

NUMBER _____

IN THE
SUPREME COURT OF THE UNITED STATES

ALFONZO JOHNLOUIS,
Petitioner

versus

UNITED STATES OF AMERICA,
Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

FRANK GRANGER
CJA Panel Attorney
Frank Granger, APLC
1135 Lakeshore Drive, 6th Floor
Lake Charles, LA 70601
Phone: (337) 439-2732
Email: frank@fgrangerlaw.com
CJA Counsel for Petitioner
Member, Supreme Court Bar

QUESTIONS PRESENTED FOR REVIEW

This case presents a question of first impression to this Court which has not decided a warrantless search of First Class sealed mail by an “officer” (mail carrier) of the Postal Service since Ex parte Jackson, 96 U.S. 727, 24 L. Ed. 877 (1878) and United States v. Van Leeuwen, 397 U.S. 249 (1970).

Is the warrantless search of a First Class sealed mail Priority package by a United States Postal Service mail carrier during the course and scope of her employment “government action” by a “government actor” which violates the Fourth Amendment’s prohibition against unreasonable searches and seizures, thus requiring the evidence seized to be suppressed?

Did the Fifth Circuit correctly hold that a mail carrier was not a government actor for the purposes of the Fourth Amendment because her warrantless search of the Priority package was made for personal reasons or out of a personal motivation, “because of her concern for children and her experience with a relative”. . . and [she was] not inspecting the package to enforce the law, or a government actor who undertook law-enforcement activities? Appx. B, p. 9.

PARTIES TO THE PROCEEDING

Petitioner is Alfonzo Johnlouis, a citizen of the United States of America. Respondent is the United States.

In the District Court proceedings, Derrick Felton was petitioner's co-defendant, whose appeal in the Court of Appeals for the Fifth Circuit has been submitted, but remains undecided.

PRIOR PROCEEDINGS

The opinion of the United States Court of Appeals for the Fifth Circuit sought to be reviewed, United States v. Alfonzo Johnlouis 21-30085 (August 11, 2022) (5th Cir. 2022), appears as Appendix B.

This matter arises from the Western District of Louisiana, Lafayette Division, Case No. 6:18-CR-00185-02.

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OPINIONS

The U.S. Court of Appeals for the Fifth Circuit rendered its decision in United States v. Alfonzo Johnlouis 21-30085 (August 11, 2022) (5th Cir. 2022), affirming the trial court's judgment denying defendant's Motion to Suppress. Rehearing En Banc was denied on October 4, 2022.

JURISDICTION

This Court has jurisdictional authority over this matter pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Amendment 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

This case involves the seizure and search of three First Class Sealed Mail United States Postal Service Priority Mail boxes by a United States Postal Service mail carrier, in Lafayette, Louisiana on November 3, 2017.

A USPS mail carrier was making deliveries on her route and arrived at the apartment complex where the recipient address is located. When she moved a priority mail package within her mail truck, she claims her thumb went through a “hole” on the side of the box and she felt what she assumed were aluminum pans within which the contents felt like rocks. She admitted she looked inside a hole on the side of the package and noticed white rock-like objects which she believed were drugs. She confirmed her belief by lifting a torn flap on the side of the box perpendicular to the box’s side and peered inside to gain a better view of the contents. She then searched the internet for “white rock-like drugs” on her cell phone and determined the contents were methamphetamine.

Upon reaching the conclusion the box contained crystal methamphetamine, the mail carrier gathered the box with the hole in it and two accompanying boxes addressed to the recipient address. Rather than delivering the boxes to the recipient address, the mail carrier “delivered” them to the office manager of the apartment complex. The mail carrier informed the manager that the boxes contained crystal

methamphetamine and asked the manager to contact law enforcement. The mail carrier departed. The manager contacted a friend who worked as an Assistant District Attorney in Lafayette Parish, Louisiana, who put her in touch with the Lafayette Metro Narcotics Task Force. After calling the LMNTF, officers were dispatched to the office.

