No. 14-740

In the Supreme Court of the United States

MATTHEW JOSEPH MASSI, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether marijuana found in a warrant-authorized search of an airplane should have been suppressed as the fruit of an unlawful detention.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A) is reported at 761 F.3d 512. The opinion of the district court (Pet. App. B) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on August 1, 2014. A petition for rehearing was denied on September 23, 2014 (Pet. App. C). The petition for a writ of certiorari was filed on December 22, 2014. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a conditional guilty plea in the United States District Court for the Western District of Texas, petitioner was convicted of possession of marijuana with intent to distribute it, in violation of 21 U.S.C.

841(a)(1) and (b)(1)(D). He was sentenced to five months of imprisonment, to be followed by three years of supervised release. Gov't C.A. Br. 2. The court of appeals affirmed. Pet. App. 1a-34a.

1. On May 16, 2012, the Air Marine Operations Center (AMOC), a division of United States Customs and Border Protection that monitors air traffic within the United States, observed suspicious flight activity by a single-engine airplane on which petitioner was the sole passenger. 6/27/12 Suppression Hr'g Tr. (Tr.) 5-9. The plane had flown from Orlando, Florida, to Las Vegas, making six refueling stops along the way—only to return to Florida after only 12 hours on the ground. Pet. App. 3a; *id.* at 55a. The owner of the airplane flying that route had a prior conviction for drug trafficking. *Id.* at 3a. In addition, petitioner, the sole passenger on the plane, had recently crossed into the United States from Tijuana, Mexico, a major drug-trafficking hub. *Ibid.*

AMOC alerted the Midland Police Department (MPD) and the Department of Homeland Security (DHS) to the suspicious flight plan. Pet. App. 2a-4a. It asked the MPD, which had officers at the Midland airport, to perform a regulatory inspection prescribed by Federal Aviation Administration (FAA) regulations that is known as a "ramp check." *Id.* at 2a-3a & n.1; *Id.* at 59a-60a. A ramp check includes a review of licensing documents, a check of FAA records, and an inspection of the plane's exterior. *Ibid.*

Two police officers at the airport responded to the request. The officers learned within moments that the two men who had been on the plane (petitioner and the pilot) had left the airport to purchase food. Pet. App. 4a; Tr. 39. When petitioner and the pilot re-

turned, the MPD officers asked for flight-related documents and identification. Pet. App. 4a. Petitioner and the pilot retrieved the relevant documents from luggage that was then placed on the airplane's wing. *Ibid.* Petitioner and the pilot were also told that they were not free to leave the airport. *Id.* at 12a-13a.

DHS agents arrived at the airport to assist in the investigation and, after conferring with the MPD officers, interviewed petitioner and the pilot. Pet. App. 4a; Tr. 41-42. Petitioner acknowledged that he had just returned to the United States from Tijuana—crossing the border the day before the single-engine plane embarked on a six-stop route from Florida to Las Vegas. Pet. App. 56a; Tr. 28, 32, 43, 48. While DHS agents were present, a drug-detecting dog sniffed the airplane's exterior and the luggage on the wing, but did not alert. Pet. App. 4a; Tr. 22-23, 41-42. Petitioner and the pilot were asked for consent to a search of the airplane and each declined. Pet. App. 4a-5a. As petitioner was refusing consent, he attempted to quickly shut the airplane's open door. *Ibid.*; Tr. 11, 24-27, 41-42, 60.

While inspecting the airplane's exterior, a DHS agent saw through an airplane window a large cardboard box that had been left inside the plane when the other luggage was removed. Pet. App. 5a. The agent questioned petitioner and the pilot separately about the box. While the pilot said that he had seen petitioner load the box into the airplane, petitioner twice denied any knowledge of the box. *Ibid.*; 5/16/12 Search Warrant Aff. 4; Tr. 11-12. Only after petitioner was informed that the pilot had reported seeing petitioner put the box on the plane did petitioner acknowledge that he owned the box. At that point,

petitioner requested an attorney—at which time the interview ended. Pet. App. 5a; Tr. 12, 43.

