

No.

IN THE
SUPREME COURT OF THE UNITED STATES

GERARD F. STELLWAGEN,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

**On Petition for Writ of Certiorari
to the Florida Second District Court of Appeal**

PETITION FOR WRIT OF CERTIORARI

MICHAEL UFFERMAN
Counsel of Record
Michael Ufferman Law Firm, P.A.
2022-1 Raymond Diehl Road
Tallahassee, Florida 32308
(850) 386-2345
FL Bar No. 114227
Email: ufferman@uffermanlaw.com

COUNSEL FOR THE PETITIONER

A. QUESTIONS PRESENTED

This case concerns the Fourth Amendment limits on warrants to search a home and seize all of its digital contents based on a single, months-old image of child pornography attributed to an email account. The lower courts are openly divided on each of the following recurring questions:

1. **Staleness.** Whether a single, isolated transmission of child pornography – here, one image sent roughly *eight months* before the warrant issued – becomes categorically “not stale” for purposes of probable cause simply because digital files are capable of indefinite storage, even where the affidavit contains no evidence that the suspect is a “collector” who retains such material.

2. **Nexus to the residence.** Whether evidence that an online child-pornography offense was

committed through an email account associated with a suspect, without evidence tying that activity to the suspect's home (such as an IP address for the device used), establishes the "fair probability" that evidence will be found in the home that the Fourth Amendment requires.

3. Particularity and overbreadth.

Whether, in light of *Riley v. California*, 573 U.S. 373 (2014), the Fourth Amendment's particularity requirement permits a warrant to authorize the seizure and forensic search of every electronic device and all data in a residence based on probable cause as to a single identified file.

B. PARTIES TO THE PROCEEDING

Petitioner is Gerard F. Stellwagen, the defendant-appellant below. Respondent is the State of Florida, the plaintiff-appellee below.

**C. CORPORATE DISCLOSURE
STATEMENT**

Petitioner is an individual. No corporate disclosure statement is required under this Court's Rule 29.6.

D. RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of this Court's Rule 14.1(b)(iii):

- *Stellwagen v. State of Florida*, No. 2D2024-1992, District Court of Appeal of Florida, Second District (judgment entered June 10, 2026).
- *State of Florida v. Gerard F. Stellwagen*, No. 2021-CF-11157, Circuit Court of the Twelfth Judicial Circuit, Sarasota County, Florida (order denying motion to suppress; judgment and sentence; amended final judgment entered following order of Feb. 28, 2025).

E. TABLE OF CONTENTS AND TABLE OF CITED AUTHORITIES

1.	TABLE OF CONTENTS	
A.	QUESTION PRESENTED	i
B.	PARTIES TO THE PROCEEDING	iii
C.	CORPORATE DISCLOSURE STATEMENT	iv
D.	RELATED PROCEEDINGS	v
E.	TABLE OF CONTENTS AND TABLE OF CITED AUTHORITIES	vi
1.	Table of Contents	vi
2.	Table of Cited Authorities	viii
F.	OPINIONS AND ORDERS BELOW	1
G.	JURISDICTION	1
H.	CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
I.	STATEMENT OF THE CASE	4
J.	REASON FOR GRANTING THE WRIT . . .	10
K.	CONCLUSION	20

APPENDIX	1a
A. June 10, 2026, opinion of the Florida Second District Court of Appeal	3a
B. July 23, 2024, order of the Florida Twelfth Judicial Circuit	5a
C. Excerpt of Transcript of August 15, 2023, Hearing on Motion to Suppress, Excerpt from Special Agent Larry Long's testimony, Pages 1-3, 21-22 & 28.....	16a
D. Excerpt of Transcript of August 15, 2023, Hearing on Motion to Suppress, Court's Oral Ruling on Motion to Suppress, Pages 112-118.....	21a
E. February 28, 2025, Judgment and Sentence of the Florida Twelfth Judicial Circuit (CORRECTED). . . .	27a
F. September 9, 2021, Affidavit in Support of Application for Search Warrant.....	39a

2. TABLE OF CITED AUTHORITIES

a. Cases

Illinois v. Gates,
462 U.S. 213, 103 S. Ct. 2317,
76 L. Ed. 2d 527 (1983) 10-11, 16

Jenkins v. State,
385 So. 2d 1356 (Fla. 1980) 2

Riley v. California,
573 U.S. 373, 134 S. Ct. 2473,
189 L. Ed. 2d 430 (2014) ii, 17-18

