

In The  
**Supreme Court of the United States**

—◆—  
VALENTINO ANDERSON,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

—◆—  
**On Petition For Writ Of Certiorari  
To The United States Court Of Appeals  
For The Second Circuit**

—◆—  
**BRIEF OF *AMICUS CURIAE* THE CONSTITUTION  
PROJECT IN SUPPORT OF PETITIONER**

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**IDENTITY AND INTERESTS  
OF *AMICUS CURIAE*<sup>1</sup>**

The Constitution Project (TCP) is a nonpartisan advocacy and government watchdog organization that promotes and defends constitutional safeguards by bringing together legal and policy experts from across the political spectrum to promote consensus-based solutions to pressing constitutional issues. One of TCP's key areas of focus is the constitutional imperative of procedural fairness and due process in the criminal justice system. TCP is deeply concerned with the preservation of our fundamental constitutional guarantees during the investigation and prosecution of criminal offenses and ensuring that those guarantees are respected and enforced.

In order to better apprise courts of the importance and broad consequences of critical constitutional issues, TCP regularly files *amicus* briefs in this Court and other courts in cases that implicate its positions on those issues. TCP has particular expertise, knowledge, and interest in the fair administration of criminal law, consistent with the United States Constitution. TCP's work and mission bear

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<sup>1</sup> This *amicus curiae* brief is filed with the written consent of the parties after the parties received timely notice under Supreme Court Rule 37. Neither a party nor a party's counsel has authored this brief in whole or in part, or contributed money that was intended to fund preparing or submitting this brief. No person has contributed money that was intended to fund preparing or submitting this brief.

directly on the issue of whether a defendant can have standing under the Due Process Clause to challenge the admissibility of evidence when that evidence has been obtained through conscience-shocking government conduct. *Amicus* has filed this brief to highlight the need for the Court to grant the petition in this case to address this issue.



### **SUMMARY OF THE ARGUMENT**

This Court often has acknowledged that “the law recognizes the importance to organized society that” certain fundamental rights “be scrupulously observed.” *Carey v. Phipps*, 435 U.S. 247, 266 (1978). No right is more fundamental than the right to due process. This case presents the Court the opportunity to reaffirm the importance of the principle that the rights enshrined in the Due Process Clause are not simply personal protections for specific individuals targeted for wrongful government conduct, but are fundamental obligations owed to “organized society” as a whole. When government officials, such as the police in this case, engage in egregious violations of an individual’s due process rights, the commands of the Constitution can only be “scrupulously observed” by the prohibition on the government’s use of the fruits of that egregious conduct against the defendant.

This case presents a particularly apt vehicle for the Court’s reaffirmation of this principle because the

conduct at question is so conscience-shocking – indeed, it is conceded by the government to be violative of the Due Process Clause. The Court should take this opportunity to establish once and for all that the footnote in *United States v. Payner*, 447 U.S. 727, 737 n.9 (1980), was not a license to government actors to willfully and egregiously violate the due process rights of one citizen in order to further the prosecution of another.



### **REASONS FOR GRANTING THE PETITION**

#### **The Court Should Grant the Petition and Clarify That Defendants Have Standing to Object to the Admission of Evidence Obtained Through Conscience-Shocking Conduct Against Other Parties.**

The relevant facts of this case, as described in the petition for a writ of *certiorari* (at 3-8), are undisputed and shocking. Police officers detained petitioner's wife, Crystal Anderson, and while leaving her handcuffed to a chair for several hours, repeatedly lied to her about their ability to search her body. They did so in order to force her to consent to a search for which the officers had been denied a warrant. The government eventually used the fruits of that illegal search – one it concedes violated Ms. Anderson's due process rights – to prosecute the petitioner, Ms. Anderson's husband Valentino. By allowing the government to rely on this evidence obtained through conscience-shocking methods, the Second Circuit undermined

the protections the Due Process Clause provides all citizens. And it granted a license to government officials to egregiously violate the constitutional rights of its citizens so long as any information they obtain from such violation is used only against defendants other than the individual whose rights were directly violated.

Remarkably, the basis for the Second Circuit's ruling (and similar rulings from other courts) with such far-reaching and troubling ramifications for the Constitution is dicta buried in a footnote of a 35-year-old decision of this Court, *United States v. Payner*, 447 U.S. 727, 737 n.9 (1980). The rights enshrined in the Constitution and particularly in the Due Process Clause are too important to be shunted aside on such flimsy authority. At a time when allegedly egregious police conduct is in the forefront of public debate and the protections of the Constitution are of paramount importance, government officials should not be rewarded for conscience-shocking conduct by imposition of a criminal conviction on the basis that the egregious misconduct happened to another individual.

While this case presents an especially suitable procedural and factual setting for addressing the issue, it is not the only case in which law enforcement officials willfully have violated one citizen's due process rights in an attempt to obtain evidence against another citizen. Other cases demonstrate that the conduct of the government in this case is far from *sui generis* and the time to correct the misreading of this Court's dicta that has undermined constitutional

safeguards is long past. A ruling that evidence obtained from a third party through conscience-shocking methods in violation of the Due Process Clause cannot be used against a defendant would ensure that the constitutional protections of due process are scrupulously observed.

**A. The Use Against a Defendant of Evidence Obtained Through Conscience-Shocking Conduct Against a Third Party is Not Unique to This Case.**

While the conduct in this case is particularly egregious, it is hardly the first instance (or absent action by this Court, likely to be the last) in which law enforcement has deliberately violated the due process rights of one individual in order to obtain evidence against another. A few examples suffice to make this point.

