

No. _____

In the Supreme Court of the United States

Gross Williams, *Petitioner*,

v.

United States of America, *Respondent*.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

CLAUDE J. KELLY
FEDERAL PUBLIC DEFENDER
EASTERN DISTRICT OF LOUISIANA
CELIA C. RHOADS
COUNSEL OF RECORD

500 POYDRAS STREET, SUITE 318
HALE BOGGS FEDERAL BUILDING
NEW ORLEANS, LOUISIANA 70130
(504) 589-7930
CELIA_RHOADS@FD.ORG

COUNSEL FOR PETITIONER

QUESTION PRESENTED

The questions presented are:

- (1) Does *Griffin v. Wisconsin*'s "special needs" framework apply to general law enforcement searches of probationers' homes and, if so, does *Griffin* establish a bright-line rule that a tip given to a probation officer by another law enforcement officer—no matter how bare—constitutes "reasonable suspicion" to conduct a search of a probationer's home?
- (2) Are "bulges" in a person's clothing sufficient to establish reasonable suspicion to conduct a *Terry* frisk, even if the officer never testified that he believed those bulges were weapons and provided no information indicating that they could have been?
- (3) Can an officer seize, count, and test for drug residue money found in an individual's pockets during the course of a protective *Terry* frisk?

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IN THE
SUPREME COURT OF THE UNITED STATES

GROSS WILLIAMS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

Petitioner Gross Williams respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit.

JUDGMENT AT ISSUE

On January 24, 2018—following oral argument held on December 4, 2017—a panel of the Fifth Circuit Court of Appeals entered a fourteen-page, published opinion affirming the judgment of the United States District Court for the Eastern District of Louisiana. *See United States v. Williams*, No. 17-30198. A copy is attached to this petition as an appendix. App., *infra*, 1a.

JURISDICTION

The opinion and judgment of the Fifth Circuit Court of Appeals were entered on January 24, 2018. No petition for rehearing was filed. This petition is filed within 90 days after entry of judgment. *See* Sup. Ct. R. 13.1. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution 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.

Louisiana Code of Criminal Procedure Article 895(A) provides in relevant part:

When the court places a defendant on probation, . . . the defendant shall:

. . .

(4) Permit the probation officer to visit him at his home or elsewhere;

. . .

(13)(a) Agree to searches of his person, his property, his place of residence, his vehicle, or his personal effects, or any or all of them, at any time, by the probation officer or the parole officer assigned to him, with or without a warrant of arrest or with or without a search warrant, when the probation officer or the parole officer has reasonable suspicion to believe that the person who is on probation is engaged in or has been engaged in criminal activity.

STATEMENT OF THE CASE

I. The DEA and Louisiana Department of Probation and Parole conduct warrantless searches of Mr. Williams's person, business, and home.

This case arises out of a 2014 dragnet Drug Enforcement Agency (DEA) operation targeting the “New Orleans East” neighborhood. At the time, the DEA—in partnership with New Orleans Police Department (NOPD)—was working to step up enforcement efforts in New Orleans East due to what the agency claimed were increasingly violent activities involving illegal narcotics. To that end, the director of the New Orleans DEA reached out to the District Administrator of the Louisiana Department of Probation and Parole for assistance. Testimony and evidence presented to the district court indicates that the DEA generated a list of addresses in New Orleans East “gathered through various forms of intelligence” and asked Probation and Parole officials to cross-check that list with individuals who were currently on state probation—in other words, individuals whose homes could be entered without a warrant. The DEA and task force partners then used probation compliance checks to investigate the identified addresses.

At the time, Mr. Williams was serving a five-year term of probation following a 2012 state conviction for drug distribution. Mr. Williams agreed, as a condition of his probation, to be subject to searches of his person and his home by his probation officer based on the lowered “reasonable suspicion” standard, rather than probable cause. That condition complied with Louisiana law, which requires a probationer to:

[a]gree to searches of his person, his property, his place of residence, his vehicle, or his personal effects, or any or all of them, at any time, by the probation officer or the parole officer assigned to him, with or without a

warrant of arrest or with or without a search warrant, *when the probation officer or the parole officer has reasonable suspicion* to believe that the person who is on probation is engaged in or has been engaged in criminal activity.

La. Code Crim. Proc. art. 895(A) (emphasis added). Mr. Williams’s probation conditions additionally required him to “[p]ermit the probation officer to visit him at his home or elsewhere”—i.e., to conduct what are known as compliance checks or probationary home visits—without any level of suspicion.

According to Mr. Williams’s probation officer, Patrick Green, Mr. Williams was a “model probationer.” There had been no indication that Mr. Williams was involved in criminal activity while under state supervision. In fact, although his probationary term was not yet over in 2014, Officer Green was so impressed with Mr. Williams that he planned to recommend him for early termination from probation.

As Officer Green was preparing the termination petition, he was called into a meeting with the DEA. According to Officer Green’s testimony, the DEA relayed that NOPD—which was not present at the meeting—“had information from sources that [Mr. Williams] was involved in narcotics sales.” This information was not attributed to a particular individual or tied to a particular time period. There was no basis for knowledge identified, and it is not clear whether the speaker believed the information to be current, or merely a summary of Mr. Williams’s prior criminal history.