Brandon Lemelle with the LMNTF arrived at the apartment complex, viewed the boxes, and interviewed the apartment manager. Agent Lemelle testified that he could not see the contents or aluminum pans through the hole on the side of the box. The apartment manager reported that the resident of the recipient address contacted her the day before, inquiring about packages being delivered. LMNTF agent Leger also arrived on the scene with his certified K-9 and conducted an open air sniff of the three boxes, which resulted in positive alerts for narcotics.

Agents for the LMNTF contacted the FBI. Special Agent Herman arrived on the scene informed the LMNTF agents that he was familiar with the recipient address and that it was believed to be a “stash house” for methamphetamine.

Agent Lemelle took possession of the three boxes and prepared a search warrant petition and affidavit to determine the boxes’ contents. A search warrant was issued by a state court judge at 2:11 p.m. and the boxes were opened at 2:25 p.m.; their contents revealed approximately 8 kilos of methamphetamine.

The defendant, Alfonzo Johnlouis, and two co-defendants were indicted on July 13, 2018 on one count of Conspiracy to Distribute and Possession with Intent to Distribute Methamphetamine and one count of Attempted Possession with Intent to Distribute a Controlled Substance.

Johnlouis was arraigned on August 8, 2018. The Court classified the case as complex, extending the time period for trial under the speedy trial act. Johnlouis filed a Motion to Suppress on November 26, 2019 seeking to suppress all of the evidence discovered following the warrantless search of three (3) Priority Mail boxes by the United States Postal Service mail carrier delivering them to a residence which ultimately contained methamphetamine.

A trial was held on the Motion to Suppress on March 5, 2020 before US Magistrate Judge Patrick J. Hanna. A report and recommendation was filed by the Magistrate Judge denying the Motion to Suppress on April 7, 2020, Appx. D. Johnlouis filed an objection to the Report and Recommendation on April 28, 2020. U.S. District Judge Jay Zainey accepted the Report and Recommendation of the Magistrate Judge and rendered a Judgment denying the Motion to Suppress on May 14, 2020, Appx. C. Thereafter, Johnlouis entered into a conditional plea with the government and pled guilty to Count 1 of the Indictment on September 8, 2020, reserving his right to file an appeal of the denial of the Motion to Suppress.

Alfonzo Johnlouis was sentenced on February 4, 2021 to ten (10) years imprisonment with the Bureau of Prisons with credit for all time previously served. On February 11, 2021, Johnlouis filed a Notice of Appeal, appealing the denial of his Motion to Suppress.

The Fifth Circuit rendered a decision on August 11, 2022, affirming the trial court's denial of the Motion to Suppress, Appx. B. Alfonzo Johnlouis filed a Petition for Rehearing En Banc, which was denied by the Fifth Circuit on October 4, 2022, Appx. A.

REASONS FOR GRANTING THE WRIT

Overview

This warrantless search by a USPS mail carrier of a First Class sealed Priority mail box raises a question of first impression: is the mail carrier a government actor to whom the Fourth Amendment applies and, if so, did her warrantless search of the Priority mail box violate the Fourth Amendment? This Court has not decided a case dealing with searches of First Class sealed mail by Postal Service officers (here, a mail carrier) since Ex Parte Jackson, *supra* in 1878.

