

No. _____

In the Supreme Court of the United States

Yarlin Garcia,

Petitioner

v.

United States of America,

Respondent

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

Petition for Writ of Certiorari

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Question Presented

Whether the District Court erred by denying Mr. Garcia's Motion to Suppress?

Parties and Related Cases

The names of all parties appear in the caption of the case on the cover page, and there are no related proceedings.

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Glossary of Abbreviations

Add'm	Addendum to Appellant's Opening Brief
App'x	Appendix
Br.	Brief

No. _____

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v.

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

Petition for Writ of Certiorari

Petitioner Yarlin Garcia prays for the issuance of a Writ of Certiorari to review the Judgment of the United States Court of Appeals for the First Circuit.

Opinions Below

The Opinion of the United States Court of Appeals for the First Circuit appears at *Appendix A* to this Petition. It is reported at 982 F.3d 844 (2020). The District Court's ruling appears at *Appendix B* to this Petition. It is unpublished.

Jurisdiction

On December 16, 2020, the United States Court of Appeals for the First Circuit issued its Judgment and Opinion. The First Circuit denied the Petition for

Rehearing and the Petition for Rehearing *en Banc* on March 16, 2021. The Order denying rehearing and rehearing en banc appears at *Appendix C* to this Petition.

Jurisdiction of the Supreme Court arises pursuant to Title 28 United States Code, section 1254(1). Jurisdiction in the First Circuit was based upon Title 28 United States Code, section 1291, the final judgment in a criminal case, entered against Petitioner on August 12, 2019 in the United States District Court for the District of Maine (Portland). The District Court's Judgment appears at *Appendix D* to this Petition. Jurisdiction in the District Court was based upon Title 18 United States Code, section 3231, because the United States prosecuted Petitioner for violation of the United States Code.

Constitutional Provision Involved

The Fourth Amendment to the United States Constitution provides:

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

Petitioner seeks review of his conviction.

By Complaint filed on July 21, 2017 Task Force Officer Thomas Lapierre charged Mr. Garcia with possession with intent to distribute heroin, fentanyl, and

cocaine, in violation of Title 21, United States Code, Section 841(a)(1) and 841(b)(1)(C). App'x to Opening Br. at 26 – 30.

By Indictment filed on July 26, 2017 the Grand Jury charged Mr. Garcia with possession with intent to distribute heroin, fentanyl, and cocaine, in violation of Title 21, United States Code, Section 841(a)(1) and 841(b)(1)(C). App'x to Opening Br. at 31.

By Superseding Indictment filed on September 6, 2017 the Grand Jury charged Mr. Garcia with possession with intent to distribute 100 grams or more of heroin, fentanyl, and cocaine, in violation of Title 21, United States Code, Section 841(a)(1) and 841(b)(1)(B). App'x to Opening Br. at 32.

On January 18, 2018 Mr. Garcia filed a Motion to Join Codefendant Louis Rosario Diaz's Motion to Suppress, challenging the government's claims about its seizure of things that the government would offer in evidence at trial. Id. at 40 – 54.

After hearings on March 14 and 27, 2018 the District Court denied Messrs. Diaz's and Garcia's Motions to Suppress. Add'm at 1 – 15.

On October 25, 2018 Mr. Garcia entered a conditional plea of guilty to one count of possession with intent to distribute 100 grams or more of heroin, fentanyl, and cocaine. App'x to Opening Br. at 280 – 295.

On July 29, 2019, the District Court sentenced Mr. Garcia to incarceration for a term of 87 months (7 years and 3 months), a 4-year term of supervised release, and a \$100 special assessment. Add'm at 16 – 22.

Mr. Garcia filed a Notice of Appeal on August 12, 2019. App'x to Opening Br. at 357 – 358.

Reasons for Granting the Petition

A warrantless seizure without probable cause is illegal. Likewise, a warrantless search without probable cause is also illegal. The appropriate remedy is exclusion of any evidence that result from government agents' illegal seizure and searches.

