

Case No.: \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

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TODD RASBERRY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

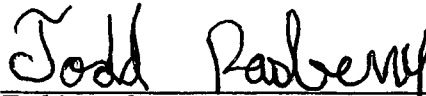
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TO THE HONORABLE STEPHEN BREYER, CIRCUIT JUSTICE, PURSUANT  
SUPREME COURT RULE 22.1

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Respectfully submitted by,  
incarcerated pro se Petitioner,



Todd Rasberry, pro se  
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QUESTION

May the government circumvent a home occupant's consent by invoking Terry v. Ohio to search home and person without a warrant?

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OPINION BELOW

The First Circuit Court of Appeal's opinion is appended hereon, (A1-18), and is reported at United States v. Rasberry, 882 F.3d 241 (1st Cir., Feb. 14, 2018)

The order denying rehearing, dated April 25, 2018, is appended hereon. (A34)

BASIS OF JURISDICTION IN THE SUPREME COURT

This Court has jurisdiction under 28 U.S.C. § 1254.

CONSTITUTIONAL PROVISION

Fourth Amendment to the United States Constitution:

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

Todd Rasberry and a companion were guested in a hotel room. His companion stepped out to run an errand, and, while out and about, was confronted by DEA Agent Paul Wolf. Wolf suspected Rasberry was a drug dealer, and, indeed, his errand-running companion confirmed this and gave Wolf the drugs she had in her possession. She told Wolf he would find more drugs back in the hotel room with Rasberry, gave him the room key, and offered her consent to search the room. (A3)

Wolf rounded up several more lawmen and beelined to the hotel room. With guns drawn, Wolf tried the room key, but it didn't work. So, he knocked on the locked door. Rasberry opened the door, handcuffs were slapped onto his wrists, he was pat searched, and guarded at gunpoint as the lawmen cleared the room of potential threats. Finding none, they holstered their guns and commenced a thorough search for hidden drugs. (A3-A4)

The lawmen neither asked, nor received, Rasberry's consent to search.

After rummaging through the room for twenty minutes, the lawmen came up empty-handed. Unable to arrest Rasberry for anything, they agreed to remove their manacles from his wrists. But first, claimed Wolf, he had to perform a secondary search of his person. Rasberry protested. But, Wolf searched him anyway, he had to he countered -- in case Rasberry had a weapon. (A4)

During this secondary pat search Wolf felt a "hard, round

object" in Rasberry's underwear. And, here's the sticking point, dissatisfied with Rasberry's answer that the object was innocuous, Wolf reached into his underwear, extracted the object, opened it, and, seized the drugs hidden inside. (A4)

Had this not happened, this story wouldn't be told. But, it did.

Rasberry motioned to suppress the underwear drugs. The court ruled the search was lawful under Terry v. Ohio, 392 U.S. 1 (1968), and denied the motion. (A5)

Rasberry appealed. A panel of the First Circuit Court of Appeals (replete with a former Justice of this Court) held the search was lawful under Terry. (A12-13)

Then, denied his petition for rehearing. (A19-34)

Now, Rasberry asks this Court decide, once and for all, whether the warrant exception of Terry v. Ohio excuses the warrantless search of home and person under Fourth Amendment standards of reasonableness.

#### BASIS OF JURISDICTION BELOW

The First Circuit had jurisdiction under 28 U.S.C. § 1291.

#### REASONS WHY CERTIORARI SHOULD BE ALLOWED

There is an open question, nationwide, whether the warrant exception of Terry v. Ohio applies inside the home. (392 U.S. 1)

This Court has decided a search warrant carries with it the authority to handcuff a home's occupant during the warranted search because probable cause has been independently determined by a neutral and detached magistrate. Michigan v. Summers, 452 U.S. 692, 701 (1981)

This authority to violate the sanctity of home and person derives solely from independent judicial determination of probable cause, not some other species of Fourth Amendment abridgement. Cf. Bailey v. United States, 568 U.S. 186, 200 (2012)

But, what about when lawmen, subjectively believing probable cause to search exists, forego that judicial determination, and, instead, enter the home, handcuff and search the occupant, rummage through the home at their leisure, then, turning up nothing, re-search the fettered occupant?

Do the exigencies conceived of by Terry apply then?

Or, is Raspberry -- and all of Society -- entitled to more under the Fourth Amendment?

Previously, this question was unanswered in the First Circuit. United States v. Beaudoin, 362 F.3d 60, n. 2 (1st Cir. 2004)

Nor is it expressly answered here. However, Raspberry's fate leaves little doubt the sanctity of home and person has suffered a decisive blow.

The Ninth Circuit (following this Court's lead) holds the Terry exception does not justify such an invasion of home and person. LaLonde v. County of Riverside, 204 F.3d 947, 954 (9th



Cir. 1999) ("[R]el[ying] heavily on the fact that the home is perhaps the most sacrosanct domain and that, there, Fourth Amendment interests are at their strongest.")

These officers did not have probable cause to arrest Raspberry. Cf. Maryland v. Buie, 494 U.S. 325, 335 (1990) (Allowing "a cursory inspection of those spaces where a person may be found[]" inside the home pursuant execution of arrest warrant.)

Perhaps, had they tried, they could have obtained a search warrant. But, they didn't even try.

They had no warrant of any sort. Nor did they have Raspberry's consent to search.

How could he have consented? When the room key didn't allow the lawmen entry, they knocked, but, before Raspberry could draw his next breath, he was handcuffed, pat searched, and armed men were occupying the room. Could his absent companion's remote consent justify this invasion? Cf. Fernandez v. California, 134 S.Ct. 1126, 1130 (2014)

It does not. Florida v. Reyes, 460 U.S. 491, 508 (1983)

And, neither does Terry. Cf. Rodriguez v. United States, 135 S.Ct. 1609, 1611 (2015)

The lawmen forewent obtaining a warrant, entered the room without Raspberry's consent, handcuffed him, searched his person, rummaged through the room for twenty minutes, re-searched his person and used the evidence seized during this subsequent search to convict and imprison him. This Unconstitutional behavior finds no grounding in Terry, Fernandez, Summers, or Bouie.

Courts nationwide are confounded by this sticky Constitutional baffler. Cf. United States v. Meyers, 308 F.3d 251, 258 (3d Cir. 2002) ("Terry has never been applied inside a home."); but see United States v. Lewis, 608 F.3d 996, 1000 (7th Cir. 2010) (Even though occupant's implied consent invalidated by armed police inside home, Terry invoked to justify warrantless seizure.) see especially Moore v. Pederson,

[W]e hold today that, in the absence of exigent circumstances, the government may not conduct the equivalent of a Terry stop inside a person's home. We further hold that a person does not consent to entry of his home by an officer outside simply by following an officer's instructions to turn around and be handcuffed, while the person remains inside his home.

806 F.3d 1036, 1039 (11th Cir. 2015); compare Armijo v. Peterson, 601 F.3d 1065, 1073 (10th Cir. 2010) (Upholding in-home Terry seizure based on exigent circumstances.)

Rasberry's case further muddles these unchartered Constitutional waters.

#### CONCLUSION

Whether Terry may be invoked to justify seizure of a person inside his home without consent or exigency is ripe for review. Rasberry prays this Court resolve this Fourth Amendment stumper, once, and for all.