No. 14-1313

In the Supreme Court of the United States

HENRY STEPHENS, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether evidence obtained from the warrantless installation and use of a Global Positioning System (GPS) tracking device attached to petitioner's car was admissible under the good-faith exception to the exclusionary rule.

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OPINION BELOW

The opinion of the court of appeals (Pet. App.3a-41a) is reported at 764 F.3d 327.

JURISDICTION

The judgment of the court of appeals was entered on August 19, 2014. A petition for rehearing was denied on December 2, 2014 (Pet. App. 1a). On February 23, 2015, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including April 1, 2015. On March 19, 2015, the Chief Justice further extended the time to May 1, 2015, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the District of Maryland, petitioner

was convicted of possessing a firearm and ammunition after having been convicted of a felony, in violation of 18 U.S.C. 922(g)(1). The district court sentenced petitioner to 70 months of imprisonment, to be followed by three years of supervised release. The court of appeals affirmed. Pet. App. 3a-25a.

1. In 2011, the Baltimore police investigated petitioner for his involvement in possible firearms and drug crimes based on information from a registered confidential informant. Pet. App. 4a-5a. Based on a photograph, the informant identified petitioner as a man whom the informant knew as "Henry." Gov't C.A. Br. 3. The informant told the police that petitioner drove a silver Chrysler 300 vehicle; provided the vehicle's license plate number; and told the police that petitioner was trafficking cocaine from Baltimore to West Virginia. *Ibid.* The informant also told the officers that petitioner worked at a nightclub called "Club Unite," wore a bulletproof vest, and carried a firearm. *Ibid.* Investigators determined that petitioner had previously been convicted of armed robbery in Georgia and had been convicted of felony distribution or conspiracy to distribute crack cocaine in West Virginia. *Ibid.*; Pet. C.A. Br. 4. The investigation that ensued examined petitioner's role in both state and federal crimes. Pet. App. 24a.

Baltimore police officer Paul Geare, a deputized agent of the Bureau of Alcohol, Tobacco, Firearms and Explosives and a member of a state-federal task force focused on state and federal drug-trafficking offenses in the Baltimore area, led the task force's investigation of petitioner. Pet. App. 5a. Based on information provided by the informant, the police located petitioner's vehicle at the apartment-complex

address in Parkville, Maryland, indicated on the vehicle's registration. Gov't C.A. Br. 3.[1] On March 9, 2011, Officer Geare used a drug-detection dog on the exterior of the vehicle while it was parked in the complex's public parking lot. *Id.* at 5. The dog alerted to the presence of contraband in the vehicle. *Ibid.* On or about March 20, 2011, Officer Geare placed a Global Positioning System (GPS) device on petitioner's vehicle without a warrant. Pet. App. 5a n.1; Gov't C.A. Br. 5. On April 12, 2011, the GPS device was removed. Gov't C.A. Br. 5; see Pet. App. 5a n.1. No information obtained from that period of GPS monitoring supported the firearms conviction at issue in this case.[2]

On May 13, 2011, Officer Geare again installed a GPS tracking device on petitioner's vehicle without a warrant while the vehicle was parked in a public lot at petitioner's apartment complex. Pet. App. 5a; Gov't C.A. Br. 6. Officer Geare separately obtained information that petitioner would be working as security at Club Unite on May 16. Pet. App. 5a. The officer developed a plan to detain and search petitioner on that date at the nightclub. *Id.* at 5a-6a.

On May 16, Officer Geare used the GPS device to track petitioner to a school, then back to petitioner's apartment complex. Pet. App. 6a. When petitioner

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[1] The vehicle was registered to Aleisha Stephens, who investigators determined was serving overseas in the military at the time. Gov't C.A. Br. 3. It is undisputed that petitioner was the sole operator of the vehicle at all times relevant here. *Id.* at 3 n.1.

