

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

RAMON CARLOS HERNANDEZ
Petitioner

v.

THE STATE OF TEXAS
Respondent

On Petition for a Writ of Certiorari
To the Fourteenth Court of Appeals of Texas in Houston, Texas

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The Fourth Amendment's warrant requirement protects the contents of cell phones from search by law enforcement. *Riley v. California*, 573 U.S. 373, 403 (2014). In the absence of Supreme Court guidance, it is unclear how the Fourth Amendment's particularity requirement applies in the context of cell phone searches. Federal circuits and state courts of last resort have reached diametrically opposed conclusions about what limitations the particularity requirement imposes.

The question presented is:

Does the Fourth Amendment's particularity requirement place any limitations on the search of a cell phone beyond requiring that a search warrant limits law enforcement 1) to searching for evidence of a particular offense and/or 2) to searching within certain broad categories of device data, such as any messages, any internet history, and any call logs?

RELATED PROCEEDINGS

- 1) *Hernandez v. State*, No. PD-0024-25 (Tex. Crim. App. Mar. 26, 2025)
- 2) *Hernandez v. State*, No. 14-23-00657-CR, 2024 WL 5252043, 2024 Tex. App. LEXIS 9173 (Tex. App.—Houston [14th Dist.] Dec. 31, 2024, pet. ref'd) (mem. op., not designated for publication) (**hereinafter App. A.**)
- 3) *State v. Hernandez*, No. 1703438 (337th Dist. Court, Harris Cty., Tex. Aug. 31, 2023)

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PETITION FOR WRIT OF CERTIORARI

Petitioner Ramon Hernandez respectfully petitions this Court for a writ of certiorari to review the judgment of the Fourteenth Court of Appeals of Texas in Houston, Texas.

OPINIONS BELOW

The unreported memorandum opinion issued by the Fourteenth Court of Appeals of Texas in this case is available at 2024 WL 5252043, 2024 Tex. App. LEXIS 9173, and is attached as Appendix A.

JURISDICTION

The Texas Court of Criminal Appeals denied Ramon Hernandez's timely petition for discretionary review on March 26, 2025. This petition for writ of certiorari is timely filed within 90 days of the order denying discretionary review. R. Sup. Ct. U.S. 13.1. 28 U.S.C. § 1257(a) vests this Court with subject matter jurisdiction in this petition for writ of certiorari.

RELEVANT CONSTITUTIONAL PROVISION

The Fourth Amendment provides:

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

a. Nature of the proceedings

On December 22, 2020, prosecutors charged Ramon Hernandez with felony murder for discharging a firearm at a vehicle and causing the death of Darren Price. (C.R. at 9). Ramon Hernandez pleaded not guilty and proceeded to a jury trial, lasting from August 21, 2024 until August 31, 2024. (C.R. at 611-615). The jury found Ramon Hernandez guilty of murder and imposed a 35-year prison sentence. (C.R. at 554-556).

b. Factual background

On April 9, 2020, Jose Rodriguez and Jonathan Fifer confronted each other at the Hometown Suites Hotel in Houston, Texas. (4. R.R. at 164-165); (6 R.R. at 258-259). As the tensions escalated that night, two opposing groups formed. Ramon Hernandez and at least two other people arrived to support Jose Rodriguez, while Darren Price and other unnamed individuals supported Jonathan Fifer. (4 R.R. at 135); (4 R.R. at 172); (4 R.R. at 179-180); (4 R.R. at 194-195); (7 R.R. at 13, 50); (State's Exhibit 256 at 5:50). In the early hours of April 10, 2020, the two groups exchanged gunfire, resulting in the death of two people. (4 R.R. at 204-

205); (State's Exhibit 256 at 15:25, State's Exhibit 263 at 10:00). Investigators found Darren Price, who sustained a fatal gunshot wound to the back of the head, a few hundred feet away from the hotel parking lot. (3 R.R. at 69-70); (5 R.R. at 105). Law enforcement came to believe that Ramon Hernandez was responsible for Darren Price's death.