Officer Green testified that he was “shocked” to hear this information, as it contradicted his own vast experience with Mr. Williams throughout his probationary term. The information did make him think about information he already knew about Mr. Williams, such as his criminal history and the tight security at his home, which

included a locked gate and guard dogs. However, he testified that he did not believe the NOPD information was sufficient to warrant an immediate search of Mr. Williams's home under the terms of the probation agreement—or was even enough to cause him to go back on his initial determination that Mr. Williams's probation should be terminated early. Instead, Officer Green determined that the proper course would be to ask Mr. Williams about this information in person and conduct a routine probationary home visit before taking further steps. Accordingly, Officer Green called Mr. Williams and asked him to come into his office. When Mr. Williams said that he could not leave his business—a used car dealership—the two men agreed to meet there instead.

Upon arriving at the dealership and after speaking casually with Mr. Williams for some time, Officer Green advised Mr. Williams of his *Miranda* rights, though Officer Green later insisted that Mr. Williams was not under arrest. Officer Green then conducted a warrantless search of Mr. Williams's person without Mr. Williams's consent. Before doing so, he asked Mr. Williams if he had “anything illegal, any sharp, anything that could hurt [him]” to which Mr. Williams responded that he only had money. Officer Green later claimed to have observed “bulges” in Mr. Williams's clothing, but did not testify to the precise size or nature of those bulges, nor did he testify that he believed the bulges to be weapons rather than money as Mr. Williams had already explained. Nonetheless, Officer Green reached into Mr. Williams's pockets—including his front pants pockets and top shirt pockets—and removed the

cash, examined it, counted it, and seized it.¹ It was only upon seizing and examining the cash in Mr. Williams's pockets that Officer Green was able to observe the various denominations and organization of the money and tell that it was quite a bit of money. The currency was then transported to a police precinct where it was tested for drug residue, producing positive results. DEA agents additionally conducted an extensive warrantless search of the car dealership, but no other contraband or evidence was found there.

Mr. Williams was then questioned extensively about the seized currency, first by Officer Green and then by DEA agents at the scene. Initially, Mr. Williams told Officer Green that the money seized from his person was proceeds from car sales at the dealership. When asked how much money he had, Mr. Williams estimated that it was about \$15,000, an amount inconsistent with the actual amount counted by law enforcement following the money's seizure (about \$10,000). In subsequent questioning by the DEA agents, Mr. Williams apparently provided different information about where the money had come from and made some connection between the cash and an individual he identified as "Twan," the owner of a nearby body shop. In disputed testimony presented in the district court, Officer Green stated that he overheard this exchange and became suspicious because he was aware of a major drug dealer in the area with the same name.

¹ According to the parties' stipulated description of video footage of the incident, Officer Green initially frisked Mr. Williams and removed nothing from his pockets. Sometime thereafter, Officer Green frisks Mr. Williams again—"several times." According to the stipulation, Officer Green did not seize the money from Mr. Williams's person until approximately five minutes after the initial frisk.

Following his conversation with the DEA, Mr. Williams was handcuffed and placed in a squad car. Questioning continued as he was transported to his mother's home, which was listed on his dealership's incorporation paperwork. Meanwhile, Officer Green remained at the dealership with Mr. Williams's wife and son. Mr. Williams's mother consented to a search of her home while Mr. Williams looked on in distress from the car. In an effort to end the search of his mother's home, Mr. Williams allegedly told officers: "What you are looking for is at my house. I have a gun and money at my residence."

Additional NOPD officers were dispatched to secure Mr. Williams's residence and make sure that no one entered or left. Eventually the assembled law enforcement teams caravanned to Mr. Williams's home, where the DEA and NOPD conducted a top-to-bottom search. Agents recovered a handgun from a nightstand drawer and roughly \$500,000 in cash, most of which was located in vacuum-sealed bags in Mr. Williams's closet. Based on this evidence, Mr. Williams was charged with various crimes related to drug trafficking and with possessing a gun while having a prior felony conviction.

II. The District Court denies Mr. Williams's suppression motion based on an erroneous finding that he consented to the initial search of his person.

Mr. Williams filed a motion to suppress evidence, challenging the validity of the series of warrantless searches. The district court held an evidentiary hearing during which the Government called Officer Green to testify. At the hearing, the court ordered the parties to focus on the events at the car dealership, because it was in the

course of that encounter that officers allegedly developed the requisite reasonable suspicion to search Mr. Williams's home.

At the conclusion of the hearing, the district court denied Mr. Williams's motion to suppress, but did so on the ground that Mr. Williams had consented to the initial search of his person and that the later warrantless searches flowed from evidence derived from that search. The court concluded that the information developed at the dealership formed the basis for the requisite reasonable suspicion to search Mr. Williams's home. In fact, there was no evidence that Mr. Williams had consented to the search of his person, and the Government never argued that he had. Mr. Williams filed a motion to reconsider, which the Government opposed and the court ultimately denied.²

Following the denial of his suppression motion, Mr. Williams pleaded guilty to possession with intent to distribute and to being a felon in possession of a firearm, but preserved his right to appeal the suppression issue. The district court sentenced him to 23 years of imprisonment, to be followed by 10 years of supervised release. The court also ordered extensive forfeiture, including the forfeiting of Mr. Williams's used car lot, a tow truck, two cars, and nearly half a million dollars. Mr. Williams timely appealed.

² Later, the district court agreed to reopen the matter and hold a second evidentiary hearing after the Government's late disclosure of *Giglio* material involving Officer Green's disciplinary history. Those documents indicated substantial reliability issues and a willingness to lie about even small matters. At the conclusion of the second hearing, the court again denied the suppression motion, finding no reason to set aside its initial determination.

III. The Fifth Circuit affirms on alternative grounds, relying on *Wisconsin v. Griffin*, and, in the alternative, *Terry v. Ohio*.

