

No. 25-7490

ORIGINAL

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SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

BRIAN MATTHEW MACHARDY — PETITIONER
(Your Name)

vs.

the STATE of ARIZONA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Arizona Court of Appeals, Division Two
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Brian Matthew Machardy
(Your Name)

Central Arizona Correctional and Rehabilitation Facility (CACRF)
(Address)

P.O. Box 9600 Florence, AZ 85132-9600
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Are law enforcement agencies, prosecutors and courts denying criminal defendants their fundamental right to Due Process, as guaranteed under the 4th, 5th and 14th Amendments of the United States Constitution and, Article 11, § 4, 8 and 24 of the Arizona Constitution, when the existence of probable cause should have dictated the issuance of a search warrant over that of pre-warrant search and seizure based on a single source connection into networks protected by a "firewall"?

LIST OF PARTIES

- All parties appear in the caption of the case on the cover page.
- All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix B,C to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the Pima County Superior court appears at Appendix E,F to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was December 12, 2025. A copy of that decision appears at Appendix B.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FEDERAL

4th Amendment of the United States Constitution

5th Amendment of the United States Constitution

14th Amendment of the United States Constitution

STATE

Article 11, § 4 of the Arizona Constitution

Article 11, § 8 of the Arizona Constitution

Article 11, § 24 of the Arizona Constitution

STATEMENT OF THE CASE

On August 16th, 2019, the Pima County Grand Jury (284-GJ-807) returned a true bill charging nine counts (1-IX) of Sexual Exploitation of a Minor, a class 2 felony, dangerous crime against children (DCAC). See, Indictment. Four days later, MacHardy entered a plea of not guilty to all counts. Minute Entry (M.E.) 08/23/2019.

On March 9th, 2020, an evidentiary hearing was conducted addressing numerous issues, the most relevant being:

- MacHardy's Motion to Suppress based upon Illegal Arrest (Lack of Probable Cause); taken under advisement. M.E. 03/09/2020.

- State's Motion to Determine Admissibility of Specific Instances of Conduct under Rule 404; taken under advisement. M.E. 03/10/2020.

Two months later, the Honorable Kimberly H. Ortiz (hereinafter, "Ortiz Court") ruled as the Rule 404 hearing, granted in part and denied in part the State's request. M.E. 05/08/2020.

On September 22nd, 2020, upon advice of counsel Jeremy Zarzycki (025847), MacHardy gave "up [his] right to trial by jury and consent[ed] to have [his] guilt or innocence determined by the judge." fnl. See, Waiver of Trial by Jury.

fnl. Counsel advised that the average juror was

to unsophisticated to understand the technical terminology and theory behind peer-to-peer networking. And that he would be better served with a bench trial.

A six day bench trial commenced on September 29th, 2020, concluding on December 9th, 2020, wherein, the Ortiz Court determined "the State has sustained its burden of proof beyond a reasonable doubt as to all counts in the indictment" See, Appendix G. On February 1st, 2021, the Ortiz Court sentenced MacHardy for Counts I through IX to consecutive terms of 10 years in the ADCRB. See, Appendix F. A timely Notice of Appeal was filed.

On appellate review, counsel Seth Apfel (032225) raised the following issues:

1. Did the police violate Mr. MacHardy's right under the Fourth Amendment (and Arizona Constitution Art. II, § 8), as detailed in Kyllo v. United States, 533 U.S. 27 (2001) by using technology not available to the general public to conduct a warrantless search of Mr. MacHardy's computer prior to obtaining a search warrant?

2. Did the trial court err by failing to exclude statements of the defendant obtained by police in the immediate aftermath of an illegal, warrantless arrest made inside the home?

3. Was there sufficient evidence to support a conviction given that the State presented no evidence to indicate that the "minors" depicted in the alleged exploitative files depicted actual minors as

compared to virtual mirrors, the latter being legal pursuant to Ashcroft v. Free Speech Coalition, 535 U.S. 234 (2002).

