Nos. 15-1527 and 15-1528

# In the Supreme Court of the United States

DIMITRY ARONSHTEIN, PETITIONER

*v.*

UNITED STATES OF AMERICA

MARK MAZER, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT*

**BRIEF FOR THE UNITED STATES IN OPPOSITION**

IAN HEATH GERSHENGORN
*Acting Solicitor General*
*Counsel of Record*
LESLIE R. CALDWELL
*Assistant Attorney General*
DAVID B. GOODHAND
*Attorney*
*Department of Justice*
*Washington, D.C. 20530-0001*
*SupremeCtBriefs@usdoj.gov*
*(202) 514-2217*

## QUESTIONS PRESENTED

1. Whether the United States provided sufficient evidence at trial that petitioner Mark Mazer was a governmental "agent" within the meaning of the federal-funds bribery statute, 18 U.S.C. 666.

2. Whether a magistrate-issued search warrant was so facially deficient, because of lack of particularization, that law enforcement agents could not rely upon it in good faith.

## TABLE OF CONTENTS



## TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page



Constitution and statutes:

Statutes—Continued: Page

# In the Supreme Court of the United States

No. 15-1527

DIMITRY ARONSHTEIN, PETITIONER

*v.*

UNITED STATES OF AMERICA

No. 15-1528

MARK MAZER, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT*

**BRIEF FOR THE UNITED STATES IN OPPOSITION**

**OPINIONS BELOW**

The opinion of the court of appeals (Pet. App. 1a-18a)[1] is reported at 631 Fed. Appx. 57. An order of the district court (Aronshtein Pet. App. 23a-36a) is not published in the *Federal Supplement* but is available at 2014 WL 1569495.

[1] Unless otherwise noted, citations to the petition and petition appendix refer to No. 15-1528.

## JURISDICTION

The judgment of the court of appeals was entered on November 30, 2015. A petition for rehearing was denied on March 22, 2016 (Pet. App. 19a-20a). The petitions for writs of certiorari were filed on June 17, 2016 (Aronshtein) and on June 20, 2016 (Mazer). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATEMENT

Following a jury trial in the United States District Court for the Southern District of New York, petitioner Mark Mazer was convicted of conspiracy to commit wire fraud, in violation of 18 U.S.C. 1349; wire fraud, in violation of 18 U.S.C. 1343; conspiracy to commit federal-funds bribery, in violation of 18 U.S.C. 371; receiving bribes, in violation of 18 U.S.C. 666(a)(1)(B); conspiracy to violate the Travel Act, 18 U.S.C. 1952, in violation of 18 U.S.C. 371; and conspiracy to commit money laundering, in violation of 18 U.S.C. 1956(h). Pet. App. 3a. Petitioner Dimitry Aronshtein was convicted of conspiracy to commit federal-funds bribery; paying bribes; conspiracy to violate the Travel Act; and conspiracy to commit money laundering. *Id.* at 3a-4a. Both Mazer and Aronshtein were sentenced to twenty years of imprisonment, to be followed by three years of supervised release. Mazer Judgment 3-4; Aronshtein Judgment 3-4. The court of appeals affirmed. Pet. App. 1a-18a.

1. CityTime was a multi-year municipal project designed to modernize the timekeeping and payroll systems of 80 different New York City agencies. Started in 1998, CityTime was completed in 2011 at a cost to the City of more than $600 million. Funding for CityTime came out of the City's capital budget, which was

approved by the City Council. Most of the funds used to pay for the project derived from the issuance of municipal bonds, including from federally subsidized Build America Bonds. In 2010 and 2011, for instance, New York City received more than $360 million in federal subsidies under the Build America Bonds program, of which more than $7 million was used to subsidize CityTime. Pet. App. 9a; Gov't C.A. Br. 4-9, 42; Aronshtein Pet. App. 31a.

Mazer joined the CityTime project in 2004 and served as the municipal project manager. In that role, Mazer "had authority to act on behalf of the City," Pet. App. 8a, including "the power to hire and fire consultants on the project" and to commit "tens of millions of dollars in CityTime funds," Aronshtein Pet. App. 30a; see *ibid.* ("he signed off on employee time-sheets"); see also Gov't C.A. Br. 8-9, 12, 41-42.

