

IN THE
Supreme Court of the United States

FRANCISCO SORIA,
Petitioner,
v.

UNITED STATES,
Respondent.

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

REPLY BRIEF FOR PETITIONER

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INTRODUCTION

The facts of this case are undisputed. In executing a valid warrant against Mr. Soria, officers entered a single-family residence and discovered the residence actually consisted of three separate subunits. BIO 2-3; Pet. 3. Upon that discovery, the officers could not determine which unit was Mr. Soria's. BIO 9; Pet. 3. They continued their search regardless. BIO 9; Pet. 3. Only through that continued search of all three subunits did the officers identify Mr. Soria's unit and discover the evidence used to prosecute him. BIO 7-8; Pet. 3-4.

In the Third and Seventh Circuits, the officers' execution of the warrant against Mr. Soria would be invalid. Applying *Maryland v. Garrison*, 480 U.S. 79, 87 (1987), those circuits require officers to discontinue their search when they realize the warrant is overbroad and they are unable to limit their search to the suspect's residence. See *United States v. Ritter*, 416 F.3d 256, 266-67 (3d Cir. 2005) (officers "were obligated to either limit the search to those areas clearly covered by the warrant or to discontinue entirely their search"); *Jacobs v. City of Chicago*, 215 F.3d 758, 768-69 (7th Cir. 2000) (officers "were obligated to cease that search if they could not determine which apartment was properly the subject of the warrant"). Here, however, the Ninth Circuit sanctioned the officers' continued search. In doing so, the Ninth Circuit created a circuit split and put itself on the wrong side of it.

The government does not dispute the holdings of the circuit courts on the other side of the split. BIO 10-11. Rather, the government attempts to dissolve this split by distorting the facts of Mr. Soria's case and by recasting *Garrison* as permitting officers to continue searching until they find the target's unit. Neither move succeeds.

The material facts here match those in *Ritter* and *Jacobs*, yet the Ninth Circuit came to a different conclusion. And that conclusion contravenes the reasoning in *Garrison*. The Court should resolve that split and correct the erroneous decision below.

I. The Circuits Are Split On Whether Officers Can Execute An Overbroad Warrant When They Cannot Narrow Its Scope.

There is a direct circuit conflict over whether officers may continue to rely on a warrant once they realize it is overbroad and are unable to narrow its scope. The Third and Seventh Circuits are clear: *Garrison* requires officers to discontinue their search of a property once they realize that the warrant is overbroad, unless they can determine which specific area is covered by the warrant. *Ritter*, 416 F.3d at 266; *Jacobs*, 215 F.3d at 769. In the decision below, however, the Ninth Circuit disregarded *Garrison*'s reasoning altogether, concluding that the execution of an overbroad warrant is valid where the evidence seized is ultimately taken from an area covered by the warrant—even if officers search the entire property to obtain that evidence. Pet. App. 3.

The government attempts to factually distinguish the Third and Seventh Circuit decisions, BIO 10-12, yet fails to address (much less distinguish) their holdings, which squarely conflict with the Ninth Circuit's here. The Third Circuit expressly followed *Garrison*, explaining that once officers discovered that there were separate dwellings contained in the residence described in the warrant, "they were obligated to either limit the search to those areas clearly covered by the warrant or to discontinue entirely their search." *Ritter*, 416 F.3d at 266. Because the officers did not limit or discontinue their search, the Third Circuit remanded for fact-finding on

whether the officers observed any evidence in common areas of the residence *before* they entered individual apartments. *Id.* at 267-68. If so, that evidence (and only that evidence) might “avoid suppression.” *Id.* at 267.

The problem with the execution of the warrant in *Ritter* was not, as the government asserts, that the warrant failed to specify “whose residence it was” and “thus officers had no way to narrow the scope of their search after they realized that the premises were subdivided into different units.” BIO 10. The problem was that the warrant identified the property as a single residence when it actually “consisted of at least four separate apartments.” *Ritter*, 416 F.3d at 260. And “[d]espite the discovery of multiple units in the residence, ... search teams were sent in to more thoroughly search the premises and collect evidence.” *Id.* In other words, the problem was that the officers, just like the officers here, failed to “limit or discontinue their search.” *Id.* at 267.

The Seventh Circuit likewise applied *Garrison* to conclude that officers should have discontinued their search of a residence once they “discovered the defect in the [warrant’s] description of the place to be searched.” *Jacobs*, 215 F.3d at 769. Specifically, once the officers discovered that the property “was a multi-unit building consisting of separate apartments and that the warrant they were executing was overbroad,” “they were obligated to cease that search if they could not determine which apartment was properly the subject of the warrant.” *Id.* The Seventh Circuit further explained that it was “clearly established that where an officer mistakenly believes that a building is a single unit but later discovers that the building in fact

contains multiple units, the officer is obligated to cease the search if he is unable to determine that the unit he is searching is properly the subject of the search.” *Id.* at 771.

Again, in attempting to distinguish the Seventh Circuit’s decision from this one, the government distorts the key issue in this case. The issue here is not whether there were “clear signs of multiple residences on the exterior of the home,” BIO 11, but whether officers can continue their search of an entire building after learning that the building contains multiple units, thus realizing that the warrant they are executing is overbroad. Where, as here, the officers are unable to limit their search to the search target’s apartment, *Jacobs* holds that they may not continue their search. 215 F.3d at 769. The Ninth Circuit held the opposite.

In sum, if Mr. Soria lived in Philadelphia or Chicago, the execution of an overbroad warrant without limitation would be held invalid. But in Los Angeles or Seattle, the same search and seizure would be authorized. That disparity on such a fundamental right is untenable. Only this Court can resolve the split.