4. Was Mr. MacHardy properly sentenced under A.R.S. § 13-705 (DCAC), where the State repeatedly specified that the case was a non-victim case, and Wright v. Gates 243 Ariz 118 (2017) requires an actual victim for sentencing as a DCAC?

5. Was Mr. MacHardy's waiver of jury trial sufficient where the colloquy conducted by the trial court did not assess whether the decision was made voluntarily?

See, 2 CA-CR 21-0021, Appellate Brief. A Memorandum Decision was issued "affirm[ing] MacHardy's convictions and sentences", with Presiding Judge Eckerstrom concurring in part and dissenting in part,

"[F]or the foregoing reasons, the trial court failed to establish that MacHardy's jury trial waiver was voluntary.

Specifically, it failed to conduct the traditional voluntariness inquiry that has been incorporated and mandated by our rules of criminal procedure. When the record 'fails to affirmatively show' that a defendant voluntarily waived his right to a jury trial, we must vacate the defendant's convictions and remand for a new trial. Baker, 217 Ariz 118, ¶ 24. I believe the record compels us to do so here." See, Appendix I.

Subsequently, the Arizona Court of Appeals (AZ Ct App), Division (Div) Two issued a Mandate averring "[a] Petition for Review was filed and DENIED by Order of the Arizona Supreme Court [AZ Sup Ct]" Appendix J. A timely Notice of Post-Conviction Relief was filed.

On August 1st, 2023, the Ortiz Court appointed as Post-Conviction Counsel Erin E. Duffy (021409); approximately nine months later, Ms. Duffy filed a Notice in Lieu of Petition for Post-Conviction Relief. Consequently, the Ortiz Court directed MacHardy to file a Supplemental Petition for Post-Conviction Relief (Sup. PCR). After a timely extension of deadline, MacHardy submitted a Sup. PCR raising the following:

1. Was MacHardy denied due process, as guaranteed by the 4th, 5th, and 14th Amendments of the United States Constitution and, Article 11, § 4, 8, and 24 of the Arizona Constitution, when an improper search of a hard drive was conducted by the Internet Crimes Against Children unit of the Tucson Police Department?

2. Was MacHardy denied effective assistance of counsel, as guaranteed by the 5th, 6th, and 14th Amendments of the United States Constitution and, Article 11, § 4 and 24 of the Arizona Constitution, when counsel failed to suppress evidence seized from search warrant 185W0509? The State responded on September 29th, 2024.

Three days prior to the expiration of Arizona Rules of Criminal Procedure (ARCP) 32.9(b), which states "[t]he defendant may file a reply 15 days after a response is served", MacHardy submitted a Motion Requesting Extension of Reply Deadline, by and through ARCP 1.7(b) - the prison mailbox rule ^{fn2}. Four days prior to the expiration of Rule 32.9(b), the Ortiz Court issued a ruling of "IT IS ORDERED Defendant's Supplemental Petition for Post-Conviction Relief is DENIED". See, Appendix E.

^{fn2} All references to pleadings filed by

MacHardy with the courts, reflect the date pleading was given to prison officials. Houston v. Lock, 487 U.S. 266, 275-76, 101 L. Ed. 2d 245, 108 S.Ct. 2379 (1988); see also, Douglas v. Noelle, 567 F.3d 1103, 1106-09 (9th Cir. 2009)

On October 18th, 2024, MacHardy requested the Ortiz Court vacate its decision. Subsequently, the Ortiz Court denied the Motion to Vacate but "grant[ed] the Defendant until December 6, 2024 to file any Reply." See, Appendix K. A timely Reply was submitted, wherein, the Ortiz Court affirmed its ruling of October 10th, 2024. See, Appendix F.

On January 6th, 2025, well within the 30-day time limitation, pursuant to ARCP 32.16(a)(4)(A), MacHardy filed motion for extension of deadline. Lacking a response from the Ortiz Court, MacHardy filed a Petition for Review, raising

Did the Ortiz Court abuse its discretion, when it failed to address

1. the improper intrusion of a hard drive by the Tucson Police Internet Crimes Against Children unit;
2. counsel's pretermission to move for suppression of search warrant 18SW0509; and,
3. Detective Barry's illegal possession of child sexual abuse material.