Government agents did not have a warrant for Mr. Garcia. Nor did government agents have a warrant for the silver Dodge pickup truck or anyone in it. Although agents might have had reason to believe that someone inside of 19 Nason Street was about to receive contraband, they did not have probable cause to believe that anyone in the silver Dodge pickup truck was committing a crime. Accordingly, the District Court should have granted suppression.

I. A United States Court of Appeals Has Sanctioned a District Court's Departure from the Accepted and Usual Course of Judicial Proceedings, which Calls for the Exercise of this Court's Supervisory Power.

A. Standard of Review.

When the Supreme Court reviews preserved constitutional trial error, the government must prove that the error was harmless beyond a reasonable doubt. *Chapman v. California*, 386 U.S. 18, 24 (1967).

B. Analysis: The District Court Should Have Granted Mr. Garcia's Motion to Suppress, Because Government Agents Arrested Him Without a Warrant and Without Probable Cause.

1. Warrantless Arrest.

Although the government has relied on a state search Warrant for a particular house on Nason Street in Sanford, Maine to search:

Any/all persons present *on the premises* of [address] at the time of execution of this search warrant *or arriving at the residence or premises during the execution of this search warrant* activities [sic] or unrelated residents of that building[;]

the government did not have a warrant to arrest Mr. Garcia, and he was not on the premises. Add'm at 8.

2. Lack of Probable Cause.

a. First, Officers Made the Constraint and Seized Mr. Garcia.

When agents arrested Mr. Garcia, he was a passenger in a silver Dodge pickup truck with Maine registration plates on a public street until the agents forcibly removed him and the other people, who were also in the truck. *Id.* at 8.

For about a year after arresting CD1¹ for drug trafficking, Agent Carleton had been surveilling CD1 on suspicion of additional trafficking. *Id.* at 1; App'x to Opening Br. at 84 – 114. Agent Carleton followed CD1 to Nason Street in Sanford, Maine on June 8, 2017 and suspected that CD1 was picking up drugs. *Id.*

¹ The term CD1 refers to a person, whose true name was not part of the public record in the District Court.

When Agent Carleton arrested CD1 on June 19, 2017, CD1 had four “fingers,” which is about 40 grams of heroin. Add’m at 2; App’x to Opening Br. at 84 – 114. CD1 agreed to cooperate. Id.

CD1 told Agent Carleton a physical description of CD2,² CD1’s source for drugs, where CD2 lived, the CD2’s first name, and a description of what CD2 drove. Id. CD1 confirmed that the June 8th trip Carleton had observed was in fact to pick up 200 grams of heroin from the source on Nason Street in Sanford. Id. CD1 told Agent Carleton about observing substantial quantities of heroin and cocaine at the Nason Street address during the previous months. Id. CD1 consented to Agent Carleton looking at CD1’s cell phone and identified CD2 as CD1’s source, appearing as “Connect” on CD1’s cell phone. Id. CD1 also told Agent Carleton about believing CD2’s source of supply to be a Hispanic male from Massachusetts. Id. Agent Carleton photographed text messages between CD1 and CD2 on June 19th, which CD1 said meant that CD2 had 5 fingers of heroin and was hopeful to have more the next day to sell to CD1. Id.

Agents obtained a search warrant for the CD2’s Nason Street premises. Id. On June 20th, agents including Task Force Officer Lapierre began surveilling the house on Nason Street. Add’m at 2; App’x to Opening Br. at 115 – 147.

Meanwhile, Agent Carleton instructed CD1 to try to arrange a transaction with CD2, listened to CD1’s phone calls and photographed the texts between CD1 and CD2. Add’m at 2 – 3; App’x to Opening Br. at 84 – 114. CD1 asked whether

² The terms CD2 refers to a different person, whose true name was also not part of the public record in the District Court.

CD2 was “good For 25,” and CD2 responded “Ya if he gets here in time.” Add’m 3; App’x to Opening Br. at 84 – 114. Another said that CD2’s source was “on way from Connecticut.” Id. During one of the phone calls, CD2 referred to the transaction between CD2 and CD2’s source as for “30 grand.” Id.

