

No. 20-

IN THE
Supreme Court of the United States

BRUCE HAROLD HENDLER ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the decision of the United States Court of Appeals for the Fifth Circuit (“Fifth Circuit”)—which affirmed the District court’s denial of a motion to suppress a detention and subsequent seizure of Mr. Hendler’s belongings--conflicts with the United States Constitution and decisions of this Court on an important matter, and therefore the decision by the Fifth Circuit calls for an exercise of this Court’s supervisory powers such that a compelling reason is presented in support of discretionary review by this Honorable Court.

PARTIES TO THE PROCEEDING

The parties to the proceeding are listed in the caption:

Bruce Harold Hendler:	Petitioner (Defendant-Appellant in the lower Courts)
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United States of America:	Respondent (Plaintiff-Appellee in the lower Courts)
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TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW.....	i
PARTIES TO THE PROCEEDING.....	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES.....	iv
CITATIONS TO OPINIONS AND RELEVANT ORDERS.....	1
GROUND FOR JURISDICTION.....	1-2
CONSTITUTIONAL PROVISIONS.....	2
STATEMENT OF THE CASE.....	2-14
ARGUMENT AMPLIFYING REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.....	15-19
CONCLUSION.....	19

INDEX TO APPENDIX

APPENDIX A	Decision of the United States Court of Appeals for the Fifth Circuit denying relief on direct appeal.
APPENDIX B	Judgment in a Criminal Case issued the United States District Court for the Southern District of Texas, Corpus Christi Division.

TABLE OF AUTHORITIES

Cases:

<i>Ornelas v. United States</i> , 517 U.S. 690, 699 (1996).....	15
<i>Terry v. Ohio</i> , 392 U.S. 1, 30 (1968).....	15
<i>United States v. Arvizu</i> , 534 U.S. 266, 274 (2002).....	15-16
<i>United States v. Cortez</i> , 449 U.S. 411, 417 (1981).....	15

Constitutional Provisions:

U.S. CONST. amend IV.....	2
---------------------------	---

Statutes:

28 U.S.C. § 1254.....	2
-----------------------	---

PETITION FOR WRIT OF CERTIORARI

Petitioner, BRUCE HAROLD HENDLER, requests that this Honorable Court grant this petition and issue a Writ of Certiorari to review the decision of the United States Court of Appeals for the Fifth Circuit. Mr. Hendler submits the District Court committed reversible error by denying his motion to suppress evidence seized as a result of an illegal search. Respectfully in affirming the decision of the District Court, the Fifth Circuit violated Mr. Hendler's constitutional right under the Fourth Amendment of the United States Constitution to be free from an unreasonable search and seizure. Accordingly, the decision by the Fifth Circuit is in conflict with the Constitution and decisions of this Court. Therefore, a compelling reason is presented in support of discretionary review.

CITATIONS TO THE OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS AND ORDERS ENTERED IN THE CASE

From the Federal Courts:

The Order of the United States Court of Appeals for the Fifth Circuit, *United States v. Bruck Harold Hendler*, No. 18-41023 (5th Cir. September 11, 2020), appears at Appendix A to this Petition and is unreported.

The Judgment in a Criminal Case of the United States District Court for the Southern District of Texas, Corpus Christi Division, appears at Appendix B to this petition and is unreported.

From the State Courts:

None.

GROUND FOR JURISDICTION

This Petition arises from a direct appeal which granted final and full judgment against Mr. Hendler. This action is on a criminal prosecution initiated by the Government.

Mr. Hendler filed a motion to suppress which was denied by the District Court. The denial of said motion is at issue in this Petition. A copy of the Judgment appears at Appendix B. Mr. Hendler argued to the Fifth Circuit that the District Court committed reversible error by denying his motion to suppress. The Fifth Circuit rejected this argument and affirmed the decision of the District Court in an unpublished opinion dated September 11, 2020. A copy of the decision by the Appellate Court appears at Appendix A. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

CONSTITUTIONAL PROVISION

U.S. CONST. Amend. IV

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 person or things to be seized.