United States v. Bosyk,
933 F.3d 319 (4th Cir. 2019) 12

United States v. Doyle,
650 F.3d 460 (4th Cir. 2011) 15

United States v. Needham,
718 F.3d 1190 (9th Cir. 2013) 15

United States v. Raymonda,
780 F.3d 105 (2d Cir. 2015) 13

United States v. Seiver,
692 F.3d 774 (7th Cir. 2012) 12

b. Statutes

28 U.S.C. § 1257(a) 2-3

§ 827.071(5), Fla. Stat.	3, 6
----------------------------------	------

c. Other

U.S. Const. amend. IV	<i>passim</i>
U.S. Sup. Ct. R. 10	10
U.S. Sup. Ct. R. 13.1	2
U.S. Sup. Ct. R. 13.5	2
U.S. Sup. Ct. R. 14.1(b)(iii)	v
U.S. Sup. Ct. R. 29.6	iv

Petitioner Gerard F. Stellwagen respectfully petitions for a writ of certiorari to review the judgment of the District Court of Appeal of Florida, Second District.

F. OPINIONS AND ORDERS BELOW

The decision of the District Court of Appeal of Florida, Second District, is an unpublished *per curiam* affirmance without opinion, entered June 10, 2026. It is reproduced at Appendix A. The written order of the Circuit Court of the Twelfth Judicial Circuit denying Petitioner's motion to suppress is unreported and reproduced at Appendix B; the trial court's oral findings are reproduced at Appendix D.

G. JURISDICTION

The District Court of Appeal of Florida, Second

District, entered its judgment on June 10, 2026. Because that court affirmed without a written opinion, the Supreme Court of Florida lacks jurisdiction to review the decision on the merits,¹ and the Second District is therefore “the highest court of a State in which a decision could be had” within the meaning of 28 U.S.C. § 1257(a).

The time to file this petition was extended. A petition for a writ of certiorari is due within 90 days after entry of judgment. *See* Sup. Ct. R. 13.1. On August 26, 2026, a Justice of this Court granted Petitioner’s application under Rule 13.5 for a 30-day extension of time, extending the deadline to and including October 8, 2026. This petition is filed within that period and is timely.

¹ *See Jenkins v. State*, 385 So. 2d 1356 (Fla. 1980).

This Court has jurisdiction under 28 U.S.C. § 1257(a). Petitioner specially set up and claimed his right under the Fourth Amendment to the United States Constitution throughout the proceedings below, and that federal right was denied.

H. 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.

Section 827.071(5), Florida Statutes, defines the offense of possession of child pornography.

I. STATEMENT OF THE CASE

1. The Investigation and the Warrants

In 2021, federal agents investigating an individual in Pennsylvania, Dominic Runco, obtained consent to review Runco's email and discovered a single image of child sexual abuse material – a file titled “mom and kids.jpg” – that had been sent on February 9, 2021, from an email account, gfshome@verizon.net, associated with Petitioner Gerard Stellwagen. A cyber tip from the National Center for Missing & Exploited Children concerned the same file, and subscriber information obtained from the email provider identified Petitioner as the account holder.

The federal affidavit did not tie the email to any IP address for a device at Petitioner's home. The investigating agent acknowledged that email accounts

can be compromised or “spoofed,” so that a message may appear to have been sent from an account it did not in fact originate from. (App. C at page 19a). The only way to confirm that the email was actually sent from Petitioner’s residence, as opposed to a spoofed or hijacked account, would have been to associate the email with the IP address of a device at the home – which investigators did not do.

A Florida agent later incorporated the federal materials into a state warrant application, adding surveillance placing petitioner at 1077 Ruisdael Circle, Nokomis, Florida, and motor-vehicle records listing that address as his residence. The warrant issued on September 29, 2021 – roughly *eight months* after the single February image – and authorized the seizure and off-site forensic search of essentially every electronic device and all data at the home, enumerated

across seventeen paragraphs, including all computers, storage media, peripherals, software, and “[e]ncrypted, deleted and unallocated files.” The affidavit (App. F) contained *no evidence* that Petitioner was a “collector” of child pornography; the agent conceded there was “[n]o” specific evidence to that effect and nothing in the search warrant other than generalities about other people with child pornography. (App. C at 19a-20a).

