No. _____

IN THE

Supreme Court of the United States

GREGORY KURZAJCZYK,

Petitioner.

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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July 11, 2025

Question Presented

Should the Court should grant the petition in order to resolve a conflict among the Courts of Appeals as to whether a probation officer's suspicionless search of the residence of a defendant on supervised release violates the Fourth Amendment?

List of Parties

Petitioner Gregory Kurzajczyk was the defendant in the district court and the appellant in the Second Circuit. Respondent is the United States.

Related Proceedings

Gregory Kurzajczyk's conviction in this case gave rise to a violation-of-supervised-release proceeding based upon the conviction. The docket number for this proceeding in the Northern District of New York is 1:16-cr-198-1. The appeal of the violation proceeding is Second Circuit docket number 24-613.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Gregory Kurzajczyk respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Second Circuit dated May 13, 2025.

Opinions Below

The decision of the Court of Appeals is an unpublished summary affirmance and is set forth at App. 012, infra.[1] The Second Circuit's denial of the petition for rehearing is unpublished and is set forth at App. 020. The district court's decision is unpublished and is set forth at App. 001.

Jurisdiction

The Court of Appeals opinion in this case was filed on May 13, 2025. A timely petition for rehearing was filed on May 23, 2925. The Court of Appeals denied the petition for rehearing on June 25, 2025. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

The basis for subject matter jurisdiction in district court was 18 U.S.C. §3231 (jurisdiction over offenses against the United States). The basis for the jurisdiction of the court of appeals was 28 U.S.C. §1291 (appeals from final judgments of district courts), Rule 4(b), Fed.

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[1]In this petition, "App." refers to the Appendix to this Petition for Certiorari, which accompanies the petition. "A" refers to the appendix filed by the petitioner in the Court of Appeals.

R. App. Proc. (appeals from criminal convictions), 18 U.S.C. §3557 and 18 U.S.C. §3742 (appeals from sentences) and Rule 35 (en banc determinations).

Constitutional and Statutory Provisions Involved

United States Constitution, Amendment IV

> 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.

Statement of the Case

District Court proceedings: After his conviction for possession and distribution of child pornography, Gregory Kurzajczyk was sentenced to (among other punishments) the following standard condition of supervised release:

> You must submit your . . . house, residence . . . computer, electronic communication devices or media, to search at any time, with or without a warrant, by any federal probation officer. or any other law enforcement officer from whom the Probation Office has requested assistance, *with reasonable suspicion* concerning a violation of a condition of . . . supervised release or unlawful conduct by you.

Judgment, A-040 (emphasis added).

After Gregory Kurzajczyk's release from prison, his probation officer, during the course of a home visit, went upstairs into Kurzajczyk's second-floor bedroom and discovered the computer

equipment and electronic storage devices that led to this second prosecution for possession of child pornography. App. 004-006.

In the district court, Gregory Kurzajczyk moved to suppress the evidence found in his bedroom, as well as the fruits of that search, alleging that he had not consented to the search and that the probation officer did not have reasonable suspicion to justify the search. App. 006. A-031-034. The government opposed suppression, A-052-062, and opposed, too, the conducting of an evidentiary hearing. A-063.

The district court concurred with the government on both counts: there was no need for a hearing because no fact germane to the court's decision was contested. Whether Gregory Kurzajczyk had consented or not, whether the probation officer had reasonable suspicion or not – neither mattered, because, the district court held, a probation officer is empowered to conduct warrantless searches of those on supervised release without consent and without reasonable suspicion, just as they may validly conduct such searches of parolees. App. 007-009, and, besides, the probation officer's actions fell within the good-faith exception to the warrant requirement. App. 010-011.

Court of appeals proceedings: On appeal after his conviction by a jury, Gregory Kurzajczyk continued to argue (among other issues) that warrantless, suspicionless searches by probation officers violate

the Fourth Amendment and that the probation officer's search of Gregory Kurzajczyk's bedroom did not satisfy the good-faith exception to the warrant requirement. App. 015.

The government responded that the search conducted by the probation officer was reasonable under the special needs doctrine, Gov't Br. 10, and that, in any event, the conduct of the probation officers was not sufficiently culpable to justify the application of the exclusionary rule. A-047.

After briefing and argument , the panel affirmed in a summary order:

> We need not reach the underlying merits of Kurzajczyk's Fourth amendment claim because the "good faith exception to the exclusionary rule"supports the District Court's denial of the motion to suppress. *United States v. Maher*, 120 F.4th 297, 320–21 (2d Cir. 2024). Even assuming without deciding that the probation officer's search violated the Fourth Amendment, the good faith exception applies because the officer could not have "reasonably know[n], at the time," that the search was unconstitutional. Id. at 321 (quotation marks omitted).
>
> Our precedents applying the "special needs" doctrine have held that "a search of a parolee is permissible so long as it is reasonably related to the parole officer's duties," *United States v. Braggs*, 5 F.4th 183, 186–87 (2d Cir. 2021) (*quoting United States v. Grimes*, 225 F.3d 254, 259 n.4 (2d Cir. 2000)), and that this rule "applies with equal force to individuals . . . subject to federal supervised release," *United States v. Reyes*, 283 F.3d 446, 458 (2d Cir. 2002). Here, the probation officer expressed "concerns about [Kurzajczyk's] access to internet devices and porn in [his] home" based on several prior home visits. App'x 117; *see also* App'x 113–16.And the search occurred before our

> opinion in *United States v. Oliveras*, 96 F.4th 298 (2d Cir. 2024), the principal authority on which Kurzajczyk relies. Under these circumstances, the probation officer "did not have any significant reason to believe that what [she] had done was unconstitutional." *United States v. Ganias*,824 F.3d 199, 225 (2d Cir. 2016) (en banc) (quotation marks omitted). We thus affirm the District Court's decision to deny the motion to suppress and to admit the challenged evidence.

