

No. _____

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

—————◆—————
JOHN CALVIN DAVIS,

Petitioner,

v.

CITY OF ANDREWS, TEXAS
AND ANTHONY DE LA CRUZ,

Respondents.

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

—————◆—————
PETITION FOR WRIT OF CERTIORARI

—————◆—————
LANE A. HAYGOOD
**Counsel of Record*
BAILEY & GALYEN
3800 E. 42nd St. Ste. 110
Odessa, Texas 79762
432.803.5800
lhaygood@galyen.com

QUESTION PRESENTED

The Fifth Circuit ignored its own precedent and the controlling standards of law arriving at a decision upholding the doctrine of qualified immunity as it applied to a police officer who utilized known false statements to ensure the arrest and incarceration of a man he knew had not committed a crime. Such brazenly and nakedly punitive actions—whereby a citizen accused may beat the rap, but not “the ride” to jail—are an affront to a society of laws and require review by this Court to prevent such manifest and petty abuses of power.

PARTIES TO THE PROCEEDINGS

The parties to the proceeding are named in the caption.

STATEMENT OF RELATED CASES

1. *John Davis v. City of Andrews, Texas and Anthony De La Cruz*. No. 7:18-CV-00198-DC
2. *Davis v. City of Andrews et al.*, No. 20-50951 (5th Cir.)

TABLE OF CONTENTS

	Page
QUESTION PRESENTED.....	i
PARTIES TO THE PROCEEDING.....	ii
STATEMENT OF RELATED CASES	ii
PETITION FOR WRIT OF CERTIORARI.....	1
OPINIONS BELOW.....	1
STATEMENT OF JURISDICTION.....	1
STATUTORY PROVISIONS INVOLVED	1
STATEMENT OF THE CASE.....	2
ARGUMENT	4
1. The Fifth Circuit erred in conducting its analysis because it ignored relevant legal standards and its own precedent	4
1.1. The standard for summary judgment re- quired greater deference to uncontro- verted facts found in the record in the light most favorable to Davis	4
1.2. The Fifth Circuit ignored its own opinion in <i>Winfrey</i> to reach the decision in this case	5
1.3. Reversal on these issues should lead to reversal on all issues	7
CONCLUSION.....	7

TABLE OF CONTENTS—Continued

	Page
APPENDIX	
Court of Appeals Opinion filed June 15, 2021	App. 1
Court of Appeals Judgment filed June 15, 2021 ...	App. 4
District Court Final Judgment filed November 9, 2020	App. 6
District Court Order filed November 8, 2020	App. 8
District Court Order filed September 2, 2019 ...	App. 19

TABLE OF AUTHORITIES

	Page
UNITED STATES SUPREME COURT CASES	
<i>Franks v. Delaware</i> , 438 U.S. 154 (1978)	6
<i>Illinois v. Gates</i> , 462 U.S. 213 (1983)	6
UNITED STATES COURTS OF APPEALS CASES	
<i>Bourne v. Gunnels</i> , 921 F.3d 484 (5th Cir. 2019).....	4
<i>Brown v. Callahan</i> , 623 F.3d 249 (5th Cir. 2010).....	4
<i>United States v. Lopez-Moreno</i> , 420 F.3d 420 (5th Cir. 2005).....	6
<i>Winfrey v. Rogers</i> , 901 F.3d 483 (5th Cir. 2019).....	5, 6
STATUTES	
28 U.S.C. § 1254	1

PETITION FOR WRIT OF CERTIORARI

Petitioner John Calvin Davis asks this Court to issue a writ of certiorari to the United States Court of Appeals for the Fifth Circuit.

**OPINIONS BELOW**

The Fifth Circuit's opinion in this case was not selected for publication. It can be found at 850 Fed.Appx. 281 (5th Cir. 2021) and is reprinted in the Appendix to this Petition. There is no opinion from the district court.

**STATEMENT OF JURISDICTION**

The Fifth Circuit issued its judgment on June 15, 2021. This Court has jurisdiction to review the Fifth Circuit's final decision under 28 U.S.C. § 1254(1).

**STATUTORY PROVISIONS INVOLVED**

This case does not involve any statutory provisions.



STATEMENT OF THE CASE

On January 21, 2016, Plaintiff, John Calvin Davis, went to his place of business, known as J&J Rentals in the city of Andrews, Texas (ROA.9). A man known to Mr. Davis as “Pizza,” who worked for the company Charger Services, brought in his pickup to talk shop with the hands at Davis’s business; while there, Pizza asked Davis’s employees to take a look at some electrical matters with his truck (ROA.9-12; ROA.432-34). Davis, upset that Charger Services had rented a trailer from J&J Rentals that they had not paid for after it was allegedly stolen, told Pizza that he wanted to know what the status of the trailer was (ROA.432-33). Pizza contacted his supervisor, who spoke harshly about Davis, which caused Davis to provide Pizza an invoice for both the work on his truck and the missing trailer (ROA.9, ROA.433-34). Pizza did not pay, and so Davis held the truck.

The following date, January 22, 2016, representatives from Charger Services returned to J&J Rentals accompanied by members of the Andrews Police Department, including, principally, Defendant De La Cruz (ROA.435). Davis provided De La Cruz a copy of the invoice, but De La Cruz threw the invoice on the ground and arrested Davis (ROA.436-37). Davis protested that he would release the vehicle to De La Cruz, but that he did not have the keys; an employee named Dennis had the keys and Dennis was in the field (ROA.438-39). Dennis was delayed in his arrival by a flat tire (ROA.439). Davis sat in handcuffs at his own place of business for forty-five minutes to an hour

before De La Cruz transported him to the Andrews County Jail (ROA.440). During that time, several other officers with different agencies showed up at Davis's place of business; while Davis was being transported, De La Cruz told Davis that they would get a search warrant for his property and that he was in "big trouble" (ROA.441).