STATEMENT OF THE CASE

Overview

Mr. Hendler was charged, and subsequently indicted, with offenses related to possession of child pornography. ROA.26-29. The alleged pornography was found after a search without a warrant and Mr. Hendler's subsequent statement. ROA.147-57. Mr. Hendler filed a motion to suppress and, after briefing and a hearing, the Court denied the motion. ROA.90-105, 147-252. Mr. Hendler subsequently entered a plea of guilty and reserved his right to have the Appellate Court review the District Court's adverse ruling on the pretrial motion to suppress evidence. ROA.119. The District Court accepted Mr.

Hendler's conditional guilty plea. ROA.119-24. Mr. Hendler was subsequently sentenced and the appeal of the denial of his motion to suppress to the Fifth Circuit followed. ROA.135-43.

The Motion to Suppress: Background

Defense counsel filed a motion to suppress statements made and evidence seized as a result of a warrantless search conducted on Mr. Hendler's vehicle and electronic devices. ROA.67-75. Specifically, Mr. Hendler moved the Court to suppress all evidence gathered from, and statements produced as a result of, the search of Mr. Hendler's vehicle and several of his electronic devices. ROA.67-75.

The Suppression Hearing

On April 19, 2018, the District Court held a hearing on the motion to suppress. ROA.147. On direct examination, the Government called its only witness, Officer Christopher Lynch. ROA.151. Officer Lynch was employed by the Corpus Christi Police Department ("CCPD"). ROA.152. His duties during his service included Patrolman and Internet Crimes Against Children ("ICAC") Investigator for the ICAC Unit. ROA.152. At the time of the hearing, the Officer was a K9 handler for the CCPD. ROA.152-53.

The Officer testified that he also worked part time at "Church Unlimited" in Corpus Christi, Texas. ROA.154. He stated that he worked at the church in his CCPD uniform and that he was there for "protection of personnel." ROA.155. The Officer's dog was not with him when he worked at the church. ROA.155.

With regard to the instant matter, Officer Lynch was working at the church on May 7, 2017. ROA.155. At that time, he was approached by a counselor at the church, Pastor Zack. ROA.155. The Pastor pointed at a man, later identified as Mr. Hendler, and stated: “Please keep an eye on that guy.” ROA.156. The Officer described his first viewing of Mr. Hendler in the following fashion:

My first visual sight of Mr. Hendler was with a young [female] child on his shoulders. And that’s what attracted me to watch him carefully, was he had a *look of pleasure* on his face that did not look like a parent would be holding their child or a grandfather would be holding their child on their shoulders.

ROA.156 (emphasis added). The Officer described this alleged “look of pleasure” as a “smile of pleasure” based on his training and experience. ROA.158.

Based on this observation of Mr. Hendler, the Officer contacted Pastor Zack. ROA.159. He told Pastor Zack that “all the cop hairs on [his] body stood up” when he saw Mr. Hendler. ROA.159. The Officer believed this prompted Pastor Zack to tell the Officer that he had talked to Mr. Hendler and that “he had confessed to [the Pastor] . . . that he had a child pornography addiction.” ROA.159.

Upon further discussion, the Pastor claimed that Mr. Hendler had shown him a thumb drive of child pornography on a digital device. ROA.160. Based on this, the Officer ran to catch Mr. Hendler as he drove out of the church parking lot. ROA.161. At that time, the Officer stated that he saw Mr. Hendler exit the parking lot with a child in the back seat of the van. ROA.161. The Officer testified “that was very odd” and his “suspicions were really

piquing at that point.” ROA.161-162. He was not able to stop the van, but did determine the license plate number on the vehicle. ROA.162.

