

No. 21-047

IN THE
Supreme Court of the United States

Gina Grace Stone,
Petitioner,

v.

United States of America,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTEENTH CIRCUIT

BRIEF FOR RESPONDENT

Gabriela Salinas
Office of the United States Attorney
One Prosecution Loop
Post Office Box 5
Alamo City, Alamo 99999
gsalinas21@usattorneyalamo.com
Tel: (210) 333-3333

Counsel for Respondent

March 6, 2022

Questions Presented

- I. When executing an arrest warrant in a residence later determined not to be that of the warrant target, is probable cause that the target resided in and was present at the residence required?

- II. Did law enforcement have sufficient evidence to establish the required level of certainty that the warrant target resided and was present at 401 West Deerfield Court at the time of entry?

Table of Contents

Questions Presented	i
Table of Contents	ii
Table of Authorities	iv
Opinions Below	vi
Statement of Jurisdiction	vi
Standard of Review	vi
Provisions Involved	vi
Statement of the Case.....	1
Summary of the Argument.....	2
Argument.....	3
I. Law enforcement officers need a reasonable belief that the warrant target resides and is present at the residence, even when later determined to be incorrect.....	4
A. Precedent and text dictate that the applicable standard to determine whether a warrant target resides and is present at the target residence is reasonable belief.	4
1. Reasonable belief applies to both <i>Payton</i> prongs: (1) a target lives at the home, and (2) the target is present at the time of entry.	8
2. The <i>Payton</i> standard is the correct standard when officers believe the residence belongs to the target.	9
3. Historically, reasonable belief has been and is the applicable standard used to determine whether a warrant target resides and is present at the residence.	10
B. Reasonable belief sufficiently balances an individual’s right to privacy and public interests to satisfy the Fourth Amendment.....	12
C. A search performed with an arrest warrant is valid even when the residence is later determined to be incorrect.	13
II. Government agents unequivocally obtained sufficient evidence to establish the required level of certainty that the warrant target resided and was present at 401 West Deerfield Court at the time of entry.....	15
A. The agents had a reasonable belief that the warrant target was present and resided at 401 West Deerfield Court based on corroborated evidence permitting entry to execute the arrest warrant.....	15
1. The agents established a reasonable belief that the warrant target resided at 401 West Deerfield Court.	16

2. The agents had a reasonable belief that the warrant target was present at 401 West Deerfield Court.	19
B. Alternatively, if this Court finds that the standard of evidence is probable cause, the evidence was sufficient to find that the warrant target resided and was present at 401 West Deerfield Court.	21
1. If the standard of evidence is probable cause, agents' corroborated evidence was sufficient to find that the warrant target resided at 401 West Deerfield Court.	21
2. If the standard of evidence is probable cause, the agents corroborated appropriate evidence to find that the warrant target was present at 401 West Deerfield Court.	24
Conclusion	25
Certificate of Service	27

Table of Authorities

Cases

<i>Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics</i> , 456 F.2d 1339 (2d Cir. 1972)	10, 11
<i>Brinegar v. United States</i> , 338 U.S. 160 (1949)	24
<i>Hill v. California</i> , 401 U.S. 797 (1971)	4, 5
<i>Illinois v. Gates</i> , 462 U.S. 213 (1983).....	3, 5, 6, 21
<i>Johnson v. United States</i> , 333 U.S. 10 (1948).....	3
<i>Maryland v. Garrison</i> , 480 U.S. 79 (1987)	4, 9, 13, 14
<i>Payton v. New York</i> , 445 U.S. 573 (1980)	passim
<i>Steagald v. United States</i> , 451 U.S. 204 (1981).....	9, 10
<i>United States v. Barrera</i> , 464 F.3d 496 (5th Cir. 2006)	12, 13
<i>United States v. Bohannon</i> , 824 F.3d 242 (2d Cir. 2016).....	5, 7, 9, 15
<i>United States v. Brinkley</i> , 980 F.3d 377 (4th Cir. 2020).....	4, 9, 13
<i>United States v. Cravero</i> , 545 F.2d 406 (5th Cir. 1977).....	10, 11
<i>United States v. Diaz</i> , 491 F.3d 1074 (9th Cir. 2007)	24
<i>United States v. Dickerson</i> , 195 F.3d 1183 (10th Cir. 1999).....	5
<i>United States v. Gay</i> , 240 F.3d 1222 (10th Cir. 2001)	4, 8, 19
<i>United States v. Gorman</i> , 314 F.3d 1105 (9th Cir. 2002)	4, 22, 23
<i>United States v. Graham</i> , 553 F.3d 6 (1st Cir. 2009).....	7, 18
<i>United States v. Lauter</i> , 57 F.3d 212 (2d Cir. 1995)	14
<i>United States v. Magluta</i> , 44 F.3d 1530 (11th Cir. 1995).....	passim
<i>United States v. Moorehead</i> , 959 F.2d 1489 (10th Cir. 1992).....	19
<i>United States v. Pruitt</i> , 458 F.3d 477 (6th Cir. 2006)	19
<i>United States v. Risse</i> , 83 F.3d 212 (8th Cir. 2016)	7, 9, 16
<i>United States v. Route</i> , 104 F.3d 59 (5th Cir. 1997).....	7, 10, 19, 20
<i>United States v. Terry</i> , 702 F.2d 299 (2d Cir.1983).....	19
<i>United States v. Thomas</i> , 429 F.3d 282 (D.C. Cir. 2005).....	4, 5, 6, 7
<i>United States v. Vasquez-Algarin</i> , 821 F.3d 467 (3d Cir. 2016).....	8, 13, 21, 22
<i>United States v. Veal</i> , 453 F.3d 164 (3d Cir. 2006)	24, 25
<i>United States v. Woods</i> , 560 F.2d 660 (5th Cir. 1977)	10
<i>Valdez v. McPheters</i> , 172 F.3d 1220 (10th Cir. 1999)	passim
<i>Winston v. Lee</i> , 470 U.S. 753 (1985).....	3

