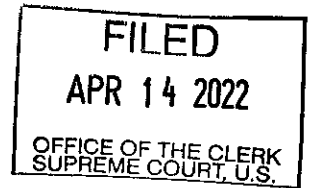


21 - 7685

ORIGINAL

No. _____



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

CARLOS DELGADO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

CARLOS DELGADO

Pro Se Petitioner

Fed. Reg. No. 14943-014

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P.O. Box 9000

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QUESTION PRESENTED

During the investigation of the alleged contraband mailing scheme of Mr. Delgado, law enforcement sought and obtained a warrant for his arrest and warrants to search his home and vehicles. These warrants were granted based on an affidavit submitted by a DEA task force agent, which relied in large part on information provided by a confidential informant. Mr. Delgado unsuccessfully sought a *Franks* hearing and suppression of the evidence obtained as a result of the issuance of those warrants in the trial court and unsuccessfully appealed the denial of both to the appellate court. The issue set forth in this petition concerns the decision by the affiant to withhold key exculpatory information from that affidavit, ostensibly to protect the identity of the confidential informant, but in a manner which amounts to acting with reckless disregard for the truth.

The question presented is:

Did the DEA task force agent act with reckless disregard for the truth when omitting material information that militated against a finding of probable cause from his affidavit or were the omissions permissible, under this Court's precedent – *Roviaro v. United States*, 353 U.S. 53 (1957) – and its progeny, as a means to mitigate the risk of revealing the confidential informant's identity?

PARTIES TO THE PROCEEDINGS

There are no parties to the proceeding other than those listed in the style of the case.

RELATED CASES

- *United States v. Carlos Delgado*, No. 3:18-cr-00165-JCH-1, U.S. District Court for the District of Connecticut at New Haven. Judgment entered Dec. 29, 2020.
- *United States v. Carlos Delgado*, No. 21-19, U.S. Court of Appeals for the Second Circuit. Summary Order entered Oct. 25, 2021; Order denying Rehearing and Rehearing En Banc, entered Jan. 26, 2022.

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The DEA task force agent acted with reckless disregard for the truth when omitting material information that militated against a finding of probable cause from his affidavit. These omissions are impermissible, under this Court's precedent -

Roviaro v. United States, 353 U.S. 53 (1957) – and its progeny, despite their pretextual effort to assert a concern that providing the material information might tend to risk revealing the confidential informant’s identity. Summary action by this Honorable Court is warranted.

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The Summary Order of the United States Court of Appeals for the Second Circuit is unpublished and may be found at USCA Case No. 21-19; *United States of America v. Carlos Delgado* (Oct. 25, 2021) (*Appendix - A1*).

The Order of the United States District Court for the District of Connecticut at New Haven denying Petitioner's motion(s) for a *Franks* hearing and to suppress is unpublished and may be found at USDC Case No. 3:18-cr-00165; *United States of America v. Carlos Delgado* (Dec. 12, 2019) (*Appendix - A12*).

The Order of the United States Court of Appeals for the Second Circuit denying rehearing and rehearing *en banc* is unpublished and may be found at USCA Case No. 21-19; *United States of America v. Carlos Delgado* (Jan. 26, 2022) (*Appendix - A22*).

STATEMENT OF JURISDICTION

The order denying rehearing was issued on January 26, 2022. This petition is timely filed pursuant to Sup. Ct. R. 13. This Court's jurisdiction rests on 28 U.S.C. §1254(1).

**CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED**

This case involves a federal criminal defendant's constitutional rights under the Fourth Amendment, which provides in pertinent part:

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

This case concerns a Criminal Complaint and Search Warrant affidavit filed pursuant to Rule 3 of the Fed. R. Crim. P. which the DEA based on false and misleading information. The controversy over the veracity of the search warrant affidavit in this case arose out of Petitioner, Carlos Delgado's ("Mr. Delgado"), arrest on Monday, July 9, 2018 over the allegations of "possession with the intent to distribute, and distribution of, a mixture and substance containing a detectable amount of cocaine, sent by the United States Postal Service." [DE #1-1, p. 7, ¶6].

On this day, on or around 6 p.m. E.S.T., while on his motorcycle riding along West Main Street, Willimantic, CT, Mr. Delgado was stopped, searched and arrested at the intersection of West Main Street and Holbrooke Ave., by law enforcement--DEA Task Force Officer Eric Myshrall, Statewide Narcotics officer Lieutenant D. Golde and Officers of the Willimantic Police Department.