[2] Before the GPS device was utilized, investigators had already determined the location of petitioner's vehicle and learned of petitioner's work at Club Unite. Information obtained from the GPS device from March 20 to April 12 showed that petitioner's vehicle had traveled multiple times from Baltimore to an area in West Virginia. Gov't C.A. Br. 5; Pet. C.A. Br. 6-7.

left his apartment and approached his vehicle, Officer Geare and another Baltimore police officer observed petitioner reach around to the back of his waistband. *Ibid.* Both officers concluded that petitioner was carrying a firearm and that he had reached into his waistband to conduct a "security check" of the weapon. *Ibid.*; Gov't C.A. Br. 7. The court of appeals later concluded that, at that point, "the officers 'had at least reasonable suspicion, if not probable cause, that [petitioner] was armed.'" Pet. App. 6a (citation omitted).

As petitioner drove away, Officer Geare instructed other officers to proceed to Club Unite. Gov't C.A. Br. 7. Officer Geare followed petitioner using visual observation and the GPS device. Pet. App. 6a. When petitioner arrived at Club Unite, the police officers who had arrived earlier approached petitioner and conducted a pat down, revealing an empty holster at the middle of petitioner's back. *Ibid.* A K-9 unit at the scene subsequently alerted at petitioner's vehicle, which the officers proceeded to search. *Ibid.* The officers discovered the loaded pistol that would later form the basis for petitioner's federal firearms conviction. See *ibid.* The officers did not arrest petitioner for that federal offense, however, but instead arrested and detained petitioner for one or more state-law offenses. *Ibid.*

2. Approximately three months after petitioner's arrest by the Baltimore police on state charges, a federal grand jury indicted petitioner for the federal firearms offense that is presently at issue. Pet. App. 6a-7a. While petitioner's federal case was pending, this Court issued its decision in *United States* v. *Jones*, 132 S. Ct. 945 (2012), which held that the installation and use of a GPS device to monitor a vehicle's

movements constitutes a "search" under the Fourth Amendment. *Id.* at 949. After deciding that threshold question, the Court in *Jones* declined to resolve whether reasonable suspicion or probable cause would render the warrantless installation and use of a GPS tracking device on a vehicle a "reasonable" Fourth Amendment search. *Id.* at 954.

Petitioner moved to suppress the firearm and other evidence that had been seized on May 16. Pet. App. 7a. The district court denied that motion. *Ibid.* The district court concluded that the warrantless use of the GPS device was an unconstitutional search that led to the seizure of the challenged evidence. *Ibid.* The court held, however, that the good-faith exception to the exclusionary rule applied. *Id.* at 7a-8a. Petitioner entered a conditional guilty plea that reserved his right to appeal the suppression order. *Id.* at 8a.

3. a. The court of appeals affirmed. Pet. App. 3a-25a. The court declined to resolve the government's argument that Officer Geare's use of the GPS device was lawful, explaining that the government had conceded in district court that the search was unlawful under *Jones*. *Id.* at 16a & n.8. The court instead held that the good-faith exception to suppression applied because the GPS search at issue had been "conducted in objectively reasonable reliance on binding appellate precedent." *Id.* at 4a (quoting *Davis* v. *United States*, 131 S. Ct. 2419, 2423-2424 (2011)).

The court of appeals explained that, at the time of the search, this Court's decision in *United States* v. *Knotts*, 460 U.S. 276 (1983), had been "considered to be the 'foundational Supreme Court precedent for GPS-related cases.'" Pet. App. 10a, 13a (citation omitted). The court of appeals explained that, in *Knotts*,

this Court had rejected a Fourth Amendment challenge to law-enforcement "use of a beeper"—"the technological forerunner to the GPS"—to track a vehicle on public roads. *Id.* at 10a-11a. That holding was premised on the *Knotts* Court's view that "the use of the beeper was not a search under the Fourth Amendment." *Id.* at 10a.

