

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2025

JOSE ANGEL SERRANO,

Petitioner,

- vs -

UNITED STATES OF AMERICA,

Respondent.

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

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QUESTION PRESENTED FOR REVIEW

Should the “private search” exception to the warrant requirement of the Fourth Amendment be expanded to permit law enforcement to use a private party to conduct a search on the basis the private party had an independent motivation to conduct a search?

LIST OF PARTIES

Jose Angel Serrano as petitioner; United States as respondent.

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**PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT
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The Petitioner, Jose Angel Serrano, hereby prays that a Writ of Certiorari issue from the decision of the United States Court of Appeals for the Ninth Circuit in case number 24-7229, affirming the denial of his motion to suppress evidence pursuant to the Fourth Amendment. The Court of Appeals issued its unpublished decision affirming the denial of the motion to suppress on December 30, 2025 [Appendix A-1]. It denied his timely filed Petition for Rehearing on March 20, 2026 [Appendix B].

OPINION BELOW

On December 30, 2025, the United States Court of Appeals for the Ninth Circuit issued an unpublished memorandum opinion, affirming Mr. Serrano's appeal from the

district court's denial of his motion to suppress evidence pursuant to the Fourth Amendment. [Appendix A1-A16] The same Court denied his timely filed Petition for Rehearing and Rehearing *en banc* on March 20, 2026. [Appendix B]. This petition is filed within ninety days of the denial of the Petition for Rehearing and is therefore timely pursuant to Supreme Court Rule 13.3.

JURISDICTION

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

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment Four provides in relevant part:

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 person or things to be seized.

STATEMENT OF THE CASE

The issue before this Court is whether the Court of Appeals expanded and misapplied the “private search” exception to the warrant requirement of the Fourth Amendment under *United States v. Jacobsen*, 466 U.S. 109 (1986), where law enforcement was present, encouraged, and participated in the warrantless search of the petitioner's locked toolbench by his wife in his garage. The district court denied that motion, and Mr. Serrano entered a conditional guilty plea to charges of possession of controlled substances and firearms by a felon.

On appeal to the Court of Appeals for the Ninth Circuit, Mr. Serrano argued that the active participation of law enforcement during the warrantless search of the locked toolbench by his wife went beyond the “private search” exception to the Fourth Amendment because the police were actively using his wife’s access to the toolbench without his consent to gain access to the contents of the toolbench. The drugs that were found in there provided the basis for the search warrant of Mr. Serrano’s home, where more drugs and firearms were found. The Court of Appeals upheld the warrantless search on the basis that his wife “had ‘a legitimate, independent motivation to further [her] own ends,’ ” relying upon its decisions in *United States v. Miller*, 688 F.2d 652, 657 (9th Cir. 1982); *United States v. Rosenow*, 50 F.4th 715, 733 (9th Cir. 2022); and *United States v. Cleaveland*, 38 F.3d 1092, 1094 (9th Cir. 1994).

This petition is filed because the Court of Appeals has extended the boundary of the private search exception beyond this Court’s decision in *United States v. Jacobsen*, 466 U.S. 109 (1983). In *Jacobsen*, a private party found white powder that later proved to be illegal drugs in an effort to determine damage to a package. The private party suspected the powder was illegal and called in law enforcement to determine what the substance was. There was not, as in this case, a coordinated effort by the private party with law enforcement to conduct a warrantless search of a locked toolbench clearly intended to exclude the public.

REASONS FOR GRANTING THE PETITION

THE DECISION OF THE NINTH CIRCUIT ERRONEOUSLY EXPANDS THE SCOPE OF THE “PRIVATE SEARCH” EXCEPTION TO THE WARRANT REQUIREMENT TO INCLUDE SEARCHES BY THE POLICE WHERE THE PRIVATE PARTY IS USED BY THE POLICE TO OBTAIN INCRIMINATING EVIDENCE.

A. Applicable facts:

This is an appeal from a conditional guilty plea challenging the warrantless search of Jose Serrano’s locked workbench in his garage, based upon consent given his wife, which resulted in the affidavit and search warrant for the rest of his residence [ER-71, RT 6]. Mr. Serrano moved to suppress the warrantless search of a locked toolbench located in his garage, where his wife allowed the police to look inside the locked workbench his without consent, relying upon *Georgia v. Randolph*, 547 U.S. 103, 106 (2006) [ER-215]. The Government justified the search of the locked workbench as a private search by his wife and also that the items mentioned in the affidavit in support of the search warrant were in “plain view” of the Chula Vista police [ER-77, RT 12].