Hours before the above arrest, however, DEA Task Officer Eric Myshrall ("Myshrall") submitted a search warrant application to United States Magistrate Judge Robert M. Specter, seeking permission to conduct a search of 86 Pleasant Valley Rd., Mansfield Center, CT, pursuant to Rule 41(c) of the Federal Rules of Criminal Procedure, for evidence of narcotics distribution, and contraband/fruit of that crime. [DE #1-1, p. 7, ¶7]. The warrant request stemmed from an investigation into the allegations of distribution of narcotics via the USPS

mailing system when in early 2018 a Confidential Source ("CS #2") contacted law enforcement reporting that Mr. Delgado offered to pay him cash in exchange for addresses where contraband could be delivered. [DE #1-1, p. 12 ¶7].

Agent Myshrall's warrant application reported that, "[I]n February 2018, the DEA Hartford Resident Office (hereinafter "HRO") met with a Confidential Source (CS#2) who stated that Carlos DELGADO is a cocaine dealer utilizing several individuals (subsequently identified by DEA to date as Luis ALAMO, TORRES-FERNANDEZ and Emilio FLORES) to distribute cocaine in the greater Connecticut area. CS#2 further reported that DELGADO utilizes several locations to distribute cocaine and to stash his illegal proceeds."

On or about May 18, 2018, CS#2 contacted law enforcement and reported that DELGADO offered CS#2 cash in exchange for addresses at which packages could be delivered." [DE #1-1, p. 12, ¶29].

Days later, on or about May 21, 2018, the Myshrall affidavit recounted that "law enforcement identified a package intended for delivery to an address that CS#2 had provided. The parcel weighed approximately 3 pounds and 13 ounces." On that day, it was further noted that "surveillance units established a perimeter around the address that CS#2 had provided and observed DELGADO operating his Toyota 4-Runner (Subject #2) in and around the area of the address provided. As soon as the CS#2 notified DELGADO that the parcel had been delivered by

USPS, DELGADO was observed by law enforcement pulling onto the street of the address that CS#2 provided. Moments later, DELGADO was observed exiting from the same street and pulling into an adjacent property. While DELGADO was at the adjacent property, CS#2 contacted law enforcement and reported DELGADO came to pick up the parcel shortly after CS#2 notified DELGADO that the parcel had arrived. CS#2 reported that DELGADO told him/her that because the delivery was successful, there would be future packages sent to the address. Although law enforcement was unable to observe DELGADO physically picking up the parcel at the CS's location 'due to the risk of exposure,' the location information from DELGADO's cellular telephone evidenced that DELGADO's cellular telephone traveled to CS#2 location. Additionally, law enforcement observed DELGADO returning to 86 Pleasant Valley RD., Mansfield, CT. (Subject Premises #1) shortly after CS#2 reported that DELGADO had picked up the package." [DE #1-1, p. 13, ¶¶ 30-32].

"[O]n June 4, 2018, CS#2 contacted law enforcement again and told them that DELGADO had contacted him/her and told CS#2 that a parcel should be arriving that afternoon. On that same date, surveillance units conducted drive-by surveillance at 86 Pleasant Valley Road, Mansfield, CT. On or around June 4, 2018, CS#2 contacted law enforcement and told them that CS#2 had spoken to DELGADO and that DELGADO did not want to pick up the parcel from the address that CS#2 had provided because DELGADO was upset due to TORRES FERNANDEZ's arrest. CS#2 stated that DELGADO told CS#2 that TORRES FERNANDEZ had just left

DELGADO's residence prior to his arrest." [DE #1-1, p. 14, ¶¶ 34-36].

"[O]n June 13, 2018 law enforcement spoke again with CS#2, CS#2 stated that DELGADO and DELGADO's cousin "Christian", who was identified by law enforcement as Christian MERCADO-ALAMO, travelled in DELGADO's Toyota Tacoma (Subject Vehicle #1) to meet CS#2. Upon meeting with CS#2, DELGADO picked up another parcel that he (DELGADO) had shipped from Puerto Rico." [DE #1-1, p. 16, ¶41].