"Based on *Knotts*," the court of appeals recounted, "several federal appellate courts held before 2011 that the warrantless use of a GPS to track the location of a vehicle did not necessarily violate the Fourth Amendment." Pet. App. 13a. In addition, in 2008, the Maryland Court of Special Appeals had held based on *Knotts* that "warrantless GPS usage was permissible under the Fourth Amendment." *Id.* at 14a-15a (discussing *Stone* v. *State*, 941 A.2d 1238, 1249-1251 (Md. App. 2008)). The court of appeals explained that, until *Jones* altered the legal landscape, the "legal principle of *Knotts*" was thus "'widely and reasonably understood'" to apply directly to the GPS context. *Id.* at 22a-23a (citation omitted). In light of those decisions, the court concluded, the good-faith exception to the exclusionary rule applied because "Officer Geare's use of the GPS was objectively reasonable" in light "of the binding appellate precedent of *Knotts*." *Id.* at 22a. A "reasonably well-trained officer in this Circuit," the court concluded, "could have relied on *Knotts* as permitting the type of warrantless GPS usage in this case" because "no contrary guidance from the Supreme Court or [the court of appeals]" existed at the time. *Id.* at 23a.

The court of appeals explained that its holding was supported by *Kelly* v. *State*, 82 A.3d 205 (Md. 2013), cert. denied, 135 S. Ct. 401 (2014). Pet. App. 23a-24a.

In *Kelly*, Maryland's highest court had stated that, if the question had come before it in 2008, "it would have applied *Knotts* like the [Maryland] Court of Special Appeals had done in *Stone*," *i.e.*, by concluding that warrantless "GPS tracking of a vehicle on public streets" was lawful. *Id.* at 15a-16a. To hold that "a Maryland officer's use of the GPS was objectively unreasonable" before *Jones*, the court of appeals explained, would "ignore the clear pre-*Jones* state of the law in Maryland" and "make a mockery of the good-faith inquiry." *Id.* at 24a.

b. Judge Thacker dissented. Pet. App. 26a-41a. Judge Thacker expressed the view that the only "[b]inding appellate precedent" that can justify application of the good-faith exception in the Fourth Circuit is a published opinion of the Fourth Circuit itself or of this Court. *Id.* at 32a. Judge Thacker found no such precedent here because *Knotts* and other decisions were distinguishable and neither the Fourth Circuit nor this Court had expressly upheld as lawful the warrantless use of a GPS tracking device. *Id.* at 32a-35a.

ARGUMENT

Petitioner challenges (Pet. 9-14) the court of appeals' holding that evidence obtained through the warrantless use of a GPS device to track his vehicle in 2011 was admissible under the good-faith exception to the exclusionary rule. The court of appeals correctly applied that exception because the local Maryland police officers who used the device acted in objectively reasonable reliance on binding appellate precedent, including a 2008 Maryland appellate decision specifically authorizing such GPS tracking. The Fourth Circuit's decision does not conflict with any decision of

this Court, any other court of appeals, or any state court of last resort. This Court has denied several certiorari petitions presenting similar good-faith questions in the context of GPS tracking devices.[3] The same result is warranted here.

1. a. The exclusionary rule is a "'judicially created remedy'" designed for the sole purpose of "deter[ring] police misconduct" that violates the Fourth Amendment. *United States* v. *Leon*, 468 U.S. 897, 906, 916 (1984) (citation omitted); see *Davis* v. *United States*, 131 S. Ct. 2419, 2426 (2011). The rule "applies only where it 'result[s] in appreciable deterrence,'" *Herring* v. *United States*, 555 U.S. 135, 141 (2009) (brackets in original) (quoting *Leon*, 468 U.S. at 909), and therefore permits "the harsh sanction of exclusion only when [police practices] are deliberate enough to yield 'meaningfu[l]' deterrence, and culpable enough to be 'worth the price paid by the justice system.'" *Davis*, 131 S. Ct. at 2429 (second brackets in original) (quoting *Herring*, 555 U.S. at 144); see *Herring*, 555 U.S. at 140 ("exclusion 'has always been our last resort'") (citation omitted). Suppression therefore is warranted "only if it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment." *Leon*, 468 U.S. at 919 (citation omitted). If "law enforcement officers have acted in objective good faith," the exclu-

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[3] See, *e.g.*, *Katzin* v. *United States*, 135 S. Ct. 1448 (2015) (No. 14-7818); *Brown* v. *United States*, 135 S. Ct. 1031 (2015) (No. 14-237); *Fisher* v. *United States*, 135 S. Ct. 676 (2014) (No. 14-5207); *Smith* v. *United States*, 135 S. Ct. 704 (2014) (No. 13-10424); *Aguiar* v. *United States*, 135 S. Ct. 400 (2014) (No. 13-10076); *Sparks* v. *United States*, 134 S. Ct. 204 (2013) (No. 12-10957).

sionary rule does not apply because suppression "cannot be expected, and should not be applied, to deter objectively reasonable law enforcement activity." *Id.* at 908, 919-920; accord *Davis*, 131 S. Ct. at 2427-2429.

