No. 06-892

# In the Supreme Court of the United States

FATHI YUSUF MOHAMMED YUSUF, AKA FATHI YUSUF, ET AL., PETITIONERS

*v.*

UNITED STATES OF AMERICA

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

## BRIEF FOR THE UNITED STATES IN OPPOSITION

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## QUESTION PRESENTED

Whether the warrants authorizing a search for evidence of a complex money laundering scheme, tax violations, and mail and wire fraud described petitioners' business records with sufficient particularity.

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### OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-46) is reported at 461 F.3d 374. The memorandum opinion of the district court for the District of the Virgin Islands (Pet. App. 47-78) is unreported.

### JURISDICTION

The judgment of the court of appeals was entered on August 24, 2006. A petition for rehearing was denied on October 5, 2006 (Pet. App. 79-80). The petition for a writ of certiorari was filed on December 28, 2006. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

### STATEMENT

Petitioners, a corporation based in the U.S. Virgin Islands and several of its owners and operators, were

charged in a 78-count indictment with money laundering, currency structuring, various tax violations, mail fraud, obstruction of justice, and conspiracy. Pet. App. 3. The district court granted a motion to suppress evidence based on a facial challenge to several search warrants. *Id.* at 47-78. On interlocutory appeal under 18 U.S.C. 3731 (2000 & Supp. IV 2004), the court of appeals reversed and remanded the case for further proceedings. Pet. App. 1-46.

1. In a series of seven transactions from April 16-19, 2001, United Corporation, a family-owned chain of supermarkets in the U.S. Virgin Islands, deposited $1,940,000 into its account with the Bank of Nova Scotia, entirely in denominations of $50 or $100. The bank found the activity suspicious and forwarded a report to the St. Thomas office of the FBI on July 20, 2001. Federal investigators immediately launched an investigation. Pet. App. 5.

On October 19, 2001, the FBI sought search warrants for three supermarkets, three residences, three individuals, and two safe deposit boxes in the Virgin Islands. Pet. App. 6-7 n.2. The warrant application included a sworn affidavit, signed by an FBI agent, describing the government's investigation in detail. Some information in the affidavit had been supplied by the Virgin Islands Bureau of Internal Revenue (VIBIR). *Id.* at 3.

The warrant application also contained two exhibits describing the items to be searched for and seized. Each warrant, in the space provided to describe the "property," contained the words: "See Exhibit 'B' marked 'Evidence' attached." See C.A. App. 380. Exhibit B, which was attached to each of the warrants and was not sealed, Pet. App. 39, contained the following description:

Any and all records, whether typed or handwritten, or stored on paper, magnetic or electronic medium (including information stored on computer systems) of money laundering and illegal business activities, including Money Laundering and Conspiracy to Commit Money Laundering, Failure to Report Exporting of Monetary Instruments, Mail Fraud, Wire Fraud, Alien Smuggling, Food Stamp Fraud, and Conspiracy to commit the same from 1990 to the present

pertaining to United Corporation d/b/a Plaza Extra, Plessen Enterprises, Inc., Hamdan Diamond Corp., Sixteen Plus Corp. and any affiliated companies, as well as their principals, officers, managers, and employees, including but not limited to Fathi Yusuf, Maher Yusuf, Waleed "Wally" Hamed, and Waheed "Willy" Hamed; including

1. Audit reports and financial statements of the above-listed companies and persons;

2. All financial records, including monthly statements, cancelled checks, deposit slips, certificates of deposit, of any and all banks and financial institutions where the above-listed companies and persons have accounts;

3. Any and all securities held or owned by the above-listed companies and persons and related records;

4. Any and all financial instruments, promissory notes, and letters of credit held or owned by the above-listed companies and persons and related records;

5. Documents, including corporate documents, identifying the names, addresses, dates of birth, telephone numbers, and social security numbers of all employees, officers, directors, and associates of the above-listed corporations and companies;

6. Any and all contracts, agreements, and correspondence;

7. Original contracts, promissory notes, subscription forms, purchases's [*sic*] receipts, compliance verification forms, W-9 forms, and correspondences executed or exchanged between United Corporation d/b/a Plaza Extra and all of its customers and associated companies;

8. Copies of all Internal Revenue Service and VI Bureau of Internal Revenue tax returns or other reporting forms and supporting schedules and documentation;

9. Telephone records, Rolodex records, telephone answering machine tapes;

10. Video tapes, disks or records;

11. Photos, whether recorded on paper, tape, or disk;

12. Documents and records pertaining to communication by facsimile (fax) transmissions;

13. Any other records of money laundering and illegal activities, including but not limited to:

> books, records, receipts, accounts, notes, logs, ledgers, journals, worksheets, invoices, pass books, money drafts, money orders, bank drafts, cashier checks, bank checks, safety deposit box keys, and money wrappers, airline tickets, and addresses and telephone numbers in books or on paper or stored in electronic form by computer systems, or word processing equipment.