On appeal, Mr. Williams pointed out that the district court's consent finding was clearly erroneous. He further argued that suppression was required, because the initial frisk and the seizure of cash from his person was improper. Without that evidence, he urged, there was no reasonable suspicion to search his home. The Government did not dispute that the district court's consent finding was clear error, but advanced a number of alternative theories to justify the various searches, none of which had been the subject of district court factual findings below. These alternative justifications included a protective *Terry* frisk theory and an inevitable discovery theory. The Government also argued that the tip alone provided the requisite reasonable suspicion to search Mr. Williams's home, regardless of the validity of the searches at the dealership. Despite the Government's apparent concession about the district court's error, the Fifth Circuit upheld the denial of the suppression motion on alternative grounds, making factual and legal determinations far beyond what the district court had done in the first instance. *See United States v. Williams*, 880 F.3d 713, 715 (5th Cir. 2018).

First, the court determined that the vague tip alone was sufficient to provide Officer Green with the requisite reasonable suspicion to search Mr. Williams's home. *Id.* at 720. Notably, this conclusion contradicted both the district court's findings and Officer Green's own belief about the situation. Not even Officer Green himself believed he had reasonable suspicion to search Mr. Williams's home immediately upon receiving the vague tip. Nor did the district court, which specifically instructed

the parties to focus the suppression inquiry on whether reasonable suspicion arose during the course of the searches at the dealership.

In coming to its conclusion, the Fifth Circuit relied almost exclusively on this Court's decision in *Griffin v. Wisconsin*, 483 U.S. 868 (1987). That case analyzed, under the "special needs" doctrine, the constitutionality of a Wisconsin regulation that authorized any probation officer to search a probationer's home without a warrant "as long as his supervisor approve[d] and as long as there [were] '*reasonable grounds*' to believe the presence of contraband." *Id.* at 871 (emphasis added). The Fifth Circuit largely ignored this Court's parallel—but distinct—line of caselaw examining the reasonableness of general law enforcement searches of probationers who agree, as a part of the terms of their probation, to home searches supported by reasonable suspicion rather than probable cause. *See United States v. Knights*, 534 U.S. 112 (2001). The court similarly did not examine Louisiana or federal caselaw describing when tips like the one received by Officer Green constitute reasonable suspicion, as required by Louisiana law. Instead, the Fifth Circuit interpreted *Griffin* as establishing a bright-line rule "that tips given to a probation officer from other law enforcement officers are sufficient to support reasonable suspicion to conduct a search of a probationer." *Williams*, 880 F.3d at 720. Based on this interpretation of *Griffin*, the court determined that the skeletal tip provided to Officer Green satisfied the reasonable suspicion standard.

The court could have ended its inquiry there, having found reasonable suspicion for the ultimate search of Mr. Williams's home. However, the panel went

on to examine, in the alternative, the search of Mr. Williams's person at the dealership, ultimately concluding that the search was proper under *Terry v. Ohio*, 392 U.S. 1 (1968). The "pat-down was justified," the court explained, "to ensure that officers were not at risk from Williams potentially being armed when they arrived at the dealership to conduct a search." *Williams*, 880 F.3d at 720.

In support of this conclusion, the Fifth Circuit relied on Officer Green's claim that he observed "bulges" in Mr. Williams clothing, created by the wads of cash Mr. Williams readily and truthfully identified. Like its treatment of *Griffin*, the Fifth Circuit similarly interpreted *Terry* and its progeny as establishing a bright-line rule that "large visible bulges in" a defendant's pockets "support [an officer's] decision to conduct [a] frisk." *Id.* The court concluded that a *Terry*-frisk was proper "given the large visible bulges in Williams's pockets that were large enough to conceal weapons." *Id.* at 722. Notably, Officer Green never actually testified that he believed the bulges were weapons, nor did he testify about the precise size, feel, or other factors that would have supported a reasonable belief that Mr. Williams was in fact armed based on those bulges.

Despite extensive briefing and oral argument on the topic, the Fifth Circuit additionally failed to explain why Officer Green was justified not only in conducting a protective pat-down, but also in removing and seizing Mr. Williams's money from his pockets following that frisk. The court did not cite or discuss any of this Court's caselaw carefully delineating the scope of protective pat downs, which, of course, are limited to what is necessary to discover weapons.

Based on its determination that the tip provided sufficient reasonable suspicion for the home search, and, alternatively, that the search of Mr. Williams's person and seizure of his money was justified by *Terry*, the Fifth Circuit affirmed the district court's denial of the suppression motion. *Id.* at 722.

REASONS FOR GRANTING THE PETITION

In a fourteen-page, published opinion, the Fifth Circuit interpreted *Griffin* as establishing a bright-line rule that “tips given to a probation officer from other law enforcement officers are sufficient to support reasonable suspicion to conduct a search of a probationer.” In doing so, the court deemed the law enforcement tip here—void of any specificity or indicia of reliability, about a model probationer—sufficient to constitute reasonable suspicion to search his home. This, despite the fact that not even the district court or the officer involved believed the information provided was sufficient to constitute the reasonable suspicion required by Louisiana law.

In doing so, the Fifth Circuit improperly cross-polluted two distinct lines of Fourth Amendment jurisprudence, confusing the special needs doctrine of *Griffin v. Wisconsin* with the totality-of-the-circumstances doctrine of *United States v. Knights*. And far from confining its decision to the particular facts of Mr. Williams’s case, the Fifth Circuit’s opinion is rooted in an erroneous view that *Griffin* establishes a bright-line rule that a law enforcement tip about a probationer is always sufficient to constitute reasonable suspicion to search the probationer’s home. This approach not only created a circuit split over the application of *Griffin*, but also dramatically lowered the bar for the satisfying reasonable suspicion standard.