2. The Suppression Litigation

Petitioner was charged with ten counts of possession of child pornography under section 827.071(5), Florida Statutes. He moved to suppress all evidence seized from his home, arguing that (a) the federal warrant lacked probable cause and tainted the state warrant as fruit of the poisonous tree; (b) the affidavit failed to establish a nexus between the offense and his residence; (c) the eight-month-old, single-image

information was stale; and (d) the warrant was unconstitutionally overbroad. The federal questions were raised in the written motion, argued at an evidentiary hearing on August 15, 2023, and passed upon in the trial court's oral and written rulings. Under Florida's constitutional conformity clause, the courts below were required to resolve these Fourth Amendment questions in accordance with the decisions of this Court. After the trial court denied suppression, Petitioner entered a no-contest plea to all ten counts, expressly reserving his right to appeal the dispositive suppression ruling. He was adjudicated guilty and sentenced to a downward-departure term of six months in jail followed by community control and sex-offender probation. (App. E).

3. The Decisions Below

The trial court denied suppression. On

staleness, it held that because the evidence was “a photograph digitally stored” that “can be stored for a long period of time, years, decades or beyond,” “eight months for a photo on a computer does not become stale,” expressly distinguishing digital images from drugs and other perishable evidence subject to a shorter staleness window. (App. B at 9a; App. D. at 24a). On nexus, it relied on the surveillance and motor-vehicle records placing Petitioner at the home. (App. B at 8a). On overbreadth, it reasoned that “because technology can be stored and duplicated and sent to various devices,” the all-device warrant was “not overly broad.” (App. B at 10a; App. D at 25a). The court invited appellate review, stating it wanted its staleness ruling preserved “so an appellate court can look and see if Judge Krug is wrong on this issue.” (App. D at 24a).

The District Court of Appeal of Florida, Second District, affirmed *per curiam* without opinion. (App. A).

J. REASONS FOR GRANTING THE WRIT

Review is warranted under this Court's Rule 10. Certiorari is reserved for compelling reasons, including where a state court of last resort has decided an important federal question in a way that conflicts with the decisions of other courts of last resort or of the federal courts of appeals, and where a court has decided an important and recurring federal question that should be settled by this Court. This case satisfies both criteria on questions that arise in child-pornography and digital-search prosecutions across the country every day.

The Fourth Amendment permits a warrant only on a "practical, common-sense" showing of "a fair probability that contraband or evidence of a crime will be found in a particular place," and a magistrate may not simply ratify "the bare conclusions of others."

Illinois v. Gates, 462 U.S. 213, 238-239 (1983). The decisions below drained that standard of content in the digital setting: they treated the indefinite storability of digital files as a substitute for any particularized showing that a single, months-old image would still be found in this suspect's home, and they permitted the seizure of a person's entire digital life on that thin basis. The lower courts are openly and persistently divided over each of these questions.

1. The Courts Are Entrenched in Conflict Over Whether Digital-Evidence Probable Cause Goes Stale Absent Proof That the Suspect Is a Collector

The question whether, and when, digital-evidence probable cause becomes stale has fractured the lower courts. On one side, several circuits hold that even a substantial delay does not render child-pornography information stale, reasoning

that offenders are “collectors” who retain their materials indefinitely and that digital files persist on hard drives. The Seventh Circuit has held that staleness is “highly relevant to the legality of a search for a perishable or consumable object, like cocaine, but rarely relevant when it is a computer file,” which does not rapidly dissipate. *United States v. Seiver*, 692 F.3d 774, 777 (7th Cir. 2012). The Fourth Circuit has likewise concluded that, in cases involving collectors, even a substantial delay between distribution and the issuance of a search warrant does not render the underlying information stale. *See United States v. Bosyk*, 933 F.3d 319, 330 (4th Cir. 2019).

But those same courts ground the no-staleness rule in the premise that the suspect is a *collector* who retains material. *See Seiver*, 692 F.3d at 775-778. That premise is absent here. And on the other side of

the divide, the Second Circuit has refused to presume retention where the affidavit shows only an isolated incident and no indicia that the suspect collects or hoards child pornography. The Second Circuit has squarely held that “absent any indicia that the suspect was a collector of child pornography likely to hoard pornographic files, . . . a single incident of access does not create a fair probability that child pornography will still be found on a suspect’s computer months after all temporary traces of that incident have likely cleared,” and that a warrant resting on such thin information “was not supported by probable cause.” *United States v. Raymonda*, 780 F.3d 105, 117 (2d Cir. 2015).