This writ should be granted because the Fifth Circuit's opinion is contrary to this Court's precedent in Ex Parte Jackson, *supra*. The Fifth Circuit holds that the Fourth Amendment's warrant requirement does not apply to searches by government

actors, like mail carriers, who do not undertake law enforcement activities, and who search (“inspect”) First Class mail for personal reasons or out of a personal motivation. Further, the Fifth Circuit errs in holding that Fourth Amendment does not apply to the mail carrier who is a government actor because her “inspection” was not “motivated by a desire to investigate a legal violation” and she undertook no law enforcement activities -- “to enforce the law.” (Appx. B, p. 9). Essentially, the Fifth Circuit creates a “narrow holding tailored to the peculiar facts of this case and the particular activities of individual governmental actors” exception to the Fourth Amendment’s warrant requirement not recognized by this Court, i.e., a “non-law enforcement activity personal motive” exception to the governmental actor doctrine based on personal motives and unrelated to law enforcement activities. Such an exception was not countenanced by the founding fathers in establishing the Fourth Amendment which requires a search warrant before allowing governmental invasion of persons and property or an infringement of a reasonable expectation of privacy.

In 1878, this Court, in Ex Parte Jackson, supra, held that a warrant was required for inspection or search of sealed mail, letter postage, or packages sent with letter postage. Id at 733. The mail carrier is a government actor: she works for the U.S. Postal Service which has the sole Constitutional and Congressional authority to handle and deliver U.S. mail and was delivering the mail when she made the Priority

Mail boxes which warrantless search violated the Fourth Amendment. The Fifth Circuit holds that the Fourth Amendment does not apply to a government actor, like the mail carrier, who undertook no law enforcement activities, even though she worked for a governmental agency that did, and who searched (“inspected”) the priority mail package because of a personal motive, her concern for children and her experience with a relative,” and not from a desire to “investigate a legal violation.” (Appx. B, p. 9).

This Court should grant this writ to resolve the breadth and limits of the Fourth Amendment’s warrant requirement for searches and seizures by governmental actors, and whether an exception to the Fourth Amendment applies to a USPS mail carrier. A mail carrier is a federal government employee who is required to take an oath to “support and defend the Constitution of the United States . . .” This oath is very similar to that taken by Court personnel, Judges, FBI Agents, or members of Congress. See, 39 U.S.C. § 1011. The US Postal Service has a Constitutional and Congressional mandate and monopoly over all US Mail. It was established by Article I, Section 8 of the US Constitution, and through Congressional act. The USPS has the authority to make rules and regulations covering its operations. Those rules and regulations have been recognized by the federal courts as having the force of law. A violation of the Fourth Amendment by its members has legal consequences.

The Fifth Circuit creates a “private motivation/non-law enforcement activity” exception to the Fourth Amendment that has never been recognized, and which removes the primary function of the Fourth Amendment: [t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. . .”

This Court should grant this Petition for Writ of Certiorari, reverse and vacate the opinion of the U.S. Court of Appeals for the Fifth Circuit, and remand with instructions to reverse the district court’s denial of the Motion to Suppress and remand with instructions to the District Court to grant the Motion to Suppress and dismiss the indictment.

1) Does the Fourth Amendment apply to a government actor like a USPS mail carrier?

The postal service has a very unique and exclusive governmental function created by Art. I, Section 8 of the Constitution and fully regulated by a Congressional statutory framework and agency rules and regulations. It is the only entity legally authorized to handle U.S. Mail since the ratification of the U.S. Constitution.

Over 350,000 U.S. Postal Service letter carriers deliver millions of pieces of mail each day. U.S. Bureau of Labor Statistics 3/31/22. The Fifth Circuit holds that if any one of them has a personal motivation unrelated to a law enforcement function and not motivated from a desire to investigate a legal violation, he/she can search

First Class sealed mail and Priority Mail boxes, and anyone adversely affected, has no Fourth Amendment remedy - - the Exclusionary rule and suppression of the evidence.

The U.S. Court of Appeals for the Fifth Circuit holds that a postal carrier's warrantless search of First Class sealed mail does not violate this court's precedent in Ex parte Jackson, *supra*, or the Fourth Amendment's warrant requirement, if the letter carrier did not undertake law enforcement activities and acted out of a personal concern or motivation in making the search, and not "motivated by a desire to investigate a legal violation." (Appx. B, p. 9).