The Fifth Circuit damaged that standard further by holding that the mere presence of bulges in a subject’s clothing supports reasonable suspicion that a person is currently armed and dangerous, even without testimony that the officer believed those bulges might be weapons or any information about the nature of those bulges.

And, finally, the court wholly abandoned long-established limits on the permissible scope of these protective searches, holding that an officer may seize and examine money found in a person’s pockets during the course of a *Terry* frisk, even without probable cause that the money is contraband.

The Fifth Circuit’s decision in this case warrants this Court’s intervention. It reflects broad confusion about two overlapping—but ultimately distinct—strands of this Court’s caselaw governing probationary searches. As a result of that confusion, the Fifth Circuit adopted a dangerously low interpretation of the reasonable suspicion threshold. The court’s bright-line approach to what should be a totality-of-the-circumstances inquiry not only degrades constitutional protections for the nearly 5 million adults under community supervision,³ but also damages constitutional protections in numerous other contexts. Importantly, reasonable suspicion is a broadly applicable standard. It applies to citizens in their schools, workplaces, and cars, as well as to individuals law enforcement might merely encounter walking down street. Thus, weakening and confusing that standard—as the Fifth Circuit has done here—affects the constitutional rights of everyone, not just probationers.

Mr. Williams’s case presents an ideal vehicle for correcting serious confusion in the law and for preventing further damage to Fourth Amendment liberties. The Fifth Circuit’s holding is not only extreme, but is also uncontained by the facts of Mr.

³ See U.S. Dept. of Justice Bureau of Justice Statistics, “Probation and Parole in the United States” (2015).

Williams’s case. Rather than merely misapplying correct legal standards to the facts before it, the Fifth Circuit has created new rules with far-reaching implications.

I. The Fifth Circuit’s decision confused this Court’s probationary search caselaw and, as a result, misinterpreted it to hold that a law enforcement tip always constitutes reasonable suspicion to search a probationer’s home.

A. The Fifth Circuit improperly applied this Court’s “special needs” decision in Griffin v. Wisconsin to a reasonable suspicion search conducted for law enforcement purposes.

Ordinarily, a search of a home is reasonable only if it is authorized by a judicial warrant supported by probable cause. *See* U.S. Const. amend. IV; *Payton v. New York*, 445 U.S. 573, 586 (1980). However, “for searches of probationers and parolees and their homes, the Supreme Court has embraced two exceptions to the warrant and probable-cause requirements: (1) a special-needs exception and (2) a totality-of-the-circumstances exception.” *United States v. Warren*, 566 F.3d 1211, 1215 (10th Cir. 2009).

First, the “special needs” exception takes root in this Court’s decision in *Griffin v. Wisconsin*, which recognized that 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.” *Griffin*, 483 U.S. at 873–74. Thus, this Court held that a state regulation may provide for searches of parolees and their property, including their homes, on less than probable cause. *Id.* at 880. Under that special needs framework, the Court upheld a Wisconsin regulation that subjected parolees to searches upon “reasonable grounds” to suspect the presence of contraband. *Id.* In doing so, the Court deferred entirely to the state court’s

determination that the state-law “reasonable grounds” standard was satisfied by an officer’s having “received information from a detective . . . that there were or might be guns in Griffin’s apartment.” *Id.* at 871. The Court made no independent finding of whether the tip in that case actually met that or any other legal threshold—only that searches conducted pursuant to Wisconsin’s valid regulatory scheme were reasonable. *Id.* at 875, 880. Moreover, and importantly here, the *Griffin* majority opinion made no mention of the federal “reasonable suspicion” standard.

The second exception to the warrant and probable-cause requirements—the totality-of-the-circumstances exception—authorizes warrantless searches of probationers without probable cause by police officers for general law enforcement—rather than probationary—purposes. In *United States v. Knights*, this Court recognized that a police officer’s search of a probationer’s home pursuant to a probation condition authorizing the search without probable cause could be constitutionally reasonable under the “totality of the circumstances.” 534 U.S. at 118–19. Specifically, the Court held that a law enforcement officer’s conducting a search of a home based on a probation condition requiring only “reasonable suspicion” passed Fourth Amendment muster. *Id.* at 121. The Court determined that it was reasonable to conclude that the search condition would further the goals of probation, and, moreover, the imposition of the search condition “significantly diminished [the probationer’s] reasonable expectation of privacy.” *Id.* at 120. Balancing this reduced expectation of privacy and the governmental interest in monitoring probationers, the

Court held that reasonable suspicion was sufficient to conduct a search of a probationer's home under the Fourth Amendment. *Id.* at 121.

Unlike *Griffin*, the *Knights* exception “is predicated on (1) the reduced (or absent) expectation of privacy that the Court would recognize for probationers and parolees and (2) the needs of law enforcement.” *Warren*, 566 F.3d at 1216. As the Third Circuit has explained, “*Knights* clearly offers a second and discrete path to a legitimate search when a probationer has agreed to a search condition, and that path involves applying ordinary Fourth Amendment principles rather than any sort of analysis of special needs[.]” *United States v. Williams*, 417 F.3d 373, 378 (3d Cir. 2005).