This case sits at the fault line. The affidavit described a single image sent *eight months earlier* (App. B at 9a), with *no* evidence – as the agent conceded – that Petitioner was a collector of child

pornography. Under the Second Circuit's approach, that information was stale and could not support the warrant. Under the reasoning adopted below – that digital storability alone defeats staleness – the age of the information and the absence of any collector evidence are *irrelevant*. The outcome of this suppression motion turns entirely on which side of the split governs. Only this Court can resolve the conflict.

2. The Courts Are Divided Over Whether an Online Offense, Without More, Establishes a Nexus to the Suspect's Home

The lower courts are also divided over the nexus question – whether evidence that a suspect committed an online child-pornography offense, without evidence connecting the offense to the home, establishes a fair probability that evidence will be found there. The Ninth Circuit has catalogued the conflict: the Second and Sixth Circuits have held that evidence of a related

offense does not by itself establish probable cause to search for child pornography, while the Eighth Circuit has disagreed. *See United States v. Needham*, 718 F.3d 1190, 1195 n.3 (9th Cir. 2013). The Third and Fourth Circuits have joined the former camp, *see id.*, holding that allegations of sex crimes against minors are not sufficient to establish – or even to hint at – probable cause as to the wholly separate crime of possessing child pornography, and that “evidence of child molestation alone does not support probable cause to search for child pornography.” *United States v. Doyle*, 650 F.3d 460, 472 (4th Cir. 2011).

The nexus defect here is even more acute. The affidavit did not connect the offending email to any device or IP address at Petitioner’s home, and the investigating agent acknowledged that the account could have been spoofed. (App. B at 19a). The only

home-specific facts were that Petitioner lived there. The Fourth Amendment requires a fair probability that evidence will be found in the place to be searched, not merely proof that the suspect resides at an identified address. *See Gates*, 462 U.S. at 238. Whether the nexus element may be satisfied by inference from the nature of an online offense, or instead requires a device – or location – specific link, is a question that governs the validity of countless residential warrants and has divided the courts of appeals. It warrants this Court’s review.

3. This Case Presents an Important and Recurring Question About Particularity for All-Device Warrants After *Riley*

The warrant authorized the seizure and forensic search of every electronic device and essentially all data in Petitioner’s home, based on probable cause as to a single identified file. This Court has recognized

that digital devices are different in kind: they hold for many Americans “the privacies of life,” and the fact that a pre-digital search “could have turned up a photograph or two in a wallet does not justify a search of thousands of photos in a digital gallery” or “every bank statement from the last five years.” *Riley v. California*, 573 U.S. 373, 400, 403 (2014). Those principles are in profound tension with warrants that sweep in a person’s entire digital existence on a showing tied to one file.

The trial court upheld the all-device warrant on the theory that “because technology can be stored and duplicated and sent to various devices,” a limitless seizure is permissible. (App. D at 25a). That reasoning inverts *Riley*: the very capacity of modern devices to aggregate the most sensitive details of a person’s life is a reason to *demand* particularity, not to

excuse its absence. This Court has not addressed how the particularity requirement constrains “seize-all-devices” warrants and forensic search protocols in the wake of *Riley*, and the lower courts lack uniform guidance. Given how routinely such warrants issue, the question is important and recurring, and this case is a suitable vehicle to address it.

4. This Case Is an Excellent Vehicle

The federal questions were pressed at every stage and passed upon below. Under Florida’s conformity clause, the state courts were bound to decide them under this Court’s precedents, so the decision rests on federal law and no adequate and independent state ground obscures review. The suppression ruling was dispositive and expressly reserved for appeal by Petitioner’s no-contest plea, so

the Fourth Amendment questions are outcome-determinative and cleanly presented. The trial court itself invited appellate scrutiny of its staleness holding. And the three questions are interrelated facets of a single, pervasive problem: how the Fourth Amendment's traditional requirements – probable cause, nexus, timeliness, and particularity – apply when the evidence is digital and the place to be searched is the home. This Court's guidance would resolve entrenched conflicts and provide needed direction to law enforcement and the lower courts.

K. CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

MICHAEL UFFERMAN
Counsel of Record

COUNSEL FOR THE PETITIONER

October 2026