In the absence of conclusive evidence identifying Darren Prices's shooter, the prosecutor primarily relied upon three categories of evidence to support its theory of the case. First, Ramon Hernandez admitted to firing shots contemporaneously with Hernandez's flight from the parking lot. (State's Exhibits 256, 263). Next, the prosecution offered surveillance video to establish that Ramon Hernandez exited the hotel parking lot about 7-8 seconds after Darren Price. (State's Exhibit 16 at 45:15). Finally, text messages retrieved from a cell phone later linked to Ramon Hernandez helped establish motive and intent:

1. "Today, I'm going to shoot dow[n] MF."
2. "Who shot my soldier."
3. "That's why I'm at war."
4. "With the black guys."

(8 R.R. at 125-127).

c. Procedural background

During trial, counsel objected to the search of the cell phone connected with Ramon Hernandez as overbroad and beyond the scope authorized by the warrant, and objected to the overbroad seizure of all the data from the cell phone. (7 R.R. at 224); (7 R.R. at 234); (7 R.R. at 273). On appeal, Ramon Hernandez argued that the search constituted an unlawful general search, the search warrant was an illegal general warrant, and that the search warrant violated the Fourth Amendment's particularity requirement, granting officers unfettered authority to seize all the phone's data and indiscriminately search through the phone. (Appellant's Brief at 25-29). The Fourteenth Court of Appeals rejected the merits of Ramon Hernandez's claims, holding that "a search of computer records that is limited to those related to the offense set forth in the affidavit is appropriately limited" and that the evidence seized from the cell phone fell into the enumerated categories of device data set forth in the search warrant. *Hernandez v. State*, App. A at 17-18.

REASONS FOR GRANTING THE WRIT

a. The Supreme Court should intervene to clarify what limitations the particularity requirement places on searches of cell phones

1. Cell phone evidence is important evidence in many serious criminal cases

The importance of cell phone evidence to criminal investigations continues to grow, with many law enforcement professionals believing that the value of digital evidence has eclipsed even DNA evidence. *2024 Industry Trends Survey*, CELLEBRITE (2024) available at <https://cellebrite.com/en/industry-trends-survey-2024/>. In a survey of 50 prosecutors and 51 investigators, the majority of respondents indicated that digital evidence was “almost always” or “usually” relied upon in investigations involving organized crime, crimes against children, financial crime, and sex crime and “almost always,” “usually,” or “half the time” relied upon in violent crime investigations. Christa M. Miller, *A survey of prosecutors and investigators using digital evidence: A starting point*, 6 FORENSIC SCIENCE INTERNATIONAL: SYNERGY 100296 (2023) (further noting that respondents to a survey of police chiefs in the United Kingdom indicated that digital evidence is a factor in about 90% of

criminal cases). As utilization of digital evidence increases in criminal investigation, the demands and caseloads facing digital forensic examiners continue to increase. *2024 Industry Trends Survey*, CELLEBRITE; *What Lies Ahead: 3 solutions for today's mobile forensics challenges*, OXYGEN FORENSICS (2025) available at <https://www.oxygenforensics.com/en/resources/mobile-forensics-challenges-2025-solutions/>. The ubiquity of smartphones continues to increase and law enforcement will continue to seek creative ways to extract and use information from cell phones in criminal prosecutions. See *Fact Sheets: Tech Adoption Trends - Mobile Fact Sheet*, PEW RESEARCH CENTER (Nov. 13, 2024) available at <https://www.pewresearch.org/internet/fact-sheet/mobile/> (Noting that as of 2024, 91% of Americans own a smartphone).

2. In *Riley v. California*, a unanimous court recognized the unique and important privacy interests implicated by searches of cell phones

In *Riley v. California*, this Court balanced the potential evidentiary value of cell phone evidence with the unique and deep-rooted privacy interests in the information stored on the phone. 573 U.S. at 386. Searching a cell phone often reveals sensitive records traditionally stored in a person's home, but may also reveal sensitive medical, location, and

communication records that are not part of the records traditionally stored in a person's home. *Id.* at 396-97. Data stored on a phone can span several years, and may even predate the phone's purchase. *Id.* at 395. A cell phone may store not only files created on the phone itself, but may contain information transferred from other phones or files stored on cloud service providers. *Id.* at 397. In light of the sensitivity of data stored on a typical cell phone, this Court established that the Fourth Amendment's warrant requirement extends to the search of a cell phone. *Id.* at 403.