There are other key differences between *Knights* and *Griffin* that bare short discussion. First, *Knights* incorporated and applied the broadly-applicable “reasonable suspicion” standard from federal law, rather than a state-specific standard. Additionally, the *purpose* of a “special needs” search matters, while the reasonableness of a general law enforcement search (like that in *Knights*) is measured objectively, without regard to the search’s subjective purpose. The Sixth Circuit has explained: “Unlike in the general Fourth Amendment reasonableness context, an officer’s ‘actual motivations’ in conducting a special needs search ‘do matter.’ A law enforcement officer cannot use the special-needs doctrine as a ‘stalking horse’ simply to evade the Fourth Amendment’s usual warrant and probable cause requirements.” *United States v. Lykins*, 544 F. App’x 642, 648 (6th Cir. 2013) (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 736 (2011)). By comparison, *Knights* expressly rejected application

of the “stalking horse” theory to its totality-of-the-circumstances exception. *Knights*, 534 U.S. at 122.

This Court too has stressed that *Griffin* is limited to the special needs context, in which there is no law enforcement purpose behind the search:

In other special needs cases, we have tolerated suspension of the Fourth Amendment’s warrant or probable-cause requirement in part because there was no law enforcement purpose behind the searches in those cases, and there was little, if any, entanglement with law enforcement. Moreover, *after* our decision in *Griffin*, we reserved the question whether “routine use in criminal prosecutions of evidence obtained pursuant to the administrative scheme would give rise to an inference of pretext, or otherwise impugn the administrative nature of the . . . program.”

Ferguson v. City of Charleston, 532 U.S. 67, 79 n.15 (2001) (internal citations omitted) (quoting *Skinner v. Ry. Labor Execs.’ Ass’n*, 489 U.S. 602, 621 n.5 (1989)).

Thus, although both the *Knights* exception and the *Griffin* exception relate to probationers and parolees, the two modes of analysis derive from distinct lines of caselaw and incorporate different analytical frameworks. This has caused a great deal of confusion when examining constitutional questions related to probationary searches. As the Tenth Circuit has explained, “[t]he two exceptions overlap in application” and “are often conflated.” *Warren*, 556 F.3d at 1215. Some courts have cleanly differentiated between the two exceptions—rightfully keeping the doctrines separate and analyzing searches under one framework or the other, depending on the circumstances. *See, e.g., Williams*, 417 F.3d at 378 (3d Cir.); *Warren*, 566 F.3d at 1215 (10th Cir.). Some courts—like the Fifth Circuit in this case—have confusingly co-mingled the two exceptions, importing standards from each and citing the two lines

of caselaw interchangeably. *See, e.g., United States v. Harris*, 635 F. App'x 760, 764 (11th Cir. 2015).

The *Knights* totality-of-the-circumstances exception was the correct framework to apply in this case. Like the defendant in *Knights*, Mr. Williams agreed to a state probationary condition requiring that he permit searches of his home based on reasonable suspicion, rather than probable cause. Mr. Williams did not challenge the constitutionality of this state regulation, but instead argued that law enforcement officers in his case did not have the requisite reasonable suspicion to search his home based on the vague, nonspecific NOPD tip. Moreover, the search in this case was plainly for law enforcement purposes, rather than probation purposes. Mr. Williams's home was searched as a part of a dragnet operation initiated and conducted by ATF and NOPD. Louisiana Probation and Parole was merely a tool to obtain warrantless entry into individual homes. Indeed, the Government has never tried to argue otherwise. Rather than deny pretext, the Government chose to rely on *Knights* before the district court, arguing that pretext was irrelevant—thus cabining its argument to the totality-of-the-circumstances, rather than the special needs, context. Thus, *Knights* and this Court's general "reasonable suspicion" caselaw—rather than *Griffin*'s special needs and "reasonable grounds" framework—was the proper mode of analysis in Mr. Williams's case.

This error and the broad confusion *Knights* and *Griffin* have caused courts like the Fifth Circuit is a compelling enough reason for this Court to grant Mr. Williams's Petition. Indeed, courts, defendants, and the government have struggled to keep

straight these two distinct modes of Fourth Amendment analysis and are in great need of clarification. However, as discussed below, the Fifth Circuit’s misuse of *Griffin* had serious repercussions far beyond mere misapplication of the law. By conflating *Griffin* and *Knights*, the Fifth Circuit created a dangerously low benchmark for the reasonable suspicion standard.

B. The Fifth Circuit interpreted Griffin v. Wisconsin to establish a hazardous, bright-line rule about law enforcement tips, and, in doing so, improperly lowered the “reasonable suspicion” threshold.

By conflating the distinct warrant exceptions announced in *Griffin* and *Knights*, the Fifth Circuit also conflated “reasonable suspicion”—the standard broadly applicable to many search and seizure contexts—with “reasonable grounds”—the special standard codified in a Wisconsin regulation. As a result, the Fifth Circuit misinterpreted *Griffin* to hold “that tips given to a probation officer from other law enforcement officers are sufficient to support reasonable suspicion to conduct a search of a probationer.” *Williams*, 880 F.3d at 720. In other words, the Fifth Circuit interpreted *Griffin* as giving carte blanche approval to indiscriminate searches of probationers’ homes based on law enforcement tips, regardless of the detail and nature of the information provided. This was not only incorrect, but also created a circuit split over *Griffin*’s meaning and application and set the reasonable suspicion bar dangerously low.

As discussed, *Griffin* upheld a Wisconsin regulation that permitted probationary searches based on “reasonable grounds” for suspecting criminal activity. Prior to this Court’s ruling in that case, the Wisconsin Supreme Court had already

held that “a tip from a police detective that Griffin ‘had’ or ‘may have had’ an illegal weapon at his home constituted the requisite ‘reasonable grounds’” under Wisconsin law. *Griffin*, 483 U.S. at 875 (quoting *State v. Griffin*, 388 N.W.2d 535, 544 (Wisc. 1986)). Although upholding the state regulation as permissible under the special needs doctrine, the Court declined to review whether the specific tip involved actually satisfied Wisconsin’s “reasonable grounds” standard. *See id.* at 875 (“Whether or not we would choose to interpret a similarly worded federal regulation in that fashion, we are bound by the state court’s interpretation, which is relevant to our constitutional analysis only insofar as it fixes the meaning of the regulation.”).