The Officer then returned to the church to talk to Pastor Zack. ROA.162-63. The Officer testified that Pastor Zack said that Mr. Hendler told him he had previously exposed himself to a twelve-year-old child. ROA.163. This caused the Officer to ask personnel at the church if there was a file on Mr. Hendler. ROA.163. A church clerk said yes, and brought the Officer the file. ROA.164.

The file established that Mr. Hendler’s email address was familyofaffection@gmail.com. ROA.164. The Officer explained that this raised his suspicion “one hundred percent” because:

Being taught in Internet crimes against children, that is a –one of the–that type of phrase is often used by pedophiles. It kind of suggests incest, families, closeness together, in a sexual sense.

ROA.164. He said that he believed all of this led him to conclude he should “do something quickly” about the situation. ROA.167.

The Officer then traced the vehicle, and located it in a trailer park. ROA.167-68. When the Officer knocked on the door of the mobile home attached to the location of the vehicle, the child’s mother answered the door. ROA.168. When questioned, the mother told the Officer that Mr. Hendler was at the community pool, and the Officer proceeded to that location. ROA.169-71. The Officer was wearing a body camera, and a video from that camera was played during the hearing on the motion to suppress. ROA.171.

The Officer arrived at the pool and saw Mr. Hendler. ROA.172. At this point, the Officer pontificated that Mr. Hendler was “manipulating” his Samsung phone to destroy evidence. ROA.172. However, the Officer made this claim because Pastor Zack had told him Mr. Hendler had child pornography on his digital devices. ROA.173. The Officer then had the following thoughts and made the following threat as to what he may do with Mr. Hendler’s electronic devices:

I’m going to take this for a–I’m going to hold this for a minute. If things don’t go the way–like if he’s not going to cooperate, I’m going to seize it and wait for a search warrant.

ROA.174.

Furthermore, the Officer admitted that if Mr. Hendler had tried to leave the pool area, he would have told him to stop and he would have detained him. ROA.174. The Officer added that he asked Mr. Hendler for consent to look into the cell phone. ROA.174. He opined that Mr. Hendler answered that “he didn’t mind.” ROA.175. The video establishes the officer said, about the cell phone, “let me see it” and Mr. Hendler responded “you’re welcome to it.” ROA.175. The tape also shows that, when Mr. Hendler was asked if he had a problem with child pornography, he responded “well, I used to.” ROA.175. The body camera video further establishes:

- * Mr. Hendler provided a chip for the device without being asked for it, ROA.177;
- * Mr. Hendler deleted images, ROA.177-78;
- * The Officer obtained consent to search Mr. Hendler’s vehicle, ROA.179-80;
- * The Officer conceded he “may have to tackle” Mr. Hendler because he was moving so quickly, ROA.180-81;

- * On the issue of searching the van, the Officer told Mr. Hendler “you may say no, if you don’t want me to,” ROA.181;
- * After the van door was opened, the Officer again asked for consent to search the vehicle, ROA.181;
- * On another occasion, during entry into the van, the Officer again asked for consent and again told Mr. Hendler he could withdraw his consent to search the vehicle;
- * The Officer found what looked like “children panties,” ROA.184;
- * The Officer found sex toys, children’s toys, tape and what the Officer claimed was “sexual predator craft.” ROA.184, 187; and
- * Mr. Hendler gave written consent to search his electronic devices. ROA.189-90.

Mr. Hendler was taken to the CCPD. ROA.191-92. The Officer testified Mr. Hendler was given his rights, that he waived his rights, and that he admitted to possessing child pornography. ROA.192. The Officer then stated:

While this admission was going on, we had the Samsung (referring to Mr. Hendler’s cell phone) looked at by an expert. He located child pornography. He provided me the pictures from that. I presented them to the Defendant. And he admitted that those are his pictures. He even initialed by the pictures saying that he had downloaded them.

ROA.192.

The Officer was then cross-examined by Mr. Hendler’s lawyer. ROA.193. Significantly, the Officer agreed he never obtained any type of warrant before seizing the evidence or arresting Mr. Hendler. ROA.194.