App. 015-016.

Reasons for Granting the Petition

The Court should grant the petition in order to resolve a conflict among the Courts of Appeals as to whether a probation officer's suspicionless searches of the residence of a defendant on supervised release violates the Fourth Amendment.

The Fourth Amendment guarantees "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" and its Warrant Clause provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to seized." U.S. Const. Amend IV. "A probationer's home, like anyone else's, is protected by the Fourth Amendment's requirement that searches be 'reasonable." *Griffin v. Wisconsin*, 483 U.S. 868, 873 (1987). A search conducted without a warrant that has been issued upon a showing of probable cause is per se unreasonable, subject to certain exceptions. *Katz v. United States*, 389 U.S. 347, 356-57 (1967).

Such an exception to the warrant requirement exists where a governmental agency has special needs beyond the normal need for law enforcement.

In *Griffin v. Wisconsin*, 483 U.S. at 868, this Court held that probation officers fell within this special-needs exception to the warrant requirement. The Court upheld a warrantless search of a probationer conducted pursuant to a Wisconsin regulation permitting "any probation officer to search a probationer's home without a warrant as long as his supervisor approves and as long as there are 'reasonable grounds' to believe the presence of contraband." 483 U.S. at 870-871.

In *United States v. Knights*, 534 U.S. 112, 121 (2001), this Court considered the validity of searches of probationers based upon a condition of probation authorizing such searches (rather than upon a regulation, as in *Griffin*). This Court balanced a probationer's Fourth Amendment interests against the special needs of probation officers to supervise, and concluded that "when a probation officer has *reasonable suspicion* that a probationer subject to a search condition is engaged in criminal activity, there is enough likelihood that criminal conduct is occurring that an intrusion on the probationer's significantly diminished privacy interests is reasonable." 534 U.S. at

121 (2001) (emphasis added).[2]

What the *Knights* opinion did not decide is:

> whether the probation condition so diminished, or completely eliminated, [Mr.] Knights' reasonable expectation of privacy (or constituted consent) that a search by a law enforcement officer without any individualized suspicion would have satisfied the reasonableness requirement of the Fourth Amendment. The terms of the probation condition permit such a search, but we need not address the constitutionality of a suspicionless search because the search in this case was supported by reasonable suspicion.

Id. at 120 n.6.

This Court has never held that in the absence of reasonable suspicion a probation officer's search of a probationer's residence (or the residence of a defendant on supervised release) satisfies the Fourth Amendment.

Statutory, regulatory, and administrative provisions governing warrantless probation-officer searches uniformly are based upon the understanding that a probation officer's warrantless search comports with the Fourth Amendment – so long as the probation officer has reasonable suspicion justifying the search.

18 U.S.C. §3583(d), the statutory authority for warrantless

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[2]A probationer's reasonable expectations of privacy are probably identical to those of a defendant on supervised release and are very different from those of parolees, who have lesser expectations of privacy than those on probation (or supervised release). *Samson v. California*, 547 U.S. 843, 850 (2006),

probation-officer searches, provides that a "court may order, as an explicit condition of supervised release for a person [such as Gregory Kurzajczyk] who is a felon and required to register under the Sex Offender Registration and Notification Act, that the person submit his person, and any property, house, residence, vehicle, papers, computer, other electronic communications or data storage devices or media, and effects to search at any time, with or without a warrant, by any law enforcement or probation officer *with reasonable suspicion* concerning a violation of a condition of supervised release or unlawful conduct by the person, and by any probation officer in the lawful discharge of the officer's supervision functions." [Emphasis added]

The United States Sentencing Guideline advice on warrantless probation-officer searches suggests that where the offense of conviction is, as here, a sex offense, a court may impose

> (C) A condition requiring the defendant to submit to a search, at any time, with or without a warrant, and by any law enforcement or probation officer, of the defendant's person and any property, house, residence, vehicle, papers, computer, other electronic communication or data storage devices or media, and effects, *upon reasonable suspicion* concerning a violation of a condition of probation or unlawful conduct by the defendant, or by any probation officer in the lawful discharge of the officer's supervision functions.

U.S.S.G. §5D1.3(d)(7)(C) (emphasis added).

The Administrative Office of the United States Courts advises

federal probation officers, supervisees, and the general public that

> The probation officer limits enforcement of this condition [*i.e.* a condition of supervised release authorizing warrantless searches] to situations where he or she can articulate reasonable suspicion that items prohibited by the conditions of supervision or evidence of a violation of the conditions of supervision may be found at the place or in the item being searched. Searches are not to be conducted absent such suspicion of violation behavior.[3]

The guide to probation officers in the Northern District of New York (quoted at length in the government's sealed brief in the Court of Appeals) similarly advises probation officers that consent of the person under supervision is required in order to conduct searches of a residence.

As noted, the conditions of Gregory Kurzajczyk's supervised release specifically required that the probation officer possess reasonable suspicion before conducting a search.