3. In the absence of Supreme Court guidance on what limitations the particularity requirement imposes on cell phone searches, some jurisdictions allow law enforcement to remove all available data from a cell phone

Although eleven years have passed since this Court issued *Riley v. California*, important questions remain regarding how the Fourth Amendment acts to limit the scope of a search of a cell phone. As noted by this Court, privacy interests in the data contained within a cell phone are often equal to or greater privacy interests in the contents of a person's residence. *Riley v. California*, 573 U.S. at 396-97. In practice, in many jurisdictions, search warrants authorize broader searches of cell phones than are tolerated of peoples' residences. Searches of residences generally

involve seizing specifically listed items from the location, not by dismantling a person's residence brick-by-brick and loading the contents into moving vans. In contrast, cell phone searches in many jurisdictions often accessing and copying the entirety of the available data on a person's phone, passing this unfiltered data along to the prosecution. (State's Exhibit 249); (Court's Exhibit 3); *See e.g. Williams v. Commonwealth*, No. 1562-23-3, 2024 WL 4536324, at *2, 2024 Va. App. LEXIS 606, at *4, (Va. Ct. App. Oct. 22, 2024) (forensic examiner performed a full extraction of all the data on a phone); *United States v. King*, 737 F. Supp. 3d 1020, 1024-25 (D. Nev. 2024) (forensic examiner performed a file-system extraction of all the files on a phone). Many jurisdictions hold that particularity imposes no restrictions upon search warrants that allow the seizure of each category of device data likely to be found on any cell phone, justifying the extraction of the entire phone. (Court's Exhibit 1, 2); *See also State v. Wilson*, 884 S.E.2d 298, 299 (Ga. 2023) (warrant authorizing seizure of user account information, stored phone information, images, text messages, videos, documents, e-mails, internet activity, call logs, contacts, phonebook entries, and deleted data).

The more data extracted from a phone, the greater the risk that officers will discover information in “plain view” that is unconnected with the case. Full phone extractions likely involve significantly more case-irrelevant information than relevant information. *See State v. McGovern*, 974 N.W.2d 595, 617 (Nev. 2022) (searches of a cell phone present difficult questions regarding the application of the plain view doctrine due to the depth of information stored on a cell phone and the intermingling of relevant and irrelevant material). It remains unclear what safeguards prevent the use of and rummaging for case-irrelevant information from a phone in connection with the execution of a search warrant.

Modern digital forensic tool manufacturers are providing analytics and intelligence capabilities, allowing law enforcement to perform automated comparisons of information from different cases and data sources, to recognize and categorize images stored on a phone, and to attempt to recognize coded language in communications. *Innovations to Modernize Investigations*, CELLEBRITE (Last visited May 5, 2025) available at https://cellebrite.com/wp-content/uploads/2024/10/Ebook_

Pathfinder_10-Innovations.pdf The more data extracted from a cell phone, the greater likelihood that case-irrelevant data will be analyzed through surveillance and AI-based tools. Without clear limitations on access to extracted data the device has already been forensically examined or after the case is disposed, the data remains available for subsequent searches. In the same way a DNA profile is used indefinitely in DNA databases, a person's digital identifiers and digital signatures may serve as a silent witness, connecting a person to future and unsolved investigations. Without limitations placed on what information can be extracted from a cell phone, each jurisdiction is free to adopt its own standards regarding these important questions of a constitutional dimension.

4. The particularity requirement is the Fourth Amendment's bulwark protecting against general warrants and general searches

The Fourth Amendment protects individuals not only from warrantless searches, but from general warrants that authorize law enforcement officers to ransack a person's property. *Stanford v. Texas*, 379 U.S. 476, 486 (1965). A warrant must "particularly describe the things to be seized mak[ing] general searches under them impossible and

prevent[ing] the seizure of one thing under a warrant describing another.” *Marron v. United States*, 275 U.S. 192, 196 (1927). While this Court has not definitively addressed what constitutes a general warrant in the context of the search of a cell phone, the same passage from *United States v. Kirschenblatt* cited in *Riley v. California* warned not only of the evils of warrantless searches, but of the similarity of warrantless searches to general warrants, noting:

After arresting a man in his house, to rummage at will among his papers in search of whatever will convict him, appears to us to be indistinguishable from what might be done under a general warrant; indeed, the warrant would give more protection, for presumably it must be issued by a magistrate.

United States v. Kirschenblatt, 16 F.2d 202, 203 (2d Cir. 1926) (emphasis added) cited by *Riley v. California*, 573 U.S. at 396-97.