The examination then turned to this concept of a “smile of pleasure on [Mr. Hendler’s] face.” ROA.196. To the Officer, the child’s position was not inappropriate.

ROA.196. The Officer explained, “it’s not the arms and the legs that concerned me; it’s her legs and her crotch being—he’s pulling her down onto his neck.” ROA.196. Based on this, the following clarifying cross-examination took place between the Officer and defense counsel:

Q Okay. You wouldn’t want to just have your arms out if you have somebody on your shoulders, correct?

A Correct.

Q Okay. That’s—the purpose of that would be to try to steady them on your shoulders?

A Yeah.

Q Okay. And this was in public, correct?

A This was in public?

Q Yes.

A Yes, ma’am.

Q Okay. In fact, you said you didn’t—you weren’t the one that even took this picture, correct?

A No, that is correct.

Q Okay. It was just somebody else affiliated with the church?

A Yes, correct.

Q Okay. And you didn’t get this until later on?

A Yes.

Q Okay. Did anybody come up to you and tell you that looked odd?

A No.

Q The child was completely clothed, correct?

A Yes.

Q She's wearing a top and a bottom?

A Yes.

Q And shoes?

A Yes, ma'am.

ROA.197-98.

It was next pointed out that it was Pastor Zack who told Mr. Hendler to delete the pornography as opposed to a simple act by Mr. Hendler. ROA.199. This caused the Officer to further agree that deleted data is not always permanently deleted, as he had previously testified. ROA.200-02.

Subsequently, the cross-examination of the Officer focused on familyofaffection@gmail.com, the email address used Mr. Hendler, ROA.203. The Officer noted the email address was not used as far as knew as part of a church membership. ROA.203. He also stated that the email address was not used on Craigslist, Backpage, or "anything like that." ROA.203. Nonetheless, the Officer claimed that, in his five years of investigating crimes against children, he had seen the words "family of affection" used together and that these words were associated with child pornography or child exploitation. ROA.204. The Officer then altered his answer and decided that he had not seen these exact words together, but had seen similar words used together in connection with crimes against children. ROA.204. However, the Officer said he never "Googled" these words. ROA.204.

The discussion then turned to a different church. The Officer was asked if he had ever heard of a church called the “House of International Prayer,” and the Officer stated he had not. ROA.204. Importantly, when the Officer was told on cross-examination that the House of International Prayer church had a pastor who uses the term “family of affection,” the Officer determined that “that could be a perfectly fine email address.” ROA.206. Indeed, the Officer pontificated that, “[i]f it was just that email and nothing else, I would have ignored the whole situation.” ROA.207.

The Officer also said that he believed he had probable cause for his actions, but did not seek a warrant. ROA.207-08. He testified that, despite the fact that he called his captain, he did not seek a judge or “JP” for a warrant. ROA.208. The Officer also agreed he failed to seek a warrant despite the fact that, after his initial conversation with Pastor Zack, he also talked to a clerk at the church, obtained an NCIC criminal background search, searched and found a name and address attached to the subject vehicle, talked to Pastor Zack again, and picked-up a fellow officer before traveling to the trailer park. ROA.208-10. Ultimately, the Officer was steadfast that he had probable cause for a warrant but did not call for a warrant. ROA.211.

The Officer additionally testified that he arrived at the trailer park and was able to see that the mother and the child were safe. ROA.213. The Officer also noted the child was not in danger. ROA.214.

At this juncture in the hearing on the motion to suppress, the testimony focused on the time stamp on the video from the Officer’s body camera. ROA.214-17. As the Officer

discussed the time line on the tape, he noted the seizure of the devices as consensual did not matter because the Officer was “going to seize it anyway.” ROA.226. In fact, the Officer put his hands on the cell phone before he asked for consent. ROA.220. Furthermore, when the Officer used his hand to take the device he said “I’m going to take this for a moment, and I’m going to tell you what’s going on.” ROA.220.

