No. _____

In The
Supreme Court of the United States

PAUL ALEXANDER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is the Fourth Circuit in violation of Supreme Court precedent and in conflict with other circuits when, in conducting a harmless error review, it intentionally does not consider derivative evidence that was obtained as a result of the unconstitutional car search?

2. Is the Fourth Circuit in violation of Supreme Court precedent and in conflict with other circuits when, in conducting a harmless error review, it assesses not the impact of the suppressed evidence on the jury, but rather assesses only the overall strength of the Government's untainted evidence?

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The opinion of the Court of Appeals for the Fourth Circuit is unpublished but can be found at *United States of America v. Paul Alexander*, No. 20-4059 (4th Cir. Feb. 4, 2021).

JURISDICTION

The Fourth Circuit issued its judgment on February 4, 2021. A1. Petitioner filed a Petition for Rehearing and Rehearing *En Banc* on February 18, 2021, which was denied on April 12, 2021. A6. On March 19, 2020, this Court issued an Order extending to 150 days the amount of time to file a petition for writ of certiorari following the denial of a timely petition for rehearing. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

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 persons or things to be seized.

STATEMENT OF THE CASE

I. Introduction

Paul Alexander, a Black man, was pulled over in Baltimore County, Maryland, for an alleged window-tint violation. This pretextual stop was illegally extended, in violation of *Rodriguez v. United States*, 575 U.S. 348 (2015), so that police could conduct a canine scan. The canine scan led to a search of the vehicle, which led to the discovery of non-drug evidence. The non-drug evidence propelled the investigation forward, leading to the search of an apartment, among other things, which led to an arrest and drug trafficking charges. Alexander was eventually tried and sentenced to 35 years for a non-violent drug crime.

When Alexander appealed the illegal car search, the Fourth Circuit Court of Appeals considered only "the evidence directly obtained during the traffic stop." A4. The Fourth Circuit then concluded that any error in admitting the presumably illegally obtained evidence was harmless in light of the "overwhelming amount of evidence the Government introduced during trial." *Id.*

In so concluding, the Fourth Circuit cast aside decades of jurisprudence and, apparently, exercised a new standard for finding harmless error. First, the Fourth Circuit explicitly declined to assess the derivative impact of the evidence obtained from the car stop, essentially ignoring swaths of evidence that would not have been obtained but for the illegal car search. This appears to usher a new test for the Fourth Circuit, one that ignores the settled precedent of *Wong Sun v. United States*, 371 U.S. 471, 484 (1963) (holding that the exclusionary rule

extends to both the direct and indirect products of Fourth Amendment violations). This is also a standard that is at odds with every other circuit in the United States.

Second, the court opined that illegally obtained evidence is harmless if the Government otherwise has overwhelming evidence of guilt. This strays from the 75-year-old standard set forth in *Kotteakos v. United States*, 328 U.S. 750, 764-65 (1946), which requires the reviewing court to focus its inquiry not on the amount of raw evidence the Government may possess, but on how the illegal evidence influenced the jury.

By dismissing the illegality of the search of Alexander's car as "harmless error," the Fourth Circuit sent a clear message: police misconduct will be tolerated, even at the expense of the Fourth Amendment.

II. Factual overview

In 2018, Paul Alexander got caught in the crosshairs of a federal drug investigation. A task force comprised of Drug Enforcement Administration agents and local police was investigating another individual, Miles Bellamy, with whom Alexander had regular contact.

While surveilling Bellamy, the officers observed multiple interactions between Bellamy and Alexander – some of which involved the passing of packages from one to another. Suspecting that Alexander was also involved in narcotics trafficking, the officers set their sights on him.

First, in April of 2018, the officers used a pretextual stop (window tint) to pull over and

conduct a search of the car in which Alexander was traveling. When they did not find any narcotics, they let him go.[1]

A month later, on May 15, 2018, the DEA officers tried again. They did so by placing a call to the Baltimore County police and requesting that they initiate a stop of Alexander's vehicle. The Baltimore County police did just that, and Alexander was pulled over, again because of a purported window tint violation.

After some initial confusion about paperwork and the identity of Alexander, the police satisfied the purpose of the stop. However, instead of releasing Alexander, they held him on the curb in handcuffs while they waited for a canine to come and scan the vehicle.

