of

[5] Although *United States v. Williams* is unpublished, nonetheless there is conflict in the Eleventh Circuit between *Carter* and *Williams*, which underscores the uncertainty left by *Knights*.

[6] In *Barnette*, the defendant challenged the validity of a blanket waiver of his Fourth Amendment rights as a probation condition in a plea agreement. *Id*. at 691. Specifically, the defendant bargained for a probationary sentence in lieu of prison, and as part of said probation, the defendant agreed to submit to suspicionless searches by his probation officer at any time. *Id.* This agreement amounted to a blanket waiver of the defendant's Fourth Amendment rights as a condition of probation. *Id.* The defendant abandoned his challenge to the validity of the waiver on appeal, and his conviction was affirmed. *Id.* at 693.

the defendant's person, and of the defendant's vehicle and premises while the defendant is present, for the purposes which are reasonably related to the defendant's probation supervision[7]." *Id.* at 619. The defendant's probation officer received information from a local police officer that the defendant may be in possession of a firearm, in violation of his probation. *Id.* at 619. Based upon this information, the defendant's probation officer, with the assistance of local police, conducted a warrantless search of the defendant's vehicle and residence. *Id.*

In *Midgette,* the Fourth Circuit employed the *Griffin* "special needs" analysis and held that the North Carolina statute authorizing warrantless searches of probationers was similar to the Wisconsin regulation in *Griffin*, and was "narrowly tailored" and imposed meaningful restrictions to "guarantee[] that the searches are justified by the State's 'special needs,' not merely its interest in law enforcement." *Id.* at 623-624. The court concluded that warrantless searches conducted in conformity the North Carolina statute were reasonable under the Fourth Amendment because the restrictions "undoubtedly assure that the searches conducted pursuant to it are justified by the State's special needs." *Id.* at 624. The

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[7] In *Midgette*, the Fourth Circuit considered N.C. Gen. Stat. § 15A-1343(b1)(7), which was subsequently amended and recodified as N.C. Gen. Stat. § 15A-1343(b)(13), which is the statute at issue in the Petitioner's case. The current iteration of this statute authorizes the warrantless search of a probationer's home while the probationer is present, if the purpose of the search is directly related to the probation supervision. N.C. Gen. Stat. § 15A-1343(b)(13). The phrase "directly related" was not defined by the North Carolina General Assembly when it amended Section 15A-1343 in 2009. This amendment changed the requirement that warrantless searches now be "directly related" to the probation supervision, instead of "reasonably related" to the probation supervision, as the predecessor statute required. The North Carolina Court of Appeals first discussed the meaning of the phrase "directly related" in *State v. Powell*, stating, "we infer that by amending *subsection(b)(13)* in this fashion, the General Assembly intended to impose a *higher* burden on the State in attempting to justify a warrantless search of a probationer's home than that existing under the former language of this statutory provision." *State v. Powell*, 253 N.C. App. 590, 599-600 (N.C. 2017).

court then employed the *Knights* balancing test to evaluate the reasonableness of the warrantless search and held that the warrantless search at issue was constitutional because it was supported by reasonable suspicion. *Id.* at 624-625.

The Fourth Circuit arrived at a different outcome in *United States v. Hill*, 776 F.3d 243 (4th Cir. 2015). *Hill* dealt with a suspicionless search of defendants on federal supervised release. *Id.* at 245. The defendants were not subject to a warrantless search condition on supervised release but were required to submit to home visits by their probation officer. *Id.* After arresting the defendants on warrants for violating conditions of their supervised release, a probation officer conducted a walk-through of one of the defendant's residences. *Id.* at 246. Officers then led a drug-detection dog throughout the residence. *Id.* The drug dog positively alerted in many places throughout the residence and officers thereafter applied for a search warrant. *Id.* The officers' subsequent search pursuant to the search warrant yielded various controlled substances and paraphernalia. *Id.*

The defendants moved to suppress the dog sniff, and the items seized as a result of the execution of the search warrant. *Id.* The defendants argued that law enforcement was required to obtain a search warrant after the conclusion of the walk-through of the residence because none of the defendants were subject to a warrantless search condition as part of their supervised release. *Id.* at 247.

The Fourth Circuit agreed, basing its decision on its precedent in *United States v. Bradley*, 571 F.2d 787 (4th Cir. 1978). *Id.* at 248-249. In *Bradley*, the Fourth Circuit held that a parole officer must secure a warrant prior to conducting a search of a

parolee's residence, even where the parolee has consented to unannounced visits by the parole officer. *Id.* The *Hill* court held that it's decision in *Bradley* was not overruled by *Griffin*, *Knights*, or *Samson,* because central to this trio of cases were regulations or conditions of probation/parole authorizing the warrantless search. *Id.* at 249. In contrast, the defendants in *Hill* were only required to submit to unannounced visits by their probation officers, not warrantless searches. *Id.* Therefore, the court reasoned that *Bradley* controlled the outcome, and because officers did not obtain a search warrant, the dog sniff and subsequent search pursuant to a search warrant were deemed unlawful. *Id.* at 249-250.

