NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

RONNIE ROBINSON

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent,

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Was the warrantless search of Petitioner's cell phone unconstitutional when there was no reasonable suspicion to believe that the phone contained evidence of criminal activity? Did Petitioner's United States Probation Officer have the right to direct that Petitioner provide the contents of his phone to members of the New York State Police to cooperate in unrelated homicide investigation?

2. Was the warrantless search of Kimberly Virola's apartment unconstitutional when probation officers lacked reasonable suspicion to believe that there was evidence of a crime in the apartment.

3. Did the search exceed the bounds of a probation search?

4. Does an individual on probation lose their right to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures?

5. Can the United States Probation Department search any residence, without limitation, where an individual on probation is located?

PARTIES TO THE PROCEEDING

All parties to petitioner's Second Circuit proceedings are named in the caption of the case before this Court.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other

PETITION FOR WRIT OF CERTIORARI

Petitioner Ronnie Robinson respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

DECISION BELOW

The summary order of the Court of Appeals is United States v. Ronnie Robinson, 23-7913, Second Circuit Court of Appeals (2024 WL 4891272). Judgment entered November 26, 2024.

JURISDICTION

The judgment of the Court of Appeals, which had jurisdiction pursuant to 28 U.S.C. § 1291, was entered on November 26, 2024. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
>
> U.S. Const. amend. IV

STATEMENT OF THE CASE

Ronnie Robinson (hereinafter "Petitioner") appealed to the Second Circuit Court of Appeals from the Northern District Court's judgment of conviction following a conditional plea of guilty to: (1) possession of a firearm after having been convicted of a felony, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2); (2) possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. §§ 924(c)(1)(A); and (3) possession of marihuana with intent to distribute, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(D). Petitioner's conditional plea reserved the right to challenge the district court's denial of his motion to suppress evidence seized during a warrantless search of his girlfriend's apartment (hereinafter "Virola's apartment"), which included the marihuana and firearm that formed the basis of the above-referenced charges. On appeal to the Second Circuit Court of Appeals, Petitioner challenged the denial of that motion, after an evidentiary hearing, and made the following arguments: (1) law enforcement violated his Fourth Amendment rights by entering Virola's apartment under the guide of being a probation home visit; (2) upon entering the apartment, Petitioner's United States Probation Officer violated his Fourth Amendment rights by directing Petitioner to provide the code to his cellphone and by directing that he allow members of the New York State Police to search his cellphone without a warrant, or, in the alternative, without reasonable suspicion; and (3) officers further violated his Fourth

Amendment rights by searching Virola's apartment without a warrant, or, in the alternative, without reasonable suspicion.

Petitioner argued that the probation officers were not acting in their capacity as probation officers, but rather, as vessels to allow members of the New York State Police access to Petitioner. Members of the New York State Police wanted to speak with Petitioner about a homicide that they believed Petitioner had information about, but when Petitioner did not provide the desired information, they used the strength of the government to try to force Petitioner to cooperate in their investigation. There was no reasonable suspicion to believe that Petitioner was any committing crimes or that there would be instrumentalities of criminal activity found in Virola's apartment, but there was still an intrusion so that members of the New York State Police could question Petitioner with the threat of a violation of probation being present. Indeed, if Petitioner had just cooperated in the unrelated investigation (with members of the New York State Police), there would have been no search of Virola's apartment.

Petitioner submits that the entry into the apartment was unlawful, that the subsequent search of his cellphone was unlawful, that the search of Virola's apartment was unlawful, and that all items located therein should have been suppressed. The overbroad probation condition that the Court of Appeals relied on

should have been struck and the items located as a direct result of unlawful law enforcement antics should have been suppressed.