And the Court certainly did not hold that the tip satisfied the broadly-applicable, federal *reasonable suspicion* standard. As the Sixth Circuit later explained:

[T]he Supreme Court did not hold that the “were or might be” tip established reasonable suspicion; it merely deferred to a state court’s application of a state-law standard. Because the Court did not conduct its own analysis of the facts in *Griffin*, and because the state’s standard in that case may well differ from the federal reasonable suspicion standard, *Griffin* does not guide our application of the reasonable suspicion standard.

United States v. Payne, 181 F.3d 781, 789 (6th Cir. 1991). Thus, the Sixth Circuit has rightly rejected the use of *Griffin* as a benchmark for reasonable suspicion, even in the probationary context.

The proper course, instead, is to “look to . . . cases dealing explicitly with the reasonable suspicion standard and the criteria for evaluating the reliability of tips received by the police.” *Id.* Accordingly, to determine whether reasonable suspicion for suspecting a probation violation exists based on a law enforcement tip, courts

should “consider the quantity and reliability of the information possessed by law enforcement and consider this information in light of the totality of the circumstances.” *United States v. Freeman*, 479 F.3d 743, 749 (10th Cir. 2007); *accord Payne*, 181 F.3d at 789 (“The tip in this case lacked any of the traditional indicia of reliability identified in those cases, and it was stale. It was clearly insufficient to create a reasonable suspicion.”).

The Fifth Circuit failed this task and, in doing so, created a circuit split rooted both in its incorrect application of *Griffin* and in its exceptionally low understanding of the reasonable suspicion bar. Indeed, the Fifth Circuit’s interpretation of *Griffin* cuts against decades of reasonable suspicion caselaw. Contrary to the Fifth Circuit’s approach, reasonable suspicion must be based on the totality of the circumstances and requires “articulable reasons” and “a particularized and objective basis for suspecting the particular person . . . of criminal activity.” *United States v. Cortez*, 449 U.S. 411, 417–18 (1981). A blanket rule blessing all law enforcement tips as a basis for searching probationers’ homes clearly violates those key tenants.

The dangers of taking a bright-line approach, rather than actually assessing the quality and quantity of available information, is evident in Mr. Williams’s case. The tip here was wholly devoid of specificity and its source was entirely unclear from the record. All Officer Green knew was that “sources” had told the NOPD that Mr. Williams was involved in drug dealing. The tip provided no information about the location, time period, or any other details of that alleged criminal activity. And Officer

Green did not even hear this vague information directly from NOPD—he heard it instead through a game of telephone with the DEA.

Importantly, there was no way to know whether the source of this information was reliable or if the information was stale. The tip very well could have been recycled information from Mr. Williams’s prior drug history—the entire reason he was on probation in the first place. *See Knights*, 534 U.S. at 122–23 (Souter, J., concurring) (“We now hold that law-enforcement searches of probationers who have been informed of a search condition are permissible upon *individualized suspicion of criminal behavior committed during the probationary period*[.]” (emphasis added)). Indeed, *every* probationer with narcotics offenses has associated with them some information suggesting they were at one point involved in narcotics. As the Tenth Circuit has explained: “Presumably all parolees have criminal records, and if this were sufficient to warrant reasonable suspicion, there would effectively be no limits on the ability of law enforcement officers to conduct warrantless searches of parolees’ homes.” *Freeman*, 479 F.3d at 749. If nonspecific and potentially stale information were sufficient to support reasonable suspicion, those probationers could be searched at any time based solely on an infinite feedback loop of law enforcement intelligence, rendering the reasonable suspicion protection meaningless.

Of course, “[e]ven a less-than-reliable tip may add something to the totality of the circumstances for determining reasonable suspicion.” *Payne*, 181 F.3d at 790–91. In other words, an otherwise unreliable tip might provide support for reasonable suspicion when supplemented by other reliable information indicating a sufficient

probability of criminal activity. But there was little other incriminating information to bolster the tip in this case. Although Officer Green considered the facts that Mr. Williams had guard dogs and tight home security, even he did not believe that this scant evidence was enough to support a full-blown search without investigating the tip further. To the contrary, the totality of the circumstances here *lessened* the probability that the tip was accurate. The wealth of information available to Officer Green indicated that Mr. Williams was not currently engaged in criminal activity. Even after years of close supervision, Officer Green did not suspect Mr. Williams of any criminal activity to that point, and, in fact, was so impressed that he felt comfortable recommending Mr. Williams for early termination from probation. Indeed, as the district court expressly found, Officer Green's experience was that Mr. Williams had been a model probationer. This specific and personalized information *reduced* the probability of ongoing criminal activity and suggested that the tip may not have been current or reliable.

Thus, Mr. Williams's case uniquely demonstrates why the *per se* approach taken by the Fifth Circuit is so dangerous. By treating *Griffin* as establishing a bright-line rule about law enforcement tips, the Fifth Circuit was able to shirk its responsibility to consider the totality of the circumstances—an inquiry that must take into account both positive and negative information in the reasonable suspicion inquiry.