App., *infra*, 1a-3a. Exhibit B also defined the terms "records," "information," and "[c]omputer systems," and called for the seizure of large quantities of cash or valuables "collected in a manner designed to facilitate convenient transport." *Id*. at 3a-4a.

On October 19, 2001, a magistrate judge of the United States District Court for the District of the Virgin Islands issued the warrants. C.A. App. 380. On October 23, 2001, federal agents executed the warrants at each of the locations described. Based on the evidence they discovered, a grand jury returned a 78-count indictment charging United Corporation and its owners and operators with various criminal offenses, including money laundering, currency structuring, tax violations, mail fraud, obstruction of justice, and conspiracy. Pet. App. 3, 12.

2. Some of the information contained in two paragraphs of the affidavit supporting the search warrant turned out to be inaccurate. The information, which had originated in documents provided to the FBI by VIBIR, overstated the amount of the discrepancy between the gross receipts reported on United Corporation's Virgin Islands tax filings and the gross receipts reported on its IRS tax filings for 1998, 1999, and 2000. Petitioners moved to suppress the evidence recovered during the

searches, arguing that the warrant was defective because of the false statements. Pet. App. 16-17.

Following a hearing pursuant to *Franks* v. *Delaware*, 438 U.S. 154 (1978), the district court found that certain statements in the affidavit were made with reckless disregard for the truth. The court therefore excised those statements and held that the reconstituted affidavit failed to establish probable cause. Accordingly, the district court suppressed all of the evidence seized during the execution of the search warrants. Pet. App. 3. That ruling "effectively dismiss[ed] the Government's case." *Ibid*.

3. The court of appeals reversed. Pet. App. 1-46. It determined that the FBI agent did not act recklessly in reporting the tax information provided by VIBIR because the agent did not have an "obvious reason to doubt the truth" of the documents provided. *Id.* at 4. To the contrary, the court of appeals concluded, the federal investigators acted with reasonable diligence in verifying the information, and their belief that United had underreported its gross receipts returns was "eminently plausible * * * at that point in the investigation." *Id.* at 23-24.

Moreover, the court of appeals held, even if the two challenged paragraphs of the affidavit were excised, the reconstituted affidavit "clearly establishes probable cause." Pet. App. 25. The affidavit described a series of bank deposits "made *solely* in $50 and $100 denominations," and the court of appeals found it "utterly incomprehensible that a retail supermarket chain receives and deposits cash only in such large denominations." *Id*. at 32. It found the district court's decision to invalidate the entire warrant for lack of probable cause "disconcerting." *Id*. at 25.

The court of appeals also considered, and rejected, petitioners' alternative argument that blanket suppression was required because the warrants were unconstitutional "general warrants" that violated the Fourth Amendment.[1] Pet. App. 36-38. Specifically, the court of appeals considered three claims: (1) that the warrants failed to describe the property to be searched and seized with particularity because they did not incorporate the affidavit, citing *Groh* v. *Ramirez*, 540 U.S. 551 (2004), Pet. App. 36, 38; (2) that the warrants referred to the crimes committed by name, rather than "by reference to the statutory elements in the United States Code," *id.* at 36; and (3) that the catch-all provision in paragraph 13 of Exhibit B, which allowed the agents to search for records of "money laundering and illegal activities," App., *infra*, 2a, gave agents unfettered discretion to conduct a general search. Pet. App. 36.

First, the court of appeals rejected petitioners' reliance on *Groh*. In that case, the warrant failed to incorporate the portion of the affidavit describing the items to be seized, and as a result the warrant "failed to identify *any* of the items that [the agent] intended to seize." Pet. App. 39 (quoting *Groh*, 540 U.S. at 554 (emphasis and alteration in the decision of the court of appeals)). Here, by contrast, the warrants expressly incorporated the attached Exhibit B, which described at length the items to be seized. *Ibid.* Thus, the court of appeals

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[1] Because it found no constitutional defect in the warrants, the court of appeals did not need to consider the government's alternative arguments that some of the evidence was admissible under the inevitable discovery doctrine, and that petitioners lacked a legitimate expectation of privacy in certain areas of the grocery stores that were searched. See Gov't C.A. Br. 50, 53; Govt. C.A. Reply Br. 22, 25.

held, "the problem which existed in *Groh* is simply not implicated in this case." *Ibid.*