Mazer used his authority to obtain millions of dollars in kickbacks from corrupt subcontractors. Among those paying kickbacks was Aronshtein, Mazer's uncle, whose company Mazer hired to work on CityTime. Even though the company, DA Solutions, Inc. (DAS), had no clients or business in the prior year, Mazer ensured that DAS was given a significant portion of the CityTime project. In return, DAS paid 80% of its profits in kickbacks. Mazer steered work to DAS for nearly six years, during which time DAS received $85 million in revenue. Aronshtein, in turn, paid Mazer approximately $20 million in kickbacks. Aronshtein Pet. App. 23a, 26a-30a; Gov't C.A. Br. 4, 11-12, 15.

2. On December 14, 2010, a federal magistrate authorized arrest warrants for petitioners based on a 35-page criminal complaint. Among other things, the

complaint described the following: Mazer brought Aronshtein aboard the CityTime project while concealing their familial relationship; Aronshtein received tens of millions of dollars from the project; Mazer obtained kickbacks from Aronshtein; and Mazer and Aronshtein laundered the proceeds of their wrongdoing, including by sending more than $500,000 to corporate accounts controlled by Aronshtein and his wife. Federal agents arrested Aronshtein the next morning. When they spoke to his wife in the course of executing the warrant, she tried to mislead them and conceal the location of relevant documents. Concerned that a grand jury subpoena would be insufficient to secure pertinent records, the government sought a search warrant for Aronshtein's house that afternoon. In support of its request, the government submitted an affidavit incorporating the criminal complaint. Gov't C.A. Br. 56-59.

On December 15, 2010, a federal magistrate issued a warrant authorizing the search of Aronshtein's house and four safe deposit boxes for evidence relating to the violation of 18 U.S.C. 1343, 1349, 1956, and 1957. The warrant identified several categories of records relevant to those violations that agents were authorized to seize, including (i) books, records, receipts, notes, ledgers, financial reports, and other papers related to financial transactions; (ii) indicia of ownership of property or premises; (iii) identification documents; (iv) corporate records; and (v) currency and other valuable assets. The warrant was executed later that same day. Gov't C.A. Br. 59-61.

3. In June 2011, a federal grand jury returned a twelve-count indictment against petitioners and seven others. Mazer was charged with conspiracy to commit

wire fraud (Count 1); wire fraud (Count 2); conspiracy to commit federal-funds bribery (Count 5); receiving bribes (Count 6); conspiracy to violate the Travel Act (Count 8); and conspiracy to commit money laundering (Count 12). Aronshtein was charged along with Mazer in Counts 1, 5, 8, and 12. In addition, Aronshtein was charged with paying bribes (Count 7). See Superseding Indictment 1-41.

Before trial, Aronshtein moved to suppress the evidence seized from his home, arguing that the search warrant had not stated with sufficient particularity the items to be seized. The district court denied Aronshtein's motion. At the end of a six-week trial, the jury convicted Mazer and Aronshtein on all counts. Aronshtein Pet. App. 22a-23a.

Following conviction, petitioners moved for a judgment of acquittal, arguing that the government had failed to show that Mazer was an "agent" within the meaning of the federal-funds bribery statute, 18 U.S.C. 666(d)(1). The district court rejected their claim in light of "overwhelming evidence presented at trial establishing that Mazer served as an agent of the City of New York during the course of the CityTime project." Aronshtein Pet. App. 30a; see *id.* at 23a-24a, 30a-31a.

4. The court of appeals affirmed in a summary order. Pet. App. 1a-18a.

First, the court of appeals rejected Aronshtein's suppression claim. The court found it unnecessary to "resolve whether the warrant complied with the Fourth Amendment," stating that, "even if it did not, the good-faith exception to the exclusionary rule applies." Pet. App. 4a (citing *United States* v. *Leon*, 468 U.S. 897, 922 (1984)). Under that exception, as relevant here,

the exclusionary rule should not be applied "unless the warrant at issue was 'so facially deficient . . . that the executing officers cannot reasonably presume it to be valid.'" *Id.* at 5a (quoting *Leon*, 468 U.S. at 923). That standard was not met here, the court held, because "the officers' reliance on the warrant was objectively reasonable." *Ibid.* In addition, the court stressed that "[c]ourts routinely afford officers greater latitude in detailing the items to be searched when, as here, the criminal activity under investigation involves complex financial transactions." *Ibid.* (internal quotation marks omitted). Therefore, the court concluded, "even if the warrant at issue may have been less detailed than is typical, the officers did not act unreasonably in executing it." *Ibid.*