"[O]n June 18, 2018, at approximately 10:00 a.m. law enforcement conducted drive-by-surveillance at 86 Pleasant Valley Road, Mansfield Center (Subject Premises #1). On that date, DELGADO's 4-Runner (Subject Vehicle #2), Christian MERCADO-ALAMO's vehicle, a red scooter, and another vehicle under a tarp were all parked at the residence."

"[O]n that same date, CS#2 contacted law enforcement and reported that another parcel arrived and that DELGADO wanted CS#2 to bring the parcel to him. CS#2 stated that he/she told DELGADO that she/he could not do so, DELGADO then told CS#2 that he would come pick up the parcel from CS#2. CS#2 stated that DELGADO subsequently arrived in his Cadillac (Subject Vehicle #3) and once DELGADO arrived, the parcel was placed into the vehicle's trunk." CS#2 stated that he/she and DELGADO then drove to 86 Pleasant Valley Road, Mansfield Center (Subject Premises #1) and, upon their arrival, DELGADO brought the parcel into the house and

ultimately into a bedroom of the residence. DELGADO then distributed what appeared to CS#2 to be cocaine to TORRES-HERNANDEZ and others the next day directly from the residence." [DE #1-1, p. 17, ¶44].

On June 26, 2018, the affidavit also described that the Honorable U.S. Magistrate Judge Robert A. Richardson issued a search warrant for the Priority Mail parcel displaying Priority Mail label number 9505 5111 4137 8173 0831 69 and handwritten Priority Mail address label, addressed to NILSY PEREZ, AGUSTIN ST HALL CALLE A, #14, BAYAMON, P.R. 00956 and bearing a return address of LUIS TORRES, 131 Echo Dr. WILLIMANTIC, CT. 06226. A subsequent search of this parcel revealed \$26,860.00 US Currency of suspect drug proceeds. [DE #1-1, p. 17, ¶47].

On the same day, the Honorable U.S. Magistrate Judge Robert A. Richardson also issued a search warrant for a second parcel that was sent from Puerto Rico and addressed to Ryan PEHOWDY, 2979 Main Street, Coventry, CT. The Priority Mail parcel displayed Priority Mail label number 9505 5103 3621 8171 2762 57, handwritten Priority Mail address label addressed to RYAN PEHOWDY, 2979 MAIN ST. COVENTRY, CT 06238, and a return address of NICOL MARTINEZ, PORTICOS DE GUAYNABO EDIFICIO 4 APT #202, GUAYNABO, P.R. 00959. The subsequent execution of that search warrant revealed that the parcel in question contained approximately 1 Kilogram of suspected cocaine. A field test conducted on a portion of the suspected cocaine returned a positive reaction for the presence of cocaine.

[DE #1-1, pp. 17-18, ¶48].

Through contact with the United States Postal Service Investigators, law enforcement identified that a second parcel from Luis TORRES was being shipped to Puerto Rico. The parcel was from Luis Torres, 86 Pleasant Valley Rd, Mansfield Center, Connecticut 06250, was being shipped to Fernando FERNANDEZ, 260 Ave., Winston Churchill, Suite #500, San Juan, P.R. [DE #1-1, p. 18, ¶49].

United States Postal Service Investigators in Puerto Rico later obtained a search warrant for the Priority Mail parcel displaying Priority Mail label number 9505 5131 7307 8167 0287 65, handwritten Priority Mail address label addressed to Fernando FERNANDEZ, 260 Ave., Winston Churchill, Suite #500, San Juan, P.R. and bearing a return address of Luis TORRES, 86 Pleasant Valley Road, Mansfield Center, Connecticut 06250. A subsequent search of this parcel revealed \$9,990.00 US Currency of suspected drug proceeds. [DE #1-1, p. 18, ¶50].

On July 10, 2018, Mr. Delgado was brought before the Honorable Donna F. Martinez, United States Magistrate Judge, for arraignment on a Criminal Complaint for Possession of Cocaine with the intent to distribute, distribution and Money Laundering. [DE #14].

On August 7, 2018, a grand jury returned an Indictment charging Mr. Delgado for the following offenses: Count One: Conspiracy to possess and distribute 5 or more kilograms of cocaine in violation of 21 U.S.C. §§

846, 841(b)(1)(A); Count two: Possession of a Kilogram of heroin or more in violation of 21 U.S.C. § 841(a)(1) & 841(b)(1)(A); Count three: Possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1); Count four: Possession of a firearm in furtherance of a crime in violation of 18 U.S.C. § 924(c) and Count five: Forfeiture of Assets. [DE #1].