Second, the court of appeals held that the warrants described the property to be searched and seized with sufficient particularity, notwithstanding their references to several federal crimes by name, rather than by reference to relevant provisions of the criminal code. Citing its decisions in *United States* v. *American Investors of Pittsburgh, Inc.*, 879 F.2d 1087 (3d Cir.), cert. denied, 493 U.S. 955 (1989) and 493 U.S. 1021 (1990), and *United States* v. *Kepner*, 843 F.2d 755 (3d Cir. 1988), the court noted that "the breadth of items to be searched depends upon the particular factual context of each case and also the information available to the investigating agent that could limit the search at the time the warrant application is given to the magistrate." Pet. App. 40-42. In this case, the court noted, Exhibit B contained several express limitations, restricting agents to evidence of enumerated federal crimes, narrowing the scope of the search to evidence from 1990 to the date of the search in 2001, and limiting the search to records "pertaining to" specific corporations and individuals. *Id.* at 42. Although the warrants authorized a broad search, the court of appeals emphasized that "the government was conducting an investigation into money laundering and other complex white collar crimes," and that investigators must have "more flexibility regarding the items to be searched when the criminal activity deals with complex financial transactions." *Id.* at 43. Indeed, the court found, "it is difficult to conclude how the Government could have more narrowly tailored the warrant in this money laundering investigation." *Ibid.*

Third, the court of appeals found no constitutional defect in the catch-all provision in paragraph 13 of Ex-

hibit B, which authorized the seizure of records of "money laundering *and illegal activities*." Pet. App. 44. Relying on this Court's decision in *Andresen* v. *Maryland*, 427 U.S. 463, 479-482 (1976), the court of appeals construed the phrase "illegal activities" to refer to the list of "illegal business activities" set forth in the opening paragraph of Exhibit B, and not to all illegal activities of any kind. Pet. App. 44. The court therefore found it "clear" that "paragraph 13 does not transform the warrants into general warrants." *Id.* at 45.

**ARGUMENT**

Petitioners contend (Pet. 9-11) that the search warrants in this case permitted unconstitutional general searches. They construe the warrants as permitting the seizure of all records of "illegal activities," and argue that the manner in which the warrants referred to specific criminal offenses rendered them impermissibly overbroad. The court of appeals correctly rejected both arguments based on a careful reading of Exhibit B and a determination that, under the circumstances, no more particularized description of the items to be seized was possible. Pet. App. 36-45. Its factbound conclusion does not conflict with the decisions of this Court or other courts of appeals. Further review is unwarranted.

1. Petitioners' principal argument (Pet. 13-14) is that paragraph 13 of Exhibit B authorized a general search for evidence of "illegal activities." This Court rejected a virtually identical claim in *Andresen* v. *Maryland*, 427 U.S. 463 (1976).

The Fourth Amendment provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

U.S. Const. Amend. IV. In *Andresen*, 427 U.S. at 465, police had probable cause to believe that an attorney had defrauded the purchaser of a particular lot in a subdivision of Montgomery County, Maryland. Police obtained several warrants authorizing the search of the attorney's office and the seizure of specific documents relevant to that transaction "together with other fruits, instrumentalities and evidence of crime at this [time] unknown." *Id.* at 480-481 n.10 (internal quotation marks omitted).[2] The attorney challenged the warrants based on the Fourth Amendment's particularity requirement,

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[2] The description of the items to be searched for and seized stated in full:

> [T]he following items pertaining to sale, purchase, settlement and conveyance of lot 13, block T, Potomac Woods subdivision, Montgomery County, Maryland:
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> > title notes, title abstracts, title rundowns; contracts of sale and/or assignments from Raffaele Antonelli and Rocco Caniglia to Mount Vernon Development Corporation and/or others; lien payoff correspondence and lien pay-off memoranda to and from lienholders and noteholders; correspondence and memoranda to and from trustees of deeds of trust; lenders instructions for a construction loan or construction and permanent loan; disbursement sheets and disbursement memoranda; checks, check stubs and ledger sheets indicating disbursement upon settlement; correspondence and memoranda concerning disbursements upon settlement; settlement state ments and settlement memoranda; fully or partially prepared deed of trust releases, whether or not executed and whether or not recorded; books, records, documents, papers, memoranda and correspondence, showing or tending to show a fraudulent intent, and/or knowledge as elements of the crime of false pretenses, in violation of Article 27, Section 140, of the Annotated Code of Maryland, 1957 Edition, as amended and revised, together with other fruits, instrumentalities and evidence of crime at this [time] unknown.

*Andresen*, 427 U.S. at 480-481 n.10 (internal quotation marks omitted).

calling the terms of the warrants "so broad as to make them impermissible 'general' warrants." *Id.* at 478.

This Court disagreed, noting that "the warrants for the most part were models of particularity" and rejecting the argument "that they were rendered fatally 'general' by the addition, in each warrant, to the exhaustive list of particularly described documents, of the phrase 'together with other fruits, instrumentalities and evidence of crime at this [time] unknown.'" *Andresen*, 427 U.S. at 479. That phrase, the Court emphasized, did not form part of "a separate sentence" but instead "appear[ed] in each warrant at the end of a sentence containing a lengthy list of specified and particular items to be seized." *Id.* at 480. Because each of the items in that list "follow[ed] the colon after the word 'Maryland,'" each "clause[] in the series [was] limited by what precedes that colon, namely, 'items pertaining to . . . lot 13, block T.'" *Id.* at 481. The Court therefore found it "clear from the context that the term 'crime' in the warrants refers only to the crime of false pretenses with respect to the sale of Lot 13T." *Id.* at 480-481.

The Court recognized the dangers "inherent in executing a warrant authorizing a search and seizure of a person's papers." *Andresen*, 427 U.S. at 482 n.11. In such a search, the Court observed, "it is certain that some innocuous documents will be examined, at least cursorily, in order to determine whether they are, in fact, among those papers authorized to be seized." *Ibid.* Nonetheless, the Court found no constitutional defect in the warrant language. Because the police were investigating a "complex real estate scheme whose existence could be proved only by piecing together many bits of evidence," the warrant had to sweep broadly to reach each piece of the "jigsaw puzzle." *Id.* at 481 n.10. The

Court admonished that "[t]he complexity of an illegal scheme may not be used as a shield to avoid detection." *Ibid*.

Based on *Andresen*, courts of appeals routinely interpret the "catch-all phrase" in a warrant "in light of the items that precede it." *United States* v. *Pindell*, 336 F.3d 1049, 1053 (D.C. Cir. 2003), cert. denied, 540 U.S. 1200 (2004). See *United States* v. *Riley*, 906 F.2d 841, 844 (2d Cir. 1990) ("In upholding broadly worded categories of items available for seizure, we have noted that the language of a warrant is to be construed in light of an illustrative list of seizable items.").[3] That interpretive approach follows from the "established interpretive canon[s]" *noscitur a sociis* and *ejusdem generis*, *Pindell*, 336 F.3d at 1053, which counsel that "[w]here

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[3] See, *e.g.*, *Pindell*, 336 F.3d at 1053 (rejecting a particularity challenge to warrants that authorized the seizure of "any other evidence of a violation of Title 18 U.S.C. § 242" because that language appeared "in the same sentence as, and at the conclusion of, a quite specific list of items to be seized," making it "reasonably clear that the warrants did not authorize the seizure of evidence of just any violation of § 242"); *United States* v. *Ables*, 167 F.3d 1021, 1033-1034 (6th Cir.) (construing search warrants as describing the items to be seized with particularity, notwithstanding a phrase authorizing the seizure of "other items evidencing" certain financial transactions, because the warrants contained an "illustrative list of items" that "supplied sufficient examples of the items that the IRS was authorized to seize—bank statements, money drafts, letters of credit, money orders, cashier's checks, pass books, bank checks, automatic teller machine receipts, Western Union receipts, etc." to prevent "general exploratory rummaging" by the police), cert. denied, 527 U.S. 1027 (1999); *United States* v. *Young*, 745 F.2d 733, 758-759 (2d Cir. 1984) (finding no constitutional defect in a warrant containing "boilerplate language" that authorized the seizure of "other evidence" of a drug conspiracy because that language "followed a list of more specific items to be seized, and could be construed only in conjunction with that list"), cert. denied, 470 U.S. 1084 (1985).

general words follow specific words * * * the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words," *Washington State Dep't of Soc. & Health Servs.* v. *Guardianship Estate of Keffeler*, 537 U.S. 371, 384 (2003) (quoting *Circuit City Stores, Inc.* v. *Adams*, 532 U.S. 105, 114-115 (2001)). It also accords with the general rule that courts should interpret warrants and supporting affidavits in a "commonsense," rather than "hypertechnical," manner. *Illinois* v. *Gates*, 462 U.S. 213, 236 (1983) (citation omitted); *United States* v. *Sells*, 463 F.3d 1148, 1156 (10th Cir. 2006), cert. denied, No. 06-8487 (Feb. 20, 2007); *United States* v. *Gendron*, 18 F.3d 955, 966 (1st Cir.) (Breyer, C.J.), cert. denied, 513 U.S. 1051 (1994). See *United States* v. *Ventresca*, 380 U.S. 102, 108 (1965) ("Technical requirements * * * have no proper place in this area.").

Courts of appeals also "universally recognize[]" that the Fourth Amendment's particularity requirement "must be applied with a practical margin of flexibility, depending on the type of property to be seized, and that a description of property will be acceptable if it is as specific as the circumstances and nature of activity under investigation permit." *United States* v. *Wuagneux*, 683 F.2d 1343, 1349 (11th Cir. 1982) (collecting cases), cert. denied, 464 U.S. 814 (1983). Accordingly, when interpreting search warrants in cases "involving complex financial transactions and widespread allegations of various types of fraud," courts recognize that an extensive search of business records may be necessary. *Ibid.*[4] Several courts of appeals have upheld warrants

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[4] See, *e.g.*, *United States* v. *$92,422.57*, 307 F.3d 137, 149-150 (3d Cir. 2002) (Alito, J.) (finding that a warrant authorizing the seizure of "[r]e-

calling for the seizure of all business records of an enterprise based on probable cause to believe that the enterprise was engaged in a "pervasive scheme to defraud." *United States* v. *Martinelli*, 454 F.3d 1300, 1307 (11th Cir. 2006) (citation omitted), petition for cert. pending, No. 06-1098 (filed Feb. 5, 2007); *United States* v. *Smith*, 424 F.3d 992, 1004-1006 (9th Cir. 2005), cert. denied, 126 S. Ct. 1477 and 1770 (2006); *Marvin* v. *United States*, 732 F.2d 669, 674 (8th Cir. 1984); *United States* v. *Brien*, 617 F.2d 299, 309 (1st Cir.), cert. denied, 446 U.S. 919 (1980).

In this case, paragraph 13 of Exhibit B authorized a search for "[a]ny other records of money laundering and illegal activities." App., *infra*, 2a. Contrary to petitioners' claim that paragraph 13 granted the FBI unlimited discretion to search for evidence of illegal activities, that clause must be construed in light of the preceding list of records and other limitations on the scope of the search. Pet. App. 44-45. Like the clause challenged in *Andresen*, paragraph 13 is a "catch-all" that appears at the

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ceipts, invoices, lists of business associates, delivery schedules, ledgers, financial statements, cash receipts, disbursement, and sales journals,and correspondence" was "indubitably broad, but * * * not 'general'" in light of the purpose of the investigation and the suspected underlying criminal activity); *United States* v. *Logan*, 250 F.3d 350, 365 (6th Cir.) (noting that "[a] description contained in a warrant is sufficiently particular if it is as specific as the circumstances and the nature of the alleged crime permit," and upholding warrant language based on the complexity and nature of the suspected fraud), cert. denied, 534 U.S. 895 and 997 (2001); *United States* v. *Travers*, 233 F.3d 1327, 1330 (11th Cir. 2000) (recognizing, in a case where the charges included "mail fraud, bankruptcy fraud, equity skimming, and money laundering," that "cases involving 'complex financial fraud . . . justify a more flexible reading of the fourth amendment particularity requirement'") (citation omitted), cert. denied, 534 U.S. 830 (2001).

end of a long sentence listing specific records subject to search and seizure. 427 U.S. at 479. Indeed, because it extends only to "*other* records of money laundering and illegal activities," App., *infra*, 2a (emphasis added), paragraph 13 cannot be understood except by reference to the kind of records of money laundering and illegal activities described earlier in Exhibit B. Similarly, the phrase "money laundering and illegal activities" in paragraph 13 plainly echoes the introductory description of the crimes for which the FBI had probable cause: "money laundering and illegal *business* activities, including Money Laundering and Conspiracy to Commit Money Laundering, Failure to Report Exporting of Monetary Instruments, Mail Fraud, Wire Fraud, Alien Smuggling, Food Stamp Fraud, and Conspiracy to commit the same." *Id.* at 1a (emphasis added). Read "with[] reference to the rest of the long sentence at the end of which it appears," *Andresen*, 427 U.S. at 479, paragraph 13 operates merely to include additional types of business records not described in paragraphs 1-12 but related to the same alleged criminal activities.

Under the circumstances, the warrants could not have contained a more particularized description of the items to be seized. The court of appeals held, and petitioners no longer challenge, that the FBI had probable cause to believe that United Corporation and its principals had engaged in money laundering, mail and wire fraud, and reporting violations. Pet. App. 32-36. The affidavit accompanying the warrants also described the FBI's suspicions of alien smuggling and food stamp fraud. *Id.* at 61-64. Because the investigation involved a "massive white collar scheme" and allegations of pervasive fraud, *id.* at 43, the search warrants reasonably called for an extensive search of business records per-

taining to United Corporation and its affiliates and principals. Based on an assessment of the affidavit and search warrants, the court of appeals found it "difficult to conclude how the Government could have more narrowly tailored the warrant in this money laundering investigation." *Ibid*. That factbound determination, like the court's resolution of the dispute over the proper construction of Exhibit B, does not warrant further review by this Court.[5]

2. Petitioners also argue (Pet. 16-18) that the references to criminal offenses in Exhibit B violated the Fourth Amendment's particularity requirement in two ways. First, they note (Pet. 16) that money laundering, mail fraud, and wire fraud are "generic offenses derivative of other * * * criminal conduct." Second, they object (Pet. 17) that Exhibit B refers to criminal of-

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[5] Petitioners' reliance (Pet. 11-13) on *Groh* v. *Ramirez*, 540 U.S. 551 (2004), is misplaced. *Groh* held that a warrant application that "adequately describe[s] the 'things to be seized'" cannot "save the *warrant* from its facial invalidity," but expressly held open the possibility that "a court may construe a warrant with reference to a supporting application or affidavit if the warrant uses appropriate words of incorporation, and if the supporting document accompanies the warrant." *Id*. at 557-558. In this case, the government makes no claim that the affidavit itself operates to constrain the scope of the search. Instead, the government relies on the language of Exhibit B, which was expressly incorporated into and attached to each warrant. See C.A. App. 380 ("Exhibit 'B' marked 'Evidence' attached."); *United States* v. *Moser*, 123 F.3d 813, 823 n.7 (6th Cir. 1997) (finding attachment of the affidavit irrelevant because "exhibit B (not the affidavit) was the document that limited the agents' discretion by describing with sufficient particularity the types of items to be seized, and exhibit B was attached to (and expressly referenced by) the search warrant"), cert. denied, 522 U.S. 1020 and 1035 (1997) and 522 U.S. 1092 (1998). Thus, as the court of appeals recognized, "the problem which existed in *Groh* is simply not implicated in this case." Pet. App. 39.

fenses by name, rather than describing their elements or citing particular section numbers within the United States Code. Because no court of appeals has accepted those arguments, further review by this Court is unwarranted.

As the court of appeals emphasized, the warrants in this case constrained the scope of the search in three ways: (1) "they specified that agents were searching for evidence of several specifically enumerated federal crimes"; (2) they restricted investigators "to evidence from 1990 to the date of the search in October 2001"; and (3) they restricted the search to records "pertaining to" United Corporation and its affiliated companies, principals, and employees. Pet. App. 42. Because those restrictions appear before the semicolon that introduces the numbered paragraphs, the records described in each "clause[] in the series" must satisfy those offense, time, and subject-matter requirements. See *Andresen*, 427 U.S. at 481. Under the circumstances, the warrants describe the items to be seized with reasonable particularity. Pet. App. 42-43.

Petitioners note that three of the criminal offenses named in Exhibit B, mail fraud (see 18 U.S.C. 1341), wire fraud (see 18 U.S.C. 1343), and money laundering (see 18 U.S.C. 1956 and 1957), depend on other underlying criminal conduct: "specified unlawful activity" in the case of money laundering, 18 U.S.C. 1956(a)(1), or a "scheme or artifice to defraud" in the case of mail or wire fraud, 18 U.S.C. 1341, 1343. They argue that naming those offenses, which are derivative of other offenses, violates the Fourth Amendment's particularity requirement by sweeping in a wide range of other criminal conduct.

No court of appeals has embraced such a rule, and several have rejected it, at least implicitly.[6] The inclusion of money laundering, mail fraud, and wire fraud in the list can be reasonably construed to refer only to the unique elements of those offenses, as distinct from the underlying specified unlawful activity or scheme to defraud. See *Gates*, 462 U.S. at 236 (1983) (adopting a "commonsense" rather than "hypertechnical" construction of the affidavit accompanying a warrant) (quoting *Ventresca*, 380 U.S. at 109). Under the circumstances of this case, no more particularized description of the suspected criminal offenses was possible. The structured deposits, detected by petitioners' bank and reported to

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[6] See *United States* v. *Ervasti*, 201 F.3d 1029, 1039 & n.7 (8th Cir. 2000) (finding no constitutional defect in a warrant that authorized the seizure of a host of business records "all of which are evidence of violations of Title 18, [U.S.C.], Sections 1341 and 1343 [mail and wire fraud], and Title 26, [U.S.C.], Section 7212(a) [interference with administration of tax laws], for the period of 1991 to present"); *Moser*, 123 F.3d at 823 (finding no violation of the particularity requirement where the warrant authorized the seizure of "property designated and intended for use and which is and has been used as a means of committing an offense concerning a violation of Title 18, United States Code, Section 1341," which criminalizes mail fraud); *United States* v. *Sawyer*, 799 F.2d 1494, 1508-1509 & n.15 (11th Cir. 1986) (finding no violation of the particularity requirement where the warrant authorized the search and seizure of a wide range of documents and records "which are evidence and fruits of, and the means of commission of violations of Title 18, U.S. Code, Sections 1341, 1343, 371 and violations of the Commodity Exchange Act, Title 7, U.S. Code, Section 6(b) 60(1)"), cert. denied, 479 U.S. 1069 (1987); *United States* v. *Lamport*, 787 F.2d 474, 476 (10th Cir.) (upholding a warrant that called for a search of various specific items along with "any other property that constitutes evidence of the commission of the criminal offense, Title 18, United States Code, Section 1341 (Mail Fraud)," based on the circumstances of the investigation), cert. denied, 479 U.S. 846 (1986).

the FBI, strongly suggested an effort to transfer almost $2 million in a manner that would avoid detection. Based on those deposits and other evidence obtained by the FBI before applying for the warrants, investigators had probable cause to believe that petitioners had engaged in money laundering or mail or wire fraud, but could not be certain as to the original source of the funds. Pet. App. 32-35.

Petitioners also fault the affidavit for referring to each criminal offense "by its generic name" rather than describing its elements or specifying a "location within the United States Code." Pet. 17; see Pet. 6. Again, no court has embraced that argument, and at least one court of appeals has rejected it. See *United States* v. *Rude*, 88 F.3d 1538, 1551 (9th Cir. 1996) (finding no constitutional defect in a warrant that authorized the seizure of a host of business records and other items "traceable to fraud and money laundering," and specifically rejecting the argument that the warrant "failed to state with particularity any guidelines for the agents to determine objectively whether a document to be seized related to wire fraud or money laundering"), cert. denied, 519 U.S. 1058 (1997).

The cases on which petitioners rely (Pet. 17-18) are readily distinguishable. Three decisions, *Rickert* v. *Sweeney*, 813 F.2d 907, 909 (8th Cir. 1987), *Voss* v. *Bergsgaard*, 774 F.2d 402, 405 (10th Cir. 1985), and *United States* v. *Cardwell*, 680 F.2d 75, 77 (9th Cir. 1982), hold only that a bare reference to the general conspiracy or tax evasion statutes places no effective limit on the scope of a warrant. In *Rickert*, the court held that "probable cause existed only to search for evidence of tax evasion in connection with one particular project," and invalidated a warrant that authorized the seizure of

records related to all projects. 813 F.2d at 909. Similarly, in *Voss*, the court held that probable cause existed only as to the existence of "a substantial tax fraud scheme," and could not justify the seizure of all of an organization's records, including those related to lawful political advocacy protected by the First Amendment. 774 F.2d at 406. In *Cardwell*, the defect was particularly clear because IRS agents were "already focused * * * on certain portions of the appellants' business record": "the government knew exactly what it needed and wanted and where the records were located," but nonetheless obtained a warrant authorizing a "massive re-examination" of the defendant's records. 680 F.2d at 78 (quoting *VonderAhe* v. *Howland*, 508 F.2d 364, 370 (9th Cir. 1975)).[7]

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[7] The other decisions cited by petitioners are factually inapposite for the same reason. In *United States* v. *Abrams*, 615 F.2d 541, 542-543 (1st Cir. 1980), investigators suspected that three doctors had submitted false Medicare and Medicaid claims, but because of the broad description in the search warrant, officers seized all patient records, including the "records of non-Medicare-Medicaid patients." In *In re Lafayette Academy, Inc.*, 610 F.2d 1, 3 (1st Cir. 1979), investigators had probable cause to believe that a school had engaged in fraud in connection with the Federal Insured Student Loan Program (FISLP), but obtained a warrant that authorized the seizure of four truckloads of the school's business and student records, including records having no possible connection to FISLP. Both cases involve warrants that swept more broadly than the showing of probable cause.

Petitioners' reliance on *United States* v. *Spilotro*, 800 F.2d 959 (9th Cir. 1986) (Kennedy, J.), is also misguided. The warrants in that case called for the seizure of "notebooks, notes, documents, address books, and other records; safe deposit box keys, cash, and other assets; photographs, equipment including electronic scanning devices, and other items and paraphernalia, which are evidence of violations of 18 U.S.C. 1084, 1952, 892-894, 371, 1503, 1511, 2314, 2315, 1962-1963." *Id.* at 962. The court held that the warrants lacked particularity because "the

In this case, by contrast, the court of appeals found it "difficult to conclude how the Government could have more narrowly tailored the warrant" in light of the size, complexity, and pervasiveness of petitioners' suspected money laundering, tax violations, and fraud. Pet. App. 43. Petitioners make no effort to compare the evidence described in the warrant application with the scope of the search authorized in Exhibit B, and instead seize upon individual phrases which, in isolation, could suggest an impermissibly broad authority to search. The court of appeals, on the other hand, painstakingly compared the supporting affidavit with the scope of the warrant, noting that "the government needed to search for a broad array of corporate documents to piece together United's unexplained large-scale currency deposits" and concluding that the "financial records, sales records, tax records, and purchase records" described in Exhibit B "are all probative of the cash flow" and "could establish the massive white collar scheme the Government has alleged in this case." *Ibid.* Based on the nature of the investigation and the warrant's express limitations, the court of appeals held that "the warrant here was drafted

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government could have narrowed most of the descriptions in the warrants either by describing in greater detail the items one commonly expects to find on premises used for the criminal activities in question, or, at the very least, by describing the criminal activities themselves rather than simply referring to the statute believed to have been violated." *Id.* at 964. Here, the government followed both of those instructions. Exhibit B includes 12 paragraphs describing, at length, the types of records that typically contain information relevant to the criminal activities listed, along with a "catch-all" provision in paragraph 12. See App., *infra*, 1a-2a. It also listed specific criminal offenses by name, rather than merely citing section numbers of the United States Code. *Id.* at 1a.

with sufficient particularity." *Id.* at 42-43. Further review of that fact-intensive inquiry is unwarranted.

**CONCLUSION**

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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**APPENDIX**

Exhibit "B"
Evidence

a. Any and all records, whether typed or hand-written, or stored on paper, magnetic or electronic medium (including information stored on computer systems) or money laundering and illegal business activities, including Money Laundering and Conspiracy to Commit Money Laundering, Failure to Report Exporting of Monetary Instruments, Mail Fraud, Wire Fraud, Alien Smuggling, Food Stamp Fraud, and Conspiracy to commit the same from 1990 to the present

pertaining to United Corporation d/b/a Plaza Extra, Plessen Enterprises, Inc., Hamdan Diamond Corp., Sixteen Plus Corp. and any affiliated companies, as well as their principals, officers, managers, and employees, including but not limited to Fathi Yusuf, Maher Yusuf, Waleed "Wally" Hamed, and Waheed "Willy" Hamed; including

1. Audit reports and financial statements of the above-listed companies and persons;

2. All financial records, including monthly statements, cancelled checks, deposit slips, certificates of deposit, of any and all banks and financial institutions where the above-listed companies and persons have accounts;

3. Any and all securities held or owned by the above-listed companies and persons and related records;

4. Any and all financial instruments, promissory notes, and letters of credit held or owned by the above-listed companies and persons and related records;

5. Documents, including corporate documents, identifying the names, addresses, dates of birth, telephone numbers, and social security numbers of all employees, officers, directors, and associates of the above-listed corporations and companies;

6. Any and all contracts, agreements, and correspondence;

7. Original contracts, promissory notes, subscription forms, purchases's receipts, compliance verification forms, W-9 forms, and correspondences executed or exchanged between United Corporation d/b/a Plaza Extra and all of its customers and associated companies;

8. Copies of all Internal Revenue Service and VI Bureau of Internal Revenue tax returns or other reporting forms and supporting schedules and documentation;

9. Telephone records, Rolodex records, telephone answering machine tapes;

10. Video tapes, disks or records;

11. Photos, whether recorded on paper, tape, or disk;

12. Documents and records pertaining to communication by facsimile (fax) transmissions;

13. Any other records of money laundering and illegal activities, including but not limited to:

books, records, receipts, accounts, notes, logs, ledgers, journals, worksheets, invoices, pass books, money drafts, money orders, bank drafts, cashier checks, bank

checks, safety deposit box keys, and money wrappers, airline tickets, and addresses and telephone numbers in books or on paper or stored in electronic form by computer systems, or word processing equipment.

The terms "records" and "information" include:

all of the foregoing items of evidence in whatever form and by whatever means they may have been created or stored, including any electrical, electronic, or magnetic form (such as any information on an electronic or magnetic storage device, including floppy diskettes, hard disks, ZIP disks, CD-ROMs, optical discs, backup tapes, printer buffers, smart cards, memory calculators, pagers, personal digital assistants such as Palm Pilot computers, as well as printouts or readouts from any magnetic storage device); any handmade form (such as writing, drawing, painting); any mechanical form (such as printing or typing); and any photographic form (such as microfilm, microfiche, prints, slides, negatives, videotapes, motion pictures, photocopies).

Computer systems include:

computer hardware, meaning hard disks, floppy disks, magnetic tape, central processing units, monitors, keyboards, connecting wires, printers, modems, plotters, encryptions, circuits boards, optical scanners, external hard drives, computer storage facilities, all electronic devices which are capable of analyzing, creating, displaying converting, or transmitting electronic or magnetic computer impulses or data, and other computer related devices; and

computer software, meaning any and all instructions or programs stored in the form of electronic or magnetic media which are capable of being interpreted by a

computer or related component, including operating systems, application software, utility programs, compilers, interpreters, and other programs or software used to communicate with computer hardware or peripherals, either directly or indirectly, via telephone lines, radio, or other means of transmissions, and computer instruction manuals for the use of any computers and their accessories found at the premises; and

recorded information pertaining to any e-mail stored on computers, e-mail servers, mail gateways, logs and other reads pertaining to e-mail, including all stored files, e-mail messages, attached documents, and web pages; all files and transactional logs associated with e-mail, including all telephone numbers used to access e-mail, dates, times, method of connecting, port, dial-up, location, attached file names and sizes, and user names, and all billing records, account history, and subscriber information related to e-mail; and

b. any large accumulations or bundles of US currency, precious metals, precious stones and jewelry stored or collected in a manner designed to facilitate convenient transport, exclusive of cash or valuables that are kept in a manner clearly consistent with the normal operation of legitimate business or normal personal affairs.