Next, the court of appeals rejected petitioners' challenge to the sufficiency of the evidence used to convict them under the federal-funds bribery statute, 18 U.S.C. 666. That provision applies to the bribing of an "agent" of any organization, state or local government, tribal government, or agency that receives federal benefits in excess of $10,000. 18 U.S.C. 666(a)(1)(B), (a)(2), and (b). On appeal, petitioners "challenge[d] the sufficiency of the evidence supporting the jury's determination that Mazer was an agent of the City." Pet. App. 8a. The court rejected that contention, finding "the evidence * * * more than sufficient for the jury to find that Mazer was an agent of the City." *Ibid.* Among other things, "the evidence amply support[ed] the jury's determination that Mazer had authority to act on behalf of the City," including evidence "that Mazer *personally* had authority to act on behalf of and bind the City in connection with his work on CityTime." *Id.* at 8a-9a. The court also rejected

petitioners' argument that Mazer was an agent of the City's Office of Payroll Administration (OPA), rather than an agent of the City itself. Trial evidence demonstrated, the court explained, that "CityTime was not an OPA-specific project, but a City-wide one, initiated to update the payroll system of 80 City agencies and accounted for in the City's capital budget." *Id.* at 9a; see *ibid.* (Mazer "described his work as involving a 'project *for the city*'") (citation omitted); *ibid.* ("[T]he CityTime contract and each amendment thereto was entered into 'by . . . the City of New York, *acting through* its Office of Payroll Administration.'") (citation omitted).

**ARGUMENT**

Petitioners argue (Pet. 6-14; Aronshtein Pet. 34) that review is warranted to resolve a conflict between the courts of appeals in construing the definition of "agent" under the federal-funds bribery statute, 18 U.S.C. 666. But the evidence presented at trial showed that Mazer was an "agent" of New York City—a direct recipient of federal funds—even under petitioners' proposed construction. In any event, no disagreement exists in the courts of appeals about the meaning of the term that would warrant certiorari review.

Aronshtein also contends (at 18-26) that the court of appeals, in rejecting his suppression argument, violated this Court's instructions in *Groh* v. *Ramirez*, 540 U.S. 551 (2004), on the application of the Fourth Amendment's particularity requirement. But the court of appeals' ruling is correct and does not conflict with *Groh*.

1. The federal-funds bribery statute, 18 U.S.C. 666, prohibits the paying of bribes to, or the accep-

tance of bribes by, "state, local, and tribal officials of entities that receive at least $10,000 in federal funds." *Sabri* v. *United States*, 541 U.S. 600, 602 (2004). Section 666 "was designed to extend federal bribery prohibitions to bribes offered to state and local officials employed by agencies receiving federal funds." *Id.* at 607 (quoting *Salinas* v. *United States*, 522 U.S. 52, 58 (1997)). The statute's language reflects "Congress' expansive, unambiguous intent to ensure the integrity of organizations participating in federal assistance programs." *Fischer* v. *United States*, 529 U.S. 667, 678 (2000). Consistent with that broad purpose, Section 666 applies to any "agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof," 18 U.S.C. 666(a)(1) and (2), provided that "the organization, government, or agency receives" more than $10,000 in federal funds "in any one year period," 18 U.S.C. 666(b).

a. As the court of appeals correctly concluded, the government's proof at trial demonstrated that Mazer was an "agent" of New York City when he corruptly solicited bribes from Aronshtein. Mazer was "manager of the CityTime project," Pet. App. 7a, which was "a City-wide project, paid out of City-wide funds, and developed for use at dozens of agencies across the City," Aronshtein Pet. App. 31a. In his capacity as manager, Mazer "*personally* had authority to act on behalf of and bind the City," Pet. App. 9a, and he used that authority to enrich himself at the expense of the City. For instance, "the jury heard evidence that Mazer, in his role as a manager of the CityTime project, signed a series of timesheets that authorized payments for consultants for hours never worked." *Id.* at 7a. That is precisely the sort of "improbity" by local

officials that Congress sought to combat in Section 666. *Sabri*, 541 U.S. at 605.