Events leading up to the search

The Chula Vista police had come to the house in response to call by Mr. Serrano’s wife that he had molested her fourteen year old daughter. The police found a locked workbench with drawers and she told theme she did not have consent to open

it [ER-72-73; RT 7-8]. After she was told by the police there was not enough evidence to arrest her husband on the sex complaint, she agreed to open the workbench while her husband was detained by the police outside his home [ER-77, RT 7]. The contents of the locked workbench were used to arrest Mr. Serrano and were referred to in the affidavit for a warrant to search the home, which was executed the next day. [ER-71-72; RT 7-8]. The Government argued that the search of the locked workbench was a private search by Mr. Serrano's wife, who was not an agent of law enforcement, and therefore the Fourth Amendment was not violated [ER-76- ER-77; RT 11-12].

Testimony at the motion hearing on November 22, 2022

At the hearing on the motion to suppress evidence, the Government's only witness was **Shaun Myers**, a detective with the Chula Vista Police Department [RT 18, ER-83]. On March 15, 2021, he went to Mr. Serrano's residence to investigate a call that Mr. Serrano had raped one of his stepdaughters [RT 18, ER-83]. Myers spoke to Mr. Serrano's wife on and off from 7:25 to 9:00 PM. [RT 38, ER-103]. During that time he was aware Mr. Serrano had been just detained outside so he could not walk in during the investigation after driving up to his house [RT 38-39, ER-103-ER-104]. While there, Myers was lead into the garage by one of Mr. Serrano's stepdaughters [ER-88; RT 23]. There was a refrigerator in the garage to which others in the residence had access, also to take care of the dogs kept in the garage [ER-89; RT 24]. Inside the

garage was a locked workbench where Ms. Serrano told the police Mr. Serrano stored his drugs [ER-90-91; RT 25-26]. Myers had a flashlight and used it to look inside an inch and a half gap to see inside the drawer [ER-91, ER-110; RT 26, 45]. He was not sure he could have seen inside it without a flashlight. [ER-130, RT 65]. He testified he did not move the drawer with his thumb but he bent down and used the flashlight to peek inside the locked drawer to see things. [ER-111, RT 46]. He did that without consent. [ER-110, RT 45]. He could see two scales, a large and a small one, which had what Myers believed was either cocaine or fentanyl residue not amounting to a line of drugs. [ER-91 - ER-92; ER-111; RT 26-27]. He did not see pay/owe sheets or a mirror [ER-91, RT 46]. He believed there was reasonable suspicion the workbench contained drugs but insufficient to amount to probable cause to break it open. [ER-88, RT 43].

Ms. Serrano asked him if he could break into it. [ER-90, RT 25]. He responded he could not without a warrant. [ER-90, ER-107, ER-119; RT 25, 42, 54]. She was informed she could get a restraining order after he explained to her that there was not enough evidence to arrest her husband and he would be released. She expressed concern that he could flee to Mexico and produced a key that would open the workbench so the police could search it. [ER-96, ER-97, ER-105, ER-107, ER-116-ER-117, ER-120; RT 31-32, 40, 42, 51-52, 55]. She opened the drawer and Myers used his flashlight to illuminate the area so he could see what was in it. [ER-121, 130;

RT 56, 65]. He would not have been able to see the contents of the drawer if she had not opened it. [ER-130, RT 65]. He asked her not to stop moving things around but did not tell her to take anything out of the drawer. [ER-97, RT 32]. She “pulled everything out and opened everything up.” [ER-112, RT 47]. That’s when Myers saw what looked like a rock of methamphetamine in Ms. Serrano’s hand and he knew the drawer contained narcotics. [ER-112, ER-122, ER-127; RT 47, 57, 62]. At that point Myers believed there was probable cause and he and other police officers searched the rest of the workbench, not just the top drawer, around 7:28 PM. [ER-113-114, ER-124, ER-126; RT 48-49, 59, 61; Defense Exhibits 7, 13]. Myers also believed there was now probable cause to arrest Mr. Serrano, who was detained outside. [ER-113-114, ER-124-125, RT 48-49, 59-60]. Mr. Serrano was arrested and searched [ER-125, RT 60]. On him was a key that opened a safe in one of the downstairs bedrooms, although the safe was not searched until after the police obtained a search warrant based upon the discovery of drugs in the locked workbench. [ER-125-126, RT 60-61].

