

IN THE SUPREME COURT OF THE UNITED STATES

JOSE MENA-VALDEZ,) Case No. _____
)
 Petitioner,)
)
 v.) **MOTION FOR LEAVE TO
) PROCEED IN FORMA PAUPERIS**
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)

COMES NOW the Petitioner, JOSE MENA VALDEZ, and pursuant to Rule 39 of the Rules of the Supreme Court of the United States, hereby moves this Court for leave to file the attached writ of certiorari without prepayment of costs and to proceed in forma pauperis. In support of his motion, Petitioner states and alleges that such leave was previously sought from the United States District Court for the District of Nebraska and from the United States Court of Appeal for the Eighth Circuit, that the relief requested was granted in both instances, and that the undersigned was appointed as counsel for petitioner pursuant to the Criminal Justice Act of 1964, 18 U.S.C. § 3006A.

DATED this 2nd day of May, 2022.

JOSE MENA-VALDEZ,
Petitioner

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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JOSE MENA-VALDEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari
To The United States Court of Appeals
For The Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Did law enforcement officers have probable cause to conduct a warrantless search of the vehicle driven by the Defendant.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgments below.

OPINIONS BELOW

The Eighth Circuit Court of Appeals did not select its opinion for publication in the Federal Reporter, nor did the District Court publish an opinion in this case. The relevant rulings from both courts are included in the Appendix A through Appendix F hereto.

STATEMENT OF JURISDICTION

The Eighth Circuit filed its decision on December 17, 2021. A petition for rehearing was filed and denied on February 2, 2022. This Court has jurisdiction to review the circuit court's decision on a writ of certiorari pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourth and Fourteenth Amendments to the United States Constitution

STATEMENT OF THE CASE

Around 10:00 P.M., on October 30, 2018, Officer Holtmeyer was on patrol with two other officers in the area of 25th and I Streets, in Omaha, Nebraska, when he observed a white Chrysler 300 traveling westbound without license plates. Officer Holtmeyer watched the

Chrysler turn left at an intersection without signaling 100 feet prior to the turn. Officer Holtmeyer initiated a traffic stop, and as he approached the Chrysler, he could see paper in-transit tags in the windshield that were not clearly visible because of the tinted windows. Officer Holtmeyer testified that as soon as he made contact with the driver, the Defendant, Officer Holtmeyer “smelled a very strong odor of alcohol coming from the vehicle.” Officer Holtmeyer also saw a red Solo cup in the center console. Officer Holtmeyer removed Defendant from the Chrysler and seized the red Solo cup, which contained about ten ounces of liquid that Officer Holtmeyer believed was rum and Coke, and could smell that the source of the alcohol was coming from the cup. Defendant was asked if he had been drinking, and Defendant replied, “a little bit”. Officer Holtmeyer and another officer then searched the Chrysler and found a bag containing 7.6 ounces of methamphetamine in the front passenger area. Defendant was arrested and a small amount of methamphetamine and cash were found on his person. Officers impounded the Chrysler and recovered a handgun wedged between the center console and front passenger seat during a subsequent search. A registration check of the Chrysler’s VIN showed that it was unregistered.

REASONS FOR ALLOWANCE OF THE WRIT

The Defendant files this Writ in the belief that the Eighth Circuit Court of Appeals (Appellate Court), in affirming the Judgment of the United States District Court for the District of Nebraska has unconstitutionally expanded the exception to the Defendant’s right to be protected from unreasonable searches and seizures. Specifically, as the facts of this case show, the basis for the search of the Chrysler 300 was Officer Hotlmeyer’s suspicion that it carried illegal contraband. “Reasonable Suspicion” to conduct a warrantless search should not be the

standard upon which probable cause is based. *United States v. Martin*, 706 F.2d 263 (8th Cir. 1983).

Officer Holtmeyer did not act in any way as if he suspects that there is any crime being committed. He does not ask the Defendant to do a field test or take a breathalyzer test, and he does not ask the Defendant any questions, other than that relating to the alcohol contained in the cup. He does not ask for permission to search the Defendant's vehicle, he does not ask where the Defendant is going or where he is coming from, he does not ask if there is any methamphetamine or marijuana present in Defendant's vehicle, he merely searches the Defendant's vehicle.

CONCLUSION

The Court should grant the petition for a writ of certiorari and reverse the decision of the Eighth Circuit Court of Appeals.

Respectfully submitted this 2nd day of May, 2022.

JOSE MENA-VALDEZ,
Petitioner

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