Despite the violation of Petitioner's constitutional rights, on November 26, 2024, the Court of Appeals for the Second Circuit issued a summary order affirming Petitioner's convictions. In doing so, the Court of Appeals determined that law enforcement permissibly entered Virola's residence. Even if there was not a valid entry, however, the Court of Appeals still determined that the search was lawful because Petitioner's supervised release conditions required him to "permit a probation officer to visit him … at any time at home *or elsewhere*." The Court of Appeals further held that the record "fully supports the district court's determination that the officers reasonably suspected that Robinson had violated at least one condition of his supervised release: That he 'shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony.'" In support of this, the Court of Appeals determined that members of the New York State Police (not Petitioner's probation officer) had information that Petitioner had communicated with individuals who had prior felony convictions. Petitioner submits that the record is void of any facts to support the conclusion that Petitioner's probation officer knew about this, that Petitioner knew these individuals had criminal history, or that Petitioner had the same phone that he had when he had allegedly made such communications (to allow a warrantless search of the phone).

Moreover, there was no evidence to establish when these alleged violations occurred.

Petitioner respectfully submits that the district court assumed facts that were not in the record and that the Court of Appeals equally adopted facts that were nowhere in the record. After much discussion, the Court of Appeals held that the search of Petitioner's cellphone, as well as the search of Virola's apartment, was reasonable.

Petitioner did not seek rehearing.

REASONS FOR GRANTING THE PETITION

This is a unique case that deals with an individual on probation supervision wherein there is no belief that he is committing any new criminal activity. The individual on probation had information about an unsolved homicide and members of the New York State Police wanted that information. When Petitioner would not provide this information, members of the New York State Police contacted his United States Probation Officer and scheduled a "home visit" that would allow the New York State Police to question Petitioner without his probation officer present. Members of law enforcement first went to Petitioner's approved address and when he was not there, they were directed, by Petitioner's roommates, to Virola's residence.

At Virola's residence, the United States Probation Officers knocked on the door and entered without permission. They then opened the door for the New York State Police to come into the apartment. Virola did not consent to their entry. Petitioner was directed to give members of the New York State Police the code to his cellphone and he was forced to allow them to search. When Petitioner still would not give the information that they desired, there was a determination that there was going to be a search of Virola's residence. Virola specifically stated that she did not consent to the search.

At the time that probation, as well as the New York State Police entered Virola's apartment, there is no reasonable suspicion to search Petitioner's cellphone, or the residence. Under Petitioner's conditions of release, to justify a search, his probation officer needed "reasonable suspicion concerning a violation of a condition of probation or supervised release or unlawful conduct by the defendant". They did not obtain any evidence of wrongdoing until ***after*** they violated Petitioner's rights. Moreover, it is still questionable that the search was reasonably related to alleged violations of a condition or probation. The district court, as well as the Court of Appeals, attempted to justify the search because of evidence allegedly found on Petitioner's cellphone, but again, why were they searching the cellphone without a warrant? And without any belief that there was evidence of a violation to be found on the phone?

The Government repeatedly attempts to liken this case to *Reyes* and claim that probation's actions were justified. However, unlike in the case of United States v. Reyes, 283 F.3d 446 (2d Cir. 2002), there was no reasonable suspicion that Petitioner was doing anything illegal at the time that the United States Probation Department started their unannounced visit to Petitioner's girlfriend's home. Additionally, the search in *Reyes* was upheld because the law permits cooperation between agencies as long as the probation officers are pursuing legitimate probation-related objectives and the search was actually at the residence of Mr. Reyes. However, it needs to be stressed again that in the case involving Petitioner, there was just no legitimate probation related objective and they proceeded to search a place where he was just an overnight guest.

Even assuming that the unlawful entry was not a problem, that the subsequent ruse to allow law enforcement into the house was not a problem, that the warrantless search of the phone was not a problem, there is still absolutely no articulable basis for the search of a residence where he was just an overnight guest. Petitioner contends that the search was unreasonable, that his Fourth Amendment rights were violated, and that the evidence should have been suppressed.