Around 7:30 p.m., Agent Joshua Howard of United States Immigration and Customs Enforcement arrived at the airport, and, after consulting with the other agents about what had transpired, began the process of seeking a search warrant for the airplane. Agent Howard contacted a federal prosecutor for assistance. After receiving prosecutorial approval to apply for a search warrant, he left the airport at around 9:30 p.m. to prepare the warrant application. Pet. App. 5a-6a, 57a; Tr. 13-14. Agent Howard did a "quick check" to corroborate the information he had received from AMOC, and, after the 20-minute drive to his office, began writing his affidavit in support of a search warrant by 10 p.m. Pet. App. 5a-6a; Tr. 15-16.

The application for a search warrant prepared by Agent Howard noted that petitioner had recently returned from Tijuana, "a notorious border city, known for the presence of large drug trafficking organizations"; described petitioner's strange flight plan within the United States; noted the prior cocaine trafficking conviction of the plane's owner; and described petitioner's suspicious behavior during the "ramp check," including his shifting accounts of the cardboard box inside the plane. 5/16/12 Search Warrant Aff. 4. Agent Howard brought the application to the home of a magistrate judge, who authorized a search warrant following his review of Agent Howard's affidavit around 11:30 p.m. Pet. App. 6a; Tr. 16.

Agent Howard returned to the airport and searched the airplane pursuant to the warrant around midnight. Inside the cardboard box stored on the plane, Agent Howard found 19 sealed bags of mariju-

ana weighing in excess of 10 kilograms. Pet. App. 6a. Two additional bags of marijuana were found in the back of the plane. *Id.* at 58a. Petitioner and the pilot were taken into custody. *Id.* at 6a.

2. A grand jury in the Western District of Texas returned an indictment charging petitioner with possession of marijuana with intent to distribute it, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(D). 12-cr-00153 Docket entry No. 14 (May 23, 2012).

Petitioner moved to suppress the drug evidence, asserting that it was the fruit of his unlawful arrest at the airport. Petitioner argued that law enforcement officers had unlawfully detained him because officers lacked reasonable suspicion for a *Terry* stop and because his detention "ripened into an arrest without probable cause" before the search warrant was obtained. Mot. to Suppress 7-10. Petitioner further argued that the marijuana seized from the airplane was the "product of [his] illegal arrest." *Id.* at 10-12. In addition, he contended that the good-faith doctrine was inapplicable because Agent Howard's affidavit was too conclusory and because reliance on the warrant was unreasonable. *Id.* at 12-14.

Following an evidentiary hearing, the district court denied petitioner's suppression motion. Pet. App. 54a-71a. The court first rejected petitioner's arguments that he had been unlawfully detained during the five-hour period between the beginning of the ramp check and the execution of the search warrant for the airplane. The court concluded that petitioner's detention had been lawful. The stop was lawful at its inception, the court reasoned, because officers were authorized to conduct suspicionless "ramp checks" and because

officers had reasonable suspicion of criminal activity. *Id.* at 59a-60a, 67a.

The district court also rejected petitioner's argument that the duration of his detention made the stop an unlawful arrest. Pet. App. 67a-68a. It found that officers had developed probable cause to believe a drug trafficking crime had occurred in short order—by the time that they "received conflicting answers regarding ownership of the cardboard box" on the airplane. *Id.* at 60a-61a, 65a-68a. It also concluded that "the law enforcement officers acted with as much due diligence as is possible" in obtaining a search warrant. *Id.* at 65a.