This Court has applied the good-faith exception "across a range of cases," including to searches conducted "in objectively reasonable reliance on binding appellate precedent." *Davis*, 131 S. Ct. at 2428, 2834. A search conducted in objectively reasonable reliance on a prior precedent of a governing appellate court is "not subject to the exclusionary rule," even if that precedent is subsequently overturned, because "suppression would do nothing to deter police misconduct in these circumstances, and because it would come at a high cost to both the truth and the public safety." *Id.* at 2423-2424. This Court in *Davis* thus declined to suppress evidence from a 2007 vehicle search of the sort that had been deemed lawful under then-existing court of appeals precedent, even though the Court in *Arizona* v. *Gant*, 556 U.S. 332 (2009), later held that type of search to be unconstitutional. 131 S. Ct. at 2425, 2428-2429.

As the court below correctly held, suppression is not justified in this case because the Maryland officer acted in objectively reasonable reliance on binding appellate precedent when he installed and used a GPS device to track petitioner's vehicle in 2011.[4] In *United*

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[4] Like the court of appeals, this brief assumes *arguendo* that the GPS tracking in this case constituted an unlawful search. See Pet. App. 8a. Although the government argued on appeal that the GPS tracking of petitioner's vehicle was lawful because officers had reasonable suspicion of criminal activity, the court of appeals declined to address that argument because the government had conceded in district court that the search was not lawful. *Id.* at 16a n.8.

States v. *Jones*, 132 S. Ct. 945 (2012), this Court held that "the Government's installation of a GPS device on a target's vehicle, and its use of that device to monitor the vehicle's movements, constitutes a 'search.'" *Id.* at 949 (footnote omitted). The Court explained that the determination whether a "search" has occurred should be evaluated not only by the reasonable-expectation-of-privacy test established in *Katz* v. *United States*, 389 U.S. 347 (1967), but also by a distinct test based on physical trespass principles. 132 S. Ct. at 949-953. Before *Jones*, however, the local Maryland officer who tracked petitioner's location using a GPS device would have reasonably relied on binding Supreme Court and Maryland precedent to conclude that the installation and use of a GPS device to monitor the location of petitioner's car on public roadways was not a search under the Fourth Amendment.

First, this Court's decisions furnished binding appellate precedent on which Officer Geare could have reasonably relied. In *United States* v. *Knotts*, 460 U.S. 276 (1983), the Court explained that, under the *Katz* framework, the determination whether an intrusion constitutes a search under the Fourth Amendment "cannot turn on the presence or absence of a physical intrusion into any given enclosure," but instead depends on whether the intrusion invaded an individual's reasonable expectation of privacy. *Id.* at 280-281 (citation omitted). Applying that framework, the *Knotts* Court concluded that the use of a radio-based tracking device inside a chemical container to track the location of a defendant's car on public roads did not constitute a search under the Fourth Amendment because "[a] person traveling in an automobile

on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another." *Id.* at 277, 281.

In *United States* v. *Karo*, 468 U.S. 705 (1984), the Court reaffirmed that framework. The Court again stated that the determination whether a search was a Fourth Amendment intrusion turned on an analysis of privacy interests, rather than an analysis of trespass. *Id.* at 712-713 ("The existence of a physical trespass is only marginally relevant to the question of whether the Fourth Amendment has been violated * * * for an actual trespass is neither necessary nor sufficient to establish a constitutional violation."). Based on its assessment of privacy expectations, the Court concluded that police officers did conduct a search for Fourth Amendment purposes when they used a beeper device to monitor the location of a container within private residences. *Id.* at 714. In doing so, however, the Court did not cast doubt on *Knotts*' holding with respect to the use of devices to track movements on public roadways. *Id.* at 714-715. Rather, the Court distinguished *Knotts* as involving the monitoring of movements already subject to public observation by the naked eye. *Id.* at 713-714; see also *id.* at 707.