Finally, it should be noted that the Fifth Circuit's degraded reasonable suspicion standard also conflicts with Louisiana Courts' interpretation of its own

statute and their understanding of the federal reasonable suspicion standard incorporated by that law. Those courts have rejected any suggestion that skeletal tips like the one in this case are sufficient to constitute reasonable suspicion under Louisiana probation law. *See, e.g., State v. Saulsby*, 892 So. 2d 655, 659 (La. Ct. App. 2004) (rejecting the argument that a probation officer had reasonable suspicion to search a probationer’s home when the officer’s “testimony merely indicate[d] that he was contacted by the sheriff[']s office in reference to the complaint,” “[t]here [was] nothing in the record to show that [the officer] was informed of any specifics regarding defendant[']s alleged drug activity, e.g., the nature of the drug activity, where it was taking place, and when,” the officer did not “testify that he had specific information as to the location of any contraband,” and it was “unclear who actually provided this information about defendant.”). Thus, the Fifth Circuit did not even follow this Court’s lead in *Griffin* and defer to state court interpretations of their own statute. Instead, the Fifth Circuit wholly ignored both federal and state directives.

II. The Fifth Circuit adopted an erroneous, per se rule that “bulges” in a person’s clothing support reasonable suspicion that the individual is presently armed and dangerous.

Having determined there was reasonable suspicion, under *Griffin*, to search Mr. Williams’s home based on the tip alone, the Fifth Circuit was not required to address the permissibility of the intermediary search of Mr. Williams’s person. It did nonetheless, and the court’s erroneous view of the reasonable suspicion standard spilled into its *Terry* analysis as well. This analysis created a second—and similarly dangerous—bright-line rule that warrants this Court’s attention and correction.

Under the Fifth Circuit’s analysis, “bulges” in an individual’s clothing will always support a *Terry* frisk, even if the officer does not actually testify that he believed the bulges were weapons and even if little else about the situation confronting the officer suggests that the person might be armed and dangerous.

Under *Terry*, “[a] law-enforcement officer is . . . justified in making a limited, warrantless search for the protection of himself or others nearby in order to discover weapons if he has a reasonable, articulable suspicion that the person may be armed and presently dangerous.” *United States v. Roggeman*, 279 F.3d 573, 577 (8th Cir. 2002). This Court has made clear that an officer’s “reasonable belief” that a suspect is armed and dangerous must be based on “specific and articulable” facts before the officer conducts a pat-down search. *Terry*, 392 U.S. at 21. Moreover, “[b]ecause the ‘sole justification’ for such a search is the protection of the officer and others, its scope must be confined to a search reasonably designed to discover concealed weapons.” *Roggeman*, 279 F.3d at 577 (quoting *Terry*, 392 U.S. at 29).

Of course, bulges in a person’s clothing *may* support an officer’s reasonable belief that a person is currently armed and dangerous. Naturally, however, the presence of bulges can only support that belief if the officer *reasonably believes those bulges may be weapons*. As the Maryland Supreme Court helpfully has explained: “[W]hen judging the facts under the Fourth Amendment *Terry* rubric, we reject the notion that a bulge is a bulge is a bulge is a bulge, no matter where it is, what it looks like, or the circumstances surrounding its observation.” *Ransome v. State*, 816 A.2d 901, 906 (Md. 2003). Of course, “a noticeable bulge in a man’s waist area may well

reasonably indicate that the man is armed.” *Id.* However, “as most men do not carry purses, they, of necessity, carry innocent personal objects in their pants pockets—wallets, money clips, keys, change, credit cards, cell phones, cigarettes, and the like—objects that, given the immutable law of physics that matter occupies space, will create some sort of bulge.” *Id.* Thus, to apply *Terry* “uncritically to any large bulge in any man’s pocket, would allow the police to stop and frisk virtually every man they encounter.” *Id.* That is precisely why a protective search and removal of an object from a suspect’s pocket is not justified if “the officer ma[kes] no claim that he suspected [the] object to be a weapon.” *Minnesota v. Dickerson*, 508 U.S. 366, 378 (1993) (internal quotation marks omitted).

Officer Green never testified that he believed the bulges in Mr. Williams’s clothing might be weapons. In fact, he already knew the bulges were money. Mr. Williams truthfully told Officer Green what was in his pockets, and Officer Green did not suggest he disbelieved him. Nor did Officer Green provide any information that would support a reasonable belief that the bulges were in fact weapons, such as their precise size, location, or general appearance.

The Fifth Circuit made much of Officer Green’s testimony that he was not sure if something might be *behind* the bulges, which, again, he knew to be money. Without ever stating that he worried the bulges were actually weapons, or discounting Mr. Williams’s truthful statement that all he had was cash, Officer Green testified that he merely “wanted to see if there were any weapons on the other side of him with the large bulges. *I could not tell what else was in his pockets.*” But Officer Green

provided no basis for believing there was something hidden behind the money in Mr. Williams's pockets and no way for the Fifth Circuit to determine whether that belief—even if he actually held it—was reasonable under the circumstances. Indeed, the district court made no factual findings at all on this point.

Moreover, the *absence* of information about what was in Mr. Williams's pockets, without any actual basis for believing that the pockets contained weapons, does not constitute particularized suspicion that Mr. Williams was presently armed and dangerous, as required by *Terry* and its progeny. To permit a protective pat-down any time an officer *does not know* what is in a suspect's pockets would turn the constitutionally-compelled requirement for particularized suspicion on its head.