The Second Circuit, like this Court, has never explicitly decided whether a probation officer's suspicionless search of a supervisee is constitutional. The Second Circuit has, however, held that such searches do not violate the Fourth Amendment so long as a condition

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[3] United States Courts, Overview of Probation and Supervised Release Conditions, chapter 3 (D)(4), set forth at https://www.uscourts.gov/about-federal-courts/probation-and-pretrial-services/post-conviction-supervision/overview-probation-and-supervised-release-conditions/chapter-3-search-and-seizure-probation-and-supervised-release (last viewed July 1, 2025).

of supervised release that was imposed at sentencing authorizes suspicionless searches. *Oliveras*, 96 F.4th at 298.[4]

Although the panel's summary order does not explicitly rule on the constitutionality of warrantless, suspicionless probation-officer searches, make no mistake about it: the practical effect of the order is to authorize suspicionless searches in the future. This is not hyperbole, as even a cursory consideration of the order's consequences demonstrates: henceforth, any time a probation officer conducts a warrantless, suspicionless search, and a defendant moves to suppress, the search will always be upheld, because the probation officer of the future, like the probation officer here, will be held to have acted in good faith. Indeed, the question of the constitutionality of warrantless, suspicionless probation-officer searches may never be decided, at least in the Second Circuit: each time the issue is raised, either in the district court or in the court of appeals, it will not be

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[4] In *Reyes*, 283 F.3d at 458, the Second Circuit held that because a home visit is far less intrusive than a probation search, a probation officer may conduct a home visit without reasonable suspicion.

In *Braggs*, 5 F.4th at 183, the Second Circuit upheld a search without reasonable suspicion of the residence of a state parolee who, in order to obtain a release on parole, had signed an agreement in which he consented to "permit [his] Parole Officer to visit [him] at his residence and / or place of employment and . . . permit the search and inspection of [his] person, residence and property." 5 F.4th at 185.

reached, because each time a probation officer searches without reasonable suspicion, that probation officer could not have "reasonably know[n]. . . that the search was unconstitutional," App. 016-017 – particularly after the issuance of the summary order in Gregory Kurzajczyk's case.

So the summary order here, for all practical purposes, eliminates any requirement that probation officers possess reasonable suspicion before searching the residences of those on supervised release, even though the Court of Appeals has never explicitly held that such searches satisfy the Fourth Amendment, and may never be required to settle the question.

This summary order (as well as the Second Circuit's holding in *Oliveras*, 96 F.4th at 298, that suspicionless searches may conducted if authorized as s special condition of supervised release) is thus, in our view, in conflict with the Court's suggestion in *Knights* (and in the more explicit statutory, regulatory administrative directives based on the *Knights* opinion) that although probationers possess significantly diminished privacy interests, they may at least possess a legitimate expectation that they will be free from searches by their probation officers, unless the search is supported by reasonable suspicion.

The summary order here is in direct conflict with the decision of the Court of Appeals for the Sixth Circuit in *United States v. Fletcher*,

978 F.3d 1009 (6th Cir. 2020). There, the court found that a probation officer's search of a supervisee's cell phone required reasonable suspicion, 978 F.3d at 1015-16, that the requirement of reasonable suspicion was not satisfied, *id.* at 1016-1018, and that the evidence seized should thus have been suppressed. As here, the defendant's probation agreement did not authorize suspicionless searches. The *Fletcher* majority opinion noted that while the privacy interest of a probationer has been significantly diminished, it is still substantial, and the court differentiated the situation of a supervisee from that of a parolee.[5]

The conflict that we have identified between the Second and Sixth Circuits over the validity of warrantless, suspicionless probation searches is mirrored in numerous conflicting court decisions.

Some courts, it is true, have held that a warrantless search of a probationer or a supervisee subject to a search condition is constitutional, even absent reasonable suspicion. *See, e.g., United States v. King*, 736 F.3d 805, 810 (9th Cir. 2013) (concluding that "a suspicionless search, conducted pursuant to a suspicionless-search

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[5] The *Fletcher* court also rejected the government's argument, accepted by our panel, that any mistake by the probation officer as to the requirement of reasonable suspicion was a reasonable mistake of law that fell within the good faith exception.

condition of a violent felon's probation agreement, does not violate the Fourth Amendment"); *United States v. Tessier*, 814 F.3d 432, 434-35 (6th Cir. 2016) (upholding a warrantless search of a probationer's residence that was not based on reasonable suspicion where the probationer was subject to a warrantless search condition and the search served a legitimate law enforcement or probationary purpose); *United States v. Williams*, 650 Fed. App'x. 977, 980 (11th Cir. 2016) (holding that the suspicionless search the home of a probationer subject to a warrantless search provision was constitutional where the search was conducted primarily by probation officers); *State v. Adair*, 383 P.3d 1132, 1135-38 (Ariz. 2016) (holding that a search of a probationer's home, conducted by probation officers pursuant to valid probation conditions, need not be supported by reasonable suspicion but declining to address the constitutionality of the same search conducted by law enforcement instead of probation officers); *State v. Vanderkolk*, 32 N.E.3d 775, 779 (Ind. 2015) (concluding that the holding in *Samson* also applies to probationers and community corrections participants). *See generally State v. Ballard* , 874 N.W.2d 61, 76 (N.D. 2016) (Sandstrom, J., dissenting; collecting cases). As noted, many of these decisions are based, at least in part, upon the probationer's signing an acceptance to a suspicionless-search condition of probation or supervised release.