When the canine arrived, it scanned the car and alerted. Armed with probable cause, the police then searched the car and found the following: approximately $450,000 in cash, a Verizon bill, a jewelry receipt, a prior traffic citation, and documentation reflecting Alexander's earlier efforts to obtain a legal name change. Alexander was not arrested or charged as a result of this stop. Nor did he receive any traffic citations.[2]

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[1] Although it was not litigated because Alexander was not driving and thus did not have standing, this pretextual stop and search was almost certainly in violation of the Fourth Amendment because police illegally held the driver after the purpose of the stop was completed so that they could wait for a canine to arrive. *See Rodriguez v. United States*, 575 U.S. 348 (2015) (prohibiting extension of vehicle stops for additional investigation).

[2] The fact that he did not receive a citation was significant because, at trial, the police justified the stop based on illegal tinting of the vehicle.

Evidence derived from this traffic stop constituted the foundation of the case against Alexander. For example, DEA agents cited the vehicle stop, canine alert, and the cash seized during this stop as bases for obtaining various cell phone and vehicle tracking warrants. In addition, the lead investigator in Alexander's case testified at trial that the Verizon bill seized during the stop led agents to Alexander's residence – which they otherwise were unable to locate – permitting them to launch a full-scale investigation.

Working off of the information obtained from the car stop, investigators obtained records and surveillance footage from the property identified in the Verizon bill. They also parked an unmanned surveillance van outside this address, and they occasionally conducted physical surveillance. This surveillance continued for seven months and became the crux of the Government's case against Alexander. It also provided the basis for additional warrants and, ultimately, the search of Alexander's residence and vehicles.

A substantial portion of the trial was devoted to this surveillance. The Government introduced various videos from the unmanned surveillance van from June through December 2018 that purportedly showed Alexander coming and going from his apartment, or back and forth between vehicles, often with duffle bags or suitcases. These videos were used to establish that Alexander was transporting drugs or money (or both), and that he was storing these items in numerous vehicles and in his apartment.

Over the course of two days, the jury watched and heard about these surveillance videos as the case agent narrated for the jury. The case agent

provided his interpretive descriptions of what was being depicted in the videos, thereby enhancing the effect of the surveillance videos. For example, he testified that numerous videos showed Alexander moving duffle bags and suitcases from one vehicle to another, or to and from his apartment. He also testified that the videos showed Alexander moving "rectangular shapes" – presumably narcotics – around in his trunk, carrying duffel bags containing "kilos of heroin or fentanyl," and engaging in late-night narcotics transactions.

It was this surveillance – derived from the Verizon bill found during the illegal car search – that constituted the lion's share of the Government's trial evidence, and ultimately led to Alexander's conviction.

REASONS FOR GRANTING THE WRIT

There are three separate reasons why this Court should grant a writ of certiorari.

First, the Fourth Circuit's opinion upends decades of Supreme Court jurisprudence and puts the Fourth Circuit at odds with all other circuits in the country. If the Fourth Circuit is to be taken at its word – that is, the words in its opinion denying Alexander's appeal – it is employing a harmless error standard that runs afoul of settled Fourth Amendment law, including the landmark cases *Kotteakos v. United States*, 328 U.S. 750 (1946), and *Wong Sun v. United States*, 371 U.S. 471, 484 (1963). It would also immediately take the teeth out of a more recent Supreme Court decision, *Rodriguez v. United States*, 575 U.S. 348 (2015), which explicitly prohibits the police from extending a car stop any

longer than necessary to complete the purpose of the stop. These cases, and others with similar holdings regarding harmless error, are so enmeshed in our legal precedent that to unearth them now would be to set off a seismic change in our interpretation of the Fourth Amendment. Not only would that unsettle the Fourth Circuit, but it would inject confusion across other circuits, which have wisely followed the law and limited police intrusion on Fourth Amendment rights.

