

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

JUAN JOSE LOPEZ-ZUNIGA,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

1. Whether the Eighth Circuit's creation of a new standard in evaluating GPS warrants is contrary to existing United States Supreme Court precedent when it determined that the probable cause necessary to obtain a warrant to monitor a vehicle's movement "need not be as strong" as the probable cause necessary to obtain a search of a vehicle.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Juan Jose Lopez-Zuniga respectfully petitions for Writ of Certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The Eighth Circuit's decision in *United States v. Juan Jose Lopez-Zuniga* appears at Appendix A and was published at 909 F.3d 906 (8th Cir. 2018). The United States district court's opinion can be found at Appendix B.

JURISDICTION

The district court had jurisdiction of this criminal case under 18 U.S.C. § 3231. The United States Court of Appeals for the Eighth Circuit had jurisdiction over the appeal under 28 U.S.C. § 1291. On November 26, 2018, the Eighth Circuit Court of Appeals affirmed the district court's ruling in part, and reversed in part, the district court's decision to suppress GPS warrants in this case. (App. B, p. 10). On January 9, 2019, the Eighth Circuit denied Petitioner's request for a rehearing. (App. E, p. 47). This Court has jurisdiction of this appeal under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment of the United States Constitution states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and 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.

STATEMENT OF THE CASE

I. Charge History.

On February 23, 2017, Petitioner Juan Jose Lopez-Zuniga was charged with one count of conspiracy to distribute 500 grams or more of a mixture of methamphetamine from October 2015 to September 2016, in violation of 21 U.S.C. § 841(a)(1), 841(b)(1)(A), and 846. The district court had jurisdiction of the criminal case under 18 U.S.C. § 3231.

II. Facts.

On December 21, 2015, law enforcement officers obtained a search warrant allowing them to install a GPS tracking device on Petitioner's vehicle for sixty (60) days. (App. A, p. 2). The Affidavit in support of the search warrant alleged that over an eight (8) month period, controlled buys had occurred between cooperating individuals and Rogelio Garcia-Jiminez. The only mention of Petitioner was that Petitioner's car dropped off someone that resembled Garcia-Jiminez at an apartment building and that Petitioner rode with Garcia-Jiminez to a mall and restaurant out of town.

On February 18, 2016, a second GPS warrant was signed allowing officers to track Petitioner's vehicle for an additional sixty (60) days. (App. A, p. 2). The Affidavit in support of the second warrant contained the same information from the previous Affidavit, but also included tracking information obtained from the first warrant's issuance.

On April 22, 2016, law enforcement officers applied for a third GPS warrant that was granted the same day, allowing them to track Petitioner's vehicle for sixty

(60) days. (App. A, p. 5). The Affidavit in support of the third warrant included the information contained within and gained from the previous two GPS warrants. Additionally, officers alleged that a confidential individual (CI) identified Petitioner as the person that handed the CI methamphetamine during a controlled buy with Garcia-Jiminez on March 9, 2016, above a restaurant where Garcia-Jiminez and Petitioner both worked.

A fourth GPS warrant was signed on June 22, 2016, authorizing GPS tracking on Petitioner's vehicle for an additional sixty (60) days. (App. A, p. 5). The Affidavit in support of the fourth warrant contained the same information as set forth in the previous affidavit, but included information from the additional sixty days of tracking.

III. District Court Procedural History.

On May 15, 2017, Petitioner filed a Motion to Suppress the information obtained from the four (4) GPS search warrants as they were obtained without probable cause. (App. F, p. 48). On June 2, 2017, Petitioner filed an Amended Motion to Suppress. (App. G, p. 51).

On August 10, 2017, Magistrate Judge Kelly Mahoney entered a Report and Recommendation recommending Petitioner's Motion be granted in its entirety, stating that all four (4) warrants were not supported by probable cause and that the *Leon* good faith exception did not apply. (App. D, p. 30).

On September 18, 2017, Chief Judge Leonard Strand adopted the Magistrate's Report and Recommendation, granting Petitioner's Motion to Suppress in its entirety. (App. C, p. 11). The Government filed an interlocutory appeal on October 16, 2017. (App. H, p. 54).