The Officer then took this consent variation one more step when he admitted he never asked for consent to take the cell phone, but rather he asked for consent to look at it. ROA.221. The Officer added that he was not going to return Mr. Hendler’s cell phone to Mr. Hendler. ROA.221. He expounded: “[O]f course I was gonna keep it” and “I am not giving it back to him.” ROA.221-22. Yet, he went even further and said: “I’m seizing this right now [but] I’m not going to say that to him.” ROA.222.

On a similar but separate issue, the Officer agreed Mr. Hendler was not free to leave when the officer made contact with him at the pool. ROA.223, 224. The Officer said that he knew this was the case, but that he hid this from Mr. Hendler. ROA.224. The Officer’s conclusion on this issue was deeply reluctant and was only fully confessed when asked by the Judge. ROA.224.

At this time during the alleged consent to search, Mr. Hendler attempted to take his device from the Officer and the Officer actually took it back from Mr. Hendler. ROA.225. During this exchange, Mr. Hendler was not read his *Miranda* rights and the Officer continued to question him. ROA.226. It was at this point that Mr. Hendler finally conceded that he deleted child pornography from his cell phone. ROA.226.

When the Officer discussed with Mr. Hendler the searching of the vehicle, the Officer was in possession of Mr. Hendler's belongings. ROA.228-29. As the Officer explained: "I'm pretty sure we took it all." ROA.229. At one point, the Officer stated: "I may have to tackle him." ROA.229. Clearly, Mr. Hendler was not free to leave.

During this stage of the search, the Officers were in Mr. Hendler's van and had his driver's license. ROA.230-31. Despite the progress in the search, the Officer testified that he told Mr. Hendler that he could withdraw his consent. ROA.230. Nonetheless, the Officer stated that Mr. Hendler was "still not free to leave." ROA.231.

Hence, it is not surprising that at this juncture Mr. Hendler stated: "I think I should assert my rights." ROA.232. This comment was met with what the Officer called "small talk." ROA.233.

As the officers searched the vehicle, they did not see any evidence of child pornography. ROA.233. The Officer specifically testified that he and his fellow officer continued into containers in the van, but never found evidence of child pornography. ROA.234.

The cross-examination next turned to the consent form "for the devices." ROA.234. The consent form was perhaps a strange concept in this case because the Officer testified:

“We don’t need it; we just do it” ROA.235. Specifically, the Officer make the lack of need for a consent form clear:

Let me rephrase that. We don’t need the consent; we just do it for documentation purposes. Since—especially since everything is on our video, our department has a policy; if it’s not on video, it has to be on paper.

ROA.235.

The Government then conducted its redirect examination of the Officer. ROA.235. The Officer asserted child pornographers keep their material on multiple devices. ROA.236. He also told the prosecutor that he believed a person can use “factory settings” to delete material in a very short time. ROA.237. However, on re-cross examination, the Officer conceded that he could not tell if Mr. Hendler was using factor settings. ROA.237. This ended the evidence portion of the hearing on the motion to suppress. ROA.238.

The Ruling on the Motion to Suppress

At that time, the Court heard oral argument from both parties. ROA.238-50. Because these arguments invoke the legal issues in this case, they are reserved for the Arguments section in this brief. The hearing on the motion to suppress was concluded without a ruling from the bench, with the Judge stating that the motion would be taken under advisement for a subsequent ruling. ROA.251.

On June 4, 2018, the District Court issued its Order on the motion to suppress. ROA.90-105. The motion was denied. ROA.90-105. Because the ruling is an application of the law to the facts, the discussion of the Order is reserved the Arguments section of this brief.

Plea of Guilty

On July 19, 2018, Mr. Hendler entered a plea of guilty. ROA.449-82. Relevant to this matter is that Mr. Hendler reserved his right to appeal the ruling on the motion to suppress. ROA.119. Hence, the denial of the motion to suppress is the issue in this appeal.