When a vehicle with Massachusetts plates arrived at CD2’s house on Nason Street in Sanford late in the evening of June 20th, and someone went inside the house, agents executed the state warrant, believing that CD2’s source had arrived. Add’m at 3; App’x to Opening Br. at 115 – 147. Inside the house agents then learned that the teenager, who had just arrived, came to play video games with another teenager in the house. Id.

Inside the house agents also detained CD2, who agreed to cooperate. Id. Agents had no previous dealings with CD2, who told Officer Lapierre: that CD2 had placed an order that was going to be delivered in 10 minutes; that CD2 had the money for the transaction; that a dark colored SUV, possibly a Jeep, would pull into the driveway or park in front of the house; that the drugs would be concealed in the engine compartment in an air vent or intake, and CD2 identified “B Man” as CD2’s source on CD2’s cell phone. Add’m at 3 – 4; App’x to Opening Br. at 115 – 147.

Officer Lapierre listened to calls, indicating that the source was on the long road, which CD2 said was U.S. 202; indicating that the source was right outside, and asking CD2 to move the red car, which Officer Lapierre had previously seen at the end of the driveway. Add’m at 4 – 5; App’x to Opening Br. at 115 – 147. CD2 told Officer Lapierre “They’re here.” Add’m at 5; App’x to Opening Br. at 115 – 147.

Other agents observed a silver Dodge pickup come down Nason Street from the direction of Route 202, stop briefly in front of the house, and then proceed in the direction of Main Street. Add'm at 5; App'x to Opening Br. at 115 – 226. A few minutes later, it returned and stopped directly in front of the house, but still on the public street, adjacent to the curb. Id.

As Officer Lapierre was yelling Dodge truck, CD2 hears that and kind of mumbled that “he had previously used a Dodge truck or silver truck.” Add'm at 5; App'x to Opening Br. at 137:22 – 137:25.

Officer Lapierre ordered the seizure of the truck and anyone in it, including Mr. Garcia. Add'm at 5; App'x to Opening Br. at 115 – 226.

Trooper Adam Schmidt illuminated the cab of the pickup truck and activated his emergency lights to make the people in the truck aware that they were stopped at that point. App'x to Opening Br. at 205:10 – 205:13.

About ten agents, all with guns drawn were shouting as they approached the truck. Add'm at 6; App'x to Opening Br. at 115 – 226. Trooper Schmidt approached the driver's side and ordered the driver Louis Rosario Diaz to get out. Id. When he did not immediately get out, Trooper Schmidt forcibly pulled him out and onto the ground, cuffing him, and checked him for weapons while he was on the ground. Id.

Likewise, Special Agent Derek McDonald detained the front seat passenger Mr. Garcia, told Mr. Garcia that he was detained, and gave Mr. Garcia *Miranda* warnings. Id.; *See, Miranda v. Arizona*, 384 U.S. 436 (1966). Agent McDonald

reads *Miranda* warnings, because he does not feel that the people feel they are free to leave if they are in handcuffs. App'x to Opening Br. at 179:22 – 179:25.

Both a driver and passenger have standing to object to the seizure, of the car and themselves. *Brendlin v. California*, 551 U.S. 249 (2007).

Whether the police surround a person or otherwise restrict his ability to leave is a significant factor in the seizure inquiry. *See Michigan v. Chesternut*, 486 U.S. 567, 575, 108 S.Ct. 1975, 100 L.Ed.2d 565 (1988); *United States v. Bowles*, 625 F.2d 526, 532 (5th Cir. 1980).

At that point, they had seized Mr. Garcia. Seizure occurs when a police officer by physical force or a show of authority in some way restrains a person. *United States v. Holloway*, 499 F. 3d 114, 117 (1st Cir. 2007). Police illuminating the cab of the pickup truck, activating emergency lights to make the people in the truck aware that they were stopped at that point (App'x to Opening Br. at 205:10 – 205:13), about ten agents, all with guns drawn and shouting as they approached the truck, ordering the driver to get out, forcibly pulled him out and onto the ground, cuffing him, checked him for weapons while he was on the ground, likewise approaching and handcuffing Mr. Garcia, telling Mr. Garcia that he was detained, and giving Mr. Garcia *Miranda* warnings (Add'm at 6; App'x to Opening Br. at 115 – 226); was a show of authority such that a reasonable person in the Mr. Garcia's position would not feel free to leave. *Holloway, supra*; *see United States v. Smith*, 423 F.3d 25, 28 – 29 (1st Cir. 2005). In addition, all of this shows that Mr. Garcia actually submitted to the show of authority. *Holloway, supra*; *see California v.*