Petitioner seeks review of this case because there is a divide among of the circuits regarding the "stalking horse" theory. Moreover, there is a divide among the circuits regarding what is necessary for an invasive search of a residence

wherein a probationer is located. In the case of United States v. Grandberry, 730 F.3d 968 (9th Cir. 2013), the Court of Appeals for the Ninth Circuit, held that officers must have probable cause to conclude that a parolee lives at an address before carrying out a warrantless search pursuant to a parole search condition. The probable cause standard would be met if an officer of "reasonable caution" would believe, "based on the totality of [the] circumstances," that the parolee lives at a particular residence. United States v. Diaz, 491 F.3d 1074, 1077–78 (9th Cir. 2007). There must be probable cause, prior to the search, to believe that the parolee resides at a particular residence. Stated another way, "there must be strong evidence" that the parolee resides at the address. Cuevas v. de Roco, 531 F.3d 726, 736 (9th Cir. 2008) (per curiam).

Under the parole search exception, where an individual is released from incarceration pursuant to a condition of supervised release that explicitly authorizes warrantless searches, a search conducted pursuant to that condition of release does not violate the Fourth Amendment. *See* Samson v. California, 547 U.S. 843 (2006); United States v. Knights, 524 U.S. 112 (2001). This search was not pursuant to a condition of release because Petitioner's release conditions specify only a search of ***his*** "property, residence, vehicle, papers, effects, or computer." Law enforcement searched Ms. Virola's entire apartment, including her bedroom, the living room, and her children's bedrooms. Petitioner was only an

overnight guest at Ms. Virola's apartment the night of November 29, 2021, through November 30, 2021. Therefore, the place searched was not his residence and thus not subject to his release conditions.

If law enforcement was under the belief that Petitioner resided at the apartment, they would need still reasonable cause to search under his probation condition. *See* Motley v. Parks, 432 F.3d 1072, 1079 (9th Cir. 2005) ("Requiring officers to have probable cause to believe that a parolee resides at a particular address prior to conducting a parole search protects the interest of third parties.") In United States v. Grandberry, 730 F.3d 968 (9th Cir. 2013), the Court addressed a situation very similar to Petitioner's and confirmed that Officers need to have probable cause to believe that the searched premises was indeed the parolee's residence.

Petitioner argues that the district court erred in not suppressing all evidence obtained by the New York Police as fruit of the poisonous tree. *See* Wong Sun v. United States, 371 U.S. 471, 484-85 (1962). Petitioner argues that the district court improperly considered evidence and that it erred in its determination that law enforcement had the right to search Petitioner's phone and that they had the right to search Virola's apartment. No member of law enforcement had attempted to ascertain whether this was Petitioner's address ***prior*** to the search on November 30, 2021. It was only ***after*** the search that members of law enforcement attempted to

link Petitioner to that address and attempted to show his ties to the residence for purposes of possession of items seized.

The search also fails because there was just no reasonable suspicion or probable cause to search the residence of Ms. Virola. Under Petitioner's conditions of release, to justify a search, his probation officer still needs "reasonable suspicion concerning a violation of a condition of probation or supervised release or unlawful conduct by the defendant". Here, the probation officers unlawfully entered the residence and then proceeded to perch and question Petitioner. When Petitioner did not give law enforcement the information about the unsolved homicide, they proceeded to search his phone (without a warrant) and his girlfriend's residence (without a warrant).

Even assuming that the unlawful entry was not a problem, that the subsequent ruse to allow law enforcement into the house was not a problem, that the warrantless search of the phone was not a problem, there is still absolutely no articulable basis for the search of an entire residence where he was just an overnight guest. Petitioner contends that the search was unreasonable, that his Fourth Amendment rights were violated, and that the evidence should have been suppressed. If Petitioner had cooperated with the unrelated homicide investigation, there would have been no search of Virola's apartment.