On November 21, 2019, Mr. Delgado filed a motion seeking a probable cause (*Franks*) hearing and Motion to suppress items collected from "Subject Premises #1." [DE #233; DE #237]. in it he identified and pointed out that in an effort to exert influence on Magistrate Judge Robert M. Spector to authorize the search, DEA Task Force Officer Eric Myshrall "knowingly and intentionally, with reckless disregard for the truth" enclosed as evidence a Kilogram of cocaine intercepted by the Newark USPS Investigator Inspectors destined to a Ryan Pehowdy 2979 Mains Street, Coventry, Connecticut and used it to support the Myshrall affidavit. *See, id.*

As to the sufficiency of the affidavit in support of the search warrant, the Honorable Janet C. Hall, disagreed with Mr. Delgado's argument that this paragraph 48 suggests that he possessed the package described. Nor does the context around this paragraph suggest that Delgado possessed the package. In short, the court found that paragraph 48 is not misleading, much less contains a "deliberate falsehood or statement made with reckless disregard for the truth." *Falso*, 544 F.3d at 125. Further, even removing this paragraph, the court held, there was ample probable cause in the affidavit to support the

issuance of the warrant and therefore, denied Delgado's request for a *Franks* hearing. [DE #266, p. 4].

On January 16, 2020, the Honorable Janet C. Hall, United States District Judge, presided over the start of a bifurcated trial. [DE #282]. On January 21, 2020, the jury convicted Delgado of the drugtrafficking offenses charged in Counts One and Two of the second superseding indictment, but acquitted Delgado of the firearm offense charged in Count Four. [DE #282]. The next day, the jury convicted Delgado of the unlawful possession of firearms by a convicted felon, as charged in Count Three. [DE #294]. The Government did not pursue the money laundering offense charged in Count Five and, after the imposition of sentence, the district court granted the Government's motion to dismiss that charge. [DE #388, p. 2].

On December 21, 2020, the district court effectively sentenced Delgado to 25 years of imprisonment, followed by five years of supervised release. [DE #388]. More specifically, the district court imposed terms of imprisonment of 25 years for Count One, 25 years for Count Two, and ten years for Count Three, all to run concurrently. *Id.* It then imposed terms of supervised release of five years for Count One, five years for Count Two, and three years for Count Three, all to run concurrently. *Id.* The district court did not impose a fine, but it did impose the mandatory special assessment of \$300. *Id.*

On December 29, 2020, the district court entered

judgment (and a judgment of acquittal for Count Four). [DE #388]. On January 4, 2021, Delgado filed a timely notice of appeal. [DE #391].

On appeal to the Second Circuit, Mr. Delgado raised multiple challenges to the district court's denial of a *Franks* hearing and of suppression of the fruits of the search. Specifically, Mr. Delgado argued:

1. Whether Mr. Delgado has made a "sufficient preliminary showing" that the gateway requirements applicable to *Franks* claims were met.
2. Whether the conduct of the agent who prepared the affidavit evinced a reckless disregard for the truth when he incorporated paragraph 48 in the supporting affidavit as well as failed to include the facts that a drug dog did not alert to the May 21 package constituted the reckless omission of "clearly critical information";
3. Whether a reasonably well trained officer would have known that the search was illegal despite the magistrate's decision;
4. Whether the packages claimed to have been mailed on May 21, June 4, 13 and 18, 2018 in fact did not exist;

5. Whether the district court committed clear error in not conducting further hypothetical "Corrected Affidavit" analysis in determining if remaining affidavit still supported a finding of probable cause to authorize Criminal Complaint and Search warrant after setting aside paragraph 48 and entering the omitted information.

Relevant to the instant petition, the United States asserted on appeal that the exclusion of material exculpatory information from the affidavit was permissible as it was based on their interest in mitigating the risk that their CI could be exposed to potential identification based on such information. *See U.S.' Brief*, p. 37 ("[T]he inclusion of such details may have revealed the informant's identity and thereby presented a risk to the informant's safety.").

On October 25, 2021, the United States Court of Appeals for the Second Circuit affirmed the lower court's denial of both Mr. Delgado's motion for a Franks hearing and his motion to suppress, [*App. A, A1*], and on January 26, 2022, the Second Circuit denied rehearing and rehearing *en banc*. [*App. C, A22*]. This petition is timely submitted, within 90 days of the Second Circuit's January 26, 2022 order denying rehearing and rehearing *en banc*. [*App. C*].