Constitutional Provisions

U.S. Const. amend. IV	3, 6
-----------------------------	------

Other Authorities

L. Song Richardson, <i>Police Efficiency and the Fourth Amendment</i> , 87 Ind. L.J. 1143 (2012)	16, 20
Steve Ragatzski, <i>Resolving The Reasonable Belief And Probable Cause Circuit Split Stemming From Payton And Steagald</i> , 20 U. Pa. J. Const. L. Online 1 (2017) ...	12,

Thomas K. Clancy, *The Framers' Intent: John Adams, His Era, and the Fourth Amendment*, 86 Ind. L.J. 979 (2011) 6, 11

Tonja Jacobi & Jonah Kind, *Criminal Innovation and the Warrant Requirement: Reconsidering the Rights-Police Efficiency Trade-Off*, 56 Wm. & Mary L. Rev. 759 (2015) 14

Opinions Below

The opinion of the United States Court of Appeals for the Fifteenth Circuit is unreported but may be found at J.A. 70-72. The judgment of the United States District of Alamo is also unreported but may be found at J.A. 56-67.

Statement of Jurisdiction

The United States Court of Appeals for the Fifteenth Circuit entered judgment on November 1, 2020. J.A. 70. Petitioner timely filed a Petition for Writ of Certiorari, which this Court granted on December 31, 2021. J.A. 73. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

Standard of Review

This Court reviews a district court's fact findings for clear error and its legal conclusions *de novo*.

Provisions Involved

“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.” U.S. Const. amend. IV.

Statement of the Case

The Drug Enforcement Agency (DEA) received a tip from a confidential informant regarding where a warrant target was residing. J.A. 17-18. The informant had worked with the federal agents on prior cases and proved to be a reliable source. J.A. 17-18. In addition to describing where the target resided, the informant notified the agents that the target was driving a white GMC pickup truck. J.A. 18.

The day before the warrant execution, government agents pursued the tip and located a house with a white truck approximately matching the description of what the informant had provided them. J.A. 19-20. While surveilling the residence, agents showed a neighbor a picture of the warrant target and confirmed someone matching the target's description was seen at the residence. J.A. 20. The agents verified the informant's information and confirmed their belief that the warrant target resided at the home the agents located. J.A. 20-21. The agents executed the arrest warrant the following day and entered 401 West Deerfield Court. J.A. 20-21.

The Petitioner filed a motion to suppress the physical evidence federal agents seized in the United States District Court of Alamo. J.A. 56-67. The district court applied the *Payton* standard and denied the motion to suppress. J.A. 56-67. The Petitioner appealed to The United States Court of Appeals for the Fifteenth Circuit. J.A. 70-72. Affirming the lower court's decision, the appellate court also found *Payton* controlling and upheld the reasonable belief as less than probable cause

standard. J.A. 70-72. The Petitioner filed a Petition for Writ of Certiorari. J.A. 73. This Court granted certiorari. J.A. 73.

Summary of the Argument

I. The lower courts correctly held *Payton* to be the controlling authority. Reasonable belief is the standard to be used under *Payton*. Once an arrest warrant founded on probable cause has been issued, officers only need a reasonable belief the arrest warrant target resides and is present at the residence to execute the warrant. Given the precedent of this Court and the majority of the circuit courts, reasonable belief is the proper standard. Reasonable belief effectively balances a person's right to privacy and public interests which echoes the touchstone of the Fourth Amendment. Requiring an officer to obtain a search warrant before entering a third party's home would grant that suspect greater protections in a third-party home than in their own. A search warrant is only required under this Court's own jurisprudence if it is known to be a third-party home. When agents have a reason to believe the target resides at a home and it is later determined to be incorrect, the reasonable belief validates the entry. Accordingly, this Court should hold that *Payton* is the controlling authority and reasonable belief is the level of evidence required to warrant entry into the residence.

II. The lower courts rightfully found that the law enforcement officers obtained sufficient evidence to establish the required level of certainty that the warrant target resided and was present at the residence. To satisfy the reasonable belief requirement, law enforcement need more than a probability, but less than certainty

to determine if a subject resides and is present at the home. Reasonable belief is interpreted to mean something less stringent than probable cause. The agents followed a lead from an informant, located a home that matched the description, and received an eyewitness testimony from a neighbor. This corroborated evidence obtained in the investigation established a reasonable belief that the warrant target resided and was present at the home. However, if this Court decides probable cause is required, a totality of the circumstances analysis of the same evidence satisfies this standard. The agents fulfill the probable cause standard when the evidence is viewed in totality. Accordingly, this Court should affirm the rulings of the lower courts and hold to suppress the evidence.

Argument

“The right of the people to be secure in their persons, houses, papers, and effects, against *unreasonable* searches and seizures, shall not be violated.” U.S. Const. amend. IV (emphasis added). The Fourth Amendment protects individuals’ right to privacy, and, at its core, protects the right of persons to retreat into their homes to be free from *unreasonable* governmental intrusion. *Winston v. Lee*, 470 U.S. 753, 759 (1985) (emphasis added).