Second, *Stone* v. *State*, 941 A.2d 1238 (Md. App. 2008), provided the local Maryland officer in this case with binding appellate precedent that specifically authorized the warrantless utilization of a GPS device. The court in *Stone* held that a GPS tracking device installed on a vehicle by officers is "simply the next generation of tracking science and technology from the radio transmitter 'beeper' in *Knotts*," and that, "[u]nder *Knotts*, the use of the GPS device [to track a vehicle on public roads] could not be a Fourth Amend-

ment violation" because defendants have no "reasonable expectation of privacy in their location as they travel[] on public thoroughfares." *Id.* at 1250; see *id.* at 1244, 1249-1251.

The Baltimore officer in this case, who installed and used a GPS device in Maryland to track petitioner's vehicle in 2011 in the course of the investigation of petitioner's state and federal offenses, arrested petitioner for one or more offenses under Maryland state law, not federal law. Pet. App. 6a-7a, 24a. A well-trained state officer in his position would have reasonably concluded that the logic of *Knotts* applied directly to the use of a GPS device. The officer also would have known that the Maryland Court of Special Appeals' decision in *Stone*, which construed *Knotts* in exactly that manner, was a binding precedent for Maryland officers that specifically addressed—and authorized—the warrantless use of a GPS device. Such reliance on *Knotts* and *Stone* was objectively reasonable at the time. See, *e.g.*, *Kelly* v. *State*, 82 A.3d 205, 216 (Md. 2013) (explaining that, before *Jones*, Maryland's highest court would have also applied *Knotts* in the same manner as the appellate court in *Stone* "to resolve the question of the constitutionality of GPS tracking of a vehicle on public roads"), cert. denied, 135 S. Ct. 401 (2014). In light of this Court's pre-*Jones* decisions and *Stone*, the officer here acted "in objectively reasonable reliance on binding appellate precedent," *Davis*, 131 S. Ct. at 2434, in concluding that the use of GPS-based tracking devices to monitor the location of petitioner's car was not a search for Fourth Amendment purposes. And because the good-faith exception turns on "'the objectively ascertainable question whether a reasonably well

trained officer would have known that the search was illegal' in light of 'all of the circumstances,'" *Herring*, 555 U.S. at 145 (quoting *Leon*, 468 U. S. at 922 n.23), the court of appeals correctly concluded that suppression of evidence obtained from the GPS tracking here is not justified.

b. Petitioner contends (Pet. 13-14) that the Fourth Circuit's decision is inconsistent with this Court's good-faith decision in *Davis* because this Court's pre-*Jones* decisions in *Knotts* and *Karo* did not "specifically *authorize*[]" warrantless GPS tracking. The court below, however, did not rely exclusively on *Knotts* and *Karo*. The court found the use of a GPS tracker in this case to be objectively reasonable in light of the decisional law interpreting *Knotts*, including the Maryland Court of Special Appeals' 2008 decision in *Stone*. See Pet. App. 14a-15a. And, as discussed above (at 11-12), the court in *Stone* specifically held that the warrantless use of a GPS tracking device was lawful under the governing principles in *Knotts*. At least in the absence of any contrary decision by the Maryland Court of Appeals or by the relevant federal appellate courts (this Court and the Fourth Circuit), a well-trained Maryland officer would have known in 2011 that *Stone* was binding appellate precedent in Maryland. Petitioner simply ignores *Stone* and identifies no basis for disputing that state officers in Maryland would reasonably have followed that binding state-court precedent.