How can a USPS letter carrier not be considered a government actor for Fourth Amendment purposes when her search was made during the course and scope of her employment in delivering the U.S. Mail for the United States Postal Service?

First, in order for a violation of the Fourth Amendment to occur, a search must have taken place. In footnote 3 of the Fifth Circuit's opinion, it is mentioned that

"[T]he Government does not specifically dispute that Girard's actions constituted a search."

"[B]ecause the Government does not dispute that Girard in fact searched the package - - that is, 'examine[d] [it] by inspection,' *Kyllo v. United States*, 533 U.S. 27, 32 n.1 (2001) (internal quotation marks and citation omitted) - - we assume that a search occurred."

As a search is assumed to have occurred, the next step is to determine whether the letter carrier is a government actor. As referenced in Ferguson v. City of Charleston, 532 U.S. 67 (2001), this Court held that: “[B]ecause MUSC is a state hospital, its staff members are government actors subject to the Fourth Amendment’s strictures.” Id at 76. This is to say, that the governmental status of the employer makes them government actors. The Fifth Circuit cited Ferguson as precedent that in order for one to be classified as a “government actor,” there must be a connection to law enforcement.

However, the nursing staff in Ferguson who secured urine samples for drug testing were not law enforcement and undertook no law enforcement activities, but did so by following a policy of the hospital that was directly related to a law enforcement activity, thus making them government actors. Here, the USPS undertakes law enforcement activities through postal inspectors, even though mail carriers do not; but they are trained to recognize and report suspicious or dangerous packages, thus making them government actors for Fourth Amendment purposes.

The Fifth Circuit misconstrued the legal point at issue: a search of a priority mail package or sealed mail requires a search warrant even if the searcher is a letter carrier. Ex Parte Jackson, *supra*, held that postal authorities’ search of sealed mail without obtaining a search warrant violates the Fourth Amendment.

The trial court found the mail carrier was not law enforcement and she did not violate 18 U.S.C. § 1703 by searching the box; therefore, there was no Fourth Amendment violation. This finding overlooked over 140 years of settled federal law: the letter carrier is a government employee/actor governed by substantive federal law and federal jurisprudence. Consequently, her violation of that law by searching the Priority Mail boxes without first obtaining a warrant violates the Fourth Amendment and any evidence obtained is subject to suppression/the Exclusionary Rule.

In questioning by co-defendant's counsel, the letter carrier admitted that the rules and regulations in the Postal Operations Manual and in the Administrative Procedure Manual gave her direct instruction that if she handled a suspicious package that may appear to be contain narcotics, dangerous material, or contraband substances to report it to the postal inspection service. She was not given the authority or option to search it herself, but, in this case she did.

This Court in U.S. v. VanLeeuwen, 397 U.S. 249 (1970) cited Ex Parte Jackson, *supra*, in holding “[i]t has long been held that First Class mail such as letters and sealed packages and other printed matter is free from inspection by postal authorities, except in the manner provided by the Fourth Amendment.” Id at 251. Van Leeuwen turned on whether a 29 hour delay in delivering a package after mailing to allow authorities time to obtain a search warrant was unreasonable. This Court

found that it was not. That case did not involve a mail carrier search of First Class sealed mail.

However, the issue now before this Court is whether a mail carrier who makes a warrantless search of a First Class sealed Priority Mail box is a government actor to whom the Fourth Amendment applies if he/she undertook no law enforcement activities when she searched the Priority mail box and the search was made for personal reasons [“because of her concern for children and her experience with a relative”] and not from a “desire to investigate a legal violation. (Appx. B, p. 9). The Fifth Circuit’s holding flies in the face of a plain reading the Fourth Amendment’s purpose: to limit government conduct that infringes on a person’s reasonable expectation of privacy or involves governmental intrusion into a Constitutionally protected space or thing - “persons, house, papers, and effects” in order to obtain information. But, wasn’t the mail carrier’s search to investigate what she thought was a legal violation: trafficking/distributing drugs? And to stop those drugs from being delivered. Aren’t these also law enforcement activities and functions?