Law enforcement agents must have a warrant based on probable cause issued by a neutral magistrate to enter a home. *Johnson v. United States*, 333 U.S. 10, 14 (1948). The courts determine probable cause by considering the totality of the circumstances when deciding if agents had a substantial basis for believing the target resided at the home. *Illinois v. Gates*, 462 U.S. 213, 230 (1983).

An arrest warrant founded on probable cause permits law enforcement officers to enter a home where the target lives when there is *reason to believe* the target is present. *Payton v. New York*, 445 U.S. 573, 603 (1980) (emphasis added). Law enforcement officers *only* need a search warrant, in addition to an arrest warrant, when they *know* the target is residing at a third-party home. *United States v. Brinkley*, 980 F.3d 377, 385 (4th Cir. 2020) (emphasis added).

I. Law enforcement officers need a reasonable belief that the warrant target resides and is present at the residence, even when later determined to be incorrect.

Sufficient probability, *not* certainty, is the touchstone of reasonableness under the Fourth Amendment. *Maryland v. Garrison*, 480 U.S. 79, 87 (1987); *Hill v. California*, 401 U.S. 797, 804 (1971). The *Payton* Court established a test requiring law enforcement to have a reasonable belief that (1) a target lives at the home, and (2) the target is present at the time of entry. *United States v. Gay*, 240 F.3d 1222, 1226 (10th Cir. 2001).

A. Precedent and text dictate that the applicable standard to determine whether a warrant target resides and is present at the target residence is reasonable belief.

The *Payton* Court specifically used the text “reason to believe” because it clearly meant something other than probable cause. *United States v. Thomas*, 429 F.3d 282, 286 (D.C. Cir. 2005). While a minority of circuits have interpreted *Payton* to mean the same standard inherent in probable cause, the majority have reasoned that reasonable belief did mean something other than probable cause. *Compare United States v. Gorman*, 314 F.3d 1105, 1112 (9th Cir. 2002), *with Thomas*, 429

F.3d at 286. To hold government agents to a standard of certainty that a suspect does reside at a home would render the *Payton* test moot. See *Valdez v. McPheters*, 172 F.3d 1220, 1225 (10th Cir. 1999) (rejecting that reasonable belief is equivalent to probable cause). This Court has never explicitly required probable cause to satisfy both *Payton* prongs, to do so now would be a departure from the text as written. See *United States v. Magluta*, 44 F.3d 1530, 1534-35 (11th Cir. 1995).

The holding in *Payton* explicitly reads that the Fourth Amendment allows warrant execution when there is reason to believe the suspect resides and is present in the home. See *Payton*, 445 U.S. at 584. To establish a reasonable belief certainty is not required, only a reasonable probability. *Gates*, 462 U.S. at 235. Reasonable belief is a significantly less stringent standard than probable cause and requires general facts based on knowledge available to law enforcement. See *United States v. Bohannon*, 824 F.3d 242, 255 (2d Cir. 2016); *Hill*, 401 U.S. at 804. Law enforcement officers determine reasonableness when applying the totality of the circumstances analysis. *United States v. Dickerson*, 195 F.3d 1183, 1186 (10th Cir. 1999) (explaining that the touchstone of the Fourth Amendment is reasonableness).

The Fourth Amendment includes two independent clauses, the first protecting the basic right to be free from *unreasonable* searches and seizures and the second requiring that warrants be specific and reinforced by probable cause. *Payton*, 445 U.S. at 584 (emphasis added). The first clause is not intended to limit or restrict an officer's inherent power to arrest or search, but rather assumes an existing right against actions in excess of that inherent power and certifies that it

remains inviolable. Thomas K. Clancy, *The Framers' Intent: John Adams, His Era, and the Fourth Amendment*, 86 Ind. L.J. 979, 983 (2011). The second clause of the Fourth Amendment states that no warrants shall issue, but upon probable cause, supported by Oath or affirmation, particularly describing the place to be searched, and the persons or things to be seized. U.S. Const. amend. IV. Even if the standard is interpreted to be probable cause, which has been defined as a probability and not certainty, it would not be dispositive. *Gates*, 462 U.S. at 231.

In *Payton*, the phrase “an arrest warrant founded on probable cause...” implies that officers have already obtained an arrest warrant from the magistrate founded on probable cause. *See Payton*, 445 U.S. at 603. Additionally, “... implicitly carries with it the limited authority to enter a dwelling...” explains that there is no need to have an officer return to the magistrate when they have already obtained an arrest warrant for the target. *See id.* Lastly, “... in which the suspect lives when there is reason to believe the suspect is within,” allows officers to establish a reasonable belief that the target potentially resides and is present at a particular home. *See id.* The text in *Payton* does not require a law enforcement officer to be certain the target is residing and present at the home to validate a warrant execution. *See Thomas*, 429 F.3d at 286.

A strong majority of the circuit courts have properly interpreted *Payton's* reasonable belief standard language to require a lower level of evidence than probable cause. *See Valdez*, 172 F.3d at 1225; *see also Magluta*, 44 F.3d at 1535 (holding that reasonable probability, not certainty, is required to execute a lawful

arrest warrant). The First, Second, Fifth, Eighth, Tenth, Eleventh, and D.C. Circuits have held that officers must *only* have a “reasonable belief” that the suspect resides in the home to execute an arrest warrant for the suspect. *See Bohannon*, 824 F.3d at 253; *see also United States v. Graham*, 553 F.3d 6, 13 (1st Cir. 2009); *United States v. Risse*, 83 F.3d 212, 216 (8th Cir. 2016); *United States v. Route*, 104 F.3d 59, 62 (5th Cir. 1997); *Thomas*, 429 F.3d at 286 (adopting the reasonableness standard akin to the majority of the circuits).