Search warrants permitting law enforcement to indiscriminately search through all a person’s communications, internet browsing history, and call logs closely resemble general warrants permitting law enforcement to seize and rummage through a person’s “books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings and other written instruments.” *Stanford v. Texas*, 379 U.S. at 486. In the instant case, the search warrant imposed no meaningful restrictions on

the seizure of information from the cell phone associated with Ramon Hernandez, effectively authorizing law enforcement to seize all data contained within the phone. (State’s Exhibit 249); (Court’s Exhibit 1-3). Given the volume of sensitive information contained within most personal cell phones, the particularity requirement should draw clear boundaries to prevent law enforcement from engaging in the digital equivalent of ransacking a person’s house.

b. Courts are starkly divided in how they interpret the particularity requirement

While state courts of last resort and federal circuits widely reject “all data” searches as authorizing unconstitutional general searches, courts are split on what other limitations the particularity requirement imposes upon cell phone searches. While this section focuses primarily on cases involving cell phones, some cases involving computers and cloud service providers are cited when they are illustrative of the reasoning used in cases involving cell phones.

This section separates courts into two general camps. Courts permitting broader searches of cell phones hold that the particularity requirement is satisfied when 1) a warrant limits the search to evidence

of a particular offense or 2) the warrant constrains the search to certain categories of device data (i.e. “any text messages”, “all internet history,” or “any calls”). Courts restricting searches of cell phones hold that the particularity requirement 3) demands temporal limitations to restrict the scope of the search, 4) demands an independent nexus for each broad category of device data subject to search, or 5) demands law enforcement describe the targets of the search with as much specificity as can be provided. Courts limiting searches of cell phones often invalidate broad search warrants when information uncovered during the investigation could have been used to tailor the search to the specifics of the case and prevent a freewheeling search through case-irrelevant materials.

1. Courts holding that the particularity requirement is satisfied when a search is limited to finding evidence of a specific offense

United States v. Bass and *United States v. Bishop* are widely cited cases supporting the proposition that the particularity requirement is satisfied so long as a search warrant restricts law enforcement to search for evidence of a specific offense. 785 F.3d 1043 (6th Cir. 2015); 910 F.3d 335 (7th Cir. 2018). In *Bass*, “the warrant authorized the search for any records of communication, indicia of use, ownership, or possession,

including electronic calendars, address books, e-mails, and chat logs” and “sought evidence of fraudulent conduct related to charges of Wire Fraud, Credit Fraud, and Identity Theft.” *United States v. Bass*, 785 F.3d at 1049 (punctuation omitted). Reasoning that “criminals can—and often do—hide, mislabel, or manipulate files to conceal criminal activity,” the Sixth Circuit Court of Appeals reasoned that the Fourth Amendment authorized a “broad, expansive search” of the cell phone. *Id.* *Bass* remains influential and has recently been cited approvingly by the Sixth Circuit Court of Appeals. *United States v. Nester*, No. 23-1727, 2024 WL 4615777, 2024 U.S. App. LEXIS 27728, at *13-17 (6th Cir. Oct. 30, 2024)

Bishop employed slightly different reasoning to arrive at a similar result. *United States v. Bishop*, 910 F.3d at 336-37. The 7th Circuit Court of Appeals noted that caselaw permitted officers searching a house for drugs to search anywhere drugs could be found and allowed officers searching for specific documents to examine every file cabinet in an office. *Id.* The court reasoned that every document on the cell phone was analogous to a file cabinet, therefore it was appropriate to search every document for evidence. *Id.* at 337. *Bishop* added one additional layer of nuance, noting that a warrant is insufficient specific when “some more-

specific alternative would have done better at protecting privacy while still permitting legitimate investigation.” *Id.* Noting that in most cases, investigators will not have specific, reliable information about where relevant information is kept, *Bishop* does not impose a requirement for specificity not warranted by the investigators’ current knowledge. *Id.* at 337-38. In practice, *Bishop* is largely indistinguishable from *Bass*, and it does not appear that *Bishop*’s “some more-specific alternative” language is often used to invalidate overbroad warrants. *See e.g. United States v. Joon Kim*, 707 F. Supp. 3d 751, 757 (N.D. Ill. 2023) (Rejecting an overbreadth challenge, finding that a search warrant is appropriately narrow where it cabins the things being looked for by stating what crime is under investigation). *Bishop* remains influential and has recently been cited approvingly by the 7th Circuit Court of Appeals. *Socha v. City of Joliet*, 107 F.4th 700, 709 (7th Cir. 2024).