REASONS FOR GRANTING THE WRIT

This Court should grant the writ of *certiorari*. At a minimum, this Court should order summary reversal because in affirming the denial of Mr. Delgado's motion(s) for a *Franks* hearing and to suppress, the Second Circuit has so far departed from the accepted and usual course of judicial proceedings and sanctioned such a departure by the district court, as to call for an exercise of this Court's supervisory power. This is true because the extension of the confidential informant privilege applied in this case is irreconcilable with this Court's holding in *Roviaro v. United States*, 353 U.S. 53 (1957) and its progeny. This is true because the only reasonable inference one may draw from the record is that United States' assertion of the confidential informant privilege was largely if not completely pretextual. In fact, a review of the record inescapably leads one to strongly believe that the true purpose of the omissions was to manipulate the Magistrate Judge into granting a warrant where all the available information would not amount to probable cause. Moreover, at the least the record demonstrates that the omission of the readily available exculpatory information from the affidavit rises to the level of acting with reckless disregard for the truth. This Honorable Court should grant the writ, vacate the Second Circuit's order affirming the lower court's denial of the *Franks* hearing and suppression and remand for consideration of the issue and proper application of *Roviaro* and its progeny.

As this Court explained in *Roviaro v. United States*, 353 U.S. 53, 59-61, 77 S. Ct. 623, 627-28, 1 L. Ed. 2d 639 (1957):

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law. The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, by preserving their anonymity, encourages them to perform that obligation.

The scope of the privilege is limited by its underlying purpose. Thus, where the disclosure of the contents of a communication will not tend to reveal the identity of an informer, the contents are not privileged. Likewise, once the identity of the informer has been disclosed to those who would have cause to resent the communication, the privilege is no longer applicable.

A further limitation on the applicability of

the privilege arises from the fundamental requirements of fairness. Where the disclosure of an informer's identity, or of the contents of his communication, is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause, the privilege must give way.

Id. (Internal citations omitted).

The precise question presented in this petition does not appear to have been directly addressed by this Honorable Court in the roughly sixty-five (65) years since it offered this guidance. The various federal courts of appeals have likewise not developed a comprehensive, effective and uniform policy on this question. For example, many courts including the First Circuit contenance the use of the phrase "on or about" when describing the time frame of a controlled drug purchase is a common police practice, used to protect the identity of a confidential informant, *See United States v. Hicks*, 575 F.3d 130, 138 (1st Cir. 2009). The Fourth Circuit allows the date of a CI's controlled buy to be omitted from the written affidavit and only supplied to the magistrate judge via oral testimony. *See, United States v. Clyburn*, 24 F.3d 613, 615 (4th Cir. 1994) ("In order to establish the reliability of the informant, Magistrate Sanders took sworn testimony from Sergeant Dennis, who testified that the informant had made a controlled purchase of crack cocaine at Clyburn's house on the previous day. Sergeant Dennis indicated that he omitted this information from his written

affidavit in order to protect the identity of the informant."). The Ninth Circuit recognized the potential need for a *Franks* hearing and ordered that *in camera* proceedings be undertaken to preserve the prosecution's interest in protecting the identity of its CI, while allowing the defendant to vindicate his right to fundamental fairness in this context. See *United States v. Kiser*, 716 F.2d 1268, 1269, 1274 (9th Cir. 1983) ("This case presents a question expressly reserved by the Supreme Court in *Franks v. Delaware*, 438 U.S. 154, 170, 98 S.Ct. 2674, 2683, 57 L.Ed.2d 667 (1978): Under what circumstances is a defendant entitled to disclosure of the identity of a confidential informant in order to challenge the veracity of a search warrant affidavit? . . . We vacate Kiser's conviction and remand to the district court for an *in camera* hearing and, if necessary, a *Franks* hearing. The *in camera* hearing should be transcribed and its record sealed. In the event the district court finds Kiser is not entitled to a *Franks* hearing, or if such a hearing is held and Kiser does not establish his claim, the court may reinstate the judgment of conviction.").