Specifically, in *United States v. Thomas*, the court held that an officer executing an arrest warrant may enter a residence if the reasonable standard is satisfied by “something less” than would be required for a finding of probable cause, as stated in the majority of circuit courts. *Thomas*, 429 F.3d at 286. In this case, legal entry into the suspect’s home did not require probable cause. *Id.* A reasonable belief was sufficient. *Id.* The court reasoned that this Court used the term reasonable belief instead of probable cause in *Payton*. *Id.* If this Court wanted probable cause to be the standard, it would have explicitly dictated that. *Id.*

Here, as in *Thomas*, this Court should maintain the reasonable belief standard set forth in *Payton*. *See id.* The *Payton* Court used the phrase “reasonable belief” for a specific purpose. *Id.* Requiring law enforcement to obtain probable cause would be inconsistent with the language in *Payton* and the precedent of five other circuit courts. *Id.* The use of reasonable belief was not accidental; for it was used to distinguish a separate standard from probable cause. *Id.*

1. Reasonable belief applies to both *Payton* prongs: (1) a target lives at the home, and (2) the target is present at the time of entry.

Most of the circuits have interpreted the rule in *Payton* to be a two-part test. See *United States v. Vasquez-Algarin*, 821 F.3d 467, 472 (3d Cir. 2016); see also *Gay*, 240 F.3d at 1226. An arrest warrant founded on probable cause permits law enforcement officers to enter a home where the agents reasonably believe: (1) the target lives when there is reason to believe (2) the target is present. *Payton*, 445 U.S. at 603.

The text in *Payton* cannot be construed formalistically. See *Magluta*, 44 F.3d at 1535 (relating that reasonable belief is based on ascertainable facts). Viewed formalistically, officers would need an arrest warrant founded on probable cause as well as probable cause that the suspect was present to enter the home. See *Payton*, 445 U.S. at 603; see also *Vasquez-Algarin*, 821 F.3d at 482. It would be an injustice to deduce from only the text that law enforcement officers can only execute an arrest warrant where a suspect lives because ascertaining that information amounts to a legal impossibility. See *Valdez*, 172 F.3d at 1225. If a threshold test is applied in this case, agents would never be able to execute an arrest warrant at any home without absolute certainty that the warrant target did indeed live there. J.A. 21; see *Valdez*, 172 F.3d at 1225 (stressing that officers could never rely on *Payton* if certainty was required). To require this type of test would effectively cause a traffic jam of extreme magnitude, stopping the wheels of justice from turning. See *Valdez*, 172 F.3d at 1225.

Therefore, the *Payton* standard should be interpreted in a practical way, a two-part test that interprets both residence and presence along a gradient.

2. The *Payton* standard is the correct standard when officers believe the residence belongs to the target.

A reasonable oversight of who a residence belongs to does not prevent an officer's ability to execute an arrest warrant in a third-party home. *See Garrison*, 480 U.S. at 87; *see also Brinkley*, 980 F.3d at 385 (stating that *Payton* controls when officers believe that the suspect resides in a certain home). Fourth Amendment rights are personal; requiring an officer to obtain a search warrant before entering a third party's home while already holding an arrest warrant for a suspect would grant that suspect greater protections in a third-party home than in their own. *Bohannon*, 824 F.3d at 255.

The government's interest in protecting the public outweighs a heightened standard of rights for a suspect in third party home, absent exigent circumstances. *Id.* at 258. The rule in *Payton* is applicable when a suspect has "common authority over, or some other significant relationship" to the residence entered by law enforcement. *Risse*, 83 F.3d at 217. The line between a third-party home and a suspect's true residence is blurred because criminals, unlike law abiding citizens, often change residencies. *See Valdez*, 172 F.3d at 1225. *Payton* and *Steagald* cannot be understood to divide the world into "hermetically sealed residences" belonging solely to the suspect on the one hand, and third parties on the other. *Valdez*, 172 F.3d at 1225; *see Steagald v. United States*, 451 U.S. 204, 213 (1981) (demanding both a search and arrest warrant when entering a third-party home). Requiring

certainty of residency, when certainty is essentially impossible, would restrict law enforcement and place a standard on them that is almost impossible to prove.

Valdez, 172 F.3d at 1225.

There is no evidence that suggests the agents were aware the home was a third party's residence at the time of entry. J.A. 21; *see Steagald*, 451 U.S. at 213 (requiring a search warrant to enter a third party's residence where law enforcement believed the target to be a visitor). Once law enforcement obtains an arrest warrant established by probable cause, officers may enter the target's home to execute the warrant. *See Payton*, 445 U.S. at 586.

Therefore, *Payton* is the correct standard to be applied because the agents reasonably believed the warrant target resided at the targeted residence. *Payton* effectively provides adequate protection under the Fourth Amendment.

3. Historically, reasonable belief has been and is the applicable standard used to determine whether a warrant target resides and is present at the residence.

Reasonable belief has historically been the standard to determine a valid warrant execution. *See Route*, 104 F.3d at 62; *see also United States v. Woods*, 560 F.2d 660, 665 (5th Cir. 1977) (concluding that reasonable belief is the standard to follow). Cases prior to *Payton* have applied this reasonable belief standard. *See Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 456 F.2d 1339, 1347-48 (2d Cir. 1972); *United States v. Cravero*, 545 F.2d 406, 421 (5th Cir. 1977); *Woods*, 560 F.2d at 665.