Hodari D., 499 U.S. 621, 626 – 629 (1991); *Smith*, 423 F.3d at 31 – 32; *see United States v. Mendenhall*, 446 U.S. 544, 554 (1980).

b. Unreasonable Seizure.

The facts and circumstances about which police had reasonably trustworthy information in this case at the moment when they seized Mr. Garcia would not have caused a reasonably prudent person to believe that he had committed, was committing, or was about to commit a crime. *Glik v. Cunniffe*, 655 F. 3d 78, 85 – 86 (1st Cir. 2011); *Michigan v. DeFillippo*, 443 U.S. 31, 37, 99 S.Ct. 2627, 61 L.Ed.2d 343 (1979); *see also United States v. Winchenbach*, 197 F. 3d 548, 555 (1st Cir. 1999); *Beck v. Ohio*, 379 U.S. 89, 91, 85 S.Ct. 223, 13 L.Ed.2d 142 (1964).

When agents seized Mr. Garcia, all they knew was CD2’s claim about hoping to receive drugs around that time from someone driving a dark SUV, possibly a Jeep. Add’m at 3 – 4; App’x to Opening Br. at 115 – 147. They had already seized a teenager by mistake. Add’m at 3; App’x to Opening Br. at 115 – 147. After CD2 hears Officer Lapierre yelling Dodge truck, CD2 kind of mumbled that “he had previously used a Dodge truck or silver truck.” Add’m at 5; App’x to Opening Br. at 137:22 – 137:25.

Even though Mr. Garcia was a passenger in a silver Dodge pickup truck with Maine registration plates on a public street, agents forcibly removed him and the other people, who were also in the truck. Add’m at 8; App’x to Opening Br. at 115 – 226.

Accordingly, the seizure was illegal, and all evidence obtained as a result of it must be suppressed. *United States v. Woodbury*, 511 F. 3d 93, 99 (1st Cir. 2007) (citing *United States v. Brunette*, 256 F.3d 14, 19 (1st Cir. 2001); *Weeks v. United States*, 232 U.S. 383, 391 – 93, 34 S.Ct. 341, 58 L.Ed. 652 (1914); *Wong Sun v. United States*, 371 U.S. 471 (1963)).

c. Later, Agents Had a K-9 Sniff for Drugs.

About 17 minutes after Trooper Schmidt's dash cam was activated, he had his K9 sniff around the truck exterior. Add'm at 6 – 7; App'x to Opening Br. at 115 – 226.

d. Unreasonable Search.

Later, under the hood agents found a heroin/fentanyl mixture and cocaine. Add'm at 7; App'x to Opening Br. at 115 – 226.

For the same reasons that the seizure of Mr. Garcia was unreasonable, searching him and the truck were also unreasonable. He incorporates all of the same reasons and authority that he did for his seizure argument, which appears following the caption: First, Officers Made the Constraint and Seized Mr. Garcia in Section I.A.2.a., *supra* at 5 – 10.

When a seizure is illegal, all evidence obtained as a result of it must be suppressed. *United States v. Woodbury*, 511 F. 3d 93, 99 (1st Cir. 2007) (citing *United States v. Brunette*, 256 F.3d 14, 19 (1st Cir. 2001); *Weeks v. United States*, 232 U.S. 383, 391 – 93, 34 S.Ct. 341, 58 L.Ed. 652, (1914)); *Wong Sun v. United States*, 371 U.S. 471 (1963)).