Second, letting the Fourth Circuit's opinion stand – and opening the door to other similar rulings – would potentially send the wrong message to law enforcement at a time when the public interest demands greater scrutiny of police conduct. The Fourth Circuit has said that, essentially, if law enforcement officers break the law (and violate the Fourth Amendment) their conduct will be excused and they will still be able to use the illegally obtained evidence against the defendant. But that defeats the purposes of the exclusionary rule: to deter police misconduct and overreach, to provide a remedy for violations of the Fourth Amendment, and to maintain the integrity of the criminal justice system. Now – in the wake of several high-profile incidents that underscore the need for police oversight – is not the time to condone the type of illegal car search that occurred in this case.

Third, a writ of certiorari should be granted because this case produced an unjust result that should not stand. Alexander received a sentence of 35 years in federal prison (without parole) for a non-violent drug offense. While it is true that the distribution of illegal narcotics is serious and dangerous, this sentence is entirely disproportionate

to other federal sentences handed down in this district and beyond. In fact, it is a longer sentence than the average sentence for murder in the District of Maryland. While this petition does not present an Eighth Amendment claim, the nature of the sentence is all the more reason why this Court need not bow to the principles of finality and instead should scrutinize the police misconduct that led to this unjust result.

This Court should grant certiorari and reverse.

I. The Fourth Circuit is at odds with the Supreme Court and other circuits.

The Fourth Circuit's harmless error analysis in *Alexander* undercuts Supreme Court precedent and puts the circuit at odds with all other circuits.

The Fourth Circuit opinion makes two mistakes. First, it applies a legal standard that fails to take into account derivative evidence that was obtained as a secondary result of the illegal car search – the so-called fruit of the poisonous tree. Second, the Fourth Circuit errs by failing to measure the impact of the illegally obtained evidence on the jury, and instead utilizes a weight-of-the-evidence test to conclude that any error was "harmless." Both of these errors must be corrected by this Court so that the Fourth Circuit can be brought into line with the rest of the country.

a. Derivative evidence.

The Fourth Circuit's harmless error analysis is fundamentally flawed because it considers only

the *direct* evidence obtained as a result of the illegal search. What it fails to consider is the *indirect* evidence that flowed from the illegal police action. In fact, in its analysis, the Fourth Circuit stated: "[t]he only evidence that may have been erroneously admitted is the evidence directly obtained during the traffic stop." A4.

Not only is this statement wrong, but the Fourth Circuit's analysis breaks with Supreme Court precedent and is at odds with every other circuit in the country.

Wong Sun v. United States held that, when evidence is seized pursuant to an unlawful search, the exclusionary rule prohibits the use of both the direct and indirect products – or "fruits" – of that search. 371 U.S. at 484. As the Court has explained, this means not only that the evidence so seized may not be used at trial; rather, "it shall not be used at all." *Id.* at 485 (quoting *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920)). Thus, any evidence that "has been come at by exploitation of" the government's unlawful conduct must also be suppressed. *Id.* at 488. In other words, the government may not use the unlawfully obtained evidence or information to further their investigation or obtain further evidence. Nor can the prosecution offer testimony regarding the matters observed during the unlawful invasion. *Id.*

It goes without saying that every other circuit in the country abides by this holding from *Wong Sun* and its progeny. *See United States v. Shrum*, 908 F.3d 1219 (10th Cir. 2018) (remanding the case and reversing the trial court's denial of the defendant's motion to suppress after finding that the evidence was obtained through a search warrant that was

based on information discovered from a prior illegal seizure of the defendant's home); *United States v. Bershchansky*, 788 F.3d 102 (2nd Cir. 2015) (affirming an order to suppress a confession that police obtained after conducting a search that exceeded the scope of their warrant and finding evidence that elicited the confession in question); *United States v. Camacho*, 661 F.3d 718, 730 (1st Cir. 2011) (reversing after finding that the discovery of a gun "flowed directly from the original unlawful seizure" of the defendant); *United States v. Villa-Gonzalez*, 623 F.3d 526 (8th Cir. 2010) (affirming order to suppress physical evidence that investigators obtained through the defendant's non-consensual and involuntary statement); *United States v. Mowatt*, 513 F.3d 395 (4th Cir. 2008) (vacating and remanding after determining that some evidence was obtained via a home search absent exigent circumstances, and that a subsequent search warrant obtained from that baseless search produced indirect evidence that was also inadmissible); *United States v. Washington*, 490 F.3d 765 (9th Cir. 2007) (vacating and remanding after finding that police lacked reasonable suspicion to make an investigatory stop that the defendant reasonably believed he could not terminate, and causing the defendant to consent to the search that revealed the evidence in question); *United States v. Davis*, 430 F.3d 345 (6th Cir. 2005) (reversing and remanding after finding that the defendant was improperly detained for 90 minutes after a traffic stop to conduct a dog sweep that provided the basis for the search warrant that produced the evidence in question); *United States v. Robles-Ortega*, 348 F.3d 679 (7th Cir 2003) (vacating decision denying