Petitioners nevertheless contend (Pet. 13) that the court of appeals erred because it "did not require any finding—and actually made no findings—that Mazer had authority to act on behalf of the City's funds." As the preceding paragraph shows, however, petitioners are incorrect in their characterization of the court's ruling. See Pet. App. 7a-9a. Petitioners also argue that to permit conviction under Section 666 in cases "where the defendant had *no* authority with respect to the control and expenditure of funds of an entity that received federal monies" would raise constitutional concerns. Pet. 14-15; see Pet. 14-18. But agents of organizations that receive federal funds can threaten the funds, and the objectives of the programs they support, by engaging in wrongdoing that weakens the "integrity" of the organization's financial affairs, even if they do not exercise control over funds. *Sabri*, 541 U.S. at 605. Congress has ample authority to protect against those risks before they manifest themselves in the concrete loss of federal dollars. *Id.* at 605-607; see *United States* v. *Fernandez*, 722 F.3d 1, 11-12 (1st Cir. 2013) ("We have no hesitation in concluding that 'measures to police the integrity of entities receiving federal funds fall under the scope of this power,' even absent evidence of an agent's authority to act specifically with respect to the covered entity's funds.") (quoting *United States* v. *Keen*, 676 F.3d 981, 991 (11th Cir.), cert. denied, 133 S. Ct. 573 (2012)).

In any event, no such concerns are present in this case, given "the evidence * * * establish[ing] that Mazer had control over tens of millions of dollars in CityTime funds." Aronshtein Pet. App. 30a; see Pet.

App. 9a (referring to "evidence at trial showing that Aronshtein knew of Mazer's role in the hiring process for CityTime"). To the extent that petitioners disagree with the court of appeals' assessment of the sufficiency of the evidence, see Pet. 13 ("[T]he record showed over and over again that Mazer had no authority to do anything on behalf of the City."), that is not a dispute worthy of this Court's plenary review.

Petitioners separately argue that Mazer was not "an 'agent' of New York City government as a whole," but rather an agent of "OPA, the sub-agency of City government responsible for managing the CityTime project." Pet. 18 (citation omitted). The court of appeals addressed and rejected that contention as well, citing evidence that "CityTime was not an OPA-specific project, but a City-wide one, initiated to update the payroll system of 80 City agencies and accounted for in the City's capital budget." Pet. App. 9a; see *ibid.* ("[T]he CityTime contract and each amendment thereto was entered into 'by . . . the City of New York, *acting through* its Office of Payroll Administration.") (citation omitted); see also Aronshtein Pet. App. 30a ("[T]here was overwhelming evidence presented at trial establishing that Mazer served as an agent of the City of New York during the course of the CityTime project."). Petitioners' argument to the contrary (Pet. 18-26) is factbound and, in any event, incorrect. See Gov't C.A. Br. 8-9 (Mazer negotiated and supervised the expenditure of $140 million in City Council-approved CityTime funds, which came from the City's capital budget).

b. Petitioners argue that the decision below "deepened an acknowledged split among the Circuits" about whether an "agent" within the meaning of Section 666

must have authority to commit governmental funds. Pet. 7 (capitalization altered). They argue that "[t]he Fifth Circuit has long required that 'for an individual to be an agent for the purposes of Section 666, he must be authorized to act on behalf of the agency with respect to its funds.'" Pet. 4 (brackets omitted) (quoting *United States* v. *Whitfield*, 590 F.3d 325, 344 (5th Cir. 2009), cert. denied, 562 U.S. 833 (2010)) (citation and internal quotation marks omitted). Petitioners assert that the Fifth Circuit's rule conflicts with decisions from the First, Third, and Eleventh Circuits, which do not require proof that an agent is authorized to commit funds. Pet. 7 (citing *Fernandez*, *supra*; *Keen*, *supra*; *United States* v. *Vitillo*, 490 F.3d 314 (3d Cir. 2007)).

Petitioners also contend (Pet. 7) that the Second Circuit has now "joined" the courts of appeals that do not require such proof. As explained above, however, that is incorrect. See pp. 8-9, *supra*. Resolution of the asserted conflict could not affect the outcome of this case, given the overwhelming evidence introduced at trial "that Mazer had control over tens of millions of dollars in CityTime funds, that he had the power to hire and fire consultants on the project, and that he signed off on employee timesheets." Aronshtein Pet. App. 30a.

In any event, no conflict exists on this issue that warrants this Court's review. The Fifth Circuit has stated that a finding that a person is an "agent" under Section 666 requires a showing that he is "'authorized to act on behalf of the [entity] with respect to its funds.'" *Whitfield*, 590 F.3d at 344 (quoting *United States* v. *Phillips*, 219 F.3d 404, 411 (5th Cir. 2000)) (brackets omitted); see *United States* v. *Shoemaker*,

746 F.3d 614, 620-621 (5th Cir. 2014) (finding test satisfied). But the cases so stating and reversing convictions rest on circumstances factually narrower than the statement suggests.