The district court next held that even if petitioner's detention amounted to an unlawful arrest, suppression of the marijuana would not be justified. The court first held that suppression would be inappropriate because of the lack of a causal connection between petitioner's continuing detention and the issuance of a search warrant. The suppression hearing had not produced evidence "that any of the[] facts used in the search warrant affidavit were discovered during the latter parts of the detention." Pet. App. 68a. As a result, "even if the detention had been unreasonable in length, the detention could not have served as the basis for suppression because everything necessary for the warrant was acquired prior to it." *Ibid.*

In any event, the district court concluded, the drugs were admissible pursuant to the good-faith exception to the exclusionary rule set out in *United States* v. *Leon*, 468 U.S. 897 (1984). See Pet. App. 68a-70a (rejecting petitioner's arguments that application was "so lacking indicia of probable cause as to render official belief in its existence entirely unreasonable"

and that the warrant was "facially deficient in failing to particularize the place to be searched or things to be seized").

Petitioner pleaded guilty, reserving his right to appeal the denial of his suppression motion. Pet. App. 1a-2a; see Fed. R. Crim. P. 11(a)(2). He was sentenced to five months of imprisonment, to be followed by three years of supervised release. See Gov't C.A. Br. 2.

3. The court of appeals affirmed. Pet. App. 1a-34a. The court first addressed petitioner's challenge to his detention at the airport. It concluded that petitioner's detention had initially been lawful, both because officers were entitled to perform a suspicionless "ramp check" and because they quickly acquired reasonable suspicion that the airplane was being used to transport drugs. *Id.* at 10a-14a. The court found, however, that petitioner's detention ripened into an arrest during the period in which officers were preparing, procuring, and executing the search warrant for the plane. *Id.* at 15a. It further concluded that the arrest was unlawful, determining that the officers, and the district court, were mistaken in finding probable cause to believe that petitioner was involved in a drug-trafficking crime. *Id.* at 17a.

The court of appeals concluded, however, that petitioner was not entitled to suppression of the seized marijuana based on his claim that the drug evidence was the fruit of his unlawfully prolonged detention. The court began by noting that under the good-faith doctrine developed in *Leon*, "evidence obtained during the execution of a warrant later determined to be deficient is nonetheless admissible if the executing officer's reliance on the warrant was objectively reason-

able and made in good faith." Pet. App. 18a (citation omitted). The court noted that its own cases had not "frequented" the question of "whether the good faith exception can permit the admissibility of evidence over a possible taint caused by an earlier-in-time detention in violation of the Fourth Amendment." *Id.* at 19a. It noted that one of its decisions, and some cases in other courts of appeals, had addressed whether the good-faith exception applied if the "probable cause finding" supporting the warrant was "based on evidence that was the product of an illegal search or seizure." See *id.* at 20a-21a (citation omitted) (cataloging cases).

The court of appeals noted, however, that the "possible taint" in petitioner's case was not of this type. Pet. App. 19a-20a & n.3; *id.* at 28a. In petitioner's case, it explained, the search warrant leading to recovery of evidence was procured based on information obtained during the lawful ramp check and investigative detention—not the period of detention for preparation and execution of the warrant. *Id.* at 28a. Because "the evidence relied upon by the affidavit had been uncovered" before the detention became unlawful, "the 'poisoned tree' of improper law enforcement did not cause the discovery of the evidentiary 'fruit' summarized in the affidavit." *Ibid.* The only connection between the recovered evidence and petitioner's extended detention was that officers' conduct "allow[ed] the plane and its occupants still to be at the airport" when the search warrant was executed. *Id.* at 19a n.3.

The court of appeals concluded that petitioner would not be entitled to suppression even assuming poisonous-tree analysis were appropriate because of

this type of connection. Analyzing petitioner's case "*as if* the fruit of the poisonous tree doctrine applies," Pet. App. 20a n.3 (emphasis added), the court drew on cases addressing warrants that relied on illegal information to conclude that the good-faith exception would apply if (1) "the prior law enforcement conduct that uncovered evidence used in the affidavit for the warrant" was "'close enough to the line of validity' that an objectively reasonable officer preparing the affidavit or executing the warrant would believe that the information supporting the warrant was not tainted by unconstitutional conduct"; and (2) the resulting search warrant was "sought and executed by a law enforcement officer in good faith as prescribed by *Leon*." *Id.* at 25a. The court of appeals found that Agent Howard's conduct would satisfy each of these requirements. *Id.* at 28a-34a.