On February 12th, 2025, the AZ Ct App., Div. Two ordered that "Petitioner may within ten days show why the petition for review should not be dismissed", due to timeliness. See, Appendix L. Shortly thereafter,

MacHardy submitted a "Motion of Timeliness", wherein, the AZ Ct App issued a "stay[...] and jurisdiction is revested in the trial court, ..., for the limited purpose of ruling on the pending Motion for Extension of Deadline. See, Appendix M.

On March 10th, 2025, the Ortiz Court granted the Motion for Extension of Deadline. See, Appendix N. Shortly thereafter, the AZ Ct App "ORDERED: The stay of appeal is vacated, jurisdiction is revested in this court, and the above-entitled appeal is reinstated". See, Appendix O.

In lieu of a State's response, MacHardy received a "Notice of Erratum". See, Appendix P. Awaiting an appropriate time to receive the State's Response, MacHardy submitted a "Motion Requesting Corrected State's Response", explaining by addressing MacHardy as "Young", the State "create[d] an issue in receipt, wherein, CACBF and ADCBB policy prohibits inmates from receiving legal mail intended for another". See, Appendix Q. The AZ Ct App denied MacHardy's request. See, Appendix R.

On May 15th, 2025, MacHardy filed a Petition for Special Action to the AZ Sup Ct asking,

"Did the Appellate Court deny MacHardy due process, as guaranteed by Article 11, § 4 of the Arizona Constitution and, the 5th and 14th Amendments of the United States Constitution, when it refused to instruct the State to supply a corrected copy of its response?"

Within the body of the Special Action, MacHardy attempted to explain, if the State inadvertently utilized the name "Young" in the response, it is very possible and highly probable that the envelope containing the "Response" was addressed to "Young". [fn3] Meaning if the envelope was

addressed to "Young", prison officials would not have called MacHardy to pickup legal mail. Therefore elucidating that non receipt would deny MacHardy's right to receive and reply in a meaningful manner to the State's objections, pursuant to ARCP 32.9(b).

Six days later, the AZ Ct App., Div. Two transferred jurisdiction to AZ Ct App., Div. One. See, Appendix S. After realizing a Special Action had been submitted, AZ Ct App., Div. Two vacated its transfer and "forward the record to the Arizona Supreme Court", should have resulted in a stay of all actions pending a decision. See, Appendix T. One week later, without the AZ Sup Ct's decision on the pending Special Action, the AZ Ct App., Div. Two issued a "Memorandum Decision" granting review, denying relief. See, Appendix C.

fn3. ADCBR and CACBF policy requires that "[a]ll incoming legal mail shall be in the presence of the inmate and checked for contraband items, but staff members may not read, skim, scan, or review the written contents of any incoming legal mail, ... ADCBR, Department Order (D.O.) 902 - Inmate Legal Access to the Courts; Corrections. AZ.gov/pg17.

On August 5th, 2025, the AZ Sup. Ct. opined "the State's response, in its entirety, stated: 'Petitioner Brian Matthew MacHardy raises no meritorious claims for postconviction relief. The trial court addressed and rejected Young's claims in a well-reasoned ruling. This Court

should deny relief" fn4. See, Appendix U.

fn4. As of the filing of this 28 U.S.C. 1257(a),
MacHardy has not received a copy of the State's
Response

A timely Petition for Review was filed with the AZ Sup. Ct.,
resulting in a boilerplate, "ORDERED: Petition for Review = DENIED" see,
Appendix B.

REASONS FOR GRANTING THE PETITION

Throughout American history, the 4th Amendment of the United States Constitution promulgates that searches and seizures within an individual's home or dominion, absent a warrant, are presumptively unreasonable.