The Sentencing Hearing

Mr. Hendler was sentenced on October 7, 2018. ROA.483. Neither side filed an objection to the Presentence Investigation Report (“PSR”). ROA.487. The PSR calculated the range of custody at 78 to 97 months. ROA.487. The Government recommended Mr. Hendler be imprisoned for 97 months and reviewed the facts in support of its recommendation. ROA.482-88. Mr. Hendler and his attorney addressed the Court and the law, and asked for a downward departure of 63 months. ROA.490. Mr. Hendler was deeply apologetic and noted that he was never involved with child sex offenses. ROA.491. The Court downward departed to a sentence of 70 months. ROA.494. The conditions of supervised release which were imposed were typical for sex offender offenses. ROA.494-95.

The Appeal to the Fifth Circuit

Mr. Hendler’s notice of appeal was timely filed on October 30, 2018. ROA.142-43. The Fifth Circuit affirmed the denial of Mr. Hendler’s motion to suppress on appeal. (Appendix A, page 4). Mr. Hendler now respectfully files the Petition for Writ of Certiorari.

**ARGUMENT AMPLIFYING REASONS RELIED
ON FOR ALLOWANCE OF THE WRIT**

I.

Standard of Review Governing the Denial of the Motion to Suppress

The Fifth Circuit defined the standard of review on an appeal from a District Court's denial of a motion to suppress. Legal conclusions are reviewed de novo. (Appendix A, page 2) (citing *Ornelas v. United States*, 517 U.S. 690, 699 (1996)). Factual findings are reviewed for clear error. *Id.* The denial is reviewed "in the light most favorable to the prevailing party." *Id.*

II.

The "*Terry* Stop"

A.

The Totality of the Circumstances

A "Terry stop" permits the police to stop an individual for investigative purposes if the officer has reasonable suspicion that "criminal activity may be afoot." *Terry v. Ohio*, 392 U.S. 1, 30 (1968). However, the "investigatory stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity." *United States v. Cortez*, 449 U.S. 411, 417 (1981). The officer's mere "hunch" is insufficient to justify a stop. *United States v. Arvizu*, 534 U.S. 266, 274 (2002). The Appellate Courts "must look at the totality of the circumstances of each case to see whether the detaining officer has a particularized and objective basis for suspecting legal wrongdoing." *Id.* at 273 (internal quotation omitted).

It is the totality of the circumstances which matters. *See id.* Merely isolating “separate circumstances” of the detention “departs sharply from the teachings” of this Court. *Id.* at 274. The *Terry* decision “precludes this sort of divide-and-conquer analysis.” *Id.*

B.

The Totality of the Circumstances Were not Considered

The Fifth Circuit determined the *Terry* stop was justified and gave its reasoning in one sentence which provides:

In this case, one of the arresting officers testified at the suppression hearing that his suspicions regarding Hendler arose after he was provided with information from a credible witness that Hendler possessed child pornography, he observed Hendler interact with a young girl at a church, he learned of Hendler’s email address which he believed was suggestive of pedophilia, and he drew on his experience investigating pedophilia-related offenses.

(Appendix A, page 2). Thus, the Fifth Circuit isolated specific observations about three of the available circumstances to justify the temporary detention. *See* (Appendix A, page 2). Mr. Hendler respectfully submits the Court applied the incorrect standard of review by failing to evaluate all of the factually-correct circumstances for the stop and thus this Petition should be granted.