After the locked workbench was searched, the police filed an affidavit in support in support of the search warrant. The affidavit stated that Mr. Serrano gave his stepdaughter cocaine and then sexually assaulted her on March 14, 2021. [CR 35-3, ER-236]. The affidavit also stated that Ms. Serrano told the police her husband possessed and used drugs, he was known to carry a concealed and loaded handgun, and

that she pointed out Serrano's known drug concealed location inside a workbench [CR 35-3, ER-237]. It omitted the workbench was locked.

The affidavit also stated that Mr. Serrano admitted being with his fourteen year old step-daughter but denied any wrongdoing. [CR 35-3, ER-237]. It also stated that Mr. Serrano's wife "located the key to the workbench and without instruction opened it." [ER-237]. She alerted Officers of what she found and showed Agent Myers. [ER-237]. The affidavit stated that Agent Myers located a plastic bag containing a white crystalline substance, five separate baggies containing 10 blue colored pills imprinted with M30 which he believed to be fentanyl inside the workbench. The white crystalline substance tested positive for methamphetamine with a net weight of 23.5 grams. Two working digital scales, several hand written documents indicative of pay/owe sheets were also located [35-3, ER-237]. The affidavit also stated that \$15,000 in United States currency was in the glove compartment of Mr. Serrano's car as well as a small plastic bag containing methamphetamine was found under the driver's floorboard. [ER-238; CR 35-3]. The affidavit also stated that Mr. Serrano's wife later showed officers a firearm loaded with fifteen rounds of 9mm ammunition located in a dresser of a shared master bedroom. [ER-238, CR 35-3].

Based upon that affidavit, a search warrant issued and Mr. Serrano's home was searched and drugs a firearms were found. This provided the evidence that was the

basis for Mr. Serrano's conditional guilty plea.

District Court's order denying motion to suppress

After the evidentiary hearing and further briefing, the district court issued a written order on November 22, 2022, denying the motion to suppress. The district court found that Ms. Serrano had common authority over the garage and therefore she could give consent for the police to inspect the garage. [ER-13; CR-65]. It also found that Det. Myers "peek" into the locked workbench bench was not an unreasonable search or seizure. [ER-15, CR 65]. It also found that the search of the workbench by Mr. Serrano's wife was a private search because she was not functioning as a government agent. [ER-18-22; CR 65]. Because the district court found the search of the locked workbench did not violate the Fourth Amendment, it found that the seizure of other items in other parts of the house pursuant to the search warrant that relied upon the information in the affidavit in support of the warrant did not violate the Fourth Amendment. [ER-23, CR 65].

Court of Appeals's decision affirming the denial of the motion to suppress

Before the Court of Appeals for the Ninth Circuit, Mr. Serrano argued his wife could not consent to the warrantless search of the garage that was Mr. Serrano's private space, Detective Myers's peek inside the locked toolbench was not a plain view search, and the warrantless search of the locked toolbench by his wife in the presence of law

enforcement in an effort by both to find incriminating evidence did not fall within the private search exception to the Fourth Amendment. The Court of Appeals rejected all these claims. [Appendix A, pp. A2-A6]. This petition is limited to the application of the private search exception by the Court of Appeals.

B. Reasons for granting the petition.

On appeal to the Court of Appeals for the Ninth Circuit, Mr. Serrano argued that the active participation of the warrantless search of the locked toolbench by the police went beyond the “private search” exception to the Fourth Amendment because the police were actively using his wife’s access to the toolbench without his consent to gain access to its contents. The drugs that were found in the toolbench provided the basis for the search warrant of Mr. Serrano’s home, where more drugs and firearms were found. The Court of Appeals upheld the warrantless search on the basis that his wife “had ‘a legitimate, independent motivation to further [her] own ends,’ ” relying upon its decisions in *United States v. Miller*, 688 F.2d 652, 657 (9th Cir. 1982); *United States v. Rosenow*, 50 F.4th 715, 733 (9th Cir. 2022); and *United States v. Cleaveland*, 38 F.3d 1092, 1094 (9th Cir. 1994).

This petition is filed because the Court of Appeals has expanded the boundary of the private search exception beyond this Court’s decision in *United States v. Jacobsen*, 466 U.S. 109 (1983). In *Jacobsen*, a private party found white powder that later proved to be illegal drugs in an effort to determine damage to a package. The private party suspected the powder was illegal and called in law enforcement to determine what the substance was.

There was not, as in this case, a coordinated effort by the private party with law enforcement to conduct a warrantless search of a locked toolbench clearly intended to exclude the public. Prior cases cited by this Court to support the private search exception in *Jacobsen*, *United States v. Place*, 462 U.S. 696, 707 (1983); and *Walter v. United States*, 447 U.S. 649, 654 (1980), also dealt with whether a later search by law enforcement exceeded the scope of the private search. *Jacobsen* has been relied upon by Courts of Appeals to determine if a later search by law enforcement exceeded the initial private search and required a warrant. *United States v. Wilson*, 13 F.4th 961, 974 (9th Cir. 2021); *United States v. Ackerman*, 831 F.3d 1292, 1395 (10th Cir., 2016).

Courts of Appeals, including the Ninth Circuit, have expanded the scope of the private search exception to be applied to searches that were used to avoid the warrant requirement. This has resulted in an “independent motivation test” that does not deal with whether the warrantless search by law enforcement exceeded the initial search, but instead whether the search by law enforcement had an independent motivation from the private search. The Ninth Circuit in this case relied upon its prior decisions citing the independent motivation test, *United States v. Miller*, 688 F.2d 652, 657 (9th Cir. 1982); *United States v. Rosenow*, 50 F.4th 715, 733 (9th Cir. 2022); and *United States v. Cleaveland*, 38 F.3d 1092, 1094 (9th Cir. 1994). That test is not limited to the Ninth Circuit. See e.g., *United States v. Highbull*, 894 F.3d 988 (8th Cir. 2018).

This test permits law enforcement to bypass the warrant requirement regardless of the scope of the search. It has resulted, as in this case, an exception never intended by this Court

in *Jacobsen* to justify a warrantless search of a private space using the petitioner's wife to gather incriminating evidence without a warrant. This Court's review is necessary to reinforce the limits of the private search exception so it may not be used by law enforcement to manipulate private parties to evade the warrant requirement of the Fourth Amendment.

CONCLUSION

For the foregoing reasons, Jose Serrano requests the Court grant his Petition for Writ of Certiorari on following issue: should the private search exception to the warrant requirement of the Fourth Amendment be expanded to permit law enforcement to use a private party to conduct a search on the basis the private party had an independent motivation to conduct a search?

Respectfully submitted,

Dated: July 2, 2026

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A P P E N D I X A

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 30 2025

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE ANGEL SERRANO,

Defendant - Appellant.

No. 24-7229

D.C. No.

3:21-cr-01590-JLS-1

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Janis L. Sammartino, District Judge, Presiding

Argued and Submitted December 8, 2025
Pasadena, California

Before: M. SMITH, CHRISTEN, and FORREST, Circuit Judges.

Defendant-Appellant Jose Angel Serrano conditionally pleaded guilty to drug and firearm possession charges and was sentenced to 120 months of imprisonment. He now appeals the district court's denial of his motion to suppress evidence obtained from his residence. "We review de novo a district court's denial of a motion

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

to suppress, reviewing for clear error the district court’s underlying factual findings.”

United States v. Lara, 815 F.3d 605, 608 (9th Cir. 2016). We affirm.

1. **Consent.** “[O]ne of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent.” *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973). Serrano first argues that his wife, Jacqueline Valenzuela, could not have consented to the officers’ “[s]earch of the garage in general” because she lacked actual authority. Serrano contends that the garage was his “personal space in the house,” that he had “granted [the family] access on a limited basis,” and that any use beyond that basis would have been contingent on his approval. “A third party has actual authority” to consent to the search of a space “when [s]he has ‘mutual use of the property [and also has] joint access or control for most purposes.’” *United States v. Dearing*, 9 F.3d 1428, 1429 (9th Cir. 1993) (second alteration in original) (quoting *United States v. Matlock*, 415 U.S. 164, 171 n.7 (1974)), *overruled on other grounds by*, *United States v. Kim*, 105 F.3d 1579 (9th Cir. 1997).

Here, Valenzuela had Serrano’s permission to use the garage to access their refrigerator, care for their dogs, fix their motorcycles, and work on various house projects. In addition to accessing the garage “for h[er] own purposes,” *Kim*, 105 F.3d at 1582, as Serrano’s wife, Valenzuela lived in “their joint . . . residence” and had ready access to the garage key—each of which is indicative of her actual authority

over the entire premises. *See United States v. Guzman*, 852 F.2d 1117, 1122 (9th Cir. 1988). Taken together, these circumstances are more than enough to conclude that Valenzuela had “joint access . . . for most purposes” such that she had actual authority to consent to the officers’ search of the garage. *Matlock*, 415 U.S. at 171 n.7.

Serrano further argues that even if Valenzuela had authority to consent to the search of the garage, “she did not have authority over the locked workbench” in the garage. However, because the officers entered the garage with Valenzuela’s consent, they did not need probable cause to view the objects inside the garage. *See Schneekloth*, 412 U.S. at 219.