At least two other Federal Circuit Courts of Appeal employ reasoning similar to that employed in *Bass* and/or *Bishop*. *See United States v. Ulbricht*, 858 F.3d 71, 102 (2d Cir. 2017). *United States v. Russian*, 848 F.3d 1239, 1245 (10th Cir. 2017). Additionally, at least one state court of last resort and two state intermediate appellate courts

follow *Bass* and/or *Bishop*. See *Palmer v. State*, 853 S.E.2d 650, 658 (Ga. 2021); *State v. Johnson*, 576 S.W.3d 205, 222-23 (Mo. Ct. App. 2019); *Diaz v. State*, 604 S.W.3d 595 (Tex. App.—Houston [14th Dist.] 2020), *aff’d*, 632 S.W.3d 889 (Tex. Crim. App. 2021).

Two state intermediate courts of appeal followed the reasoning outlined in *Bass* and/or *Bishop* in situations where the search warrant targets contraband within the phone. See *State v. Maranger*, 110 N.E.3d 895, 912 (Ohio Ct. App.); *Klugman v. Superior Court*; 252 Cal. Rptr. 3d 759, 772 (Cal. Ct. App. 2019) (subsequently withdrawn from publication). It should be noted that searches for contraband may present an exception to the particularity requirement, and these cases may not be representative of how courts would rule in other contexts. Wayne R. LaFare, 2 SEARCH AND SEIZURE § 4.6(a), 771-72 (5th ed 2012) ("A less precise description is required of property that is, because of its particular character, contraband.").

- 2. Courts holding that the particularity requirement is satisfied when a search is restricted to broad categories of device data, for instance “any messages, internet history, and call logs”**

The second approach allowing broad searches of cell phones is exemplified by *State v. Goynes*. 927 N.W.2d 346 (Neb. 2019). *Goynes* validated a request to search several expansive categories of device data, reasoning that the information might ultimately prove relevant to the investigation. *Id.* at 142-43. Concluding that the warrant contained “sufficient particularity to identify the locations on the cell phone to be searched and the content to be seized,” the Supreme Court of Nebraska found that the warrant satisfied the Fourth Amendment particularity requirement. *Id.* at 144. Citing *United States v. Burgess*, 576 F.3d 1078, 1090-91 (10th Cir. 2009), an intermediate Texas Court of Appeals arrived at the same result, finding that a warrant authorizing the search for “specific types of materials” satisfied the particularity requirement. *Farek v. State*, No. 01-18-00385-CR, 2019 WL 2588106, at *7–8, 2019 Tex. App. LEXIS 5274, at *20 (Tex. App. June 25, 2019) (mem. op., not designated for publication).

“Categorical” warrants can authorize the extraction of all data within a phone by listing all the types of device data likely to be found on a phone and offering a brief explanation of how such data may theoretically aid an investigation. For example, in the instant case, the

warrant approved by the trial court and court of appeals broadly described the categories of data typically found on a cell phone, resulting in a complete extraction of data from the phone. *Hernandez v. State*, App. A. at 19; (State’s Exhibit 249); (Court’s Exhibit 1-3).

3. Courts holding that the particularity requirement demands temporal limitations that restrict the scope of the search

In *United States v. Holcomb*, the Ninth Circuit Court of Appeals considered a search warrant that allowed an unrestricted search for evidence of dominion and control of a phone. 132 F.4th 1118, 1124 (9th Cir. 2025). Noting that without temporal limitations, the dominion and control provision authorized law enforcement to “open and examine any file from any time period, including files that long predated the alleged assault.” *Id.* at 1128. Citing the lack of temporal limitations coupled with the extensive data that can reside on a cell phone or computer, the Ninth Circuit Court of Appeals concluded the warrant was invalid. *Id.* at 1128-29. The court further noted that the lack of a temporal limitation converted the warrant into a general warrant in this case, but acknowledged that in other circumstances, it may be impossible to

precisely describe the target of the search and temporal limitations may not be constitutionally required. *Id.* at 1130-31.