The Pastor, who was the “credible person” for purposes of the *Terry* stop, did not report the information to the authorities about child pornography when he allegedly received it. *See* ROA.155. Instead, he waited until he saw a uniformed officer at the service. ROA.155. Furthermore, the Pastor did not tell the Officer what he remembered from that conversation with Mr. Hendler. *See* ROA.155-56. Indeed, whatever the Pastor allegedly had

been told, he only believed the Officer needed to “keep an eye on that guy.” ROA.156. Respectfully, saying “keep an eye on that guy” is not consistent with saying that the subject is a child pornographer who needs to be immediately stopped because criminal activity is afoot. In other words, the Pastor’s statement is not a credible statement from the witness that a crime has taken, or is about to take, place. Thus, the information which propelled the detention had nothing to do with what the information the District Court believed triggered the *Terry* stop. In other words, this circumstance was considered in a vacuum rather than in its context.

Respectfully, the evidence at the hearing actually shows the Officer believed it was the “shoulder ride” photograph he witnessed between Mr. Hendler and the child that was his main reason for the detention. ROA.156-67. While this was the Fifth Circuit’s second reason for affirming the *Terry* stop, this circumstance was in reality the actual basis for the initial detention according to the Officer. ROA.156-67. The Government agreed by introducing the picture to attempt to show this behavior was consistent with a pedophile. ROA.156-67. However, even if Mr. Hendler had a “look of pleasure” on his face while giving the child a ride on his shoulders, this is not a legitimate, compelling basis for a stop. ROA.156. Therefore, the conclusion by the District Court was contrary to the evidence. *See* ROA.156.

Alternatively, to the extent the District Court’s and the Fifth Circuit’s observation may be considered partially true, the conclusion was contrary to the context of the investigation as a whole. *See* ROA.156-67. Children sometimes ride on an adults shoulders.

Respectfully, reasonable suspicion requires more than just a smile of happiness on the part of an adult giving a child a shoulder ride.

All of the factually correct circumstances of this case show the Officer's conclusion was merely a hunch. In terms of evaluating the specific information provided by the Pastor, the evidence is not sufficiently reliable to be used as specific, articulable facts of illegal behavior. The Pastor did not convey any information to anyone when he received it from Mr. Hendler. ROA.199. Rather, he merely told Mr. Hendler to delete the information, ROA.199, and effectively helped to attempt in the destruction of evidence. Further, when the pastor did talk to law enforcement during a chance encounter with Mr. Hendler at the church, the Pastor did not provide the Officer with the information he claimed to have had. In fact, the pastor showed he was unsure of his information because he only told the Officer to keep an eye on Mr. Hendler. Hence, the information could not be used to develop specific facts to support a *Terry* stop but rather it shows all of the circumstances did not support the stop.

Furthermore, the fact that the officer clearly stated he "may have to tackle" Mr. Hendler, ROA.229, establishes the Officer was not merely investigating an issue. Such action can only be described as an aggressive arrest, as opposed to a detention for investigative purposes. Stated another way, the Officer was not investigating, but rather was on his way to make an arrest and simply wanted evidence to support that arrest.

Finally, the Fifth Circuit did not evaluate all of the circumstances established before the District Court. *See* (Appendix A). Significantly, the Fifth Circuit used an alleged suggestive email as part of the basis for the stop. (Appendix A, page 2). However, this

conclusion was contrary to the Officer's concession that the email address was commonly used by at least one established church. ROA.204. Thus, all of the circumstances show that the informant was not credible and the other considerations noted by the Fifth Circuit were insignificant, *i.e.*, child on shoulders and an email used by an established church. Thus, the Fifth Circuit failed to consider all of the specific circumstances in this case and the petition should be granted.

CONCLUSION

Mr. Hendler therefore respectfully submits that the decision of the United States Court of Appeals for the Fifth Circuit, which affirmed the decision of the District Court denying Mr. Hendler's motion to suppress, conflicts with the United States Constitution and decisions of this Court. Therefore the decision by the Fifth Circuit calls for an exercise of this Court's supervisory powers such that a compelling reason is presented in support of discretionary review by this Honorable Court.

WHEREFORE, PREMISES CONSIDERED, Petitioner, BRUCE HAROLD HENDLER, respectfully requests that this Honorable Court grant this petition and issue a Writ of Certiorari.

Respectfully Submitted,

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