In *United States v. Miceli*, 774 F. Supp. 760 (W.D.N.Y. 1990), an IRS agent coerced the defendant's wife into robbing her husband's office for the incriminating evidence used to indict him. *Id.* at 764. The IRS agent established a personal – and eventually sexual – relationship with the spouse in order to convince her to obtain evidence to be used against her husband. *Id.* at 763-64. Relying on the *Payner* dicta, the court refused to suppress the evidence or dismiss the indictment. *Id.* at 770-74.

In another Second Circuit case, an IRS agent deceived an investigation target's attorney and pilfered

a document in the attorney's office. *See United States v. Beacon Fed. Sav. & Loan*, 718 F.2d 49 (2d Cir. 1983). The document was then used to enforce summonses against the attorney's clients. *Id.* at 51. Despite the Second Circuit's holding that the agent's actions violated the attorney's constitutional rights, it noted that, on the basis of the *Payner* dicta, the clients might not have standing to object to the violation of their attorney's constitutional rights in an eventual prosecution against them. *Id.* at 53.

In another case in which law enforcement relied on the intimate relationship between the target of their conduct and the actual target of their investigation, police illegally detained and transported a suspect's girlfriend in order to coerce her consent to search their shared apartment. *See State v. McMillan*, 631 N.E.2d 660 (Ohio Ct. App. 1993). Although police lacked probable cause and could not arrest the suspect's girlfriend, police took her, along with her four-month-old daughter, into custody and detained them in a cell for four hours. *Id.* at 661-62. Police denied her repeated requests for an attorney. *Id.* at 662. Ultimately, they coerced her into granting consent to search the defendant's apartment. *Id.*

The Department of Justice Report on the Ferguson Police Department demonstrates that deliberate violation of the due process rights of an individual other than the target of an investigation remains a concern. *See* U.S. Dep't of Justice Civil Rights Div., Investigation of the Ferguson Police Department (2015), available at <http://www.justice.gov/sites/default/>

files/opa/press-releases/attachments/2015/03/04/ferguson\_police\_department\_report.pdf. In July 2013, police encountered an African-American man in a parking lot while on their way to arrest someone else at an apartment building. *Id.* at 17. Police knew that the encountered man was not the person they had come to arrest; however, without even reasonable suspicion, they handcuffed the man and placed him in the back of a patrol car. *Id.* It turned out that he was the intended arrestee's landlord and the police then pressured the detained landlord to give them entrance to the target's unit to effect the arrest. *Id.*

Each of these examples and others like them demonstrate that the egregious conduct in the present case is not uncommon and yet, under rulings like that by the Second Circuit in this case, individuals are charged, prosecuted, and convicted on the basis of evidence obtained through such conscience-shocking conduct. The protections of the Due Process Clause demand more, and the petition should be granted so that this Court can reverse the damage to the Constitution done by the *Payner* dicta.

**B. If a Remedy Is Not Available to Defendants Subject to Evidence Procured in Flagrant Violation of Constitutional Safeguards, Society's Interest in Ensuring That Constitutional Protections are Scrupulously Observed is Severely Undermined.**

In this case, the Second Circuit held that the state police's conduct was "deceptive, coercive and

illegal,” but it nonetheless concluded that *Payner* precluded suppression of the illegally obtained evidence. *United States v. Anderson*, 772 F.3d 969, 975 (2d Cir. 2014). As the district court correctly noted, if such evidence is allowed to be used to prosecute another party, law enforcement often would have little, if any, incentive to obtain a search warrant when it seeks evidence from a party other than the one targeted by its investigation. *See* Petition for Writ of *Certiorari*, App. 42a. Instead, as here, it can simply pretend that a warrant exists or use other conscience-shocking methods to obtain evidence from one party in order to use it against another party (or many other parties) in later prosecutions.

This rule leaves defendants without recourse when government officials intentionally use egregious means to obtain evidence against them, simply because those egregious, indeed unconstitutional, methods are focused on other individuals (often, as here, those closely related to the actual target). More fundamentally, it sanctions the intentional subversion of constitutional protections in furtherance of law enforcement. This result is inconsistent with a long line of this Court’s decisions reaffirming the importance of constitutional protections to the entire judicial process. Indeed, regard for the requirements of the Due Process Clause “inescapably imposes upon this Court an exercise of judgment upon the whole course of the proceedings . . . in order to ascertain whether they offend those canons of decency and fairness which express the notions of justice of English-speaking peoples even toward those charged with

the most heinous offenses.” *Rochin v. California*, 342 U.S. 165, 169 (1952) (citing *Malinski v. New York*, 324 U.S. 401, 416-17 (1945)).

Based in part on society’s sense of fair justice and the canons of decency, this Court has mandated the exclusion of reliable and probative evidence any time it is derived from involuntary statements. *See Michigan v. Harvey*, 494 U.S. 344, 351 (1990). The same principles are no less implicated when officers use evidence against a defendant that was obtained in flagrant violation of a third party’s – here, a spouse’s – due process rights. The “fundamental conceptions of justice which lie at the base of our civil and political institutions,” *Mooney v. Holohan*, 294 U.S. 103, 112 (1935), cannot permit evidence obtained deceptively, coercively, and illegally to be used against a criminal defendant. The Court should grant this petition to reaffirm these principles.



**CONCLUSION**

For the foregoing reasons, the petition for a writ of *certiorari* should be granted.

Respectfully submitted,

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