Payton v. New York, 445 U.S. 573, 586, 63 L.Ed.2d 639, 100 S.Ct. 1371

(1980); see also, State v. Conez, 202 Ariz 133, ¶114, 43 P.3d 564 (AZ 2002).

This realization applies equally to the arrest of an individual or the seizure of property, thereby, propugnating against the chief evils that the wording of the 4th Amendment is directed. Id. The Arizona Constitution is even more explicit in safeguarding this fundamental liberty, by providing that "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law". Article II, § 8. Whether looking to either Constitution, absent exigent circumstances, warrantless searches violate the rules of law.

This leads to a question of first impression,

Are law enforcement agencies, prosecutors and courts denying criminal defendants, their fundamental right to Due Process, when the existence of probable cause should have dictated the issuance of a search warrant over that of pre-warrant search and seizure based on a single source connection into networks protected by a "firewall"?

In MacHardy's case, Tucson Police Detective Daniel E. Barry (Badge No.

43117) of the local Internet Crimes Against Children (ICAC) unit, testified that on September 21st, 2017, he queried the Federal Bureau of Investigation's (FBI) Child Online Protection System (COPS) [fn5] database for any child sexual abuse (CSA) leads in the Tucson area:

Barry: "... we set the limit on the jurisdiction we want to investigate ... So in my case, I set it to anywhere in southern Arizona. We start the software. And it automatically starts the query of the database asking the database, hey, we want to see those IP addresses that are associated with people who have been located in the Tucson area who have been seen with child sexual abuse info hashes." fn6. Appendix V, Reporter's Trial Transcript (R.T.T.) 09/29/2020, 76:11-20.

fn5. The Federal Internet Crimes Against Children task force's database is known as Child Online Protection System (COPS).

fn6. An "info hash" is a mathematical algorithm which allows for the digital fingerprinting of files by groups, commonly known as "payloads".

Each info hash has a unique value associated with a particular file.

In response, Detective Barry received an Internet Protocol (IP) address of 72.211.148.24. fn7. Appendix V, 115:20-22. At this exact moment in time, probable cause attached, wherein, Detective Barry had all the

necessary elements to effectuate a proper subpoena from the Pima County Grand Jury.

fn7. IP addresses are always attached, "like a 'return address' to every 'envelope' of information exchanged back and forth by computers that are actively communicating with each other over the Internet." United States v. Jean, 201 F. Supp. 920, 928-29 (W.D. Ark. 2016), aff'd 891 F.3d 712 (8th Cir. 2018).

Instead, between the hours of "2:30 p.m. local and 9:19 p.m. local on the 21st of September 2017" [See, Appendix V, Id., 95:6-8], Detective Barry utilizing the freshly gotten IP address and software applications known as "Torrential Downpour (TD)" and "Torrential Receptor (TR)" made an unwanted single source connection into a network guarded by a "firewall" fn8. At trial, Deputy County Attorney Tia Summers (Arizona Bar Number (ABN) 034784) elicited from Detective Barry the following testimony:

Summers: "And in this case, were you using or was the tool using Torrential Downpour or Receptor?"

Barry: It was actually using both... the Downpour actually made a connection. But I don't think it was able to download any files... However, the Receptor software did make a connection to this suspect computer and downloaded, I think, 30 videos depicting child sexual

abuse

Summers: So you just described to us that the tool downloaded 30 videos. Did you review all of those videos to see if they qualified?

Barry: I did.

Summers: ... what was the exact date that the tool downloaded these 30 videos?

Barry: ... I think it was September 21st, but I don't remember exactly.

Summers: Okay. Can you take a look at that and see if you can find where it refreshes your memory about when the 30 videos were downloaded?

Barry: Yeah, it would have been on September 21, 2017.

Summers: And is there a time period that is associated with this?