Several state courts of last resort have employed reasoning similar to the reasoning in *United States v. Holcomb*. In *People v. Coke*, the Supreme Court of Colorado held that the particularity requirement mandating limiting the search of the phone to the time period relevant to the investigation. 461 P.3d 508, 516 (Co. 2020). In *Commonwealth v. Snow*, the Supreme Court of Massachusetts held that “a warrant for a cell phone search presumptively must contain some temporal limit.” 160 N.E.3d 277, 288 (Mass. 2021). Citing *Snow*, the Court of Appeals of Maryland similarly concluded that temporal limits are generally required, noting that only in a “small subset of cases, most notably child pornography and financial crimes, experience has shown that some perpetrators purposely mislabel electronic files or hide evidence in unusual places.” *Richardson v. State*, 282 A.3d 98, 120 (Md. 2022). *Smith v. State* broadly imposed temporal limitations, holding a search warrant was invalid for failing to “descri[be] the areas within the cell phone to be searched, or [restrict the search to] a time frame reasonably related to the crimes.” 278 A.3d 481, 497 (Conn. 2022). In *Buckham v. State*, one of

the grounds invalidating a search warrant for the contents of a cell phone was failing to “limit the search of Buckham’s cell phone to any relevant time frame.” 185 A.3d 1, 19 (Del. 2018).

Several state intermediate appellate courts have invalidated search warrants for cell phones or digital evidence where the warrants lacked temporal limitations. *See State v. Summers*, No. A-1578-22, 2024 WL 5252023, at *6–7, 2024 N.J. Super. Unpub. LEXIS 3244, at *18-20 (Super. Ct. App. Div. Dec. 31, 2024) (not designated for publication); *People v. Thompson*, 116 N.Y.S.3d 2 (N.Y. App. Div. 1st Dept.); *State v. McKee*, 413 P.3d 1049, 1058 (Wash. 2018) *rev’d on other grounds by* 438 P.3d 528 (Wash. 2019). In addition, federal district courts in the Fourth and Eighth circuits have imposed temporal limitations on cell phone searches. *See United States v. Cawthorn*, 682 F. Supp. 3d 449, 453-54 (D. Md. 2023); *United States v. Burkhow*, No. 19-CR-59-CJW-MAR, 2020 WL 589536, at *10, 2020 U.S. Dist. LEXIS 20319, at *28-29 (N.D. Iowa Feb. 6, 2020) (recognizing that temporal limitations are required in certain circumstances).

4. Courts holding that the particularity requirement demands an independent nexus specific to each category device data subject to search

Several state courts of last resort concluded that particularity generally forbids search warrants that authorize the examination of broad categories of device data (i.e., text messages, photographs, search history) when the warrant fails to establish a nexus between that category of device data and the investigation. Distinguishing searches of physical containers from searches of digital containers, the Supreme Court of Massachusetts noted that it was “not enough that the object of the search *may* be found in the place subject to search,” but that “the affidavit must demonstrate that there is a reasonable expectation that the items sought *will* be located in the particular data file or other specifically identified electronic location that is to be searched. *Commonwealth v. Broom*, 52 N.E.3d 81, 89 (Mass. 2016) (emphasis original). Similarly, the Supreme Court of Delaware invalidated a warrant authorizing the search of particular categories of data insufficiently connected to the investigation, holding that the warrant “expressly authorized the search of materials there was no probable cause to search.” *Buckham v. State*, 185 A.3d at 19.

Although the case was later vacated after *en banc* rehearing due to the application of the good-faith rule, in *United States v. Morton*, the

Fifth Circuit Court of Appeals held that in order to search an entire “container” within a phone for evidence of an offense, there must be a specific showing of probable cause that evidence exists within that specific category of device data. 984 F.3d 421 (5th Cir. 2021) *rev’d on other grounds* by 46 F.4th 331 (5th Cir. 2022) *cert. denied* 143 S. Ct. 2467 (2023). Considering whether the observations contemporaneous with an arrest for a simple controlled-substance-related crime supported a pretextual search for evidence of drug trafficking, the court found that the search warrant affidavit failed to lay out probable cause that the defendant was engaged in drug trafficking. *Id.* at 424. In finding the search warrant overbroad, the Fifth Circuit Court of Appeals held that the State failed to establish a nexus between the offense of simple drug possession and the broad search of the photographs contained within the cell phone. *Id.* at 426-27.