State courts of last resort have been no better at applying the test announced in *Knights* to warrantless searches of probationers. There are a multitude of conflicting opinions among state courts of last resort about the constitutionality of warrantless searches of probationers, whether supported by or unsupported by reasonable suspicion. *See e.g., State v. Adair*, 241 Ariz. 58 (Ariz. 2016) (holding that the suspicionless search of a probationer's residence was reasonable because the probationer was subject to a warrantless search condition as part of his probation); *State v. Vanderkolk*, 32 N.E.3d 775 (Ind. 2015) (holding a probationer may, either by consent or pursuant to a valid warrantless search condition, authorize a suspicionless search); and in the context of a parolee, see *State v. Toliver*, 307 Kan. 945 (Kan. 2018) (upholding the suspicionless search of a parolee where the parolee signed a parole agreement authorizing all warrantless searches). *But see State v. Ballard*, 2016 ND 8 (N.D. 2016) (holding that a warrantless search of a probationer is valid when the

probationary search is authorized as a condition of probation and is supported by reasonable suspicion); *Murry v. Commonwealth*, 288 Va. 117 (Va. 2014) (holding that where a probationer is subject to a warrantless search condition, a warrantless probation search will be upheld if supported by reasonable suspicion); and *State v. Cornell*, 2016 VT 47 (Vt. 2016) (reasonable suspicion is required to support a warrantless search of a probationer authorized as a condition of probation).

Given the split of authority in the lower courts and in state courts of last resort, and the inconsistent application of constitutional standards to warrantless searches of probationers, the Court should step in and articulate a concise, uniform test to evaluate the reasonableness of warrantless searches of probationers and parolees, whether or not they are subject to warrantless searches as a condition of probation.

### B. This Case is a Clean Vehicle for Addressing an Important Issue Left Unresolved by *United States v. Knights*.

The Court should resolve the question presented in this case. The Petitioner argued both in the district court and the court of appeals that the warrantless probation search at issue was unsupported by reasonable suspicion. The Fourth Circuit failed to apply the *Knights* balancing test and determine whether the warrantless search was supported by reasonable suspicion. By its failure to consider the totality of circumstances in evaluating the reasonableness of the warrantless search of the Petitioner's residence, the court of appeals indirectly sanctioned suspicionless searches of probationers. This is because the North Carolina statute which authorizes warrantless searches of probationers only requires that the

searches be directly related to the probation supervision, not that the searches be supported by reasonable suspicion of criminal conduct.

The North Carolina statute at issue in this case applies a lower standard than warranted under the Constitution to determine the validity of warrantless searches conducted as part of a condition of probation. The standard articulated in the statute, *i.e.*, that the probation search be directly related to the probation supervision, permits suspicionless searches of probationers based solely on any violation of a condition of probation, rather than reasonable suspicion of criminal activity as required by the Fourth Amendment. Examples of probation violations that would validate a warrantless probation search under the North Carolina statute at issue include failure to maintain gainful and suitable employment, failure to perform community service hours, failure to report as directed, and failure to satisfy a child support obligation. Such violations bear no relationship to the legitimate governmental interests of preventing further criminal conduct and rehabilitation, used uniformly to justify the intrusion of a warrantless search on a probationer's expectation of privacy.

Moreover, endorsing suspicionless warrantless searches of probationers when there is solely a violation of a condition of probation unrelated to criminal activity, as allowed by the First, Fourth, and Tenth Circuits, essentially vitiates all Fourth Amendment protections for a probationer. Probationers still enjoy a diminished expectation of privacy and therefore, should be afforded some protections of the Fourth Amendment. However, the unresolved questions that still remain since the

decision in *Knights* create a significant danger of more and more courts validating suspicionless searches of probationers simply because a probation search condition authorizes such searches when there is a violation of a condition of probation. A slippery slope already exists because of *Tessier* and *King*. This Court's decision in *Samson*, which effectively extinguishes a parolees' expectation of privacy and Fourth Amendment protections simply because he is subject to warrantless searches as a condition of his parole, further muddies the already murky water. This case is a clean vehicle to address this issue of critical importance and to stop any further encroachment on the privacy interests of probationers.

This Court should grant review of this case to resolve the conflict among the lower courts and to preserve and protect probationers' Fourth Amendment right to be free from suspicionless searches.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted, this the 14th day of January, 2025.

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