Barry: I described initially two that were downloaded at between 3:15 p.m. local time and 5:07 p.m. local time

Barry: And, actually, later in my report, I see that the -- it was -- the downloads all occurred between 2:30 p.m. local and 9:19 p.m. local on the 21st of September 2017." See, Appendix V, Id., 93:3-95:7

fn8. "Firewall" is defined as "a part of a computer

system or network that is designed to block unauthorized access while permitting outward communication", or, "anything serving as a protective barrier; specifically, a program or system designed to protect a computer network from unauthorized access, as over the internet." New Oxford American Dictionary, Third Edition, Copyright 2010; Webster's New World College Dictionary, Fifth Edition, Copyright 2018, respectively.

Approximately two months after seizure and review of the 30 alleged info hashes, Detective Barry "applied for a Pima County grand jury [272-G]-1121] subpoena to identify the Internet protocol address" that he acquired from the Federal ICAC COPS database on September 21st, 2017. Appendix V, 112:25-113:1. Subpoena "272-G)-1121" was issued on November 16, 2017 [See, Appendix W], at which point, Detective Barry testified, "I took the Internet protocol address and put it into an open source database and found that it belonged to [Internet Service Provider (ISP)] Cox Communications. [fn9] So I sent a subpoena to Cox Communications to see who the IP address belonged to at what date and time -- at the date and time I had on the downloads." fn10. See, Appendix V, Id., 113:1-7.

fn9. An ISP is a company that provides individuals with access to the Internet.

fn10. The ISP maintain records and information,

such as the name, address, and telephone number associated with a particular IP address, also known as "subscriber information". See, Savanna L. Shuntich & Kenneth A. Vogel, Doe Hunting: A How-to-Guide for Uncovering John Doe Defendants in Anonymous Online Defamation Suits, Md. B.J., 48, 51 (July/August 2017).

On December 5th, 2017, Cox Communications informed Detective Barry "that the Internet protocol address was being use by Brian MacHardy at ... 201 South Camino Seco, Apartment 7207", Tucson, Arizona. See, Appendix V, Id., 115:17-116:2: Appendix X.

Approximately seven months after the unwarranted intrusion into MacHardy's computer and three months after the serving of a subpoena, Detective Barry sought and executed search warrant 18SW0509. See, Appendix V, Id., 116:25-117: Appendix Y.

A. If "Probable Cause" Exists, Absent Exigent Circumstances Is A Warrantless Search Lawful.

The 4th Amendment of the United States Constitution is explicit in its declaration that "[t]he 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" City of Ontario v. Quon, 560 U.S. 746, 177 L.Ed.2d 216, 130 S.Ct. 2619, 2677 (2010) (The Fourth Amendment guarantees the privacy, dignity, and security of persons against arbitrary and invasive acts by officers of the government.)

This Court, in Ornelas v. United States came to a determination that "[p]robable cause is a commonsense, nontechnical conception that deals with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." 517 U.S. 690, 695-96, 134 L.Ed.2d 911, 116 S.Ct. 1657 (1996); see also, United States v. DeLeon, 979 F.2d 761, 764 (9th Cir. 1992). Further opining "[p]robable cause to conduct a search exists where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found." *Id.*; see also, Illinois v. Gates, 462 U.S. 213, 231-32, 76 L.Ed.2d 577, 103 S.Ct. 2317 (1983); Hill v. California, 401 U.S. 797, 803, 28 L.Ed.2d 484, 91 S.Ct. 1106 (1971); United States v. Anton, 633 F.2d 1252 (7th Cir. 1980). Concluding, "[t]he principle components of a determination of probable cause will be the events which occurred leading up to the stop or search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer amount to probable cause." *Id.*

In this instant, Detective Barry queried the FBI's CAPS database for csa activity "anywhere in southern Arizona", by knowingly and voluntarily asking "to see those IP addresses that are associated with people who

have been located in the Tucson area who have been seen with child sexual abuse info hashes" fn11. See, Appendix V, R.T.T. 09/09/2020, 76:15-21. In response, Detective Barry received "IP address [...] 72.211.148.24" fn12. See, Appendix V, Id., 115:22.

fn11. Downstream law enforcement agencies can only assume the methods used by the FBI to obtain IP addresses are above board.

fn12. Thus giving Detective Barry with means to identify the alleged perpetrator and the address of the alleged offense.