Petitioner argues that his probation officer was aware that he was unable to reside at 85 Aiken Avenue because it was public housing. He was residing at 1606 5th Avenue (the address that all members of law enforcement went to on the morning in question). He did not have a key to Virola's apartment, he did not have any personal belongings at Virola's apartment, and otherwise did not reside there. The failure to do any sort of investigation into any alleged illegal activities demonstrates that the search was not reasonably and rationally related to the purposes of probation, but arbitrary, capricious, and harassing. *Samson*, 547 U.S. at 856.

In Riley v. California, 573 U.S. 373, 401 (2014), this Court held that a warrant is "generally required" before searching cell phones, even incident to arrest. In doing so, the *Riley* Court acknowledged that the search of cell phones is categorically different from the search of other places, because cell phones "place vast quantities of personal information literally in the hands of individuals." Accordingly, "a cell phone search would typically expose to the government far *more* than the most exhaustive search of a house: A phone not only contains in digital form any sensitive records previously found in the home, it also contains a broad array of private information never found in a home in any form—unless the phone is." *Riley*, 573 U.S. at 396-97. In short, the search of a person's cell phone "infringes far more on individual privacy" than a search of a person's home. United States v. Fletcher, 978 F.3d 1009 (6th Cir. 2020).

USPO Lavigne testified that he did not search Petitioner's phone for any reasons reasonably related to his probation duties. Indeed, Officer Lavign testified that he gave Petitioner's phone to law enforcement for their review. Officer Lavign was not part of the homicide investigation and he immediately disengaged from the questioning of Petitioner. But, he remained to ensure that Petitioner cooperated under the threat of a violation of his release.

USPO Lavigne clearly testified that Kimberly Virola refused his request to search her apartment. The Fourth Amendment prohibits "unreasonable searches" by the government. U.S. CONST. amend. IV; United States v. Jacobsen, 466 U.S. 109, 113 (1984). A search occurs when there is an invasion of "an object or area where one has a subjective expectation of privacy that society is prepared to accept as objectively reasonable." United States v. Hayes, 551 F.3d 138, 143 (2d Cir. 2008). An overnight guest may raise a Fourth Amendment objection to a warrantless search of the host's home. United States v. Osorio, 949 F.2d 38, 42 (2nd Cir. 1991).

"A warrantless search is 'per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-detailed exceptions.'" United States v. Kiyuyung, 171 F.3d 78, 83 (2d Cir. 1999) (quoting Mincey v. Arizona, 437 U.S. 385, 390 (1978)). "If the defendant succeeds in showing that the officers conducted a warrantless search, the burden shifts . . . to the government to show that the search fell within one of the exceptions to the warrant requirement." United

States v. Gagnon, 230 F. Supp. 2d 260, 267-68 (N.D.N.Y. 2002). Here, there was no warrant for the probation officers' search of Viola's apartment. The search was, thus, per se unreasonable. Petitioner maintains that there was no recognized exception.

This district court upheld the search and held that the "stalking horse" theory is not a defense in this circuit. Petitioner, however, has never argued the "stalking horse" theory. Even assuming that the unlawful entry was not a problem, that the subsequent ruse to allow law enforcement into the house was not a problem, that the warrantless search of the phone was not a problem, there is still absolutely no articulable basis for the search of an entire residence where he was just an overnight guest. Petitioner contends that the search was unreasonable, that his Fourth Amendment rights were violated, and that the evidence should have been suppressed.

As an aside, at one point during the interrogation in the kitchen, one of the New York State Police Investigators asks Petitioner whether he wanted to "go somewhere else to talk". There is no doubt that if Petitioner left with law enforcement to continue the investigation elsewhere, there would have been no search of Virola's apartment. If Petitioner had left the premises, none of the law enforcement personnel would have been able to re-gain access to the premises (and Petitioner did not have a key). Why should they have been allowed to search just

because the interrogation continued in the kitchen of Petitioner's girlfriend's house?

In light of this split of authority regarding "stalking horse" defenses, as well standards being applied by the different circuits regarding searches of residences not belonging to a probationer / parolee, this Court should grant the petition for certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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January 19, 2025