Other jurisdictions, however, have held that warrantless searches of probationers subject to a warrantless search condition must be supported by reasonable suspicion. *See, e.g.*, *Fletcher*, 978 F.3d at 1009; *State v. Bennett*, 288 Kan. 86, 200 P.3d 455, 463 (2009) (holding that a probationer may not be searched by a probation or law enforcement officer absent reasonable suspicion and that a condition imposed by the trial court subjecting the probationer to random, suspicionless searches was unconstitutional); *State v. Cornell*, 202 Vt. 19, 146 A.3d 895, 909 (2016) (declining to extend Samson to searches of probationers and holding that "reasonable suspicion for search and seizure imposed on probationers is required by the Fourth Amendment"); *Ballard*, 874 N.W.2d at 62 (concluding that the suspicionless search of the home of an unsupervised probationer subject to a warrantless search condition was unreasonable under the Fourth Amendment); *Murry v. Commonwealth*, 288 Va. 117, 762 S.E.2d 573, 581 (2014) (concluding that a probation condition subjecting a probationer to a warrantless, suspicionless search by any probation or law enforcement officer at any time was not reasonable in light to the probationer's background, his offenses, and the surrounding circumstances).

Conclusion

Although the panel's order is framed as case involving a good-

faith exception to the exclusionary rule, it effectively eliminates the requirement of reasonable suspicion for probation officer searches in the Second Circuit, and the Court should grant the petition in order to resolve the conflict between Gregory Kurzajczyk's summary order (and *Oliveras*), authorizing suspicionless probation-officer searches, and *Fletcher* and the numerous state-court Fourth Amendment decisions forbidding them.

Respectfully submitted,

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July 11, 2025

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In the

Supreme Court of the United States

October Term, 2025

GREGORY KURZAJCZYK,
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Appendix to the Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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Appendix
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

vs. **1:22-cr-335 (MAD)**

GREGORY KURZAJCZYK,

Defendant.

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Mae A. D'Agostino, U.S. District Judge:

MEMORANDUM-DECISION AND ORDER

I. INTRODUCTION

On September 13, 2022, Defendant was charged with four counts of possession of child pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B), in relation to allegations that he possessed images of child pornography on electronic devices in his Greene County home on February 16, 2022. *See* Dkt. No. 1. Trial is scheduled to commence on October 23, 2023. *See* Dkt. No. 22. Currently before the Court is Defendant's motion to suppress. *See* Dkt. No. 25. As set forth below, Defendant's motion is denied.

II. BACKGROUND

A. Defendant's Prior Conviction

On April 14, 2015, Defendant was charged by criminal complaint with distribution of child pornography following the execution of a search warrant on his residence by Special Agents of Homeland Security Investigations. *See United States v. Kurzajczyk*, No. 16-cr-198 (N.D.N.Y.). According to the uncontested facts set forth in the Presentence Investigation Report ("PSIR") in that case, between July 2014 and January 2015, undercover law enforcement officers using peer-to-peer file sharing software downloaded pictures and videos depicting child pornography from a computer associated with Defendant's residence in Greene County. In April 2015, law enforcement officers searched Defendant's residence pursuant to a federal warrant and seized his electronic devices. In a post-*Miranda* interview with investigators, Defendant admitted to using a file-sharing application to distribute child pornography and to downloading child pornography from the internet beginning "maybe five or ten years" prior. Defendant told investigators that he had "hundreds of videos of small children and a few with infants."

On April 15, 2015, after being arrested on the criminal complaint, Defendant was released from custody subject to certain conditions. On August 6, 2015, the United States Probation Office ("Probation") filed a declaration alleging that Defendant violated the conditions of his pretrial release. Specifically, Probation found Defendant in possession of a laptop computer, thumb drive, and internet-capable cell phone, all in violation of his release conditions. Defendant reported using the laptop computer to transfer adult pornographic images from an external hard drive to a thumb drive. Defendant was also found in possession of images depicting adult pornography. In response to these alleged violations, Magistrate Judge Randolph F. Treece imposed additional conditions of release. In October 2015, Defendant again violated the terms of his pretrial release

by tampering with his electronic monitoring equipment. Defendant remained out on release conditions until his change of plea hearing.

On June 22, 2016, a federal grand jury returned an indictment charging Defendant with distribution and receipt of child pornography in violation of 18 U.S.C. § 2255A(a)(2)(A) and (b)(1). On September 2, 2016, Defendant pled guilty to the two-count indictment without a plea agreement. At the conclusion of the change of plea hearing, the Court remanded Defendant to custody, noting, among other reasons, that he had violated the conditions of his pretrial release. On January 10, 2017, the Court sentenced to Defendant, then age sixty nine, to a seventy-two-month term of imprisonment, to be followed by a life term of supervised release. *See* Dkt. No. 47.[1]

At the time of sentencing, the Court imposed, among others, the following standard conditions of supervision:

> 6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
>
> 15. You must submit your person, and any property, house, residence, vehicle, papers, effects, computer, electronic communications devices, and any data storage devices or media, to search at any time, with or without a warrant, by any federal probation officer, or any other law enforcement officer from whom the Probation Office has requested assistance, with reasonable suspicion concerning a violation of a condition of probation or supervised release or unlawful conduct by you. Any items seized may be removed to the Probation Office or to the office of their designee for a more thorough examination.

Defendant was also subject to the following special condition of supervision:

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[1] Defendant appealed his life term of supervised release to the Second Circuit Court of Appeals, arguing that it was procedurally and substantively unreasonable. On February 15, 2018, the Second Circuit affirmed the life term of supervision. *See United States v. Kurzajczyk*, 724 Fed. Appx. 30 (2d Cir. 2018).

> 6. You must not use or possess any computer, data storage device, or any internet capable device unless you participate in the Computer and Internet Monitoring Program (CIMP), or unless authorized by the Court or the U.S. Probation Office. ... You must permit the U.S. Probation Office to conduct periodic, unannounced examinations of any computer equipment, including any data storage device, and internet capable device you use or possesses [sic]. This equipment may be removed by the U.S. Probation Office or their designee for a more thorough examination. You may be limited to possessing one personal internet capable device to facilitate the U.S. Probation Office's ability to effectively monitor your internet related activities.