Regardless of how the FBI acquired this IP address, the mere asking for csa leads and the FBI responding with suspected csa activity corresponding to this particular IP address, in and of itself, gives ground for "probable cause". United States v. Kearney, 672 F.3d 81, 89-90 (1st Cir. 2012) ("Probable cause existed to search a home because the IP address assigned to the home computer repeatedly accessed online accounts used to send child pornography").

Instead of taking the next lawful step, that being, to secure a subpoena to identify the individual registered to the IP address. Detective Barry utilized TD and TR to have a sneak peek under the guise of a single source connection:

Summers: "And in this case, were you using or was the tool using Tormental Downpour or Receptor?"

Barry: It was actually using both ..., the Downpour

actually made a connection. But I don't think it was able to download any files... However, the receptor software did make a connection to this suspect computer and downloaded, I think, 30 videos depicting child sexual abuse." See, Appendix V, R.T.T. 09/29/2020, 93:3-13

Detective Barry's testimony laid to rest any suspicions that the csa material was linked to IP address 72.211.148.24. Next, Detective Barry deployed an open source software that pinpointed Cox Communications as the ISP; with this information, he requested and was granted a subpoena from the Pima County Grand Jury, no. 272-GJ-1121. See, Appendix X.

On April 5th, 2018, Detective Barry executed search warrant 18SW0509 at 201 South Camino Seco, Apartment 7209, Tucson, AZ, seizing the following properties:

- HP Laptop
- Black Hard Drive
- My Passport Hard Drive
- 3 Thumb Drives
- Panoramic Router
- Samsung Cell Phone
- AT&T Cell Phone

See, Appendix Y.

The record clearly shows Detective Barry, 1) asked the FBI for probable cause and received such in the form of an IP address; 2) conducted an unauthorized search to verify the existence of and seized csa

material; 3) requested and received a subpoena 75 days after surreptitiously infiltrating MacHardy's hard drive; and, 4) requested and executed a search warrant 196 days after downloading 30 info hashes. There is no question, this situation is a stark difference from law enforcement trolling the worldwide web to make a single source connection with individuals asking for and trading csa material.

The record also shows exigent circumstances did not exist, wherein, an individual's life or safety was not in imminent danger, and MacHardy's unawareness of law enforcement involvement precluded any reasonable attempt to escape, or intentionally remove or destroy evidence Kirk v. Louisiana, 536 U.S. 635, 638, 153 L.Ed.2d 599, 122 S.Ct 2458 (2002) (A warrantless entry into a home is unlawful unless both probable cause and exigent circumstances exist.); United States v. Adams, 621 F.2d 41, 44 (1st Cir 1980).

This Court in McDonald v. United States, determined "[w]hen an officer undertakes to act as his own magistrate, he ought to be in a position to justify it by pointing to some real immediate and serious consequences if he postponed action to get a warrant". 335 U.S. 451, 459-60, 153 L.Ed.2d 93, 69 S.Ct 191 (1948). To date, no reasonable justification has been offered.

MacHardy ask this Court to find that probable cause existed prior to Detective Barry's unauthorized warrantless search, and that his failure to obtain a valid search warrant violated MacHardy's 4th Amendment right "against reasonable search [...] and seizure [...]".

B. If A Peer-To-Peer Network On The Worldwide Web Is Protected Against Unauthorized Entry By Means Of A "Firewall", Is Entry Lawful Absent Agreement With The Network's Terms And Conditions

Many states have formed a consensus that peer-to-peer networks, such as BitTorrent, Ares, Gnutella, etc., are available to all individuals on the worldwide web, making them automatically falling under the umbrella of "open source connection". What the states does not address is these networks, like BitTorrent, are protected by "firewalls" and can only be accessed through specific agreements.^{fn8}

Even though, there are numerous similarities between peer-to-peer networks, such as consent (membership) to gain access, MacHardy will limit his discussion to the BitTorrent network (hereinafter, "Community"). This Community's primary function is to provide a peer-to-peer service where clients^{fn12} can share movies, images, music, documentations, etc.