defendant's motion to suppress evidence that was discovered after police illegally raided a home, arrested a tenant, and received the tenant's consent to search the home); *United States v. Chanthasouxat*, 342 F.3d 1271 (11th Cir. 2003) (reversing and remanding after the district court erred by not suppressing drug evidence that police discovered after they illegally stopped a van and obtained the defendant driver's permission to search); *United States v. Gould*, 326 F.3d 651 (5th Cir. 2003) (affirming order suppressing physical evidence after determining that it was obtained via an illegal arrest and the defendant's subsequent consent to allow police to search his bedroom); *United States v. Butts*, 704 F.2d 701 (3rd Cir. 1983) (reversing conviction and remanding after finding that the district court improperly denied defendant's motion to suppress a confession because the confession was the fruit of an arrest made without probable cause); *Gatlin v. United States*, 326 F.2d 666 (D.C. Cir. 1963) (reversing and remanding judgment on a second defendant because that defendant's arrest was based on information obtained from the first defendant who police stopped without probable cause).

Yet the Fourth Circuit cast aside this tenet of Fourth Amendment law when it failed to consider derivative evidence in its harmless-error analysis. A significant portion of the evidence admitted against Alexander at trial was "come at by exploitation of" the task force's illegal vehicle stop and thus fell within the ambit of the exclusionary rule. *Wong Sun*, 371 U.S. at 488.

The discovery of Alexander's residence – which came from the recovery of a Verizon bill obtained during the unlawful stop – led to months'

worth of surveillance that was admitted as evidence at trial. This surveillance comprised the bulk of the Government's case against Alexander. It spanned nearly two full days of testimony in support of the Government's case. This evidence would not have been possible if agents had not discovered a Verizon bill inside of Alexander's vehicle; and they would not have discovered Alexander's residence if they had not unlawfully stopped and searched his vehicle. Even the Government's case agent and expert witness testified to this, stating that it was the Verizon bill recovered during the May 15th vehicle stop that led to the discovery of Alexander's residence. The Fourth Circuit explicitly and willfully ignored this evidence when it concluded that any Fourth Amendment violation against petitioner was harmless error.

This Court must correct this error and bring the Fourth Circuit back into line with Supreme Court precedent and the other circuits in the country.

b. Impact of tainted evidence.

The Fourth Circuit's second error is that it used an improper test to measure the effect of the evidence obtained as a result of the illegal search. Rather than consider the effect the tainted evidence had on the jury, the Fourth Circuit only concluded that the illegally obtained evidence "was a small part of an overwhelming amount of evidence the Government introduced during trial." A4. Thus the Fourth Circuit employed some type of sufficiency-of-the-evidence test that is not supported by law and that breaks from decades of precedent. If this is in

fact the Fourth Circuit's new standard, it stands alone among the circuits.

Rather, the proper harmless-error test focuses on the impact of the ill-gotten evidence on the jury. This standard was summarized by this Court some 75 years ago:

> If, when all is said and done, the conviction is sure that the error did not influence the jury, or had but very slight effect, the verdict and the judgment should stand, except perhaps where the departure is from a constitutional norm or a specific command of Congress. But if one cannot say, with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error, it is impossible to conclude that substantial rights were not affected. The inquiry cannot be merely whether there was enough to support the result, apart from the phase affected by the error. It is rather, even so, whether the error itself had substantial influence. If so, or if one is left in grave doubt, the conviction cannot stand.