Defendant was released from custody in October 2021. On October 12, 2021, Defendant signed the judgment under a paragraph in which he indicated that he understood the conditions of his release. *See* Dkt. No. 25-3 at 5.

B. The February 16, 2022 Search of Defendant's Home

On or about October 13, 2021, United States Probation Office ("USPO") Chelsea Deyo conducted an initial "[u]nannounced home contact ... for home inspection" at Defendant's Greene County home. *See* Dkt. No. 25-4. The report of that visit indicates that "[a] full home inspection was conducted including a full walk through of the residence and basement, as well as a small cottage on the property and 2 sheds." *Id.* Defendant's residence is a single-family, two-story home with an attic. The entrance is on the first floor, and Defendant's bedroom is upstairs on the second floor. *See* Dkt. No. 25-1.

On February 16, 2022, USPO Deyo and USPO Blake Dobraj arrived unannounced at Defendant's home. *See* Dkt. No. 25-5. Probation's chronological record characterized the event as an "[u]nannounced home contact;" that "[a] home inspection was completed;" and that the probation officers "conduct[ed] a walk through of the residence." *Id.* According to Defendant, after the probation officers entered his home on the first floor, "they commenced a search of the entirety of [his] home, including upstairs, where [his] bedroom is." Dkt. No. 25-1 at ¶ 3.

Defendant alleges that the probation officers did not ask for his consent to conduct a search of his home and that he did not otherwise give them consent to conduct the search. *See id.*

According to USPO Deyo, she discovered an electronic device – a laptop computer – in Defendant's bedroom, in plain view next to Defendant's bed. *See* Dkt. No. 25-5 at 1. The probation officers questioned Defendant about the laptop, which was prohibited by his special conditions of supervision as the laptop was unknown to Probation. *See id.* USPO Deyo claims that Defendant admitted accessing the computer to see if it worked and that Defendant gave verbal consent for the officers to search his residence and made a statement to the effect that he wanted to kill himself. *See id.*

The probation officers then located numerous external hard drives in the vicinity of Defendant's nightstand. *See id.* Under the covers of his bed were two additional laptop computers, two phones, and "multiple hard drives, thumb drives, and storage devices." *Id.* The probation officers allege that Defendant made verbal admissions that the devices contained child pornography. *See id.* The probation officers then searched the entire residence and requested the assistance of the FBI. *See id.*

When members of the FBI responded to Defendant's house, Defendant made additional incriminating statements. *See* Dkt. No. 25-6. Defendant was informed that he was not under arrest, but that the FBI did want to have a conversation with him, to which Defendant agreed. *See id.* Defendant was advised of his rights and he agreed to speak with the agents without counsel and provided verbal and written consent to a search of his electronic devices. *See id.* The FBI eventually took possession of the electronic devices that Probation seized from Defendant and, on February 23, 2022, applied for and obtained a federal warrant to search those devices. *See* Dkt. No. 26-1.

In his motion, Defendant seeks suppression of (1) evidence found on the devices discovered on February 16, 2022, and (2) statements he made that day, first to the probation officers and then to members of the FBI. *See* Dkt. No. 25-2. Defendant principally argues that the Court should suppress this evidence because the warrantless search of his home was not justified by any exception to the Fourth Amendment's warrant requirement and that the statements he made must be suppressed as fruit of the poisonous tree. *See id.*

III. DISCUSSION[2]

A. Probation Search

The Fourth Amendment guarantees "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" and its Warrant Clause provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to seized." U.S. Const. Amend IV. Thus, a search conducted without a warrant issued upon a showing of probable cause is *per se* unreasonable, subject to certain exceptions. *See Katz v. United States*, 389 U.S. 347, 356-57 (1967).

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[2] Since the facts necessary to decide this motion are not in dispute and otherwise supported by the record, no suppression hearing is required. *See United States v. Tudoran*, 476 F. Supp. 2d 205, 217 (N.D.N.Y. 2007) ("Before a defendant is entitled to a suppression hearing and to compel the government to meet its burden of proof, he must meet his burden of production"). In fact, Defendant has not requested a hearing on his motion to suppress and failed to submit an affidavit of someone with personal knowledge of any facts at issue. *See United States v. Mottley*, 130 Fed. Appx. 508, 509-10 (2d Cir. 2005) (affirming denial of a suppression hearing where the district court found that the defendant's affidavit did not demonstrate the existence of disputed material facts regarding the legality of a search); *United States v. Barrios*, 210 F.3d 355 (2d Cir. 2000); *United States v. Mason*, No. 06-cr-80, 2007 WL 541653, *2 (S.D.N.Y. Feb. 16, 2007) ("An affidavit of defense counsel who does not have personal knowledge of the facts and circumstances surrounding the events at issue is an insufficient basis for an evidentiary hearing").

A probation search is one such exception.[3] *See, e.g.*, *Griffin v. Wisconsin*, 483 U.S. 868, 873-74 (1987) ("A State's operation of a probation system ... presents 'special needs' beyond normal law enforcement that may justify departures from the usual warrant and probable-cause requirements"). "[A] search of a parolee is permissible so long as it is reasonably related to the parole officer's duties." *United States v. Braggs*, 5 F.4th 183, 186-87 (2d Cir. 2021) (citing *United States v. Grimes*, 225 F.3d 254, 259 n.4 (2d Cir. 2000)). "Among these duties are the supervision, rehabilitation, and societal reintegration of the parolee, as well as assuring that 'the community is not harmed by the [parolee's] being at large.'" *Id.* at 187 (quoting *Griffin*, 483 U.S. at 875).