For that reason, petitioner's contention (Pet. 13) that this Court's decisions in *Knotts* and *Karo* were insufficiently specific to warrant application of the good-faith exception is misplaced. Regardless of the level of decisional specificity that might be required

under *Davis*, *Stone* would satisfy that test because it specifically authorizes warrantless GPS tracking. Moreover, petitioner's contention (Pet. 13) that *Knotts* and *Karo* are sufficiently different because they involved beepers, not GPS devices, fails to grapple with the analysis in those cases that a reasonable officer (or court) would have understood as extending to the GPS context. See pp. 10-11, *supra*. Indeed, with respect to short term tracking like that at issue here (three days), every court of appeals to have addressed the question before *Jones* concluded that the warrantless use of a GPS device to track a vehicle on public streets was lawful under *Knotts*. See Pet. App. 13a-14a (citing cases).

Petitioner contends (Pet. 14, 24) that the pre-*Jones* consensus was "unsettled" by the D.C. Circuit's decision in *United States* v. *Maynard*, 615 F.3d 544 (2010), aff'd *sub nom. United States* v. *Jones*, 132 S. Ct. 945 (2012). *Maynard*, however, does not undermine the objective reasonableness of relying on *Knotts* and *Karo* in this case. The court in *Maynard* did not apply the trespass analysis that this Court later relied upon in *Jones*. The D.C. Circuit instead distinguished *Knotts* on the ground that *Knotts* did not address whether "prolonged" tracking would constitute a Fourth Amendment search. *Id.* at 556-558. The D.C. Circuit concluded that *Knotts* was not controlling because the officers in *Maynard* had used a GPS device not merely to "track [the defendant's] 'movements from one place to another,' but rather to track [his] movements 24 hours a day for 28 days * * * , thereby discovering the totality and pattern of his movements from place to place to place." *Id.* at 558 (citation omitted). The much more limited use of the GPS

device here, which was installed on petitioner's vehicle only three days before petitioner's arrest (see Pet. App. 5a-6a), is consistent with *Maynard*'s understanding of *Knotts*.[5]

2. Petitioner contends (Pet. 14-21) that the decision below conflicts with decisions of other courts of appeals and state courts because the Fourth Circuit applied the good-faith exception based on an officer's reliance on "precedent involving a different police practice or arising outside the jurisdiction." Pet. 15. Petitioner identifies no relevant division of authority, much less a division of authority warranting this Court's review.

First, every federal court of appeals to have addressed the issue has concluded that binding appellate precedent need not specifically address warrantless GPS tracking in order to establish a good-faith basis for such tracking. Those courts have held that, before *Jones*, a law-enforcement officer would have reasonably relied on *Knotts*, *Karo*, and other pre-GPS precedents to conclude that warrantless GPS tracking was lawful. See, *e.g.*, *United States* v. *Sparks*, 711 F.3d 58, 65-67 (1st Cir.), cert. denied, 134 S. Ct. 204 (2013) (No. 12-10957); *United States* v. *Aguiar*, 737 F.3d 251, 261-262 (2d Cir. 2013), cert. denied, 135 S. Ct. 400 (2014) (No. 13-10076); *United States* v. *Katzin*, 769 F.3d 163, 173-177 (3d Cir. 2014) (en banc), cert. denied, 135 S. Ct. 1448 (2015) (No. 14-7818); *United States* v. *An-*

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[5] Officer Geare had previously attached a GPS device to petitioner's vehicle in March 2011. But that GPS device was removed more than a month before the tracking at issue here, and none of the information obtained from that earlier use of a GPS device is relevant to the firearms conviction at issue in this case. See p. 3 & n.2, *supra*.

dres, 703 F.3d 828, 834-835 (5th Cir.), cert. denied, 133 S. Ct. 2814 (2013) (No. 12-10176); *United States* v. *Fisher*, 745 F.3d 200, 203-206 (6th Cir.), cert. denied, 135 S. Ct. 676 (2014) (No. 14-5207); *United States* v. *Robinson*, 781 F.3d 453, 459 (8th Cir. 2015); *United States* v. *Pineda-Moreno*, 688 F.3d 1087, 1090-1091 (9th Cir. 2012), cert. denied, 133 S. Ct. 994 (2013) (No. 12–7799); *United States* v. *Smith*, 741 F.3d 1211, 1221-1225 (11th Cir. 2013), cert. denied, 135 S. Ct. 704 (2014) (No. 13-10424).[6] Cf. *United States* v. *Brown*, 744 F.3d 474, 476-478 (7th Cir. 2014) (holding, based on *Knotts* and *Karo*, that GPS tracking using a device installed with vehicle owner's consent fell within the good-faith exception), cert. denied, 135 S. Ct. 1031 (2015) (No. 14-237).