Kotteakos v. United States, 328 U.S. 750, 764-65 (1946) (internal citations omitted) (emphasis added). The Fourth Circuit's focus in this case on the "amount of evidence the Government introduced

during trial" is precisely what this Court explicitly prohibited in *Kotteakos*. *See id.*

The necessity of considering how the illegally obtained evidence affected the jury is best illustrated in cases where forced confessions are introduced to the jury along with overwhelming evidence of guilt. In such cases, reversal is required – regardless of the strength of the prosecution – because a confession is such an overpowering form of evidence and the error can never be harmless. It is evidence that is virtually impossible for a jury to ignore. *Id. See also Lego v. Twomey*, 404 U.S. 477, 483-84 (1972) ([W]e did not believe a jury could be called upon to ignore the probative value of a truthful but coerced confession."); *Jackson v. Denno*, 378 U.S. 368, 376 (1964) (stating that an involuntary confession violates due process and cannot be the basis of a conviction).

Indeed, the Supreme Court and every circuit in the country employs this harmless-error analysis. *See Krulewitch v. United States*, 336 U.S. 440 (1949) (reversing because improperly admitted hearsay "had substantial influence in bringing about a verdict"); *United States v. Chavez*, 976 F.3d 1178 (10th Cir. 2020) (reversing because wrongly admitted evidence had a "substantial influence over the jury's verdict" because it was central to the government's case, the other evidence was "far from overwhelming" and jury instructions "failed to mitigate the error"); *United States v. Craig*, 953 F.3d 898 (6th Cir. 2020) (vacating and remanding because the government's baseless publication of an unadmitted and unauthenticated exhibit "appears to have infected the jury's deliberations"); *United States v. Meises*, 645 F.3d 5 (1st Cir. 2011) (granting

a new trial and finding that the government's improper overview testimony and the indirect admission of a co-defendant's out-of-court statement were not harmless because it was not highly probable that the errors did not influence the verdict); *United States v. Al-Moayad*, 545 F.3d 139 (2nd Cir. 2008) (reversing because the admission of inflammatory and irrelevant evidence deprived the defendants of a fair trial because there was not a fair assurance that the evidence did not substantially influence the jury); *United States v. Bishop*, 264 F.3d 919 (9th Cir. 2001) (reversing drug convictions because admitting evidence seized during an illegal traffic stop was not harmless error beyond a reasonable doubt because the evidence could have influenced the jury); *Barker v. Yukins*, 199 F.3d 867 (6th Cir. 1999) (granting habeas relief because the lower court's error had a substantial and injurious effect or influence on the jury's verdict); *United States v. Hands*, 184 F.3d 1322, 1329 (11th Cir. 1999) (reversing conviction when improperly admitted evidence of spousal abuse likely had a "substantial influence on the outcome of the case"); *United States v. Iron Cloud*, 171 F.3d 587 (8th Cir. 1999) (reversing a conviction because the improper admission of portable breathalyzer test evidence could have substantially swayed the jury); *United States v. Cunningham*, 145 F.3d 1385 (D.C. Cir. 1998) (reversing two defendants' assault convictions because an erroneously admitted 911 tape bolstered a questionable witness's credibility and the government could not show beyond a reasonable doubt that the error did not contribute to the verdict); *United States v. Shackelford*, 738 F.2d 776 (7th Cir.1984) (reversing because the court was

unconvinced that improperly admitted testimony did not have a substantial influence on the minds of jurors); *Government of Virgin Islands v. Joseph*, 685 F.2d 857 (3rd Cir. 1982) (reversing because providing jurors with evidence that was not admitted at trial was not harmless beyond a reasonable doubt despite substantial other evidence); *Williams v. Zahradnick*, 632 F.2d 353 (4th Cir. 1980) (reversing because it was likely that impeachment of the defendant's alibi by referencing the defendant's silence impacted the jury's verdict.)

Apparently the Fourth Circuit never got the memo. In its analysis it never considered the impact of the illegally obtained evidence on the jury. It failed to consider that five people – one-fourth of the Government's witnesses – testified in some capacity about the May 15 traffic stop. One officer, who participated in that stop, was the second witness to testify on the very first day of trial. He testified about the nature of the stop and everything that occurred during the stop (including Alexander's use of two names and the fact that a canine alerted to narcotics, even though none were found). Video of the stop was also admitted and played for the jury. The Fourth Circuit failed to consider the testimony of another agent, who described in detail the traffic stop, the events leading thereto, and the evidence seized during the search of Alexander's vehicle – including a duffel bag containing nearly $450,000 cash.