Judge Graves dissented. Pet. App. 34a-53a. While acknowledging that the court found no "clear causal connection between the unconstitutional detention and the acquisition of evidence used to support the search warrant," he believed there was sufficient "causal connection between the unconstitutional detention and the evidence obtained in the search" to warrant a poisonous-tree analysis. *Id.* at 41a. He found that connection because, in his view, some of the evidence used in the warrant was obtained during the time when petitioner was unlawfully detained, *ibid.* (stating that "all of the evidence used in the warrant was not acquired prior to the detention"), and because the detention of "[the] documents, luggage, and airplane" allowed the officers to execute the search warrant, *ibid.*

Judge Graves wrote that he would find the good-faith exception inapplicable. Pet. App. 34a-53a. He read *United States* v. *Woerner*, 709 F.3d 527 (5th Cir.), cert. denied, 134 S. Ct. 146 (2013), to hold that the good-faith exception was inapplicable when a search warrant was the product of an unlawful seizure and the officer who obtained the warrant had been involved in the investigation leading to that seizure. Pet. App. 44a. He also concluded that the good-faith exception should not apply even under the court's standard, because in his view the warrant affidavit was inadequate to justify reliance; the warrant was not adequately particular; and the court was incorrect that petitioner's detention "was close enough to the line of validity" that Agent Howard could have reasonably "believe[d] in the validity of the illegal detention." *Id.* at 53a.

ARGUMENT

Petitioner renews (Pet. 23-33) his challenge to the denial of his suppression motion as "fruit of the poisonous tree." The court of appeals correctly affirmed the denial of that motion, and its decision does not conflict with decisions of this Court or any court of appeals. Further review is unwarranted.

1. The court of appeals correctly affirmed the denial of petitioner's motion to suppress the drugs seized pursuant to search warrant. Under *United States* v. *Leon*, 468 U.S. 897 (1984), suppression of evidence seized pursuant to a search warrant is not justified unless (1) the issuing magistrate was misled by affidavit information that the affiant either "knew was false" or offered with "reckless disregard of the truth"; (2) "the issuing magistrate wholly abandoned his judicial role" and served merely as a "rubber

stamp" for police; (3) the supporting affidavit was "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable"; or (4) the warrant was "so facially deficient—*i.e.*, failing to particularize the place to be searched or things to be seized—that the executing officers could not reasonably presume it to be valid." *Id.* at 923. The courts below rejected petitioner's claims that the officers' conduct fell within exceptions set out in *Leon*, see Pet. App. 29a-32a, and petitioner does not now challenge that conclusion.

Petitioner is not entitled to relief under a further exception to the good-faith rule recognized by certain courts for cases in which a search warrant was issued based on information that was itself the product of a constitutional violation. See Pet. App. 22a-23a, 28a. The search warrant in petitioner's case would not implicate any such exception, because, as the court of appeals noted, "the 'poisoned tree' of improper law enforcement did not cause the discovery of the evidentiary 'fruit' summarized in the [search warrant] affidavit." *Id.* at 28a; see also *id.* at 68a (district court's factual determination that suppression hearing had not produced evidence "that any of the[] facts used in the search warrant affidavit were discovered during the latter parts of the detention"). While officers did obtain information from petitioner that they used in seeking a search warrant, they obtained that information during the permissible "ramp check" and *Terry* stop portions of petitioner's detention. See *id.* at 8a-15a.