The outcome in *Phillips*, for example, did not wholly turn on an assessment of whether the defendant was authorized to act on behalf of the organization with respect to its funds, as petitioners argue (Pet. 8-9). It is true that *Phillips* examined that question, but only because the defendant (a tax assessor) was not an employee of the relevant funds-receiving entity (the local parish), and the "parish ha[d] no power, authority, or control over the assessor's duties or job." 219 F.3d at 412. The *Phillips* majority was thus required to ask whether some *other* basis existed for considering the defendant to be the parish's agent. *Ibid.* Notably, the majority expressly rejected the suggestion, raised by the dissent, that it was "impos[ing] a requirement * * * that a defendant be authorized to act with respect to the [relevant] agency's funds." *Id.* at 412 n.10. That interpretation of its holding, the majority stated, "completely miscomprehends the thrust" of the opinion, *ibid.*, which turned on "the context of the facts of this appeal," *id.* at 411. In addition, the majority pointed out that Section 666 "also covers various conduct based on a defendant's status as an employee, partner, director, officer, manager or representative of the organization receiving federal funds, which may or may not require some relationship to the organization's funds." *Id.* at 412 n.10.

*Whitfield* also turned on its specific facts. There, the court of appeals reviewed the convictions of two Mississippi judges who had rendered favorable decisions in exchange for money. 590 F.3d at 336-347.

The question before the court was whether the judges were acting as agents of the Mississippi Administrative Office of the Courts (AOC)—the agency that had received federal funds—when they committed their bribery offenses. *Id.* at 344-347. The court "assume[d]" that the defendants *were* agents of the AOC when they performed functions such as "hir[ing] chambers staff that were paid at the expense of the AOC," but the court concluded they were not acting as agents of the AOC when they rendered judicial opinions. *Id.* at 345. The holding in *Whitfield* accordingly did not turn on the definition of "agent" under Section 666(d)(1). Rather, it turned on the wording of Section 666(a)(1)(B), which prohibits the solicitation of a bribe "in connection with any business" of the relevant governmental agency. Because the AOC's "business" did not involve rendering judicial opinions, see *id.* at 346 ("[T]he purpose of the AOC is to assist in the efficient administration of the *nonjudicial* business of the courts of the state.") (citation and internal quotation marks omitted), the court concluded that the bribes received by the defendants had not been "in connection with any business" of the AOC. *Id.* at 345-347. Petitioners thus cannot rely on *Whitfield* to establish a conflict in the lower courts about the meaning of "agent" in a prosecution for violation of Section 666.

2. Under the Fourth Amendment, a warrant must "particularly describ[e] the place to be searched, and the persons or things to be seized." When a warrant is insufficiently particularized, however, suppression of evidence obtained pursuant to the warrant is not always required. The good-faith exception to the exclusionary rule may apply unless the "warrant [is] so facially deficient * * * that the executing officers

cannot reasonably presume it to be valid." *United States* v. *Leon*, 468 U.S. 897, 923 (1984); see Pet. App. 5a (rejecting other bases for suppression).

a. In this case, Aronshtein sought suppression of the evidence obtained from the search of his home, contending that the search warrant "was overbroad and insufficiently particular in violation of the Fourth Amendment." Pet. App. 4a. The court of appeals, in rejecting that argument, explained that it "need not resolve whether the warrant complied with the Fourth Amendment because, even if it did not, the good-faith exception to the exclusionary rule applies." *Ibid.* The exception applies, the court determined, because "the nature of the crimes under investigation demonstrates that the officers' reliance on the warrant was objectively reasonable." *Id.* at 5a. In particular, "[c]ourts routinely afford officers greater latitude in detailing the items to be searched when, as here, the criminal activity under investigation involves complex financial transactions." *Ibid.* (internal quotation marks omitted). Therefore, "even if the warrant at issue may have been less detailed than is typical, the officers did not act unreasonably in executing it." *Ibid.*

The decision below was correct and is consistent with the uniform view of the courts of appeals, which recognize that the requisite particularity of a warrant may vary depending on the crimes being investigated and the surrounding circumstances. See *United States* v. *Villanueva*, 821 F.3d 1226, 1238 (10th Cir. 2016) ("A warrant describing items to be seized in broad and generic terms may be valid if the description is as specific as circumstances and nature of the activity under investigation permit.") (citations and internal quotation marks omitted), petition for cert. pending,