In Oliver v. U.S., 239 F. 2d 818 (8th Cir. 1957) a mail carrier “who had also served as an undercover agent for the Bureau of Narcotics, at Kansas City, Missouri, Postal Station, suspected a First Class sealed package mailed by Ms. Oliver contained narcotics and convinced the superintendent to have the package opened and inspected

without first obtaining a search warrant. It contained heroin. At the time of the search, the mail carrier was not performing law enforcement activities. The Court of Appeals found that the warrantless search of sealed First Class mail was unlawful based not only on the explicit doctrine of Ex Parte Jackson, *supra*, but also due to rules and regulations of Congress and the Postal Service Manual. The Court of Appeals explicitly found that the Postal Service regulations prohibited warrantless searches by a postal employee.

The Court of Appeals reversed the district court and suppressed the evidence, not because the mail carrier/undercover agent was law enforcement trained or was acting as law enforcement at the time of the search, but due to:

“. . . the Government’s monoplistic right to provide the public with mail facilities, it could not escape the guarantees of the Bill of Rights, and that as the search and seizure guarantee of the Fourth Amendment it would be required in its dealing with the mail, to recognize a distinction between ‘what is intended to be kept from inspection’ and ‘what is open to inspection.’” 239 F. 2d 818 at 821.

Oliver found that Ex Parte Jackson was settled law since 1878 and that protection against unlawful search and seizure of one’s papers and effects guaranteed by the Fourth Amendment extends to the mails. There is no other way first class sealed mail and Priority Mail parcels can be protected from warrantless searches by letter carriers, unless all employees of the postal service are held to the strict prohibitions required by the Fourth Amendment applicable to governmental action.

The Fifth Circuit's opinion is contrary to the prior holdings and legal analysis in Ex Parte Jackson and Oliver as well as in United States v. Jacobsen, 466 U.S. 109, 104 S. Ct. 1652.

Postal Service employees are subject to the Fourth Amendment and the exclusionary rule. There is no Constitutional exception for the search of the Priority Mail packages by the mail carrier in the case at bar. This was not a "border search exception" of mail coming in from another country by postal inspectors, nor was this a search to determine whether there was mailable material within the package because the cover of the package could not be read for delivery instructions (letters, packages opened by postal employees in the dead letter office to ascertain an address where the letter or sealed package can be delivered 39 U.S.C. § 404(c)). A search warrant is required to open First Class, sealed mail and Priority Mail boxes to effectuate a search.

The Fifth Circuit held that the USPS employee did not undertake law enforcement activities and that the Fourth Amendment does not apply to her. This argument is contrary to substantive law, Ex Parte Jackson, supra, and U.S. v. VanLeeuwen, supra, as well as postal regulations that provide otherwise; Administrative Support Manual § 274.231(a); 39 C.F.R. § 283.3(g)(1), and Domestic Mail Manual § 113.2.2. This judicially created "exception" to the Fourth

Amendment's warrant requirement based upon the subjective personal reasons or motivation of the government actor, her lack of undertaking law enforcement activities and no motivation or desire to investigate a legal violation is contrary to a plain reading of the Fourth Amendment.

The letter carrier is a U.S. Government employee and a government actor. The Fourth Amendment's exclusionary rule applies to postal employees conducting warrantless searches and prohibits the prosecution from introducing evidence in a criminal proceeding obtained in violation of a defendant's Fourth Amendment reasonable expectation of privacy rights. The breadth of the prohibition does not only apply to law enforcement or those who undertake law enforcement activities, it covers all government actors and agents. When confronted with such a situation, other circuit Courts of Appeals have properly held that persons who are not law enforcement may be subject to the Fourth Amendment and that their misconduct is contemplated by the exclusionary rule; consequently, any violation of a defendant's Fourth Amendment rights is subject to the sanctions of the exclusionary rule: suppression of the evidence. See, U.S. v. Ackerman, 831 F. 3d 1292 (10th Cir. 2010), Oliver, *supra*.