II. The Decision Below Is Wrong.

As the Petition demonstrates, *Garrison* required the officers here to cease their search because they were unable to narrow the scope of the overbroad warrant. The government’s defense of the Ninth Circuit’s holding to the contrary rests on a misreading of *Garrison* and a misunderstanding of the record here.

According to the government, *Garrison* requires only that officers “reasonably limit” their search after discovering a warrant’s overbreadth, not “cease it entirely.” BIO 7. But that argument presupposes that the officers are *able* to limit their search

to the suspect's residence. As this case shows, that is not always possible. Rather, when officers realize a warrant is overbroad and do not know which subunit is the suspect's, they cannot "reasonably limit" their search without "risk[ing] [entering] a unit erroneously included within the terms of the warrant." *Garrison*, 480 U.S. at 87. Given that risk, under *Garrison*, the officers are "required to discontinue the search." *Id.*; *United States v. Crumpton*, 824 F.3d 593, 614 (6th Cir. 2016) ("[L]aw enforcement officers are 'required to discontinue [a] search ... as soon as they discover[]' that a location is in fact subdivided into separate dwelling units, especially if it is unclear which unit belongs to the subject of the warrant.") (quoting *Garrison*, 480 U.S. at 87). The government's interpretation of *Garrison* only applies where it is possible to reasonably limit a search. That in turn requires that officers have sufficient information allowing them to identify the residence the warrant lawfully covers. Where, as here, the officers can only obtain that information by continuing their search, *Garrison* indeed requires that they cease the search entirely.

The government also claims that the Petition rests on a faulty factual premise. The government contends that the record is unclear as to whether the officers realized the warrant was overbroad before determining which unit was Mr. Soria's. BIO 8. But it is the government that misunderstands the facts, not Petitioner. The district court found as a factual matter that "[t]he officers did not completely limit their search to the residence of the suspect" but instead "search[ed] all three subunits," and that "the officers determined which subunit was Defendant's by the search itself." Pet. App. 10-11 (resolving "the potential factual dispute in Defendant's favor"). On

appeal, the parties did not dispute the district court’s factual findings. Pet’r C.A. Br. 5, 7 n.1, 15-17, 21-22; Resp. C.A. Br. 4, 25-31.¹ Where the parties do not challenge the district court’s factual findings on appeal, the appellate court treats those findings as undisputed. *See United States v. Idaho*, 210 F.3d 1067, 1073 (9th Cir. 2000) (accepting the district court’s facts as given where “the State d[id] not appear to have challenged any of the court’s underlying factual findings”); *see also* Fed. R. Civ. P. 52(a)(6) (“Findings of fact ... must not be set aside unless clearly erroneous.”). Accordingly, the record reflects that the officers continued their search despite not knowing which unit was Mr. Soria’s. Pet. 3-5. The government’s reframing of the decision below has no support in the record.

As it did in trying to explain away the split, the government mischaracterizes Mr. Soria’s position on the merits as well. Mr. Soria does not argue that the officers’ search was invalid simply because the officers learned which unit was Mr. Soria’s after entering the residence. BIO 8. Rather, Mr. Soria posits, and the record confirms, that the officers learned which unit was Mr. Soria’s only after finding his driver’s license in one of the units—i.e., after conducting an additional search. Resp. C.A. Br.

¹ The government argues that Mr. Soria “takes statements in the government’s brief out of context.” BIO 9. Not so. In its answering brief (and again in its brief in opposition), the government conceded that the officers, after entering the building, “did not know which unit was occupied by [Mr. Soria] or if [Mr. Soria] was in control of the entire premises.” BIO 9; Resp. C.A. Br. 29; Resp. C.A. Opp. to PFR/EB 11-12. That unknown, in and of itself, required the officers to discontinue their search. *Supra* 4-5. The government fails to explain how the opposite is true. In addition, elsewhere in its answering brief, the government conceded that the officers continued their search after discovering the residence was subdivided despite not knowing which unit was Mr. Soria’s. *See* Resp. C.A. Br. 9-10, 12-13, 16, 22-23, 25-26, 29-30.

29-30 (“[The officers] discovered defendant’s driver’s license in one of the kitchens, leading them to correctly identify that unit as [Mr. Soria’s] residence.”); *see also* Pet. App. 11. Indeed, as the government conceded below, in order to find the license, the officers did a “safety sweep and cursory search for drugs and weapons in *each of the three units*.” Resp. C.A. Br. 9 (emphasis added). And they did so *after* realizing they did not know which unit was Mr. Soria’s. Accordingly, there is no dispute that the officers continued their search despite not knowing which unit was Mr. Soria’s. The government’s attempt to erase the officers’ knowledge defies the record.

III. This Case Is An Ideal Vehicle To Resolve This Important Question.

This case provides the perfect vehicle for this Court to resolve the question presented. There are no factual complications or preservation issues that would impede this Court’s review. *Supra* 1, 5-6; Pet. 4.

The question presented is also fundamentally important and recurring. Homes are often subdivided into multiple living spaces, particularly in urban areas and communities facing housing shortages. Officers who obtain warrants for residences that they reasonably believe to be single-family homes will sometimes discover, only after entering, that the residence contains more than one home. When that happens, the Constitution must provide a clear answer: either officers may search until they identify the target’s unit, or they must stop unless they have enough information to limit the search to a place actually covered by the warrant. As of now, that answer depends on the geographic location of the home.

CONCLUSION

For the foregoing reasons and those set forth in the Petition, the Petition should be granted.

Respectfully submitted,

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