Petitioner contends (Pet. 17-18) that the Ninth Circuit in *Pineda-Moreno* and the Eighth Circuit in *United States* v. *Barraza-Maldonado*, 732 F.3d 865 (2013), relied on earlier circuit precedents that "specifically authorized" GPS tracking. Even if petitioner's reading of those decisions were correct, those rulings would not conflict with the decision in this case because they do not *reject* good-faith reliance on the type of binding precedents at issue here. In any event, petitioner misreads *Pineda-Moreno* and *Barraza-Maldonado*.

The court in *Pineda-Moreno* relied on prior Ninth Circuit precedents that involved beeper devices rather than GPS tracking. 688 F.3d at 1090 (discussing *United States* v. *McIver*, 186 F.3d 1119, 1126-1127 (9th Cir. 1999), cert. denied, 528 U.S. 1177 (2000); *United*

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[6] The Tenth Circuit has reached the same conclusion in a non-precedential decision. *United States* v. *Hohn*, No. 14-3030, 2015 WL 1452877, at *2-*3 (10th Cir. Apr. 1, 2015) (unpublished).

States v. *Miroyan*, 577 F.2d 489, 492 (9th Cir.), cert. denied, 439 U.S. 896 (1978); and *United States* v. *Hufford*, 539 F.2d 32, 34 (9th Cir.), cert. denied, 429 U.S. 1002 (1976)). The Eighth Circuit in *Barraza-Maldonado* also applied the good-faith exception based on the Ninth Circuit's earlier beeper decision in *McIver* because the GPS tracking at issue had occurred in Arizona within the Ninth Circuit's territorial jurisdiction. 732 F.3d at 867-868.[7] The Eighth Circuit's subsequent decision in *Robinson*, moreover, applied the good-faith exception to warrantless GPS tracking based on *Knotts* and *Karo*, and it noted that *Barraza-Maldonado* was consistent with that result. 781 F.3d at 459 & n.3.

Petitioner contends (Pet. 15-16) that the South Carolina Supreme Court adopted a contrary position in *State* v. *Adams*, 763 S.E.2d 341, 346-348 (S.C. 2014). But the court in *Adams* held the good-faith exception inapplicable because "no South Carolina appellate decision" approving the warrantless use of GPS tracking had existed when South Carolina state officers installed the GPS device in question on a vehicle in South Carolina. *Id.* at 347; see *id.* at 343. That conclusion is fully consistent with the application of the good-faith exception here, because the local Maryland officer who attached the GPS device in Maryland

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[7] Although the officers in *McIver* installed beeper and "global positioning system" devices on the defendant's vehicle, the officers ultimately used only "the [beeper-device] monitor" to track the defendant because the GPS device "malfunctioned after three days." 186 F.3d at 1123-1124. The *McIver* court thus had no occasion to pass on the lawfulness of the warrantless use of GPS tracking because no relevant evidence was derived from the GPS device.

could reasonably rely on the binding Maryland appellate decision in *Stone*.

Finally, petitioner relies (Pet. 15-17, 30-31) on one non-precedential and two precedential decisions by intermediate state courts. Those decisions do not reflect a division of authority warranting this Court's review, however, both because they do not address contexts involving a binding state-court precedent like *Stone*, and because they were not issued by a state court of last resort. See Sup. Ct. R. 10(b). Cf., *e.g.*, *People* v. *LeFlore*, 32 N.E.3d 1043, 1053-1054 (Ill. 2015) (reversing intermediate appellate decision cited by petitioner (Pet. 16-17, 25); explaining that there is "nearly a clean sweep across the federal circuits holding that *Knotts* and *Karo* are controlling precedent for GPS searches pre-*Jones*, and there is not any definitive authority to the contrary").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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AUGUST 2015