As a result of Davis's arrest, he was charged with felony theft by the Andrews County District Attorney (ROA.9). Eventually, that charge was dismissed with prejudice by a special prosecutor and the resulting records expunged on April 19, 2017 (ROA.9-10). But the damage had been done to Davis—his reputation and his business in a small city suffered because of the unconstitutional actions of Defendant De La Cruz and Defendant City who supervised him. It has been Mr. Davis's contention that his civil rights were violated by the unconstitutional search and seizure of his person in violation of his Fourth, Fifth, and Fourteenth Amendment rights, specifically, that Defendant City ordered Defendant De La Cruz to arrest Mr. Davis regardless of the facts of the case in retaliation against Davis, despite the wishes of Charger Services to the contrary concerning the arrest of Davis (ROA.443).



ARGUMENT

1. The Fifth Circuit erred in conducting its analysis because it ignored relevant legal standards and its own precedent.

Davis first alleged that Officer De La Cruz violated his rights by making a knowing false representation in swearing for a search warrant. The Fifth Circuit, in analyzing this claim, found that Davis demonstrated “nothing in the record indicating that Officer De La Cruz’s statement about the registration check was false” (Tab 1, page 2). However, neither party disputed that the lien existed but De La Cruz stated that “there [was] no lien on the vehicle by [Davis’s business] or [Davis]” (ROA.352).

1.1. The standard for summary judgment required greater deference to uncontroverted facts found in the record in the light most favorable to Davis.

Furthermore, this stands the standard for a grant of summary judgment on its head; Davis was entitled to a trial by a factfinder if he could show a “genuine fact [dispute] as to whether [De La Cruz’s] allegedly wrongful conduct violated clearly established law.” *See Brown v. Callahan*, 623 F.3d 249, 253 (5th Cir. 2010). In making this determination, the Fifth Circuit was required to view this evidence in the light most favorable to Davis. *See Bourne v. Gunnels*, 921 F.3d 484, 492 (5th Cir. 2019). Because the Fifth Circuit failed to provide the proper deference and because

the Fifth Circuit ignored uncontroverted facts in the record, review by this Court is required.

1.2. The Fifth Circuit ignored its own opinion in *Winfrey* to reach the decision in this case.

Furthermore, the Fifth Circuit, in analyzing this claim under *Winfrey v. Rogers*, 901 F.3d 483, 494-95 (5th Cir. 2019), the Fifth Circuit ignored its own case law in arriving at the conclusion that Davis did not defeat the Respondents' summary judgment burden of showing no genuine issues of material fact (see Tab 1, pp. 2-3). Rather than state that, considered in the light most favorable to Davis, De La Cruz's statement that Davis claimed a lien but one was not found during a registration check as a statement by De La Cruz that no lien existed, the district court stated that De La Cruz did not knowingly present false information as long as he believed his registration check was sufficient (ROA.352). But this is not the case; absence of evidence is not evidence of absence. The fact that the registration check allegedly found no lien is only proof of the fact that the registration check found no lien; the proximity of this statement to the one that Davis claimed a lien existed implies that the claimed lien is false. But De La Cruz knew Davis had a lien; Davis told him of it, told him that it was being filed at the courthouse, and provided De La Cruz the invoice, which De La Cruz threw on the ground.

Andrews is not a large city; De La Cruz is familiar with the county clerk's office and its location and relative proximity to the county jail and to the courthouse. De La Cruz could have informed the reviewing magistrate of Davis's statement that the lien was being processed and could have checked with the county clerk. But rather than do so, which might have uncovered the existence of the lien, De La Cruz chose to imply to the magistrate that the claim of the lien was a false claim in order to obtain the search warrant.

As in *Winfrey*, De La Cruz knew, or should have known, that his statements were so material that they would have led to the false arrest and improper search of Davis's property based on a claim of theft that could not be supported. *Winfrey*, 901 F.3d at 494. But the analysis does not end there; this Court must also consider whether the false statement was necessary to the finding of probable cause. *Winfrey*, 901 F.3d at 494-95, citing *Franks v. Delaware*, 438 U.S. 154, 156 (1978). A reviewing court must consider the faulty affidavit to determine whether the false statement was necessary for the finding as if those errors and omissions were removed. *Id.* at 495. Such a review is de novo. *United States v. Lopez-Moreno*, 420 F.3d 420, 430 (5th Cir. 2005). Probable cause requires only "a probability or substantial chance of criminal activity, not an actual showing of such activity." *Illinois v. Gates*, 462 U.S. 213, 243 n.13 (1983). Therefore, if the Fifth Circuit believes that *Winfrey* should control the case, it ignored its own elucidation of the standard for knowing and reckless

falsehoods to arrive at its conclusion. Review by this Court is required.

1.3. Reversal on these issues should lead to reversal on all issues

The panel did not reach Davis's remaining issues with regard to the City of Andrews because it found the disposition of the issues concerning De La Cruz dispositive. However, once this Court reverses the decision of the panel below, it should remand the case for a full consideration of **all** of Davis's issues raised on appeal.



CONCLUSION

Petitioner asks that this Court grant the petition and set the case for a decision on the merits.

Respectfully submitted,
LANE A. HAYGOOD
BAILEY & GALYEN
3800 E. 42nd St. Ste. 110
Odessa, TX 79762
432.803.5800
lhaygood@galyen.com

February 7, 2022