No. 16-5584 (filed Aug. 8, 2016); *United States* v. *Vitek Supply Corp.*, 144 F.3d 476, 481 (7th Cir. 1998) ("[A] warrant must explicate the items to be seized only as precisely as the circumstances and the nature of the alleged crime permit."), cert. denied, 525 U.S. 1138 (1999); see also *United States* v. *Kimbrough*, 69 F.3d 723, 727 (5th Cir. 1995), cert. denied, 517 U.S. 1157 (1996); *United States* v. *Torch*, 609 F.2d 1088, 1090 (4th Cir. 1979), cert. denied, 446 U.S. 957 (1980). In particular, "the government is to be given more flexibility regarding the items to be searched when the criminal activity deals with complex financial transactions." *United States* v. *Yusuf*, 461 F.3d 374, 395 (3d Cir. 2006), cert. denied, 549 U.S. 1338 (2007); see *United States* v. *Cooper*, 654 F.3d 1104, 1127 (10th Cir. 2011) ("Warrants relating to more complex and far-reaching criminal schemes may be deemed legally sufficient even though they are less particular than warrants pertaining to more straightforward criminal matters."); *United States Postal Serv.* v. *CEC Servs.*, 869 F.2d 184, 187 (2d Cir. 1989) ("When the criminal activity pervades that entire business, seizure of all records of the business is appropriate, and broad language used in warrants will not offend the particularity requirement."); *United States* v. *Accardo*, 749 F.2d 1477, 1481 (11th Cir.) ("This type of complex financial fraud, sometimes referred to as the 'paper puzzle,' has been held to justify a more flexible reading of the fourth amendment particularity requirement."), cert. denied, 474 U.S. 949 (1985); see also *United States* v. *Logan*, 250 F.3d 350, 365 (6th Cir.), cert. denied, 534 U.S. 895, and 534 U.S. 997 (2001); *United States* v. *Dale*, 991 F.2d 819, 848 (D.C. Cir.)

(per curiam), cert. denied, 510 U.S. 906, and 510 U.S. 1030 (1993).

In this case, the financial crimes under investigation arose from petitioners' multi-year scheme to defraud New York City of millions of dollars, and then to launder that money through more than 100 bank accounts and foreign banks using complex financial transactions and numerous shell companies. Gov't C.A. Br. 70. Given those circumstances, the executing officers could reasonably rely on the search warrant. The warrant incorporated Attachment A, which explained that agents sought "evidence, fruits, and instrumentalities" relating to violations of the wire-fraud, wire-fraud-conspiracy, and money-laundering statutes; it also specified that agents were searching for "corporate records," "identification documents," and "books, records, receipts, notes, ledgers, financial reports and other papers relating to financial transactions." *Id.* at 60; see *id.* at 59-61. The warrant thus expressly described the financial crimes for which probable cause had been established, as well as the specific categories of evidence that the agents were permitted to seize. The court of appeals correctly concluded that the executing officers could reasonably rely on the warrant. Pet. App. 5a.

b. Aronshtein does not argue that the decision below would have come out differently in any other court of appeals. Instead, he contends (at 20-21) that the ruling conflicts with this Court's decision in *Groh* v. *Ramirez*, 540 U.S. 551 (2004), but he is mistaken. *Groh* addressed the particularity issue in a qualified immunity case, applying the same standard as in *Leon*. *Id.* at 565 n.8. *Groh* held that qualified immunity did not apply where a warrant, which did not in-

volve financial crimes, "did not describe the items to be seized *at all*." *Id.* at 558. Instead, in the space set aside for a description of the items to be seized, the search warrant stated only that the "items consisted of a 'single dwelling residence . . . blue in color.'" *Ibid.* Moreover, although the *application* for the search warrant had "adequately described the 'things to be seized,'" the application could "not save the *warrant* from its facial invalidity" because the warrant did not incorporate it. *Id.* at 557; see *id.* at 557-558. As a result of those defects, the Court determined that "the warrant was so obviously deficient that we must regard the search as 'warrantless.'" *Id.* at 558.

Here, in contrast to *Groh*, the warrant expressly incorporated Attachment A, which adequately detailed the criminal violations being investigated and the types of documents and items being sought. And, in light of the complex nature of petitioners' financial crimes, the executing officers could reasonably rely on the warrant, which had been issued by a neutral magistrate.

## CONCLUSION

The petitions for writs of certiorari should be denied.

Respectfully submitted.

IAN HEATH GERSHENGORN
*Acting Solicitor General*
LESLIE R. CALDWELL
*Assistant Attorney General*
DAVID B. GOODHAND
*Attorney*

SEPTEMBER 2016