

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Roman Gabriel Contreras — PETITIONER
(Your Name)

VS.

(DC) WATSON, KURREN
(9th) SCHROEDER, D.W. NELSON, McKEOWN — RESPONDENT(S)

~~ON PETITION FOR A WRIT OF CERTIORARI TO~~

NINTH CIRCUIT COURT OF APPEALS

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Roman Gabriel Contreras
(Your Name)
Federal Correctional Institution
Victrville Medium I
PO Box 3725 Adelanto CA 92301
(Address)

(City, State, Zip Code)

N/A

(Phone Number)

QUESTIONS PRESENTED

The Ninth Circuit Court of Appeals (9th) did not follow rules being Federal Rules of Appellate Procedure and precedent caselaw. By either ruling or not ruling on four arguments waived by the government. The unpublished Memorandum (memo) is not clear or concise. However, the (9th) does not have the authority to argue for the government. When the Court fails to rule accordingly this as well is the same as if the arguments were never raised. The question therefor, would be does the Appellate Court need to follow rules? Or are they allowed to circumvent established procedure?

The other determination by both the District Court (DC) and the (9th) is that a positive alert from a narcotics detection K-9 provides Probable Cause (PC) for an arrest. This is contrary to prior Supreme Court precedent establishing an alert from a dog sniff providing (PC) to SEARCH. This High Court has held distinct and separate thresholds for (PC) to arrest and (PC) to Search. So then the question would be can a person be arrested when (PC) to search is established? Or does an actual physical search need to uncover evidence of illegal activity first then an arrest can occur?

The overall vagueness of the (9th) ruling does not answer arguments raised by my briefs. So then does the Appellate Court need to address with more specificity to my arguments?

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

As to Rule 14 (1) (c) Does not exceed five
pages, or 1,500 words.

STATUTES AND RULES

Federal Rule of Appellate Procedure 28

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☒ reported at U.S. Lexis 75001 6/10/2015; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was OCT, 27 2017.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment

The Fifth Amendment

The Sixth Amendment

STATEMENT OF CASE

Now here comes petitioner Roman Gabriel Contreras (Contreras) requesting judicial review concerning a Memorandum (memo) filed on October 27, 2017, Ca No 15-10539 Dkten 38-1, that deals with a Direct Appeal from the District Court of Hawaii (DC) No-1:15-cr-00242DKW-1. This Supreme Court has jurisdiction. The Ninth Circuit Court of Appeals (9th) did not with any specific detail address arguments raised in my Opening Brief (OB) and defendant's Reply Brief (RB)

On page 1, of (RB) the government failed to answer four arguments raised in the (OB) "The government's answering brief must respond to arguments raised in the defendant's-Appellant's (OB)" see Fed. R. App. 28(a)(7) and (b) "When the government fails to address an argument raised in the (OB) the government concedes or waives that argument, see United States v. Castillo-Marin 684 F.3d 914, 919, (9th cir) (2012) and United States v. McEnry, 659, F.3d 893, 902, (9th cir) (2011)"

The (memo) does not address other arguments the government did not waive. Although, these arguments are highly relevant that goes to the nature of "Indicia of Reliability" and Scope of the stop. The (9th) in its (memo) not only did not follow Federal rules and case precedent they acted as a "Third party intervener or interloper" see Kilbourn v. Thompson 103, U.S. 26 LEd 377 (1881) and a recent case from the 11th Circuit (U S APP, LEXIS 22132) (11-06-17) **Burgess v. U.S.**

In the instant case the (DC) as well as the (9th) has proclaimed that a "Positive alert from a narcotics detection dog (simo n) gave (PC) to arrest" This High Court has time and time again set the standard for distinct and separate thresholds of (PC) one for arrest and one for a search. The (9th) has set a precedent that allows for an arrest without searching and uncovering actual fruits of a crime. A positive alert alone should only provide (PC) to search. "An alert by a well trained narcotics detection dog establishes (PC) for a search, Illinois v. Caballes 543 U.S. 405, 409 125 S.Ct 834, 160 L. Ed 2d 842 (2005) and Florida v. Harris 568 U.S. 237, 133 S. Ct. at 1057-58, 185 L.Ed 61. "The question is, whether all the facts surrounding the dog's alert, viewed through the lens of common sense, would make a reasonably prudent person think that a search would reveal evidence of a crime" These cases as well as others from this High Court has involved a search first and when contraband is uncovered an arrest is made.

The following reasons are presented to this Supreme Court for relief and are well documented as arguments in the direct appeals process. The (memo) does not provide any clear or distinct resolution for arguments raised in the (OB) and (RB). The government's default and by rule and precedent the (9th) should have ruled accordingly.

Since the government brought charges against (Contreras) the government is the only branch that can argue any motions or injunctions properly filed in a timely manner throughout the legal process. Including the appeals portion, by not addressing or intervening for the government. The judicial branch I.E..(9th) has circumvented the "Separation of Powers" clause of the United States Constitution, Article I, II, III. see Kilbourn 103, and Burgess (11th cir) Lexis 22132.

(MEMORANDUM)

- A. The (memo) in brief states that under the "totality of circumstances" (Arvizu, 534) DEA had reasonable suspicion to stop (Contreras).
- B. The anonymous tips foretold future movements and corroborated by police observation (Morales, 252)
- C. The officers (Plural form) then conducted a reasonable investigatory stop, to dispel whether methamphetamine was being transported in carry-on luggage (Christian, 356)
- D. DEA then asked and moved (Contreras) from one place to another for a dog sniff and the entire encounter only lasted "Five to Six minutes"
- E. Once the dog alerted to the bag the officers (Plural form) had (PC) to arrest (Pringle, 540)
- F. The dog's alert was reliable (Harris, 568)
- G. The government provided extensive records of the dog and his handler and defense counsel had meaningful opportunity to call the dog handler as a witness which comports with Supreme Court guidance, that the defendant be allowed to challenge the dog's reliability (Harris at 246-47)
- H. Then mentions an argument about DEA agent Jones possible contamination of the carry-on luggage.
- I. Then rules on the argument of (PC) to search all 3 bags.