Compared with ordinary citizens, parolees have fewer expectations of privacy. *See Samson v. California*, 547 U.S. 843, 849 (2006). Those reduced expectations are further diminished where, as here, a condition of parole requires the parolee to submit – unconditionally – to searches of his person, property, and residence. *See id.* at 852; *see also United States v. Knights*, 534 U.S. 112, 119-20 (2001) (assessing similar search condition for California probation).

In the present matter, the undisputed facts establish that the probation officers conducted a home visit, which was "reasonably related to [their] duties," *Braggs*, 5 F.4th at 186-87, and observed contraband in plain view, which established reasonable suspicion for a search. On February 16, 2022, the probation officers visited Defendant at his house. During a walk-through of his house as part of that visit, the probation officers observed a laptop computer in plain view in Defendant's bedroom. Because Defendant was not participating in the CIMP, the laptop was

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[3] For purposes of a Fourth Amendment warrantless search analysis, courts generally treat parolees and probationers identically. *See, e.g.*, *United States v. Newton*, 369 F.3d 659, 665 (2d Cir. 2004). Accordingly, the Court will use those terms interchangeably.

unauthorized, and provided reasonable suspicion justifying a search for additional evidence that Defendant was in violation of his supervised release conditions.

Defendant's argument that the probation officers exceeded their authority in conducting a home visit or search ignores both his supervision conditions and the relevant caselaw. As noted above, the supervision conditions permit the probation officers to "visit [Defendant] at any time at [his] home or elsewhere, and [Defendant] must permit the probation officer to take any items prohibited by the conditions of [his] supervision that he or she observes in plain view." Additionally, the conditions require Defendant to "permit the U.S. Probation Office to conduct periodic, unannounced examinations of any computer equipment, including any data storage device, and internet capable device you use or possess[.]"

Defendant appears to argue that the visitation condition permitted the probation officers to conduct a visit only in the sense of making contact with Defendant, at home, in a single room (presumably of his choosing). However, the conditions do not limit the probation officers in this way and, in fact, permit them to conduct "periodic, unannounced examinations of any computer equipment" that Defendant "use[s] or possesses" – a condition that would be impossible to enforce if the officers were limited in the manner Defendant suggests. Additionally, such a limitation would be unworkable in that it would prevent the probation officers from assessing safety risks – *e.g.*, the probation officers would be unable to conduct a safety sweep to determine whether there is anyone else in the home while they are visiting with a supervisee in his or her kitchen.

Moreover, the caselaw rejects the cabined view of visits for which Defendant is advocating. As the Second Circuit has noted, the purpose of a home visit is "to determine whether the supervisee is violating the terms of his supervised release, including the condition that he not

commit any further crimes." *United States v. Reyes*, 283 F.3d 446, 460 (2d Cir. 2002). Such visits would be meaningless if they were confined to a single room of Defendant's choosing. *See United States v. LeBlanc*, 490 F.3d 361, 367-68 (5th Cir. 2007) (agreeing with *Reyes* and stating that it was "consistent with a long line of cases in the Second Circuit holding that probation officers could enter and view the homes of probationers as part of their supervisory duties").

In *United States v. Lombardo*, the court upheld a similar visit by probation officers that resulted in new child pornography charges. *United States v. Lombardo*, 629 F. Supp. 3d 34 (N.D.N.Y. 2022). In that case, the probation officers visited the defendant at his mother's house (his approved residence), and proceeded to his bedroom, where they found unauthorized devices in plain view. *See id.* at 37-38. The court rejected the defendant's argument that the probation officers needed reasonable suspicion to make the visit, and that the visit itself constituted a search. *See id.* at 40. Similarly, the Fifth Circuit, drawing on a series of Second Circuit cases culminating in *Reyes*, held that it was proper for state probation officers to look around the probationer's home during a visit, and rejected the defendant's argument that such canvassing amounted to a search requiring reasonable suspicion. *See LeBlanc*, 490 F.3d at 370 ("LeBlanc, as a probationer with diminished expectations of privacy, cannot expect that a probation officer will not view the various rooms in his home while conducting a home visit to verify that his residence there is genuine and suitable").

As the Second Circuit recently held, "a parole officer may search a parolee so long as the search is reasonably related to the performance of the officer's duties." *Braggs*, 5 F.4th at 184. Applied to the federal supervision context, *Braggs* calls for the rejection of the visit versus search distinction that Defendant asks this Court to make. Since the undisputed facts clearly demonstrate that the February 16, 2022, visit to Defendant's home was reasonable related to the probation

officers' duties, their actions were proper regardless of whether the conduct at issue is deemed a search or simply a home visit. The probation officers acted lawfully and reasonably when they entered Defendant's residence and proceeded to his bedroom (among other rooms). Doing so was necessary if the officers were to have any meaningful insight into Defendant's living situation and compliance with release conditions. When the probation officers reached Defendant's bedroom and observed an unauthorized laptop in plain view, they were authorized to seize it as contraband, and had reasonable suspicion to conduct a full search of the residence for additional evidence of violations. *See Reyes*, 283 F.3d at 463, 468.

Accordingly, the Court denies this aspect of Defendant's motion to suppress.