3. This Was Not a “Terry Stop.”

While police may temporarily detain a person, provided that the police i) have a reasonable, articulable suspicion of a person’s involvement in criminal activity, and ii) act reasonably in relation to the stop, unless they have a proper basis to expand it (*United States v. Ruidiaz*, 529 F. 3d 25, 28 – 29 (1st Cir. 2008); *United States v. Chhien*, 266 F.3d 1 (1st Cir. 2001); *Terry v. Ohio*, 392 U.S. 1, 19, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)); agents in this case just immediately arrested him, then began looking for a reason to justify what they had already done.

Even a brief detention, short of traditional arrest, must be based on reasonable, objective justification. *United States v. Brignoni-Ponce*, 422 U.S. 873, 878, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975). When agents seized Mr. Garcia, all they knew was CD2’s claim about hoping to receive drugs around that time from someone driving a dark SUV, possibly a Jeep. Add’m at 3 – 4; App’x to Opening Br. at 115 – 147. They had already seized a teenager by mistake. Add’m at 3; App’x to Opening Br. at 115 – 147. After CD2 hears Officer Lapierre yelling Dodge truck, CD2 kind of mumbled that “he had previously used a Dodge truck or silver truck.” Add’m at 5; App’x to Opening Br. at 137:22 – 137:25.

Agents did not ask for permission. Nor did they begin by asking a few questions. *Florida v. Bostick*, 501 U.S. 429, 434, 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991).

Instead, even though Mr. Garcia was a passenger in a silver Dodge pickup truck with Maine registration plates on a public street, agents forcibly removed him

and the other people, who were also in the truck. Add'm at 8; App'x to Opening Br. at 115 – 226.

The government agents in this case had neither probable cause nor reasonable suspicion when they seized Mr. Garcia. Accordingly, the seizure was illegal, and all evidence obtained as a result of it must be suppressed. *United States v. Woodbury*, 511 F. 3d 93, 99 (1st Cir. 2007) *citing* *United States v. Brunette*, 256 F.3d 14, 19 (1st Cir. 2001); *Weeks v. United States*, 232 U.S. 383, 391 – 93, 34 S.Ct. 341, 58 L.Ed. 652 (1914); *Wong Sun v. United States*, 371 U.S. 471 (1963).

II. Importance of the Case.

The Court of Appeals has sanctioned the District Court's departure from the accepted and usual course of judicial proceedings, and the Supreme Court should exercise its supervisory power.

A. District Court's Erroneous Ruling.

Instead of granting the Motion to Suppress, the District Court denied it. Add'm at 16 – 22. The District Court dismissed the lack of evidence regarding cooperators' reliability, including the lack of any prior experience with CD2; varying information from the cooperators' about whether CD2's out of state source was in Connecticut, New Hampshire, or Massachusetts; that agents had already seized a teenager driving a car with Massachusetts registration plates by mistake; that CD2 told them about receiving drugs from someone driving a dark SUV, possibly a Jeep

and only after CD2 hears Officer Lapierre yelling Dodge truck does CD2 kind of mumble that “he had previously used a Dodge truck or silver truck.”

Then, the District Court found that despite all of that this was a *Terry* stop without addressing how this would have been reasonable, articulable suspicion of a person’s involvement in criminal activity, in order to stop Mr. Garcia. *United States v. Ruidiaz*, 529 F. 3d 25, 28 – 29 (1st Cir. 2008).

Nor did the District Court how what the police did would have been reasonable. *Id.*; see *United States v. Henderson*, 463 F.3d 27, 45 (1st Cir. 2006).

B. Likewise, the Court of Appeals Ignored the Lack of Reliability, Varying Information, and Mistake.

The Court of Appeals’ Opinion does not address the lack of evidence regarding cooperators’ reliability, including the lack of any prior experience with CD2; varying information from the cooperators’ about whether CD2’s out of state source was in Connecticut, New Hampshire, or Massachusetts; that agents had already seized a teenager driving a car with Massachusetts registration plates by mistake; that CD2 told them about receiving drugs from someone driving a dark SUV, possibly a Jeep and only after CD2 hears Officer Lapierre yelling Dodge truck does CD2 kind of mumble that “he had previously used a Dodge truck or silver truck.” *See Appendix A.*

Conclusion

The Court should grant a writ of certiorari.

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