IV. Eighth Circuit Procedural History.

On November 26, 2018, the Eighth Circuit Court of Appeals affirmed the district court's decision regarding the suppression of warrants one (1) and two (2), but reversed the suppression of evidence obtained from warrants three (3) and four (4), finding that the *Leon* good faith exception applied to the third and fourth warrants. (App. A, pp. 4-7). In its opinion, contrary to procedure from the U.S. Supreme Court, the Eighth Circuit determined that a GPS warrant could be issued with less probable cause than a traditional search warrant. (App. A, p. 6). The Eighth Circuit stated, "we don't think it entirely unreasonable for an officer to conclude that a connection between the car and contraband ***need not be as strong*** when the warrant ***merely*** authorizes tracking the car's movement (and thus its driver) rather than searching the car itself." (emphasis added). (App. A, p. 6).

Petitioner timely filed a Petition for Rehearing on December 10, 2018, arguing that the panel's decision created a new category of Fourth Amendment analysis by creating a lower burden for GPS warrants that did not previously exist. Petitioner's Petition for Rehearing was denied on January 9, 2019. (App. E, p. 47).

REASONS FOR GRANTING THE WRIT

This Court should grant Petitioner's Writ because the Eighth Circuit created a new standard that less probable cause is required for warrants involving the search of a vehicle, specifically with warrants requesting GPS trackers on vehicles. The decision by the Eighth Circuit constitutes an important question of federal law that conflicts with this Court's decision in *U.S. v. Jones*, 565 U.S. 400 (2012).

Placement of a GPS tracking device on a vehicle is a search within the meaning of the Fourth Amendment, requiring probable cause and a warrant. *U.S. v. Faulkner*, 826 F.3d 1139 (8th Cir. 2016). Probable cause exists when, "under the totality of the circumstances, there is a fair probability evidence of a crime will be found in a particular place" or the requested search will "lead to the discovery of evidence." *Id.* at 1144, 1146. This requires a nexus between the items officers are searching for and the place or item to be searched. *See U.S. v. Johnson*, 848 F.3d 872, 878 (8th Cir. 2017). The court must decide whether the affidavit as a whole "establishes a minimally sufficient nexus between the illegal activity and the place to be searched." *U.S. v. Henderson*, 595 F.3d 1198, 1202 (10th Cir. 2010) (quoting *U.S. v. Gonzales*, 399 F.3d 1225, 1230-31 (10th Cir. 2005)).

In *Jones*, this Court determined that even though the tracking of one's movement through a GPS device may contain publicly available information, the installation of it on a defendant's car was an intrusion that constituted a search. *Jones*, 565 U.S. at 406-7. There is nothing in the language of *Jones*, requiring a warrant for the installation of a GPS device, that suggests that there is a hierarchy of standards to pass constitutional muster. The *Jones* decision cannot be read to allow for a lesser

showing when requesting a GPS warrant than when requesting a search warrant of a house or residence.

In its opinion, the Eighth Circuit Court of Appeals created a lower burden for GPS warrants that did not previously exist and is not supported by existing legal precedent. The Eighth Circuit stated, “we don’t think it entirely unreasonable for an officer to conclude that a connection between the car and contraband ***need not be as strong*** when the warrant merely authorizes tracking the car’s movement (and thus its driver) rather than searching the car itself.” (emphasis added). (App. A, p. 6). The Eighth Circuit failed to provide any legal support for the creation of this new lower standard. The suggestion in this case that the probable cause connection between alleged crime and item to be searched (car) “need not be as strong” as other warrants suggests that the Eighth Circuit Court’s decision acknowledges that the probable cause present here does not meet the necessary threshold to survive a constitutional challenge.

The granting of Appellant’s petition in this matter is extremely important to the future of any cases within the Eighth Circuit that include GPS warrants. This case creates a new body of law that allows judges and officers to unjustly rely on a new weaker standard than probable cause to obtain a GPS warrant as such warrant “merely authorizes tracking [of a] car’s movement”. This decision, if allowed to stand, dilutes this Court’s ruling in *Jones*. For this reason, Petitioner’s petition should be granted, the decision by the Eighth Circuit should be reversed and the thoughtful and careful analysis by the district court suppressing all warrants for lack of probable cause, consistent with this Court’s ruling in *Jones*, should once again be valued.

CONCLUSION

For the forgoing reasons, Petitioner prays that this Court grant his Petition for Writ of Certiorari.

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PETITIONER,

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