B. Good Faith Exception

"The fact that a Fourth Amendment violation occurred ... does not necessarily mean that the exclusionary rule applies." *Herring v. United States*, 555 U.S. 135, 140 (2009) (citation omitted). The Supreme Court has explained that the exclusionary rule has always been its "last resort," not its "first impulse." *Id.* "To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system." *Id.* at 144. The exclusionary rule does not apply to "evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant." *United States v. Leon*, 468 U.S. 897, 922 (1984). "'The burden is on the government to demonstrate the objective reasonableness of the officers' good faith reliance' on an invalidated warrant." *United States v. Clark*, 638 F.3d 89, 100 (2d Cir. 2011) (quoting *United States v. George*, 975 F.2d 72, 77 (2d Cir. 1992)).

In the present matter, even assuming that the evidence obtained by the probation officers and law enforcement following the warrantless search of the home violated Defendant's Fourth

Amendment rights, exclusion of the evidence is not warranted. The probation officers acted reasonably in all respects. All of their actions fell within the express authority granted to them by the standard and special conditions of Defendant's supervised release, and they took measures that the Second Circuit and district courts have deemed necessary and appropriate. Probation officers' good-faith and objectively reasonable reliance on these courts' prior decisions, as well as the plain meaning of Defendant's standard and special conditions of release as ordered by this Court, is functionally no different from a law enforcement officer's good-faith reliance on the issuance of a facially valid warrant. *See United States v. McGill*, 8 F.4th 617, 624 (7th Cir. 2021) (holding that the exclusionary rule did not apply because the probation officer acted in good faith when he seized the defendant's cell phone, where the probation officer believed that the unmonitored phone violated the conditions of supervised release and that it would impede his ability to keep the defendant in compliance).

Moreover, as noted above, after seizing the unauthorized devices at Defendant's home, the probation officers promptly turned them over to the FBI agents, who obtained a search warrant to search the devices and, in doing so, disclosed that the devices had been seized by probation officers during a home visit. This further demonstrates the officers good faith.

Accordingly, the Court denies Defendant's motion to suppress on this alternative ground.

C. Defendant's Statements

Defendant contends that all statements he "made surrounding the unlawful search by the Probation Officers of [his] home or as a direct result of the unlawful encounter must be suppressed." Dkt. No. 25-2 at 13 (citing *United States v. Scopo*, 19 F.3d 777 (2d Cir. 1994)) (other citation omitted). Moreover, Defendant contends that he did not consent to the probation officers'

search of his home, contrary to USPO Deyo's claim, and therefore all evidence and statements must be suppressed as fruit of the poisonous tree. *See id.*

The Court disagrees. As noted, the probation officers were permitted to conduct an unannounced home visit pursuant to the standard and special conditions of Defendant's supervised release. *See* Dkt. No. 25-5. The probation officers were permitted to seize prohibited items observed in plain view and Defendant's consent was not required for their actions. *See United States v. Lambus*, 897 F.3d 368, 410 (2d Cir. 2018) (explaining that consent is not "'required in addition to a reasonable relationship to the parole officer's duty to justify a warrantless parole search'") (quoting *United States v. Newton*, 369 F.3d 659, 666 (2d Cir. 2004)). Other than Defendant's arguments regarding the legality of the home visit and search, Defendant does not raise any additional argument as to why his statements should be suppressed. Since the probation officers were lawfully present and did not otherwise violate Defendant's Fourth Amendment rights, the statements he made are not subject to suppression.

Accordingly, the Court denies this aspect of Defendant's motion to suppress.

IV. CONCLUSION

After carefully reviewing the entire record in this matter, the parties' submissions and the applicable law, and for the above-stated reasons, the Court hereby

ORDERS that Defendant's motion to suppress (Dkt. No. 25) is **DENIED**; and the Court further

ORDERS that the Clerk of the Court shall serve a copy of this Memorandum-Decision and Order on the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: October 1, 2023
Albany, New York

Mae A. D'Agostino
U.S. District Judge

24-604-cr
United States v. Kurzajczyk

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 13th day of May, two thousand twenty-five.

PRESENT: RAYMOND J. LOHIER, JR.,
JOSEPH F. BIANCO,
Circuit Judges,
JESSE M. FURMAN,
*District Judge.**

UNITED STATES OF AMERICA,

Appellee,

v. No. 24-604-cr

GREGORY KURZAJCZYK,

Defendant-Appellant.

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* Judge Jesse M. Furman, of the United States District Court for the Southern District of New York, sitting by designation.

FOR DEFENDANT-APPELLANT:	JEREMIAH DONOVAN, Law Offices of Jeremiah and Terry Donovan, Old Saybrook, CT
FOR APPELLEE:	THOMAS R. SUTCLIFFE, Assistant United States Attorney (Michael S. Barnett, Rajit S. Dosanjh, Assistant United States Attorneys, *on the brief*), *for* Carla B. Freedman, United States Attorney for the Northern District of New York, Syracuse, NY

Appeal from a judgment of the United States District Court for the Northern District of New York (Mae A. D'Agostino, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the District Court is AFFIRMED.

Gregory Kurzajczyk appeals from a February 26, 2024 judgment of conviction entered by the United States District Court for the Northern District of New York (D'Agostino, *J.*) after a jury trial in which Kurzajczyk was found guilty of four counts of possessing material containing images of child pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B). The District Court sentenced Kurzajczyk principally to concurrent terms of 151 months' imprisonment and concurrent terms of 15 years' supervised release. We assume the parties' familiarity with the

underlying facts and the record of prior proceedings, to which we refer only as necessary to explain our decision to affirm.