For example, the court in *United States v. Cravero* explained that once officers hold an arrest warrant issued by a magistrate, reasonable belief allows an officer to enter a certain premises without additional requirements. *Cravero*, 545 F.2d at 421. Additionally, the court in *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics* held that when law enforcement has a good-faith reasonable belief a warrant target is on the target premises, they are allowed to enter the premises to arrest a person wanted for a criminal offense. *Bivens*, 456 F.2d at 1347-48.

Drafting the Fourth Amendment, the Framers identified and resolved the problem of general warrants that granted unreasonable searches and seizures. Clancy, *supra* at 988 (examining the historical record and influence regarding the framing of the Fourth Amendment). The Framers intended the Fourth Amendment to prohibit the specific “evils” they were aware of when general warrants were used for exploratory searches. *Id.* The Framers intended to prevent unreasonableness, not to create an undue burden when policing the populace, evidenced in *Payton*. *Payton*, 445 U.S. at 583.

Therefore, *Payton* only reaffirmed the Framers intentions and this Court’s precedent; reasonable belief is the correct standard.

Ultimately, this Court should determine that reasonable belief is the applicable standard to determine if the warrant target resides and is present at the residence.

B. Reasonable belief sufficiently balances an individual's right to privacy and public interests to satisfy the Fourth Amendment.

The only workable standard that can be practically utilize is a factual balancing test to establish reasonable belief, anything more would create decisions that are antithetical to the pursuit of justice. *See Magluta*, 44 F.3d at 1535; *see also* Steve Ragatzski, *Resolving The Reasonable Belief And Probable Cause Circuit Split Stemming From Payton And Steagald*, 20 U. Pa. J. Const. L. Online 1, 13 (2017). To require law enforcement officers to obtain probable cause prior to executing an arrest warrant would unduly hamstring their efforts in protecting the public. *See Magluta*, 44 F.3d at 1535; *see also* Ragatzski, *supra* at 13.

For example, in *United States v. Barrera*, the court held that once a law enforcement officer obtains an arrest warrant based on probable cause, agents only need a reasonable belief that a suspect resides in a home to execute an arrest warrant. *United States v. Barrera*, 464 F.3d 496, 504-05 (5th Cir. 2006). In *Barrera*, the court found law enforcement officer's due diligence sufficient to find a reasonable belief that the suspect resided at and was present at the residence at the time of entry; to require anything greater than reasonable belief would overstep public policy concerns. *Id.* at 504. The suspect was not found at the residence, but a post-entry discovery does not dictate what was reasonable prior to entry. *Id.* The court reasoned that reasonable belief is a fluid concept based on the facts and once an officer holds an arrest warrant, the *Payton* standard is satisfied. *Id.* at 500.

In *Barrera*, even though officers were ultimately incorrect that the target of the arrest warrant was present at the home in question, the officers' search was

held lawful. *Id.* at 499. This is a prime example of courts not requiring perfection from law enforcement officers. *See id.* Public policy demands that officers be prudent in their pursuit of justice, yet prudence is not embodied by perfection. *See Valdez*, 172 F.3d at 1225. If law enforcement were held to that standard, the public at-large would be subjected to levels of crime that are exponentially greater than what the safety the citizenry of this country currently enjoys. Ragatzki, *supra* at 8 (relating that if a law enforcement officer surpasses his boundaries, there are remedies in place for restitution).

Therefore, the reasonable belief standard effectively balances an individual's right to privacy and public interests to satisfy the Fourth Amendment.

C. A search performed with an arrest warrant is valid even when the residence is later determined to be incorrect.

Payton is the controlling authority when officers believe that the suspect resides in a certain home, even if the residence is later determined to be incorrect. *See Brinkley*, 980 F.3d at 385; *see also Vasquez-Algarin*, 821 F.3d at 472. The constitutionality of a law enforcement officer's conduct is determined by the information available to them at the time they acted. *Garrison*, 480 U.S. at 85.

For example, in *Maryland v. Garrison*, this Court held that officer conduct was consistent with a *reasonable* effort to ascertain and search the address listed on an arrest warrant within the meaning of the Fourth Amendment. *Id.* at 88 (emphasis added). In this case, officers had an arrest warrant for an apartment located on the third floor of a building. *Id.* at 81. It did not specify a specific apartment. *Id.* Although the officers subsequently discovered the apartment they

were actively searching was not the intended apartment, the evidence gathered was admissible because it was obtained via a good faith mistake founded on a *reasonable belief*. *Id.* at 88 (emphasis added). The *Garrison* Court reasoned that there is certainly a need to allow some flexibility for honest mistakes that are made by officers in the perilous and challenging process of obtaining and executing arrest warrants. *Id.* at 87.

Here, the address was unlisted, but government agents are routinely given latitude in the pursuit of justice. J.A. 28; *see Garrison*, 480 U.S. at 87; *United States v. Lauter*, 57 F.3d 212, 215 (2d Cir. 1995) (indicating that an arrest warrant solely needs to identify the person sought, not their actual location). Prohibiting good-faith mistakes would impede law enforcement and would undoubtedly result in more criminals being left unchecked than innocent people being falsely apprehended. *See Garrison*, 480 U.S. at 87; *see also* Tonja Jacobi & Jonah Kind, *Criminal Innovation and the Warrant Requirement: Reconsidering the Rights-Police Efficiency Trade-Off*, 56 Wm. & Mary L. Rev. 759, 781 (2015) (discussing the interest in facilitating law-enforcement investigation and the privacy concerns underlying the warrant requirement). Subjecting agents to constant oversight by the courts will diminish their efficacy and expose the public to unnecessary crime. *See Garrison*, 480 U.S. at 87; *see also* Jacobi & Kind, *supra* at 781.