The Second Circuit recognizes that, "[i]ntentional or reckless omissions of material information, like false statements, may serve as the basis for a *Franks* challenge [and] recklessness may be inferred where the omitted information was 'clearly critical' to the probable cause determination." *Rivera v. United States*, 928 F.2d 592, 604 (2d Cir. 1991). Although giving lip service to the proper balance of factors by stating, "[s]o long as law enforcement agents present adequate information to permit the magistrate to conclude that there is probable

cause *and do not suppress facts that would cast doubt on its existence*, they may properly exclude information that would unduly risk revealing a confidential informant's identity and exposing him or her to harm," the Second Circuit's application of this standard in Mr. Delgado's appeal failed to protect his right to fundamental fairness. *Id.*, 604–05 (emphasis added). The writ should issue because the district court and Second Circuit both strayed from this Court's admonition that the privilege must give way to the dictates of fundamental fairness when the information which might expose a CI's identity is "relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause."

The district court in denying, and the appellate panel in affirming denial of, a *Franks*' hearing and suppression, unfairly excluded from consideration the information which the United States believed might risk revealing the identity of the CI. This unfairness is particularly galling and compels this Court's attention because the excluded evidence was both readily available and totally exculpatory as to probable cause to arrest Mr. Delgado and to search his home and vehicles. Finally, assuming *arguendo* that the prosecution's – apparently pretextual – concerns of revealing their CI's identity by offering such readily available and exculpatory evidence were genuine, then the information could have been provide for *in camera* review by the district court, at the point that Mr. Delgado's motion for a *Franks*' hearing and suppression were being considered by that court.

The information which the prosecution withheld and

which tended to rebut probable cause included the following: 1) whether earlier priority mail packages referred to in the affidavit were inspected; 2) if such packages were inspected, how were they inspected and what did the method(s) of inspection reveal concerning the contents of the packages; 3) if such packages were not inspected, why were they not inspected; 4) whether any contraband, or indicia thereof, were discovered in any of the packages; and, 5) whether any evidence was found substantiating the existence of the packages. This is easily obtainable information which would be material to the probable cause determination, i.e., whether there is probable cause to believe that Mr. Delgado was in fact involved in a scheme where contraband and cash payments for such contraband were being mailed. Likewise, this information would not appear likely to reveal the identity of the prosecution's CI. It strains credulity that law enforcement would be aware of three suspect parcels and not take any steps to inspect those parcels. The inexorable inference one must draw from the absence of any mention of such inspect is that it would militate against a finding of probable cause and that the same were omitted from the affidavit with a reckless disregard for the truth.

This Honorable Court should act to provide clear guidance to the lower courts that fundamental fairness requires that the United States reveal information which is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause, despite any competing concern that doing so might risk revealing the identity of one of their CI's.

This Court has authority to “reverse any judgment” brought before it and “remand the cause and direct entry of such appropriate judgment . . . or require such further proceedings to be had as may be just under the circumstances.” 28 U.S.C. § 2106. Summary reversals are “usually reserved by this Court for situations in which the law is well settled and stable, the facts are not in dispute, and the decision below is clearly in error.” *Schweiker v. Hansen*, 450 U.S. 785, 791 (1981) (Marshall, J., dissenting); see, e.g., *United States v. Bass*, 536 U.S. 862, 864 (2002) (ordering summary reversal because the decision below was “contrary to” established law); *Maryland v. Dyson*, 527 U.S. 465, 467 (1999) (ordering summary reversal); *Leavitt v. Jane L.*, 518 U.S. 137, 145 (1996) (ordering summary reversal where the decision under review was “plainly wrong”). The Second Circuit’s order affirming the lower court’s denial of a *Franks* hearing and suppression is clearly wrong as demonstrated, *supra*. This case warrants summary reversal to clarify that proper application of *Roviero* and its progeny will not permit the prosecution to evade the fundamental requirements of fairness by omitting information which is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause, from an affidavit supporting search and arrest warrants, despite any competing concern that providing such information might risk revealing the identity of one of their CI’s.

CONCLUSION

Based upon the foregoing petition, the Court should grant a writ of *certiorari* to the United States Court of Appeals for the Second Circuit, vacate the Second Circuit's order affirming denial of Mr. Delgado's motion(s) for a *Franks*' hearing and to suppress and remand the matter to the Second Circuit with instructions to reverse the lower court's denial of a *Franks*' hearing and suppression.

Respectfully submitted,

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_____, 2022.