5. Courts holding that the particularity requirement demands law enforcement describe the targets of the search with as much specificity as can be provided

Other courts have required that search warrants go beyond listing generic categories of device data when investigators have a specific idea of what they are expecting to find within the phone. In *Burns v. United*

States, the DC Court of Appeals reasoned that warrants containing only “general descriptions of items” to be searched were “immediately suspect as being based upon nothing more than conjecture that such items related to the crime under investigation actually exist.” *Burns v. United States*, 235 A.3d 758, 775 (D.C. 2020). The DC Court of Appeals further noted that allowing the search of general categories of information on a phone failed to respect the “heightened privacy interests attendant to modern smart phones,” declaring those provisions constitutionally intolerable. *Id.* at 775. In *People v. Coke*, the Supreme Court of Colorado rejected a search for “general indicia of ownership” as overbroad due to cell phones’ ability to collect “the privacies of life.” 461 P.3d at 516-17.

At least two intermediate state courts of appeals have held that the particularity requirement obligates law enforcement to describe the items subject to seizure with as much detail as possible, considering the information known to law enforcement at the time the warrant was issued. *See State v. Bock*, 485 P.3d 931, 936 (Or. 2021) and *State v. McKee*, 413 P.3d at 1058 (both noting that generic categories of data cannot be used if law enforcement could more particularly describe the items subject to seizure).

c. The conflict between circuits is firmly entrenched

Over the past two decades, courts have largely aligned into two diametrically opposed camps. Courts favoring broader searches of phones and a more lenient interpretation of the particularity requirement often find no constitutional barriers to seizing all the data within a phone. Courts favoring narrower searches of phones and a more stringent application of the particularity requirement demonstrate concerns about the sensitive case-irrelevant data seized from a phone alongside any case-relevant data. Both camps argue that the unique characteristics of cell phone data justify their respective position.

The main justification supporting broad interpretation of search warrants is that law enforcement “cannot readily anticipate how a suspect will store information related to the charged crimes.” *See United States v. Ulbricht*, 858 F.3d 71, 102 (2d Cir. 2017) *abrogated on other grounds by Carpenter v. United States*, 585 U.S. 296 (2018). Courts permitting broad searches have often assumed upon a silent record¹ that

¹ It is unclear whether cell phone anti-forensic practices are encountered in typical cases or whether the assumption that phones can be easily modified to evade detection is justified in light of modern smartphone security practices, including application isolation, sandboxing, and the

bad actors can easily alter files and file names to conceal contraband. *See e.g. United States v. Bass*, 785 F.3d at 1049 (“Because “criminals can—and often do—hide, mislabel, or manipulate files to conceal criminal activity such that a broad, expansive search of the computer may be required.”). This line of jurisprudence, which predates *Riley v. California*, is largely rooted in cases involving searches of computers, and is well-settled in the jurisdictions adopting it. *See e.g. United States v. Stabile*, 633 F.3d 219, 239-40 (3d Cir. 2011) (justifying a broad warrant, noting that “criminals can easily alter file names and file extensions to conceal contraband.”).

The main justification supporting a stronger application of the particularity requirement recognizes the heightened privacy interests identified in *Riley v. California*. 573 U.S. at 393-98; *See United States v. Morton*, 984 F.3d at 426 (citing the privacy interests in *Riley v. California* as “requiring distinct types of information, often stored in different components of the phone, [to] be analyzed separately.”); *Richardson v. State*, 282 A.3d at 115 (“The particularity requirement is arguably of even

limited user privileges, all of which limit a user’s ability to access and modify data on a phone.

greater importance in the context of computers and smartphones than it is in the physical world”). Courts adopting limiting restrictions observe that prosecutors often possess knowledge of the events leading up to an incident and often can and must draft narrower, more targeted warrants tailored to the events of a case. *See e.g. Commonwealth v. Snow*, 160 N.E.3d at 289 (“A feud beginning mere days before, and a car borrowed earlier that day, do not support a reasonable inference that evidence related to the crime could be found in the defendant’s cell phone data from years, months, or even weeks before the murder”). While most decisions adopting this reasoning have been within the last five years, this rationale originated contemporaneously with *Bass* and *Bishop*. *See Commonwealth v. Broom*, 52 N.E.3d at 89 (holding that heightened particularity requirements apply in the context of a cell phone in 2016).