Therefore, an arrest warrant executed based on reasonable belief is valid, regardless of a reasonable mistake.

Thus, reasonable belief is the required and proper standard when executing an arrest warrant in a residence later determined not to be that of the warrant target; reasonable belief maintains a person's constitutionally protected rights while granting sufficient policing freedom. Therefore, this Court should affirm the lower court's decision.

II. Government agents unequivocally obtained sufficient evidence to establish the required level of certainty that the warrant target resided and was present at 401 West Deerfield Court at the time of entry.

An arrest warrant requirement provides less authority than a search warrant, but the issuing magistrate's finding of probable cause provides the requisite authority to execute a search of a target's residence. *Payton*, 445 U.S. at 602. If there is sufficient evidence of a suspect's participation in a felony to persuade a judge that his arrest is justified, it is constitutionally reasonable to allow law enforcement to execute an arrest warrant at his home. *Id.* at 602-03. Hence, for Fourth Amendment purposes, an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a residence in which the target lives when there is reason to believe the suspect is within. *Id.* at 586.

A. The agents had a reasonable belief that the warrant target was present and resided at 401 West Deerfield Court based on corroborated evidence permitting entry to execute the arrest warrant.

To satisfy the reasonable belief requirement, law enforcement officers need more than a mere hunch, but less than certainty to determine if a subject resides in the home. *Bohannon*, 824 F.3d at 255. Requiring law enforcement officers to have

actual knowledge of a suspect's residence would effectively void the *Payton* test. *Valdez*, 172 F.3d at 1225.

1. The agents established a reasonable belief that the warrant target resided at 401 West Deerfield Court.

Realistically, people do not live only in isolated residences; they live with others and move from one residence to another. *Id.* To require the suspect to truly live at the residence entered by law enforcement implies that officers would never be able to rely on *Payton*. *Id.* It can never be certain that the suspect did not relocate the day before a warrant execution. *Id.* A suspect's significant relationship to a home provides a reasonable basis for that suspect's residence. *Risse*, 83 F.3d at 217.

Officers are responsible to the community. L. Song Richardson, *Police Efficiency and the Fourth Amendment*, 87 Ind. L.J. 1143, 1156 (2012). Deference to officer conclusions is often warranted in suitable circumstances. *Id.* Logically, the law must allow them to use contextual information to determine reasonable belief. *Id.*

For example, in *United States v. Magluta*, the court held that evidence provided to officers by a confidential informant satisfied the reasonable belief standard since the informant was previously reliable and his tips led to successful convictions. *Magluta*, 44 F.3d at 1532. In this case, officers relied on a map given to them by the informant which led them to the target's residence. *Id.* at 1534. Officers confirmed the target resided at the home by analyzing the facts utilizing a commonsense approach. *Id.* at 1532. The court reasoned that the evidence provided

to the officers by the confidential informant satisfied the reasonable belief standard; the target's residence was established. *Id.* The court further explained that the Fourth Amendment does not require law enforcement officers to be absolutely positive of a suspect's location when executing an arrest warrant; valid justification of the evidence will permit lawful entry. *Id.* at 1538.

Here, as in *Magluta*, agents based the warrant target's residence on a trustworthy informant who provided them with information that logically led them to 401 West Deerfield Court. J.A. 19; *see Magluta*, 44 F.3d at 1532. The evidence that the government agents used to justify the residence was accurate, albeit at a different location nearby. J.A. 23. The informant told the agents that the warrant target was residing at a "big house in a fancy neighborhood," which he claimed to be in the Deerfield subdivision. J.A. 18. The informant described the target's truck as a white GMC but noted that the target is known to alternate vehicles often. J.A. 18. The color of the truck, the type of home, and the subdivision described were all true. J.A. 23. It is unreasonable to expect one-hundred-percent accuracy in law enforcement agents, doing so would be an irrational restriction on officers. *See Magluta*, 44 F.3d at 1538; *see also Valdez*, 172 F.3d at 1225 (explaining that an officer's belief is sufficient if it is objectively reasonable at the time of entry). The make of the truck may have been incorrect, but ordinary people are not experts on the make and model of vehicles. J.A. 26; *see Magluta*, 44 F.3d at 1538.

Additionally, in *United States v. Graham*, the court held that officers did not violate the Fourth Amendment; officers reasonably believed that the suspect

resided at the home when viewed considering the totality of the circumstances. *Graham*, 553 F.3d at 12. In this case, an informant told the officers where Graham was staying. *Id.* at 10. Prior to entering the apartment, the officers showed a person outside of the apartment a picture of the target and confirmed he was seen at the property recently. *Id.* The court reasoned that the arrest warrant itself along with evidence supporting reasonable belief that the suspect resided at the home was sufficient under *Payton* to permit entry into the residence. *Id.* at 12. The court emphasized that the officers do not need to have “rock-solid indicators” of residence in order to form a *reasonable belief* that a suspect resides at a location. *Id.* at 13 (emphasis added).

Here, as in *Graham*, the agents judiciously concluded that the warrant target resided in the home. J.A. 23; *see Graham*, 553 F.3d at 12. In both cases agents relied on credible second-hand information to establish reasonable belief. J.A. 17; *see Graham*, 553 F.3d at 13. In *Graham*, the court found the testimony of the eyewitness was valid. *Graham*, 553 F.3d at 13. Here, it is irrelevant that agents did not find the warrant target at the residence in question. J.A. 20; *see Graham*, 553 F.3d at 13. The only question that agents must answer prior to entry of a home is whether they had reasonable belief of the target’s residence *before* entry. J.A. 20; *see Graham*, 553 F.3d at 12 (emphasis added).