(RESPONSE A-I (R.A)(R.I)

- (R.A) If agent Jones had reasonable suspicion to stop((Contreras) then why would he initiate a Consensual Encounter? which (Contreras) tried to "Go on one way"
- (R.B) The (9th) overlooked key facts about the information from the anonymous tips, see arguments in (OB) P.24 argument I and (RB) P.4 argument II. There was no prediction of my travel plans because they were made in advance and were known by friends and family and apparently the DEA.
- (R.C) Even assuming reasonable suspicion existed for an investigatory stop by officers they then violated the scope of the stop by surrounding (Contreras) with upto Eight or more officers and a K-9. The (memo) does not address this argument that in both (OB) P.35 argument II, and (RB) P.16 argument III.
- (R.D) Here the (memo) only address' the duration of the stop but not the scope (Highly Relevant).
- (R.E) The notion that a positive alert provides by itself (PC) to arrest is not in accordance with other rulings like Caballes, Jardines, Rodriguez, and Harris. The case that was cited was Pringle, this case involves a consent to search that uncovered contraband first then gave the requisite (PC) for an arrest. Harris the other case cited also involves a search first uncovers contraband then (PC) to arrest. In the instant case (Contreras) was arrested first with no search no proof of a crime being committed. see Caballes at 405,09.
- (R.F) The question of the dog's alert being reliable under these particular circumstances was one of the four arguments waived by the government see (OB) P. 40 argument III, and (RB) P.19 argument IV.
- (R.G) This was another argument waived by the government and the records provided did not come into question because the (DC) prevented defense by asking the witness if he remembered his log, then asked what was the purpose of this and at one point walked off the bench, see (RB) P. 19 IV, and (OB) P. 41 argument III.
- (R.H) The (Memo) justifies agent Jones impermissibly touching and carrying carry-on bag. This was an argument waived by the government, see (RB) P. 16 III.
- (R.I) The argument of law enforcement showing (PC) for the search of all three bags was another argument waived by the government, see (OB) P. 45 IV and (RB) P. 22 argument V.

Given the Four arguments that the government waived and the other arguments that the (memo) did not address and the determination of a threshold, that should be for (PC) to search. However, was used as (PC) to arrest. Not even down on the Border where " Border Doctrine " allows Border Agents a more relaxed protocol to interdict crime, does a positive alert allow an arrest, they conduct a search first and uncover contraband then an arrest is made. In accordance with the forgoing, arguments and authorities, Mr. Contreras, respectfully requests that this petition before this Supreme Court be granted. And reverse his conviction and remand with instructions to grant the motion to suppress all of the evidence and statements as " Fruit from the poisonous tree" citing Wong-sun v. United States, 371 U.S. 471-85 (1963)

REASONS FOR GRANTING THE PETITION

For the following reasons I pray and feel this High Court would grant Certiorari and review the lower Courts decisions from both the District Court and the Ninth Circuit Court of Appeals. The Opinion that was published by the District Court, then affirmed by the, Ninth Circuit, unpublished Memorandum. Moreover, the finding of a positive alert from a dog, providing Probable Cause to arrest is in conflict with all sister courts in every Circuit. To list all cases would be voluminous. This Supreme Court has set the standard in Caballes, as well as Harris, and others that an alert from a narcotics detection dog establishes Probable Cause to search, and not Probable Cause to arrest.

If the determinations from the lower courts are allowed to stand they would not only be of importance to my case. Subsequently, would be also important to the average citizen, subjected to a routine dog sniff, or any other interaction with law enforcement. The notion that law enforcement would be able to arrest without searching first and uncovering contraband is chicanery.

The determinations of Probable Cause are not interchangeable. Because law enforcement agents have Probable Cause to stop a car on the highway He/or she does not have Probable Cause to search said vehicle. Likewise, a person subjected to a "Terry Stop" who then gives law enforcement consent to search a backpack or luggage That person can't be arrested based on Probable Cause (i.e..consent) being established. A search would have to uncover fruits of a crime then an arrest would be lawful and not infringing on protections guaranteed by the Fourth Amendment of the United States Constitution.

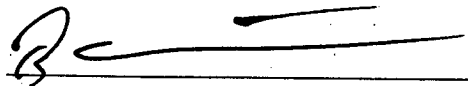
Yes, in the instant case the positive alert establishes, (PC) to search and was used or ruled as the only threshold determination in the entire case. By not searching, the luggage first and arresting (Contreras) this sets the logic that law enforcement would only need to establish Probable Cause to search to effectuate an arrest. Regardless of how the Probable Cause comes about (i.e.... Dog sniff, Consent, Plainview, or Searchwarrant.) None of this can be seen as proof of criminal activity a search would be in order and contraband discovered for an arrest to be lawful.

In terms of importance this determination from the (9th) will have an adverse effect for many individuals similar in the same position, being stopped by law enforcement. Because the only thing between liberty and an arrest would be the establishment of Probable Cause to search no actual search would be needed. For the above mentioned reasons this decision is erroneous. As well as the Court not following Federal Appellate rules of Procedure which should always be upheld to ensure Public trust in the Judicial System.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 1-8-2018