2. *Plain View.* Serrano also contends that Officer Myers’s inspection of the gap between the locked workbench drawers was not sufficiently “cursory” to fit within the meaning of “plain view.” Specifically, Serrano argues that Officer Myers conducted more than a cursory inspection when he “focused on [the workbench], asked family members if they knew whether it contained drugs, and crouched down and used his flashlight to peer into” a gap between its drawers. We disagree. Under the Fourth Amendment, there is no “search” when officers conduct “a truly cursory inspection,” which “involves merely looking at what is already exposed to view, without disturbing it.” *Arizona v. Hicks*, 480 U.S. 321, 328 (1987). “[O]nce police are lawfully in a position to observe an item first-hand, its owner’s privacy interest

in that item is lost” *Illinois v. Andreas*, 463 U.S. 765, 771 (1983). Likewise, an officer’s use of a flashlight to illuminate what is already in sight does not transform anything “encompassed within the plain view doctrine” into a “search.” *E.g.*, *United States v. Hood*, 493 F.2d 677, 680 (9th Cir. 1974). And Serrano does not otherwise explain how, if at all, Officer Myers’s ancillary attention “disturb[ed]” the workbench. *Hicks*, 480 U.S. at 328.

3. *Private Search.* Finally, Serrano argues that Valenzuela was operating as a government actor when she opened and examined the workbench’s contents in front of the police, triggering Fourth Amendment protections. We have recognized that the Fourth Amendment only “protects individuals from government actors, not private ones.” *United States v. Wilson*, 13 F.4th 961, 967 (9th Cir. 2021). As such, the Fourth Amendment’s protections are “wholly inapplicable ‘to a search or seizure, even an unreasonable one, effected by a private individual not acting as an agent of the Government or with the participation or knowledge of any governmental official.’” *United States v. Jacobsen*, 466 U.S. 109, 113 (1984) (quoting *Walter v. United States*, 447 U.S. 649, 662 (1980) (Blackmun, J., dissenting)). To determine whether a private party was acting as a government agent or instrument, we consider “(1) whether the government knew of and acquiesced in the intrusive conduct, and (2) whether the party performing the search intended to assist law enforcement efforts or further h[er] own ends.” *United States v. Miller*, 688 F.2d 652, 657 (9th

Cir. 1982). “In analyzing the second requirement—the private party’s intent in searching—we look to whether it acted to ‘assist law enforcement efforts,’ or whether it had a ‘legitimate, independent motivation to further its own ends.’” *United States v. Rosenow*, 50 F.4th 715, 733 (9th Cir. 2022) (quoting *United States v. Cleaveland*, 38 F.3d 1092, 1094 (9th Cir. 1994)). Where “a legitimate, independent motivation is established, ‘that motivation is not negated by any dual motive to . . . assist the police, or by the presence of the police nearby during the search.’” *Id.* (quoting *Cleaveland*, 38 F.3d at 1094).

Serrano claims that Valenzuela intended to assist law-enforcement efforts since, in seeking to have Serrano arrested, “the purpose of her actions in the presence of the police was the same” as theirs. But Valenzuela’s interest was not “in preventing criminal activity[] on its own.” *Id.* Instead, she told the police that she wanted Serrano arrested because she believed that he had hidden a gun in their home, and that she and her daughters would not be safe with him in the home. Valenzuela’s interest in protecting her daughters was more pronounced because the family had called the police after one of her daughters alleged that Serrano had drugged and raped her.

Because Valenzuela “had a ‘legitimate, independent motivation to further [her] own ends,’” *id.* (quoting *Cleaveland*, 38 F.3d at 1094), satisfying the second requirement of the private-actor analysis, we do not consider whether Officer

Myers's actions in accepting her invitation to see what was in the garage, "follow[ing] her into the garage, h[olding] a flashlight while she unlocked the top drawer . . . and rummaged around," and "t[aking] over once she stopped" satisfy the first requirement. Valenzuela's examination of the workbench's contents constituted a private search and did not implicate the Fourth Amendment.

AFFIRMED.

A P P E N D I X B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAR 20 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JOSE ANGEL SERRANO,

Defendant-Appellant.

No. 24-7229

D.C. No.

3:21-cr-1590-JLS

ORDER

Before: M. SMITH, CHRISTEN, and FORREST, Circuit Judges.

The panel unanimously voted to deny the petition for panel rehearing and rehearing en banc (Dkt. 50). The full court has been advised of the petition for rehearing en banc and no judge has requested a vote. Fed. R. App. 40(c).

The petition for panel rehearing and rehearing en banc is therefore **DENIED**.