Therefore, agents here satisfied the reasonable belief standard. The surrounding facts established that the warrant target resided at the home.

2. The agents had a reasonable belief that the warrant target was present at 401 West Deerfield Court.

Commonsense factors indicating a resident's presence should be considered when deciding if law enforcement established reasonable belief. *Valdez*, 172 F.3d at 1226. Direct surveillance or physically observing the suspect at the probable residence is not required. *Magluta*, 44 F.3d at 1538; see *United States v. Moorehead*, 959 F.2d 1489, 1496 (10th Cir. 1992) (indicating that a suspect's presence may be suggested by the presence of a vehicle). Officers should be able to consider that the suspect is a criminal and may be attempting to hide his location when determining if the suspect is present within the residence. *Gay*, 240 F.3d at 1227; see *United States v. Terry*, 702 F.2d 299, 319 (2d Cir.1983) (proposing that time of day could also be used to determine if a suspect is present). Reasonable belief requires less certainty than probable cause and allows law enforcement officers to execute an arrest warrant once established. See *United States v. Pruitt*, 458 F.3d 477, 482 (6th Cir. 2006) (asserting reasonable belief is established by viewing commonsense factors in totality).

For example, in *United States v. Route*, the court held the officers had reason to believe the suspect was inside the home at the time of entry. *Route*, 104 F.3d at 62. In this case, the officers heard the television from inside the residence and observed a vehicle in the driveway that further solidified their reasonable belief that the suspect was present. *Id.* The court reasoned it was irrelevant whether the suspect was actually present because the officer had performed sufficient due diligence to form a reasonable belief that allowed entry. *Id.* at 63. Furthermore, the

court explained once an arrest warrant has been issued by a neutral magistrate, officers are only required to establish reasonable belief. *Id.* at 62.

Here, as in *Route*, agents were able to form a reasonable belief based on a combination of circumstances. J.A. 21; *see Route*, 104 F.3d at 62. In *Route*, officers pieced together the presence of a second car with television noise within the house and here, agents investigated the home the previous night, received confirmation of presence from a neighbor, and visited the home within a reasonable amount of time to believe that the warrant target was still within the home. J.A. 20; *Route*, 104 F.3d at 63. The evidence may be circumstantial, but the government agents' work experience is key when combining all evidence available. J.A. 17; Richardson, *supra* at 1146. Here, the combination of the confidential informant and eyewitness account provided a reasonable basis to execute the arrest warrant. J.A. 21. Eyewitness inaccuracies are not dispositive here. J.A. 20; *Route*, 104 F.3d at 62. Eyewitnesses cannot be expected to identify intricacies of a suspect's physical characteristics accurately. J.A. 20; *see Route*, 104 F.3d at 62. In neither case did the officers find the suspect they were looking for, but that does not preclude reasonable belief being established and allowing them to enter the residence lawfully. J.A. 21-23; *see Route*, 104 F.3d at 62-63.

If this Court holds that reasonable belief is the standard of evidence, the agents here met the level of evidence needed to establish that the warrant target was present at the home.

Therefore, this Court should affirm the lower court's decision.

B. Alternatively, if this Court finds that the standard of evidence is probable cause, the evidence was sufficient to find that the warrant target resided and was present at 401 West Deerfield Court.

Once law enforcement agents obtain an arrest warrant from a neutral magistrate founded on probable cause, they must also have probable cause to execute the warrant. *Vasquez-Algarin*, 821 F.3d at 473. To establish that probable cause exists, courts consider the totality of the circumstances to determine whether agents had a substantial basis for believing the target resided and was present at the home. *Gates*, 462 U.S. at 230.

1. If the standard of evidence is probable cause, agents' corroborated evidence was sufficient to find that the warrant target resided at 401 West Deerfield Court.

Agents can consider information from informants, their own observations, and from other law enforcement agents. *Id.* at 242. When agents rely upon information from informants, courts will consider factors such as the informant's reliability, credibility, and basis for knowledge to determine whether agents had a substantial basis for believing the target resided at the home. *Id.* at 230. Further, courts will consider whether law enforcement agents corroborated the information received. *Id.* at 241.

For example, in *United States v. Vasquez-Algarin*, the court held that the reasonable belief standard requires probable cause and officers did not establish probable cause to believe the suspect resided at the residence at the time of the arrest. *Vasquez-Algarin*, 821 F.3d at 472. In this case, the officers in *Vasquez-Algarin* relied solely on information from another officer and informants whose reliability was not verified to determine if the suspect lived at the home. *Id.* at 480.

The uncorroborated evidence led the court to decide probable cause was not established. *Id.* at 482. The court reasoned the entry was unlawful based on the lack of corroborated information. *Id.*

Contrary to *Vasquez-Algarin*, here, agents actually corroborated their evidence. J.A. 20; *see Vasquez-Algarin*, 821 F.3d at 483. A credible confidential informant relayed the material information which established a reasonable belief that the warrant target resided at the home. J.A. 20; *see Vasquez-Algarin*, 821 F.3d at 483. This same informant previously provided information that led to the successful apprehension of several individuals of interest. J.A. 18. As opposed to the officers in *Vasquez-Algarin*, agents here corroborated evidence in good-faith by conducting surveillance of the target home the evening before executing the warrant. J.A. 18-20; *see Vasquez-Algarin*, 821 F.3d at 483. The agents also reached out to the target's parole officer to see if he had any information on the target. J.A. 18-19. The agents investigated a possible address for the target provided by the parole officer and determined the residence belonged to the target's ex-girlfriend. J.A. 18-19. The neighbor's eyewitness verification further corroborated agents' belief. J.A. 18-20.