Finally, the Fourth Circuit never considered that, over the course of two days, the Government's case agent testified about and narrated videos of surveillance conducted during the course of the investigation – evidence that was derived from the

May 15th vehicle stop. Almost two dozen surveillance videos and approximately five dozen accompanying photos were played or presented to the jury. The Fourth Circuit's opinion gives no indication that the panel properly considered the cumulative impact of all this evidence.

Making matters worse – and breaking from precedent – the Court ignores the closeness of this case, and the difficulty jurors had in reaching a unanimous decision. Despite the allegedly "overwhelming amount of evidence," A4, this case almost ended in a hung jury. The Jury deliberated over a day-and-a-half, and jurors raised numerous questions about the evidence. Twice, the Jury indicated it was deadlocked and could not reach a verdict on four of Alexander's five charges. This suggests that the evidence, while voluminous, did not establish Alexander's guilt as overwhelmingly as the Fourth Circuit would suggest, and the prejudice flowing from the unlawfully admitted evidence very well might have substantially swayed the jury. *See United States v. Ibisevic*, 675 F.3d 342, 354 (4th Cir. 2012) (considering length of jury deliberations in assessing closeness of case for purposes of harmless error analysis).

This is not to say that the Government did not have other evidence; it did. The problem is that the Fourth Circuit applied the wrong test, in violation of Supreme Court precedent, and in so doing reached the wrong result. This Court should force the Fourth Circuit to adhere to binding precedent and properly assess the effect of the illegally obtained evidence upon the jury.

II. The Fourth Circuit Sends the Wrong Message About Police Misconduct

The Fourth Circuit's opinion in this case sends the wrong message at the wrong time. The circuit is bending over backwards to excuse constitutional violations committed by police officers in a non-violent drug crime. The circuit dismisses the illegal conduct as harmless by employing an incorrect legal standard that is heavily slanted in favor of the police. And it does so at the expense of a Black defendant who has now been sentenced to 35 years in prison.

This is the precise opposite of what the exclusionary rule is supposed to do, and the effect it is supposed to have. When the rule is employed in this manner, it not only loses its teeth, but it defeats its own purpose. As the Supreme Court noted in *Elkins v. United States*, "The rule is calculated to prevent, not to repair. Its purpose is to deter – to compel respect for the constitutional guaranty in the only effectively available way – by removing the incentive to disregard it." 364 U.S. 206, 217 (1960) (internal citation omitted). *See also United States v. Calandra*, 414 U.S. 338, 347 (1974) (explaining that the exclusionary rule's "prime purpose" is to "deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable searches and seizures.").

While deterrence is the primary purpose of the exclusionary rule, there are other reasons to hold police and prosecutors to the letter of the constitutional law – reasons that apply in this case. In *Herring v. United States*, the Court named those additional purposes of the exclusionary rule: (1)

"avoid[ing] the taint of partnership in official lawlessness" and (2) assuring potential victims of unlawful government conduct that "the government would not profit from its lawless behavior, thus minimizing the risk of seriously undermining popular trust in government." 55 U.S. 135, 152 (2009).

The appellate courts, meanwhile, must safeguard this tenet of criminal law. When the courts – in this case the Fourth Circuit – do not give proper analysis to a constitutional violation and instead summarily dismiss it as harmless error, the effect trickles down to police on the street. *See* Vilija Bilaisis, *Harmless Error: Abettor of Courtroom Misconduct*, 74 J. Crim. L. & Criminology 457 (1983) ("The repeated application of a harmless error standard to violations of these trial rules has resulted in repeated violations of these rules by prosecutors and judges. Appellate court expressions of disapproval and warnings of impropriety provide little deterrent if convictions resulting from error-tainted trials are allowed to stand.").

This case has all of the trademarks of a case in which there is a strong need for deterrence, and public policy weighs in favor of applying the exclusionary rule.

First is the conduct of the police officers at the center of Alexander's case. The police conduct here started with a pretextual stop of a vehicle for a supposed tint violation – for being too dark – when in fact there appears to be no legitimate violation (otherwise police would have and should have issued a citation). This tactic was used not once but twice against Alexander. Second, the police improperly held the defendant beyond the scope of the original

stop so that they could call a canine officer to the scene. This – a violation of *Rodriguez v. United States*, 575 U.S. 348 (2015) – also occurred twice. In both searches, the canine alerted – even though there were no drugs in the vehicle on either occasion. This was then used, on both occasions, to permit the officers to search the car.