At least some courts adopting the rationale behind *Bass* and *Bishop* have explicitly considered and rejected the rationale adopted by cases holding that the Fourth Amendment places heightened particularity requirements on cell phone searches. *See e.g. United States v. Smith*, No. 19-324 (BAH), 2021 WL 2982144, at *10, 2021 U.S. Dist. LEXIS 131602, at *30 (D.D.C. July 15, 2021) (rejecting the reasoning adopted by its sister

court in *Burns v. United States*, 235 A.3d 758). Similarly, courts applying a heightened particularity requirement have rejected the application of *Bass* and *Bishop* in a scenario where law enforcement “easily could have provided a more specific description of the items subject to seizure.” *Burns v. United States*, 235 A.3d at 777. At this stage, it appears that the division between the courts is neither accidental nor likely to resolve itself.

d. The issue of how particularity requirements apply in the context of a cell phone search is ripe for review

Over the past decade, at least four other petitions for writ of certiorari have asked this Court to clarify how the particularity requirement applies within the context of a search of digital evidence. *Rindfleisch v. Wisconsin*, 577 U.S. 824 (2015) (asking whether the Fourth Amendment requires limitations on the communications that can be searched pursuant to a warrant); *Vetri v. United States*, 141 S. Ct. 1501 (2021) (asking whether the Fourth Amendment requires more stringent privacy consideration for the search of a cell phone); *Lindell v. United States*, 144 S. Ct. 1350 (2024) (asking whether particularity requirement requires that the evidence seized from a cell phone be particularly

described); *Zocco v. Wisconsin*, 145 S. Ct. 174 (2024) (asking whether the particularity requirement forbids the search of all data stored a cell phone). Although cell phones have become even more pervasive and digital evidence increasingly critical in criminal prosecutions since *Riley v. California*, fundamental Constitutional issues related to the admissibility of that evidence remain unresolved. Sufficient time has passed since *Riley v. California* and sufficient importance attaches to the resolution of this issue as to merit this Court’s time and consideration.

e. This case is a good vehicle for the Court to expand upon its holding in Riley v. California

This case provides a suitable vehicle for review for several reasons. First, the overbreadth of the search and search warrants were challenged in the trial court, the issue of particularity was raised on appeal, and the merits of the particularity argument were summarily addressed by the appellate opinion in this case. (7 R.R. at 224, 234, 273); *Hernandez v. State*, App. A at 18-20. Second, Texas courts find that the particularity requirement is satisfied so long as the warrant directs officers to search for “evidence of specific crimes” or “specific types of materials,” and a decision that particularity requires more is likely to impact the decision

in this case. *See Farek v. State*, 2019 WL 2588106, at *7–8, 2019 Tex. App. LEXIS 5274, at *20. More specifically, the search warrant in this case broadly authorized the search of the cell phone associated with Ramon Hernandez for evidence of “deadly conduct or murder” within every type of device data to be found on the phone:

- “All photographs/videos in storage;”
- “Text or multimedia messages (SMS and MMS);”
- “Call history or call logs;”
- “E-mails;”
- “Instant messaging, or other related forms of communication;”
- “Internet browsing history;”
- “Global Positioning System (GPS) data;”
- “Contact information including e-mail addresses, physical addresses and phone numbers;”
- “Voicemail messages or telephone recordings;”
- “Audio/video recordings sent or received by the device;”
- “Stored Documents;”
- “Computer files or fragments of files;” and
- “Tracking data and way points.”

Hernandez v. State, App. A at 19; (Court’s Exhibit 2). A decision that particularity requirement imposes temporal limitations, demands a nexus connecting each category of device data searched to the investigation, or requires law enforcement to state with more specificity what evidence it is seeking during the search of the phone will invalidate the search warrant issued. Finally, while there was confession evidence

that Ramon Hernandez fired a firearm in the specific timeframe that Darren Price was shot, no evidence established that Ramon Hernandez was the only person shooting. Given the distance between Ramon Hernandez and Darren Price, it is exceedingly unlikely Hernandez fired the fatal shot. In these circumstances, even circumstantial evidence used to paint Ramon Hernandez as a person who had intent and motive to kill Darren Price had outsized importance in the case. Granting this petition has a meaningful chance of leading to a different outcome in this case.

CONCLUSION

Petitioner respectfully submits that this Court should grant certiorari to review the judgment of the Fourteenth Court of Appeals of Texas in Houston, Texas.

Respectfully submitted on June 20, 2025.

A handwritten signature in blue ink, appearing to read 'Nicolas Hughes', with a stylized flourish extending to the right.

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APPENDIX A

Opinion, Cause 14-23-00657-CR