Segura v. *United States*, 468 U.S. 796 (1984), makes clear that suppression is not appropriate based on the alternative "possible taint" that the seizure

"allow[ed] the plane and its occupants still to be at the airport for the midnight warrant to be executed." Pet. App. 19a n.3.[1] In *Segura*, officers illegally entered a home without a warrant and remained there for 19 hours before obtaining and executing a search warrant for the premises. In considering a motion to suppress the drug evidence recovered pursuant to the warrant, this Court found suppression inappropriate based on the type of "taint" hypothesized by the court below—that the illegal seizure prevented evidence from being removed or destroyed prior to execution of the warrant. See 468 U.S. at 815. The Court declined to find a causal connection between the illegal seizure and the discovery of the drugs, because it rejected the assumption that the drug evidence would have been moved beyond the reach of the warrant were it not for the illegal seizure that kept it in place. *Id.* at 816. In any event, the court concluded that a causal connection of this type would be too attenuated to justify application of the poisonous-tree doctrine, because

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[1] Because petitioner challenged *his* detention, not the detention of the airplane, petitioner's case does not involve even this causal connection. Petitioner pressed below, and continues to advance here, a claim that "Agent Howard violated [his] constitutional rights by detaining *him* for hours without probable cause." Pet. 32-33 (emphasis added); Mot. to Suppress 4-10 (contending that petitioner was illegally detained); *id.* at 10-14 (contending that search warrant was "the product of an illegal arrest"); Pet. C.A. Br. 7-18 (contending that suppression was appropriate because petitioner "was searched and seized despite a lack of probable cause for arrest"). But it was the detention of the airplane from which the drugs were recovered—not petitioner's detention—that prevented the drug evidence from being removed or destroyed before execution of the search warrant. And petitioner presented no evidence that the officers would have allowed the airplane to depart while they were seeking a warrant to search it.

doing so would amount to recognizing a constitutional interest in the destruction of evidence. *Ibid.* *Segura* undercuts any contention that drug evidence recovered pursuant to warrant is "tainted" by an unlawful detention simply because that detention prevented petitioner from destroying evidence or moving it out of the jurisdiction.

2. No disagreement exists among courts of appeals concerning whether suppression is required for evidence recovered pursuant to warrant when an unlawful detention prevented the evidence from being destroyed or removed. Several courts have suppressed evidence when warrants were themselves issued in reliance on illegally obtained evidence—albeit in decisions that predate this Court's most recent cases elucidating the contours of the good-faith doctrine.[2] See

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[2] Most relevantly, *Herring* v. *United States*, 555 U.S. 135 (2009), for the first time applied the good-faith doctrine to authorize the admission of evidence obtained as a result of a negligent constitutional violation by police officers. *Id.* at 147-148; see Claire A. Nolasco, Rolando V. del Carmen & Michael S. Vaughn, *What* Herring *Hath Wrought: An Analysis of Post-*Herring *Cases in the Federal Courts*, 38 Am. J. Crim. L. 221, 223 (2011) ("Prior to *Herring*, no case extended the good-faith exception to illegal searches and seizures by police officers made in reliance on mistakes or errors of other law enforcement officers or staff, regardless of the nature and character of these errors."). *Herring* undercuts the reasoning of the cases finding the good-faith doctrine categorically inapplicable where a warrant affidavit was obtained based in part on illegally obtained information, because those cases generally relied heavily on the principle that the good-faith doctrine applied only where the officers relied on a third-party's judgment in violating the Fourth Amendment. See, *e.g.*, *State* v. *DeWitt*, 910 P.2d 9, 14-15 (Ariz. 1996); *United States* v. *Scales,* 903 F.2d 765, 767-768 (10th Cir. 1990); *United States* v. *Vasey*, 834 F.2d 782, 789 (9th Cir. 1987). Most of the courts whose decisions

United States v. *McGough*, 412 F.3d 1232, 1240 (11th Cir. 2005) (search warrant relying on evidence seen during illegal apartment entry); *United States* v. *Scales*, 903 F.2d 765, 767-768 (10th Cir. 1990) (search warrant relying on evidence from dog sniff following illegal luggage seizure); *United States* v. *Wanless*, 882 F.2d 1459, 1466-1467 (9th Cir. 1989) (search warrant relying on evidence from illegal car search); *United States* v. *Vasey*, 834 F.2d 782, 789-790 (9th Cir. 1987) (same); *State* v. *DeWitt*, 910 P.2d 9, 12-15 (Ariz. 1996) (search warrant relying on evidence obtained during illegal home entry); *People* v. *Machupa*, 872 P.2d 114-124 (Cal. 1994) (same); *State* v. *Johnson*, 716 P.2d 1288, 1301 (Idaho 1986) (same).[3]

