

19-7610

Case no. _____

IN THE SUPREME COURT OF THE UNITED STATES

LUCIANO CAMBEROS-VILLAPUDA

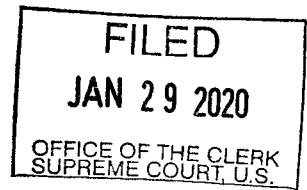
Petitioner,

ORIGINAL

v.

UNITED STATES OF AMERICA

Respondent.



On Petition for Writ of Certiorari to the
United States Courts of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

LUCIANO CAMBEROS-VILLAPUDA
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QUESTION PRESENTED

Does "exigent circumstances" needs justification when officers conducted a warrantless entry onto the curtilage unlawfully? And whether a warrantless search of the Expedition that was located onto the curtilage was reasonable under the automobile-exception rule based on *Collins v. Virginia*?

CORPORATE DISCLOSURE

There is no parent or publicly held company owning 10% or more of the corporation's stock. see: S Ct. R. 29.6.

PETITION FOR A WRIT OF CERTIORARI

Petitioner Luciano Camberos-Villapuda respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

JUDGMENT BELOW

The judgment of the United States of Appeals for the Eighth Circuit is reported at Luciano Camberos-Villapuda, case no. 19-2137(8th Cir., 10/31/2019).

GROUND FOR JURISDICTION

The United States District Court for the District of South Dakota, Southern Division had original jurisdiction over this criminal case, pursuant to 18 U.S.C. § 3231, thereafter 28 U.S.C. § 2255. see case no. 4:17-cv-04161-KES, document no. 22, dated: 5/07/2019. The Eighth Circuit affirmed the lower court judgment on October 31, 2019. see case no. 19-2137. This court's jurisdiction is invoked by the timely filing of this Petition for Writ of Certiorari within the prescribed 90 days from the final judgment rendered. see S Ct. R. 13.1.

CONSTITUTIONAL PROVISION INVOLVED

U.S. Constitution Article VII, Amendment IV, 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."

And Amendment XIV, section 1, clause II, in pertinent part: "No State shall make or enforce any law which shall abridge the privileges or immunitites of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

During pre-trial proceedings in the U.S. District Court for the District of South Dakota, Southern Division, Petitioner challenged a Fourth Amendment violation pursuant to illegal search and seizure. This challenge was commenced under a suppression hearing, in which, he claimed officers entered the property without a valid warrant. see case no. 4:13-cr-40104- KES, Document 33. Petitioner's suppression hearing was denied.

This same issue was challenged in the appellate court in the Eighth Circuit. Petitioner suggested that the officers entered the curtilage of the house without a warrant and no exigent circumstances existed. The Court of Appeals did not litigate the exigent circumstances rule nor an automobile exception, rather, the court denied his claim based on the Petitioner did not have an expectation of privacy. see U.S. v. Camberos-Villapuda, 832 F.3d 948 (8th Cir. 2016). Petitioner once again brought forth a Fourth Amendment violation pursuant to 28 U.S.C.S. § 2255.

During 2255 proceeding; Collins v. Virginia, stated that a police cannot enter into a curtilage to search a vehicle without a warrant under the automobile exception rule. see Collins v. Virginia, 138 S.Ct. 1663; 201 L Ed 2d 9 (2018). The District Court did not review on whether exigent circumstances existed, rather, the court denied based on petitioner had no expectation of privacy. see 4:17-cv-04161-KES. The Court of Appeals affirmed judgment. Id., *supra*.

REASONS FOR GRANTING THE PETITION

Both lower courts failed to consider whether exigent circumstances existed based on Collins v. Virginia. In Payton, the standard was already set that exigent circumstances are mandated under the Fourth Amendment. see Payton v. New York, 445 US 573, 63 L Ed 2d 639, 100 S Ct 1371(1980)(absent probable cause and exigent circumstances, warrantless arrests in the house are prohibited by the Fourth Amendment). On Direct review, the Eighth Circuit stated in part: "The officers' actions in the curtilage, according to the court, did not exceed the scope of that exception, and they permissibly entered the home without a

warrant due to exigent circumstances. Second, the court ruled that even if its first ground was incorrect." see *Id.*, 2016 U.S. App.LEXIS 7. And the district court under the jurisdiction of 28 U.S.C.S. § 2255, it states in part: "Camberos-Villapuda is correct that the Eighth Circuit did not determine whether the entry of the curtilage was lawful." And also stated: "Magistrate Judge Puffy did not have to provide a detailed analysis on whether exigent circumstances justified the entry." see *Id.*, Doc 22, pp. 12-13.

In the Seventh Circuit, circumstances comprising exigent circumstances are (1) hot pursuit of fleeing felon, (2) imminent destruction of evidence, (3) the need to prevent suspect's escape, and (4) risk of danger to police or others. see *Thacker v. City of Columbus*, 328 F.3d 244 (6th Cir. 2003). Based on this assertion, the court is taking away the government's burden to show exigent circumstances existed, leaving the court to not provide on the record if any exigent circumstances existed and if so, what were the circumstances for the petitioner to properly address this issue. see *Payton v. New York*, *supra*, at 586, 63 L Ed 2d 639, 100 S Ct 1371. accord *Welsh v. Wisconsin*, 466 U.S. 740, 80 L Ed 2d 732, 104 S Ct 2091(1984)(the burden is on the government the presumption of unreasonableness that attaches to all warrantless home enters).

Since Petitioner challenged if the Expedition was illegally searched by the officers unlawful entry, it falls under the issue as to whether the automobile exception rule extends into the curtilage, the Supreme Court says it does not. see *Collins v Virginia*. In *Collins*, the Supreme Court remanded the case to see if the entry is reasonable under the warrant requirement, e.g.,

exigent circumstances. Based on Kirk v. Louisiana, probable cause and exigent circumstances in order to justify an entry into a home. see Kirk v. Louisiana, 536 US 635, 153 L Ed 2d 599, 122 S Ct 2458 (2002). It should be ordered that Petitioner should have the same opportunity to challenge if an exception to the warrant requirement exist under exigent circumstances and what are they in order to properly challenge a due process violation, since the record is not clear on this point, if not, then the Expedition was searched under the automobile exception on the curtilage. Which means, the officers warrantless entry was unlawful and created a fourth amendment violation, permitting Collins v. Virginia to fall sway to Petitioner's argument for relief.

This Court should grant Petitioner's petition for writ of certiorari for the reasons stated therein.

CONCLUSION

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

Respectfully submitted:

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