Unsurprisingly, the Fifth Circuit's uncritical approach to bulges conflicts with that taken by, for example, the Ninth Circuit, which has stressed that clothing that is merely "capable of hiding a weapon" might "do nothing to *dispel* the notion that [a defendant is] armed, but neither does it suggest that he [is] armed." *Thomas v. Dillard*, 818 F.3d 864, 884 (9th Cir. 2016), *as amended* (May 5, 2016) (citing *Ybarra v. Illinois*, 444 U.S. 85, 93 (1979)). *Cf. United States v. Job*, 871 F.3d 852, 861 (9th Cir. 2017) ("[T]he facts that [the defendant's] pants appeared to be 'full of items' and he appeared nervous do not support the conclusion that he was engaged in criminal activity"); *United States v. Wilson*, 953 F.2d 116, 125 (4th Cir. 1991) ("Our decisions that mention bulges as a factor in the reasonable-suspicion analysis all involve attempts by a suspect to hide the bulge and/or the observation of a bulge in an unusual location"); *Roggeman*, 279 F.3d at 580 ("Trooper Moore testified that the size

and the shape of the bulge in [the defendant's] pocket were factors that made him concerned that it might be a weapon.”); *United States v. Lehmann*, 798 F.2d 692, 694 (4th Cir. 1986) (“[T]he size, shape, and location of [the defendant's] bulge provided a particularized ground for suspecting him of criminal conduct.”).

Finally, the Fifth Circuit's approach to reasonable suspicion in the *Terry* context—as it does in the probationary search context—fails to account for the totality of the circumstances. The court ignored the specific and personalized information available to Officer Green that lessened the probability that Mr. Williams was presently armed and dangerous. Officer Green was not approaching an unknown suspect in a dark alley without any information about the possible danger he might pose. He was approaching a man he knew well during a pre-planned meeting at the man's business. Based on his years of experience with Mr. Williams, Officer Green had not suspected Mr. Williams of being dangerous or possessing a weapon before, and, to the contrary, thought Mr. Williams was a model probationer. Indeed, the information available to Officer Green strongly suggested Mr. Williams was *not* presently armed and dangerous.

The Fifth Circuit's approach to reasonable suspicion ignored this wealth of individualized and personalized knowledge, which could not have been outweighed by a vague tip connecting Mr. Williams to, at most, narcotics and not weapons. And that information certainly was not outweighed by the mere presences of non-descript bulges in Mr. Williams's clothing, particularly when Officer Green never testified that he actually believed those bulges were weapons and provided no information to judge

whether he reasonably could have thought they were. Bulges are not a per se justification for searching someone, and the Fifth Circuit’s adoption of bright-line rules like this one in the *Terry* context render the necessary checks on that doctrine’s reach essentially meaningless.

III. The Fifth Circuit held that an officer can seize money from a person’s pockets during a protective frisk, and, in doing so, wrote *Minnesota v. Dickerson*—and its critical limits on warrantless searches—out of the *Terry* inquiry.

Finally, the Fifth Circuit’s decision is worthy of this Court’s attention, because it eliminates one of the most fundamental limits on *Terry*’s reach and violates this Court’s warnings that “[t]he purpose of this limited search is not to discover evidence of a crime, but to allow the officer to pursue his investigation without fear of violence.” *Adams v. Williams*, 407 U.S. 143, 146 (1972). Specifically, the Fifth Circuit has abandoned the critical limit forbidding the examination or seizure of non-weapons found during a lawful *Terry* search without probable cause that the objects are contraband. In short, the Fifth Circuit’s decision permits officers to rummage through a person’s pockets during a *Terry* search and seize the money they find there.

Mr. Williams argued extensively in his brief and at oral argument that, even if the initial frisk of his person had been lawful, the subsequent removal, seizure, counting, and testing of the cash in his pockets was plainly improper under this Court’s decision in *Minnesota v. Dickerson*. *Dickerson* imported the “plain view” doctrine into the *Terry* context, and made clear that an officer cannot manipulate, remove, examine, or seize a non-weapon discovered during a *Terry* frisk absent probable cause to believe the object is contraband. 508 U.S. at 379. This requirement

is necessary to cabin *Terry* searches to their limited, permissible scope and to “ensure against excessively speculative seizures.” *Id.* at 376. Only if an object’s “incriminating character is immediately apparent” may an officer lawfully seize it or even examine it further. *Id.* (citing *Horton v. California*, 496 U.S. 128, 136–137 (1990)).

The Fifth Circuit did not cite *Dickerson* in its decision or even nod to the important limits that case set. Instead, the court determined that Officer Green could seize cash from Mr. Williams’s person without finding any probable cause to believe the money was contraband. To the contrary, the district court expressly found that it would *not* have been readily apparent to Officer Green that the cash in Mr. Williams’s pockets was indicative of unlawful activity—not to mention, readily identifiable as contraband—since Mr. Williams worked at a used car dealership, a business one would expect to involve frequent exchanges of high volumes of cash. As the district court explained: “I don’t think it’s suggestive that everyone who walked in would have a nice pristine checking book and write out and make the entry on the check. Rather, I would suspect that there would be a certain amount of cash business.”

Mere money in a person’s pockets—even large amounts of money—is not readily identifiable as contraband and should not automatically expose a person to governmental seizure. To say otherwise opens gaping holes in the limits on *Terry*’s reach and exposes vast swaths of individuals to harassment and abuse. This is the very type of constitutional wrong deserving of this Court’s intervention, and Mr. Williams’s case provides an ideal vehicle for doing so.

CONCLUSION

For the foregoing reasons, Mr. Williams's petition for a writ of certiorari should be granted.

Respectfully submitted April 24, 2018,

/s/ Celia Rhoads

CLAUDE J. KELLY

CELIA C. RHOADS

Counsel of Record

Federal Public Defender

Eastern District of Louisiana