I. Suppression of Evidence

Kurzajczyk first argues that the District Court should have granted his motion to suppress evidence arising from a February 16, 2022 search of his home by a probation officer, including several electronic devices containing child pornography and inculpatory statements made by Kurzajczyk during and after the search. At the time of the search, Kurzajczyk was serving a lifetime term of supervised release due to a 2017 conviction for distributing and receiving child pornography. As standard conditions of supervised release for that conviction, Kurzajczyk was required to (1) allow a probation officer to visit his home and confiscate any prohibited items that the officer "observes in plain view," and (2) submit to warrantless searches of his home based on "reasonable suspicion concerning a violation of a condition of" his supervised release. App'x 40. In addition, a special condition prohibited Kurzajczyk from using or possessing any computer, data storage device, or internet capable device. App'x 41. Kurzajczyk challenges the search at issue in this case because none of these conditions subjected his entire home to a search in the absence of reasonable suspicion.

We need not reach the underlying merits of Kurzajczyk's Fourth Amendment claim because the "good faith exception to the exclusionary rule" supports the District Court's denial of the motion to suppress. *United States v. Maher*, 120 F.4th 297, 320–21 (2d Cir. 2024). Even assuming without deciding that the probation officer's search violated the Fourth Amendment, the good faith exception applies because the officer could not have "reasonably know[n], at the time," that the search was unconstitutional. *Id.* at 321 (quotation marks omitted). Our precedents applying the "special needs" doctrine have held that "a search of a parolee is permissible so long as it is reasonably related to the parole officer's duties," *United States v. Braggs*, 5 F.4th 183, 186–87 (2d Cir. 2021) (quoting *United States v. Grimes*, 225 F.3d 254, 259 n.4 (2d Cir. 2000)), and that this rule "applies with equal force to individuals . . . subject to federal supervised release," *United States v. Reyes*, 283 F.3d 446, 458 (2d Cir. 2002). Here, the probation officer expressed "concerns about [Kurzajczyk's] access to internet devices and porn in [his] home" based on several prior home visits. App'x 117; *see also* App'x 113–16. And the search occurred before our opinion in *United States v. Oliveras*, 96 F.4th 298 (2d Cir. 2024), the principal authority on which Kurzajczyk relies. Under these circumstances, the probation officer "did not have any significant reason to

believe that what [she] had done was unconstitutional." *United States v. Ganias*, 824 F.3d 199, 225 (2d Cir. 2016) (en banc) (quotation marks omitted). We thus affirm the District Court's decision to deny the motion to suppress and to admit the challenged evidence.

II. Jurisdictional Element of 18 U.S.C. § 2252A(a)(5)(B)

The statute under which Kurzajczyk was convicted prohibits

> knowingly possess[ing], or knowingly access[ing] with intent to view, any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography that has been mailed, or shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, or that was produced using materials that have been mailed, or shipped or transported in or affecting interstate or foreign commerce by any means, including by computer[.]

18 U.S.C. § 2252A(a)(5)(B). Kurzajczyk claims that the District Court wrongly instructed the jury that the statute's jurisdictional element is satisfied if the relevant device containing child pornography was manufactured outside of New York. "[I]t is the *image*," he contends, "that must have been mailed, shipped, transported or produced in commerce." Appellant's Br. 33. Because Kurzajczyk failed to object to the instruction, we review it for plain error. *See United States v. Omotayo*, 132 F.4th 181, 195 (2d Cir. 2025).

We have held that "the act of using computer equipment manufactured outside the United States to produce child pornography meets the jurisdictional requirement of § 2252A(a)(5)(B)." *United States v. Ramos*, 685 F.3d 120, 133 (2d Cir. 2012). And in the context of other statutes prohibiting conduct pertaining to child pornography that is "produced using materials which have been mailed or [] shipped or transported, by any means including by computer" in "interstate or foreign commerce," we have also held that child pornography is "produced" using a device if "the hardware was used to make, store, or display copies of the pornographic images." *United States v. Boles*, 914 F.3d 95, 108 (2d Cir. 2019) (interpreting 18 U.S.C. § 2552(a)(4)(B)). Accordingly, Kurzajczyk cannot establish error "that was clear and obvious under existing law." *United States v. Dennis*, 132 F.4th 214, 236 (2d Cir. 2025).[1]

III. Admissibility of Prior Conviction

Finally, Kurzajczyk claims that the admission under Federal Rule of Evidence 414 of evidence of his 2017 conviction for distribution and receipt of child pornography violated his due process rights. We review for plain error because Kurzajczyk did not raise this due process challenge before the District

[1] Kurzajczyk's challenge to the sufficiency of the Government's evidence, which is premised on the same argument, fails for the same reasons.

Court. *United States v. Napout*, 963 F.3d 163, 182–83 (2d Cir. 2020). We are unaware of any precedent establishing that admitting evidence of a defendant's prior conviction violates his due process rights. *See Dennis*, 132 F.4th at 236. Indeed, as Kurzajczyk acknowledges, we have rejected similar arguments in the context of a facial challenge to Federal Rule of Evidence 413, which also permits certain propensity evidence to be admitted. *See United States v. Schaffer*, 851 F.3d 166, 177–81 (2d Cir. 2017). We therefore conclude that the admission of the evidence of Kurzajczyk's prior conviction was not plain error.

We have considered Kurzajczyk's remaining arguments and conclude that they are without merit. For the foregoing reasons, the judgment of the District Court is AFFIRMED.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 25th day of June, two thousand twenty-five.

United States of America,

Appellee,

v.

Gregory Kurzajczyk,

Defendant - Appellant.

ORDER

Docket No: 24-604

Appellant, Gregory Kurzajczyk, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk