No. 17-7046

In the Supreme Court of the United States

CHENEQUA AUSTIN,
ERIC JERMAINE SPIVEY,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF OF THE FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES—continued

Page(s)

TABLE OF AUTHORITIES—continued

Page(s)

Statutes and Rules

Other Authorities

INTEREST OF THE *AMICUS CURIAE*[1]

The Florida Association of Criminal Defense Lawyers ("FACDL") is a non-profit organization with a membership of over 1,700 attorneys and 29 chapters throughout the state of Florida. The FACDL's members are all practicing criminal defense attorneys.

The FACDL has a strong interest in the question presented by the petition. By holding that police deception as to the reason they are at a home is irrelevant to the voluntariness of the homeowners' consent to a warrantless search of that home, the decision below creates an untenable conflict with the overwhelming majority of federal and state appellate courts on a Fourth Amendment question of exceptional importance. And the decision's per se endorsement of police deception, if allowed to stand, will encourage widespread evasion of the Fourth Amendment's warrant requirement and erode the trust between law enforcement and citizen.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case involves the undisputed use of deception by law enforcement to obtain consent for the

[1] Pursuant to Rule 37.6, *amicus* affirms that no counsel for a party authored this brief in whole or in part and that no person other than *amicus* or its counsel made a monetary contribution to its preparation or submission. Counsel of record for both parties received notice at least 10 days prior to the due date of the intention of *amicus* to file this brief. Petitioners' blanket consent to filing of *amicus curiae* briefs is on file with the Clerk of this Court, and respondent's written consent to this filing has been filed concurrently with the brief.

warrantless search of a home—the location this Court has described as "first among equals" when "it comes to the Fourth Amendment." *Florida* v. *Jardines*, 569 U.S. 1, 6 (2013).

Judge Martin's vigorous dissent details the extraordinary steps taken by law enforcement here to enter petitioners' home without a warrant:

- Approximately ten state and federal law enforcement officers working under the auspices of the U.S. Secret Service's Organized Fraud Task Force "held a planning session during which 'they made a decision to come up with the methodology of employing [a] ruse.'" Pet. App. 22a.
- Petitioners had previously reported to local law enforcement that they had been the victims of two burglaries over the span of a few weeks. Those burglaries had already been solved, but petitioners were unaware of that fact, so the officers "decided to pretend to investigate burglaries that had already been solved, as a way to get consent to enter the home and search for evidence of credit-card fraud." *Ibid.*
- To effectuate the ruse, they dressed up a U.S. Secret Service Agent "as a crime-scene technician." *Id.* at 23a.
- The officers testified that when they arrived at petitioners' home, petitioner Austin was "'genuinely excited,' 'relieved,' and 'happy' they were there to follow-up on the reported burglaries of her home." *Ibid.*

- Once at the petitioners' home, the Secret Service Agent turned crime-scene technician "pretend[ed] to dust for fingerprints" and repeatedly gained access to various rooms in the house—including the entryway, "bedroom," "bathroom," and "closet areas"—by "asking Ms. Austin where else the burglar had gone" and receiving her permission to view each of those areas. *Id.* at 23a-24a.
- Petitioner Austin immediately ceased cooperating once the officers revealed the true nature of their investigation, making clear that her consent turned on the officers' successful deception about why they were there. *Id.* at 24a.
- The ruse to obtain consent worked—but in case it did not, the "officers had an assistant state attorney on standby ready to get a search warrant." *Id.* at 23a.

The majority below swiftly brushed these circumstances aside, announcing a legal rule that it "does not matter" whether "officers deliberately lie[]" their way into a home without a warrant. Pet. App. 12a. In other words, says the majority, the officers' "subjective motivation"—the real reason they seek to enter the home—is "irrelevant" to the voluntariness of the purported consent. *Id.* at 12a-13a.

By holding that officers' misrepresentation of their investigatory purpose is legally irrelevant, the decision below squarely conflicts with multiple federal and state appellate courts. Those courts have overwhelmingly concluded that deception about an investigation's purpose is highly relevant to the voluntariness of consent under this Court's "totality of

the circumstances" standard from *Schneckloth* v. *Bustamante*, 412 U.S. 218, 224-25 (1973). And while the legal conflict is clear, several of those decisions have involved facts indistinguishable in relevant part from those presented here—such as officers gaining entry by falsely claiming to be investigating a crime reported by the homeowners (or a crime made up by the officers).

Moreover, the decision below reached its novel conclusion by misapplying this Court's precedents. *Whren* v. *United States*, 517 U.S. 806 (1996) (cited at Pet. App. 13a) has no bearing here, because whether the officers' warrantless home search was objectively reasonable in the first place depends entirely on the validity of petitioners' consent—a subjective inquiry. Cf. *Jardines*, 569 U.S. at 10. And the court below's attempt to cabin the relevance of deception to cases like *Bumper* v. *North Carolina*, 391 U.S. 543 (1968)—in which officers falsely claimed to possess a valid warrant—defies common sense as well as the broader principle announced in those cases, which is that deliberate misrepresentations to an individual by law enforcement officers can bear on the voluntariness of her resulting consent.

Finally, the question presented is frequently recurring and exceptionally important. As the petition details, consent searches comprise the vast majority of warrantless searches by police. This Court's guidance is urgently needed on whether purported consent obtained by officers' deception as to the purpose of their investigation factors into the Fourth Amendment inquiry. Clarity is especially important when, as here, officers use deceit to effect "the physical entry of the home," which is "the chief evil against which the wording of the Fourth Amendment

is directed." *Welch* v. *Wisconsin*, 466 U.S. 740, 748 (1984). And the majority's dismissal of deception as a relevant factor threatens significant adverse consequences—widespread evasion of the warrant requirement and erosion of trust between law enforcement and citizen—with little or no corresponding benefit for law enforcement.

ARGUMENT

I. The Decision Below Squarely Conflicts With Numerous Federal And State Appellate Courts.

The upshot of the decision below is that known law enforcement officers are always permitted to obtain consent for a search by misrepresenting to an individual the true purpose of their investigation. As the petition details (at 14-23), that holding departs from holdings of the Third, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Circuits, as well as the highest courts from the states of Colorado, Florida, Kentucky, Maryland, Rhode Island, and Pennsylvania. This deep conflict is ripe for this Court's review.

1. Any effort by respondent to recast this conflict as mere case- or fact-specific disparity in the application of settled principles would be futile. The court below said that, as a matter of law, officers are free to "deliberately lie[]" about the purpose of their investigation in order to obtain consent. Pet. App. 12a. Other courts have held, by contrast, that "[w]hen government agents seek an individual's cooperation with a government investigation by misrepresenting the nature of that investigation, this deception is appropriately considered as part of the totality of circumstances in determining whether consent was

gained by coercion or duress." *United States* v. *Harrison*, 639 F.3d 1273, 1278-79 (10th Cir. 2011).

That conflict persists in cases with materially similar facts. For example, in *United States* v. *Watzman*, 486 F.3d 1004 (7th Cir. 2007), federal agents sought to support a warrant application with information obtained from a phony home visit to the defendant. Specifically, the federal investigators enlisted Chicago police to assist them, and the police gained entry to the home by telling they defendant that "they were following up on a burglary *he had reported* two years earlier." *Id.* at 1006 (emphasis added). While the Seventh Circuit, like the district court, concluded that other evidence in the warrant application independently established probable cause, it had no quarrel with "the district court's conclusion that any information gleaned during the phone 'burglary follow-up' * * * is tainted" and could not be considered. *Id.* at 1007. Indeed, the government did not challenge that conclusion on appeal. *Ibid.*

State v. *Schweich*, 414 N.W.2d 227 (Minn. Ct. App. 1987), also involved police purporting to investigate a crime reported by the defendant. The defendant reported being assaulted by the boyfriend of the woman from whom he rented part of a house. *Id.* at 228. Four officers responded and obtained consent to enter the house from the defendant by stating that they were looking for the weapon used to commit the assault, without telling defendant that they also suspected him of selling drugs and were searching the home for contraband. *Id.* at 228-29. The court held defendant's purported consent invalid, explaining that even "[t]acit misrepresentation of the purpose of a search can rise to such a level of deception

to invalidate the consent." *Id.* at 230 (citing *United States* v. *Tweel*, 550 F.2d 297 (5th Cir. 1977); *Alexander* v. *United States*, 390 F.2d 101 (5th Cir. 1968)). The court summarized: "By not informing respondent he was under investigation before obtaining his consent, the state engaged in the type of government conduct criticized in *Tweel*." *Ibid.*

Moreover, nothing in the logic of the decision below—which deems all deception about investigatory purpose fair game—limits its holding to the situation where law enforcement claims to be investigating a crime reported by the homeowner. Its holding therefore also conflicts with several other decisions concluding that purported consent is involuntary when officers fabricate the crime they claim to be investigating. One such decision is *United States* v. *Phillips*, 497 F.2d 1131 (9th Cir. 1974), in which federal law enforcement officers gained entry to a building through purported consent by enlisting local police to claim that they were investigating a (fictitious) robbery in the building. *Id.* at 1132-33. The Ninth Circuit held that the consent was invalid, concluding that "[a] ruse entry, by its very nature, runs contra to the concept of an intelligent consent or waiver." *Id.* at 1135 & n.4.

The Kentucky Supreme Court reached a similar conclusion when officers obtained consent by claiming to be investigating a fabricated rape. See *Krause* v. *Commonwealth*, 206 S.W.3d 922 (Ky. 2006). What made the deceit more problematic than undercover cases in which the officer misrepresents his identity to gain entry, the court explained, is that law enforcement "exploited a citizen's civic desire to assist police in their official duties for the express purpose of incriminating that citizen." *Id.* at 927. Thus, the

"use of this particular ruse simply crossed the line of civilized notions of justice and cannot be sanctioned without vitiating the long established trust and accord our society has placed with law enforcement." *Ibid.* (collecting cases).

2. The Eleventh Circuit's decision also conflicts with the approach taken by the Florida Supreme Court. In *Wyche* v. *State*, 987 So.2d 23 (Fla. 2008), the Florida Supreme Court considered the voluntariness of the defendant's consent for DNA testing of a saliva swab. The investigators said they were collecting the evidence for use in a fictitious burglary investigation, but used the evidence to connect the defendant to a different burglary. *Id.* at 27. The Justices were divided 4-3 on whether the consent was voluntary under the totality of the circumstances, with the majority concluding that it was, but all agreed that the court of appeals "correctly considered police deception as one of many factors to be reviewed when analyzing the voluntariness of consent." *Id.* at 29.[2] Cementing the point, all of the Justices agreed not to disturb a lower court's conclusion in a related case that the defendant's consent was involuntary when he was told that his DNA would be used in a fictitious rape investigation and was instead used to connect him to a series of robberies. *Id.* at 31.

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[2] See also *id.* at 32 (Bell, J., specially concurring) (concurring with "serious reservations"; "I am disturbed by the level of intentional police misrepresentation in this case"); *id.* at 42 (Anstead, J., dissenting) ("I would conclude in this case that the level of police trickery and use of intentional deception prevented Wyche's consent from constituting 'the product of an essentially free and unconstrained choice by its maker' under the *Schneckloth* fairness analysis.").

In short, the conflict created by the decision below is untenable. The protections afforded by the Fourth Amendment should not depend on whether someone lives in Chicago, Los Angeles, or Miami. Law enforcement too should be subject to an even playing field; the kind of deception endorsed by the majority below would be highly relevant or even dispositive to the validity of a consent search if conducted by officers in Minneapolis or Frankfurt instead. And geography alone is not determinative: the *same* Florida homeowner's consent obtained by the *same* deception as to purpose will be automatically valid in federal cases but subject to invalidation in state ones.

II. The Decision Below Misapplies This Court's Precedents.

1. In deeming officers' deception irrelevant, the majority below reasoned that "[p]retext does not invalidate a search that is objectively reasonable." Pet. App. 13a (citing *Whren*, 517 U.S. at 814). That extension of *Whren* to the context of consent searches is unpersuasive, for several reasons.

First, *Whren* and its progeny are irrelevant here for the same reason that they were "irrelevant" in *Jardines*: "the question before the court is precisely *whether* the officer's conduct was an objectively unreasonable search." *Jardines*, 569 U.S. at 10. This Court's precedents place beyond cavil "that a search or seizure carried out on a suspect's premises without a warrant is per se unreasonable, unless the police can show that it falls within one of a carefully defined set of exceptions." *Coolidge* v. *New Hampshire*, 403 U.S. 443, 474 (1971); accord *Payton* v. *New York*, 445 U.S. 573, 586 & n.25 (1980) (quoting same); see also, *e.g.*, *Kyllo* v. *United States*, 533 U.S. 27, 31

(2001) ("With few exceptions, the question whether a warrantless search is reasonable and hence constitutional must be answered no."). The exception at issue here is when police have voluntary consent. See, *e.g.*, *Schneckloth*, 412 U.S. at 222. So it is entirely circular to say, as the majority here did, that the search was objectively reasonable: that assumes the conclusion that the prosecution has met its burden of showing that the consent was voluntary.

Second, *Whren* is about inquiries into probable cause for a stop—"which are made from a law enforcement officer's perspective." Pet. App. 31a n.4 (Martin, J., dissenting). The voluntariness of consent, by contrast, is based on the citizen's "subjective understanding" of the circumstances at the time of her purported consent. *Schneckloth*, 412 U.S. at 229; accord Pet. App. 31a n.4 (Martin, J., dissenting) (quoting same). As a matter of common sense, officers' lies to an individual about the reason why they are at her home is relevant in assessing that individual's "subjective understanding."

Third, while *Whren* is readily distinguishable, its extension to this novel context is especially unwarranted because *Whren* "sets the balance too heavily in favor of police unaccountability to the detriment of Fourth Amendment protection." *District of Columbia* v. *Wesby*, --- S. Ct. ----, 2018 WL 491521, at *16 (Jan. 22, 2018) (Ginsburg, J., concurring in the judgment in part); see also *id.* (" I would leave open, for reexamination in a future case, whether a police officer's reason for acting, in at least some circumstances, should factor into the Fourth Amendment inquiry."); Michael J.Z. Mannheimer, *A Crack in the* Whren *Wall?*, PrawfsBlawg (Jan. 22, 2018), http://prawfsblawg.blogs.com/prawfsblawg/2018/01/a-crack-

in-the-whren-wall.html. Thus, even if *Whren* had any relevance here—and it does not—this case would provide an ideal opportunity to "reexamin[e]" and place limits on its scope.

2. The Eleventh Circuit's refusal to consider deception as to purpose is also inconsistent with the property-rights approach to the Fourth Amendment embodied by this Court's recent decisions in *Jardines* and *United States* v. *Jones*, 565 U.S. 400 (2012). As those cases make clear, the "reasonable-expectations[-of-privacy] test 'has been *added to*, not *substituted for*,' the traditional property-based understanding of the Fourth Amendment." *Jardines*, 569 U.S. at 11 (quoting *Jones*, 565 U.S. at 409). Thus, principles of "common-law trespass" are instructive in delineating the contours of the Fourth Amendment. *Jones*, 565 U.S. at 405.

Under those principles, deception as to purpose vitiates consent and renders the resulting entry a trespass. See, *e.g.*, Restatement (Second) of Torts § 892B(2) (1979) (consent is invalid when "induced by the other's misrepresentation" about the "nature of the invasion"). Commentators have made this connection, observing that this Court's property-based approach "promises to provide more Fourth Amendment protection against police deception." Laurent Sacharoff, *Trespass and Deception*, 2015 B.Y.U. L. Rev. 359, 359 (2015); see also Wayne R. LaFave et al., 4 Search & Seizure § 8.2(n) (5th ed. 2016) (citing the Sacharoff article in observing that the "entire area of entry-by-deception" cases may be subject to evaluation under "the Supreme Court's more recent reliance upon a property-based analysis in determining what constitutes a Fourth Amendment search").

3. Respondent may point to the court below's statement that "[d]eceit can also be relevant to voluntariness." Pet. App. 8a. But the majority made clear in the remainder of that paragraph that deceit about investigatory purpose does not count. The majority instead cited this Court's decision in *Bumper*, in which police falsely said that they had a warrant, and therefore the police "claim[ed] authority they lack[ed]." Pet. App. 8a-9a. As Professor LaFave notes, however, *Bumper* and its ilk aren't really ruse cases at all, but rather "cases in which the person allowing the search has surrendered to a claim of lawful authority." LaFave, *supra*, § 8.2(n) n.393. And again, by carving out police deception as to purpose from the universe of relevant deceit, the decision below squarely conflicts with dozens of federal and state appellate decisions. See pages 5-9, *supra*; Pet. 14-23. The Eleventh Circuit's statement that *some* deceit can be relevant to voluntariness—but not the kind of deceit employed here or in countless other reported cases—thus provides no basis to insulate its decision from review.

III. The Question Presented Recurs Frequently And Is Exceptionally Important.

The enormous practical consequences of the question presented further warrant this Court's intervention.

First, the issue arises with great frequency, with consent searches comprising an estimated 90% or more "of all warrantless searches by police." Pet. 23 (quoting Alafair S. Burke, *Consent Searches and Fourth Amendment Reasonableness*, 67 Fla. L. Rev. 509, 511 (2015)). A significant number of consent searches in turn involve deception: "Recent years have brought hundreds of reported decisions con-

cerning such police ruses." Sacharoff, *supra*, 2015 B.Y.U. L. Rev. at 361; see also LaFave, *supra*, § 8.2(n) (cataloging numerous "[d]eception as to purpose" cases "in which some form of deceit or trickery is practiced by a person known to be a federal, state, or local official"). The kind of ruse employed by officers here to evade the Fourth Amendment's warrant requirement will only become more commonplace if the Eleventh Circuit's blessing of such tactics is left undisturbed.

Second, because this case involves a warrantless search of a home, it provides an ideal vehicle for this Court to address the frequently recurring question of what role deception should play in the voluntariness inquiry. This Court has repeatedly described "'the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion'" as being "'[a]t the very core' of the Fourth Amendment." *Kyllo*, 533 U.S. at 31 (quoting *Silverman* v. *United States*, 365 U.S. 505, 511 (1961)); accord *Jardines*, 569 U.S. at 6. Yet "the right to retreat would be significantly diminished" (*Jardines*, 569 U.S. at 6) if, as the decision below concludes, police can "deliberately lie[]" their way into a home. Pet. App. 12a.

Moreover, by holding deception as to purpose irrelevant for the warrantless search of a home, the Eleventh Circuit necessarily and broadly held such deception irrelevant for consent searches of *any* location. That sweeping holding calls out for this Court's intervention.

Third, the decision below threatens adverse consequences by encouraging law enforcement to employ ruses in order to circumvent the Fourth Amendment's warrant requirement. In *Schneckloth*, this

Court described the voluntariness inquiry as a comparative one, which should "accommodat[e] * * * [a]t one end of the spectrum" providing law enforcement with an adequate toolkit "for the effective enforcement of criminal laws," while accommodating "[a]t the other end of the spectrum * * * the set of values reflecting society's deeply felt belief that the criminal law cannot be used as an instrument of unfairness." 412 U.S. at 224-25. This Court specifically recognized that "unfair * * * police tactics pose[] a real and serious threat to civilized notions of justice." *Id.* at 225.

The rule announced below endorses tactics that fall directly on the "unfair" end of the spectrum. As the dissent emphasized, "the use of deception to get consent violates the Fourth Amendment because it is an 'abuse' of the public's trust in law enforcement." Pet. App. 27a (Martin, J., dissenting). As the Fifth Circuit explained nearly forty years ago: "We believe that a private person has the right to expect that the government, when acting in its own name, will behave honorably. When a government agent presents himself to a private individual, the individual should be able to rely on an agent's representations." *SEC* v. *ESM Gov't Secs., Inc.*, 645 F.2d 310, 316 (5th Cir. 1981). It is all the more clear that law enforcement officers "betray that trust" (*ibid.*) when, as here, they claim to be "assist[ing] the suspect as the victim of a crime" or "to enlist her help as a good Samaritan" (Pet. 26). See, *e.g.*, *Krause*, 206 S.W.3d at 927 ("[E]xpolit[ing] a citizen's civic desire to assist police in their official duties for the express purpose of incriminating that citizen * * * simply crosse[s] the line of civilized notions of justice.").

Finally, and on the other side of the ledger in *Schneckloth*'s comparative inquiry, there is little if

any practical law enforcement need for a sweeping endorsement of police deception as to purpose as a means for gaining warrantless entry into the home.

This Court has repeatedly recognized in recent years that "advances" in technology have made it easier and faster than ever for law enforcement officers to obtain a warrant. *Missouri* v. *McNeely*, 569 U.S. 141, 154 & n.4 (2013); accord *Riley* v. *California*, 134 S. Ct. 2473, 2493 (2014) ("Recent technological advances * * * [have] made the process of obtaining a warrant itself more efficient."); *Birchfield* v. *North Dakota*, 136 S. Ct. 2160, 2192 (2016) (Sotomayor, J., concurring in part and dissenting in part). As relevant here, since 1977, the Federal Rules of Criminal Procedure have permitted magistrate judges to issue warrants "based on sworn testimony communicated by telephone," and currently permit federal magistrates "to consider 'information communicated by telephone or other reliable electronic means.'" *McNeely*, 569 U.S. at 154 (quoting Fed. R. Crim. P. 4.1(a)). And the vast majority of states also permit officers to obtain warrants by telephone or email. *McNeely*, 569 U.S. at 154 n.4; see also Br. of Nat'l Ass'n of Crim. Defense Lawyers et al., *Birchfield* v. *North Dakota*, 2016 WL 612133, at *11, 11a (U.S. Feb. 11, 2016) (cataloging the "forty-two states" that "have passed statutes that allow police officers to telephonically or electronically submit warrant applications"). Moreover, those rare circumstances when obtaining a warrant would be too burdensome are appropriately addressed by a case-specific application of "the exigent circumstances exception" to the warrant requirement, not the per se evasion authorized by the court below. *Riley*, 134 S. Ct. at 2494.

The circumstances here offer a prime example of why the decision below's wholesale endorsement of police deception is overbroad. The government never claimed that it decided to engage in its elaborate, pre-planned ruse because "it lacked probable cause" or because "it would have been too burdensome" to obtain a warrant. Pet. App. 34a-35a (Martin, J., dissenting). "Indeed, this record reflects that the officers had an assistant attorney on standby in case their ruse did not succeed." *Id.* at 35a. And when asked at oral argument "why it did not simply get a warrant," the government's response "was that there was 'no requirement' to get a warrant." *Id.* at 34a-35a.

The government's cavalier dismissal of the warrant requirement, accepted by the majority below, flies in the face of this Court's admonition that "[o]ur cases have historically recognized that the warrant requirement is 'an important working part of our machinery of government,' not merely 'an inconvenience to be somehow "weighed" against the claims of police efficiency.'" *Riley*, 134 S. Ct. at 2493 (quoting *Coolidge*, 403 U.S. at 481, 491).

In addition, review and reversal of the decision below would not call into question well-established precedent permitting undercover officers to use deception about their identities to gain warrantless entry. See, *e.g.*, *Hoffa* v. *United States*, 385 U.S. 293 (1966); *Lewis* v. *United States*, 385 U.S. 206 (1966). Those cases rest on the proposition that the Fourth Amendment does not "protect[] a wrongdoer's misplaced belief that a person to whom he voluntarily confides his wrongdoing will not reveal it." *Hoffa*, 385 U.S. at 302; see also, *e.g.*, *United States* v. *Haden*, 397 F.2d 460, 464-65 (7th Cir. 1968) ("[T]he Fourth Amendment affords no protection to the per-

son who voluntarily reveals incriminating evidence to one who is a government agent in the mistaken belief that the latter will not disclose it."); LaFave, *supra*, § 8.2(m) (quoting same).

Cases involving deception by a known law enforcement officer are different in kind, however, because they do not involve a suspect "unwisely repos[ing] trust in what later turned out to be a government agent." *Harrison*, 639 F.3d at 1278. Instead, they involve a *known* government agent gaining warrantless access "by invoking the private individual's trust in his government, only to betray that trust." *ESM Gov't Secs., Inc.*, 645 F.2d at 316. And for that reason, courts and commentators have had little difficulty distinguishing between these two types of deception. See, *e.g.*, *Harrison*, 639 F.3d at 1278-79; *Phillips*, 497 F.2d at 1134-35; *Krause*, 206 S.W.3d at 927 (collecting cases); see also Pet. App. 32a n.6 (Martin, J., dissenting) ("[W]e have specifically distinguished undercover operations from the type of deceit used here."); LaFave, *supra*, §§ 8.2(m), (n) (distinguishing cases involving "[d]eception as to identity" from those involving "[d]eception as to purpose").

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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FEBRUARY 2018