^{fn12} "Clients" are authorized users whom agreed to an established, fixed set of rules that govern behavior within any given community.

So, how does a potential client gain access to the Community, by agreeing to: 1) Privacy Policy; 2) BitTorrent Terms of Use; and, 3) End User License Agreement (EULA), hereinafter will be known inclusively as "the Agreement". On close examination it is revealed:

a) Privacy Policy: How "BitTorrent Limited and [its] subsidiaries" govern themselves in the collection, storage, and use of personal client information. [See, Appendix 7]

b) BitTorrent Terms of Use: Set of guidelines, by which, potential clients must agree to gain access, such as, in part;

1(a) By using our products, our web site ... [collectively all products, apps, and sites will be known as ("Services") with links to these Terms of Use (the "General Terms") in any way, including using, transmitting, downloading or uploading any Materials [fn13] made available or enabled via the Services by BitTorrent, ..., you agree that you have read, understood and agree to these General Terms ... each of which govern your access and is of the Services. If you are accessing or using and accessing the Services on behalf of a company (such as your employer) or other legal entity, you represent and warrant that you have the authority to bind that entity to these General Terms and, in that case, "you" and "your" will refer to that entity. See, Appendix AA, 1(a).

fn13. "Materials" mean any content made available or enabled by BitTorrent, you, or other Users, and includes without limitation, any (i) information, data, documents, images, photographs, graphs, audio, videos, webcasts, ... See, Appendix AA, 1(c).

(e). You agree not to (i) access or attempt to access the Services by any means other than the interface provided by BitTorrent, (ii) circumvent any access or use restrictions put into place to prevent certain uses of the Services.

5(a). Except as expressly indicated to the contrary in any applicable Additional Terms, BitTorrent hereby grants you [the potential client] a nonexclusive, freely revocable (upon notice from BitTorrent), nontransferable, limited license to access, view, download, use and print BitTorrent Materials, subject to the following conditions:

- You may access and use the BitTorrent Materials solely for personal, informational, noncommercial and internal purposes, in accordance with the Terms See, Appendix AA, 5(a).

c) End User License Agreement (EULA): List the conditions of use [fn14] and a warning that "by accepting this agreement or by installing BitTorrent... or by clicking "install", "Agree" or similar language, you agree to the following terms, notwithstanding anything to the contrary in this agreement. If you do not agree with any term or condition, do not download, order, open, play, install or use the Software or product package". See, Appendix BB.

fn14. The EULA is inclusive of the Privacy Policy and BitTorrent Terms of Use. These Agreements are commonly availed throughout the peer-to-peer industry.

At no point, does any part of the Agreement invite users outside the Community access to send or receive any Materials without explicit acceptance of the Agreement that govern the BitTorrent Community. In fact, the Agreement strictly prohibits access to the BitTorrent Community without agreeing to such.

As illustrated above, a peer-to-peer network requiring an Agreement cannot be considered an open source connection, wherein, not everyone on the worldwide web has legal access to the information highway within, without first accepting the terms for entry. Unfortunately, some actors within law enforcement believe it is permissible to circumvent this "firewall" to obtain possible csa information; and, a majority of prosecutors, nationwide, buy into, if its on the worldwide web its open source, full stop.

MacHardy puts forth this 28 U.S.C. § 1257(a) as an incarcerated indigent propra persona litigant, unskilled in the science of law and, prays this § 1257(a) and attached appendices-- in support thereof-- will be received and viewed as such. MacHardy asks this Court not to let form or style to override substance, nor to allow any mistakes to procedural technicalities to defeat fairness or justice from being served. This Court, in Haines v. Kerner held "pro se litigants are to be construed liberally and held to less stringent standards than formal

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Brian MacHardy

Date: March 11, 2026