Several other courts have declined to hold the good-faith doctrine categorically inapplicable to seizures made pursuant to such warrants. *United States* v. *Cannon*, 703 F.3d 407, 413 (8th Cir.) ("We have applied *Leon* where, as here, the search warrant application cites information gathered in violation of the Fourth Amendment.") (citations omitted), cert. denied, 133 S. Ct. 2375 (2013); *United States* v. *McClain*, 444 F.3d 556, 559 (6th Cir. 2005) (applying good-faith doctrine where officers obtained a search warrant that relied in part on information from prior illegal search by different officers), cert. denied, 549 U.S. 1030

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petitioner invokes have not yet had the opportunity to consider their approach in light of *Herring*.

[3] *United States* v. *Cos*, 498 F.3d 1115, 1132-1133 (10th Cir. 2007) and *United States* v. *Herrera*, 444 F.3d 1238, 1246 (10th Cir. 2006), which petitioner cites in a footnote (Pet. 18 n.1), are inapposite because they declined to apply the good-faith doctrine to evidence seized during *warrantless* searches. See *Herrera*, 444 F.3d at 1248-1255; *Cos*, 498 F.3d at 1133.

(2006); *United States* v. *Diehl*, 276 F.3d 32, 44-45 (1st Cir.) (declining to "apply the exclusionary rule as a sanction" where warrant was issued in reliance on illegally obtained information because "the agent's conduct was neither intentionally misleading nor reckless"), cert. denied, 537 U.S. 834 (2002); *United States* v. *Thomas*, 757 F.2d 1359, 1368 (2d Cir.) (applying good-faith doctrine where warrant was issued in reliance on evidence from illegal canine sniff), cert. denied, 474 U.S. 819 (1985), and 479 U.S. 818 (1986)).

This disagreement is not implicated here, however, because the evidence used to obtain the search warrant at issue was not the fruit of petitioner's illegal detention. See Pet. App. 28a; see also *id.* at 68a. And while the court of appeals posited that there might be some causal connection between the challenged detention and the recovered drugs because the detention ensured the drugs were still present when the warrant was executed, the cases on which petitioner relies do not suppress evidence based on a connection of this type. Instead, a number of appellate courts have found a causal connection of this type insufficient to trigger a poisonous-tree analysis, relying on *Segura.* See *United States* v. *Etchin*, 614 F.3d 726, 731, 734 (7th Cir. 2010) (relying on *Segura* to deny suppression where police officers unlawfully entered apartment, "securing the area to preserve the status quo while another officer applied for a search warrant"), cert. denied, 131 S. Ct. 953 (2011); *United States* v. *Carrion*, 809 F.2d 1120, 1128-1129 (5th Cir. 1987) (denying suppression on ground that even if "agents' entry into and their limited security search of [defendant's] hotel quarters violated the [F]ourth [A]mendment * * * [t]he evidence later seized upon execution of the

search warrant was admissible against [the defendant] under" *Segura*); *United States* v. *Silvestri*, 787 F.2d 736 (1st Cir. 1986) (denying suppression where officers illegally "entered and secured" property containing marijuana while search warrant was obtained), cert. denied, 487 U.S. 1233 (1988).

Petitioner is mistaken to propose (Pet. 22) that his case could nevertheless be used to resolve the disagreement concerning warrants based on illegally obtained information—on the theory that the court below understood petitioner's case as involving "the interaction of the doctrine of the fruit of the poisonous tree with *Leon's* good-faith exception." First, petitioner's understanding of the decision below is incorrect. While the court below found it easiest to dispose of this case by addressing petitioner's claims "*as if* the fruit of the poisonous tree doctrine applies," Pet. App. 19a n.3 (emphasis added), it did not actually hold the poisonous-tree doctrine *does* apply where, as here, an illegal detention merely prevented the destruction or removal of particular evidence.