From the facts of this case it is apparent that there is a need for the Court to deter this conduct in the future. It is apparent that the police officers have a modus operandi in which they make pretextual stops, illegally extend those stops, then call for a canine unit to gain access to the vehicle. While it is true that police are permitted to make pretextual stops, it is also true that they are not permitted to extend those stops and search vehicles in the manner that took place here.

Making matters worse, the Fourth Circuit took the same cavalier approach as the police when it found the error to be harmless. *See Herring v. United States*, 55 U.S. 135, 152 (2009) (stating as a purpose of the exclusionary rule the need to "avoid the taint of partnership in official lawlessness"). To begin with, the panel did not even analyze the violation of *Rodriguez v. United States*, 575 U.S. 348 (2015). Rather, the panel just "assum[ed], without deciding, that the district court erred, as Alexander contends." A4. Treating a potential constitutional violation as an assumption minimizes the importance of the Fourth Amendment – and sends a clear message that the police may do the same. It is the Fourth Circuit's way of saying that it does not care whether the police followed the law.

Next, as mentioned above, the Fourth Circuit twice applied the wrong legal standard, both times

in deference to the police. First the Fourth Circuit stated that, for purposes of a harmless error analysis, it would only consider "evidence directly obtained during the traffic stop." A4. Second, the Fourth Circuit did not consider the impact of the evidence on the jury and instead noted only that the evidence was "overwhelming." *Id*. The circuit court then found that, based on those incorrect legal standards, any police error was harmless.

This Court should take up this matter to honor the purpose of the exclusionary rule and uphold the Fourth Amendment. As the Court noted when establishing the rule, "[t]he tendency of those who execute the criminal laws of the country to obtain convictions by means of unlawful seizures … should find no sanction in the judgments of the courts which are charged at all times with the support of the Constitution and to which people of all conditions have a right to appeal for the maintenance of such fundamental rights." *Weeks v. United States*, 232 U.S. 383, 392 (1914). This is just the type of case in which the Court should apply the exclusionary rule because "its remedial objectives are thought most efficaciously served." *United States v. Calandra*, 414 U.S. 338 (1974).

III. Little deference should be given to Alexander's unjust sentence.

There is another reason why the Court should assert its authority and apply the exclusionary rule: the district court imposed an unjust sentence and there is little value in keeping that sentence intact. It is a case in which the concerns of reaching a just result should outweigh the concerns of finality. *See*

Davis v. United States, 417 U.S. 333, 346 (1974) (finding exceptional circumstances for relief when faced with a miscarriage of justice); *Hawkins v. United States*, 706 F.3d 820, 824 (7th Cir. 2013) (citing *Schriro v. Summerlin,* 542 U.S. 348, 352 (2004) ("Finality is an important social value, but not important enough to subject a defendant to 'a punishment that the law cannot impose upon him.'").

Alexander was sentenced to 35 years in prison for drug trafficking offenses (21 U.S.C. §§ 841 and 846) and possession of a firearm in relation to a drug trafficking crime (18 U.S.C. § 924(c)). While these offenses are serious, the penalty is so disproportionate that, when considered in light of the constitutional violations described above, the convictions and sentence should not stand.

Alexander, who committed no acts of violence, received a sentence longer than most murderers who are sentenced federally in the state of Maryland. Most recently, in fiscal year 2020 – the year Alexander was sentenced – the average length of a sentence for murder was 254 months. In 2019, it was 310 months; in 2018 it was 313 months. For the five-year period from 2016 to 2020, the average sentence for murder in the state of Maryland was 300 months.

This unjust nature of Alexander's sentence should be considered because it demonstrates the impact of the illegal police action. When police break the law, and when the courts condone that type of conduct, there are real consequences. If our system of criminal justice is to take the life of a criminal defendant – by sentencing him to a term of years that approximately equals his life expectancy – it should be held to the highest standard. That did not

happen here, and for this reason this Court should grant certiorari and hear Alexander's case.

CONCLUSION

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

Respectfully submitted,

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