Additionally, in *United States v. Gorman*, the court held that the reason to believe standard embodies the same standard of reasonableness that is necessary for probable cause. *Gorman*, 314 F.3d at 1112. In this case, officers did not have enough information to lead them to conclude that Gorman resided at the home of one of his associates. *Id.* at 1108. The agents were informed that Gorman's vehicle

was parked outside of the home, but the court found this as only a possibility of residence. *Id.* A mere possibility of residence was not enough to establish probable cause to enter the home. *Id.* The court reasoned that, absent probable cause, there would be potential for abuse because officers would be fundamentally allowed to enter homes of all the suspect's associates. *Id.* at 1112.

Here, in contrast to *Gorman*, government agents maintained the sanctity of the Fourth Amendment; the warrant execution was lawful. J.A. 21; *see Gorman*, 314 F.3d at 1110. Officers were not entering a random home. J.A. 21. Under the premise of probable cause, officers entered the home of a suspect when there was reason to believe he was present. J.A. 21; *see Gorman*, 314 F.3d at 1110. The agents obtained reliable information on the warrant target through a confidential informant who had previously provided fruitful information that led to a conviction. J.A. 18. The agents effectively corroborated the evidence provided to them by surveilling the probable residence location the night before the execution of the warrant. J.A. 20. Agents found a vehicle matching the description provided to them by the confidential informant parked outside of the home from the previous evening up until the execution of the warrant. J.A. 20. The agents did not verify the license plate on the truck due to the risk of being discovered. J.A. 20. The vehicle in question did belong to someone else, but this is of no consequence; the warrant target was known to change vehicles often. J.A. 19.

Therefore, the agents established a probable cause to determine the warrant target resided at the home

2. If the standard of evidence is probable cause, the agents corroborated appropriate evidence to find that the warrant target was present at 401 West Deerfield Court.

To establish probable cause that a target is present at a residence, the realistic acts of “reasonable prudent men, and not legal technicians” must be evaluated. *United States v. Diaz*, 491 F.3d 1074, 1078 (9th Cir. 2007) (quoting *Brinegar v. United States*, 338 U.S. 160, 175 (1949)). Probable cause is the fair probability that a suspect is present in the residence based on the totality of the circumstances. *Diaz*, 491 F.3d at 1078. A probable cause determination can be supported by circumstantial evidence. *Diaz*, 491 F.3d at 1079; see *United States v. Veal*, 453 F.3d 164, 168 (3d Cir. 2006) (utilizing a commonsense approach when weighing the facts).

For example, in *United States v. Veal*, the court held the law enforcement officers established probable cause to believe the suspect was present within the home. *Veal*, 453 F.3d at 168. In this case, the officers believed Veal was in the residence at the time of the arrest because his car he drove was parked near the home. *Id.* Additionally, the officers arrived at a reasonable time for someone to be home and knew Veal was a fugitive who might be trying to hide his location. *Id.* Operating under a commonsense analysis, the court reasoned the officers had probable cause to believe that Veal was present in the home at the time of the arrest. *Id.*

Here, as in *Veal*, agents executed the arrest warrant at a reasonable time for a weekend, especially considering the party the night before. J.A. 20-29; *Veal*, 453 F.3d at 168. Both Veal and the warrant target here were fugitives; time was of the

essence. J.A. 18-19; *Veal*, 453 F.3d at 168. As in *Veal*, the agents needed to act expediently once the informant provided location information since they knew that the target would attempt to conceal his locations. J.A. 19-20; *Veal*, 453 F.3d at 168. The agents held an arrest warrant for the target for drug distribution and violence. J.A. 1. In both cases, officers acted reasonably, quickly moving in and establishing probable cause. J.A. 19; *Veal*, 453 F.3d at 168. The warrant target's vehicle was near the target residence and there were signs of life within the home. J.A. 20-21; *Veal*, 453 F.3d at 168.

Therefore, the agents obtained probable cause to determine that the warrant target was present at the residence based on their thorough investigation.

If this Court finds that the standard is probable cause, agents' due diligence sufficiently established probable cause that the warrant target resided and was within 401 West Deerfield Court. Consequently, this Court should affirm the lower court's decision.

Conclusion

Based on the foregoing reasons, the United States respectfully requests that this Court affirm the decisions of the District Court of Alamo and the Fifteenth Circuit Court of Appeals.

Respectfully submitted,

/s/ Gabriela Salinas

Gabriela Salinas
State Bar No. 23422914
Office of the United States Attorney
One Prosecution Loop

Post Office Box 5
Alamo City, Alamo 99999
Tel: (210) 333-3333
gsalinas@usattorneyalamo.com

COUNSEL FOR RESPONDENT

Certificate of Service

Undersigned counsel for Respondent certifies that this brief has been prepared and served upon all opposing counsel in compliance with the Rules of the Supreme Court of the United States by certified mail on the 6th day of March 2022 to:

John Doe
State Bar No. 24133347
211 West 47th Street, Suite 316
Alamo City, Alamo 78267
Tel: (512) 645-1978
Email: jdoe@nelsonmurdock.com

COUNSEL FOR PETITIONER

/s/ Gabriela Salinas

Gabriela Salinas
State Bar No. 23422914
Office of the United States Attorney
One Prosecution Loop
Alamo City, Alamo 99999
Tel: (210) 333-3333
gsalinas@usattorneyalamo.com

COUNSEL FOR RESPONDENT