Second, even if detentions of this type triggered a poisonous-tree analysis of some kind, petitioner's case would be an inappropriate vehicle for addressing the conflicting authority in the distinct context in which a warrant is procured based on illegally obtained information. This Court has not taken a one-size-fits-all approach in applying the poisonous-tree and good-faith doctrines. Rather, in deciding whether to apply an exclusionary remedy, this Court has considered the degree of attenuation between a constitutional violation and challenged evidence, see, *e.g.*, *Hudson* v. *Michigan*, 547 U.S. 586, 592 (2006) ("[B]ut-for cause, or 'causation in the logical sense alone,' * * * can be

too attenuated to justify exclusion.") (citations omitted), as well as the costs and benefits of an exclusionary sanction under the circumstances presented, see, *e.g.*, *id.* at 594-599; *Herring*, 555 U.S. at 137. Given this framework, a decision here would not necessarily resolve a disagreement concerning the distinct set of cases in which the warrant invoked by officers depended on illegally obtained information.

3. This case would in any event be a poor vehicle for consideration of the question presented because the judgment below may be affirmed on alternative grounds—adopted by the magistrate judge and district court—without reaching the question presented. See *Schiro* v. *Farley*, 510 U.S. 222, 228-229 (1994) (noting respondent may "rely on any legal argument in support of the judgment below"); accord *Bennett* v. *Spear*, 520 U.S. 154, 166-167 (1997); *Washington* v. *Confederated Bands and Tribes of the Yakima Indian Nation*, 439 U.S. 463, 476 n.20 (1979). As both the magistrate judge and district court found, Pet. App. 6a-7a, 61a, 62a-63a, law enforcement agents' detention of the airplane here was permissible because the detention was supported by probable cause. See, *e.g.*, *United States* v. *Place*, 462 U.S. 696 (1983). The probable cause standard requires only "a reasonable ground for belief of guilt, * * * particularized with respect to the person to be searched or seized." *Maryland* v. *Pringle*, 540 U.S. 366, 371 (2003) (internal quotation marks and citations omitted). Where, as here, a magistrate judge has issued a warrant based on a finding of probable cause, his determination should receive "great deference by reviewing courts." *Illinois* v. *Gates*, 462 U.S. 213, 236 (1983) (citation omitted).

The magistrate judge (and district court) properly concluded that probable cause was established here. First, petitioner's travel route was quite suspicious. Petitioner's route began in Tijuana, Mexico, a drug trafficking hub. The day after petitioner crossed the border from Tijuana into California, the single-engine plane on which petitioner was eventually stopped flew from Florida to Las Vegas—a journey requiring six refueling stops along the way. Then, after only 12 hours on the ground in Las Vegas, that plane began flying the same laborious route back to Florida—this time with petitioner on board. It was reasonable for law enforcement agents to suspect that the reason why petitioner elected to get from Tijuana to Florida using a small plane that departed from Las Vegas and had to make six stops for refueling along the way was to avoid the screenings for drugs and contraband associated with commercial air travel. See Pet. App. 66a-67a (noting petitioner's "suspicious behavior" of "traveling a lengthy distance after entering into the United States to get to his chartered aircraft when there were airports in Southern California where [petitioner] reentered the country").

Other evidence strengthened the inference that this journey was part of a drug-trafficking scheme. The registered owner of the small aircraft on which petitioner flew had previously been convicted of drug trafficking. Pet. App. 66a. And the inference of drug-trafficking was further supported by petitioner's conduct at the airport, where he abruptly sought to shut the aircraft's door after refusing consent to a search and falsely denied any knowledge of a large cardboard box that he eventually admitted belonged to him. *Id.* at 56a-57a. These facts amply support the findings of

probable cause. And the availability of this alternative ground for affirmance—which was adopted by the magistrate judge and district court—makes this case an inappropriate one in which to reach any question concerning the applicability of the good-faith exception.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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