Defendant, Johnlouis, never asserted the mail carrier was acting as a law enforcement officer; her warrantless search was conducted as a Postal Service

employee and was covered by the Fourth Amendment which required suppression of the evidence for her violation of his privacy interests. Defendant was not required to show that the letter carrier acted as law enforcement to trigger the Fourth Amendment. The purpose of the Fourth Amendment is to protect persons from unreasonable governmental searches and seizures by requiring a warrant before the search of his papers or effects occurs or infringes on a reasonable expectation of privacy. Upon a showing that the mail carrier violated the defendant's rights by her warrantless search of the Priority Mail boxes, the evidence should be suppressed.

2) Postal Service Mail Carriers are not exempt from the Fourth Amendment warrant requirement because they made a warrantless search from a personal motivation and undertook no law enforcement activities

This Court, in Ex parte Jackson, 96 U.S. 727, 733 (1878) held that the Fourth Amendment applies to U.S. Mail and to searches by any persons, including "officials connected with the postal service" finding:

The constitutional guaranty of the right of the people to be secure in their papers against unreasonable searches and seizures extends to their papers, thus closed against inspection, wherever they may be. Whilst in the mail, they can only be opened and examined under like warrant, issued upon similar oath or affirmation, particularly describing the thing to be seized, as is required when papers are subjected to search in one's own household. No law of Congress can place in the hands of officials connected with the postal service any authority to invade the secrecy of letters and such sealed packages in the mail; and all regulations adopted as to mail matter of this kind must be in subordination to the great principle embodies in the fourth amendment of the Constitution.

A search not conducted pursuant to a warrant is by its very nature unreasonable. The Fourth Amendment to the U.S. Constitution applies: “letters and other sealed packages are in the general class of effects in which the public at large has a legitimate expectation of privacy.” United States v. Jacobsen, 466 U.S. 109, 116 (1984). See also, United States v. Van Leeuwen, 397 U.S. 249, 253 (1970).

A search by a mail carrier is legally different from a warrantless search by a private entity (person) such as employees of the United Parcel Service or FedEx. United States v. Jacobsen, *supra*, held that the Fourth Amendment does not apply to searches made by private citizens (“private party” exception). The Fifth Circuit misapplied the law by holding that the postal letter carrier was not a government actor to whom the Fourth Amendment applied because she was not a law enforcement official, a member of a police force, or a member of the postal inspection office, and the search was conducted out of a personal reason or motivation and not to enforce law or investigate a legal violation. But, wasn’t the mail carrier’s search of the Priority Mail package an investigation of a legal violation - - narcotics trafficking, and her decision not to deliver the packages an effort to interdict the distribution of drugs as much as her concern for children or her experience with a relative? This subjective “exception” by the Fifth Circuit offers no objective basis in its application to rationally test whether a warrantless search violates the Fourth Amendment.

Jacobsen, *supra*, held that the Fourth Amendment only applies to governmental action and “it is wholly inapplicable ‘to a search or seizure, even an unreasonable one, effected by a private individual not acting as an agent of the government or with the participation or knowledge of any governmental official.’” 466 U.S. 109 at 113.

Why is that significant? This Court held that a private party (entity) search does not infringe on a reasonable expectation of privacy guaranteed by the Constitution to an individual under the Fourth Amendment. A private party search is not considered government action. A wrongful private party search does not violate the Constitution unless the private party acts “as an instrument or agent of the state.” Coolidge v. New Hampshire, 403 U.S. 443, 487 (1972). See also, United States v. Koenig, 856 F. 2d 843, 846 (7th Cir. 1988) If a FedEx or UPS employee searches a box pursuant to its rules and contract with the sender, that search does not violate the Fourth Amendment, and the evidence can be turned over to law enforcement; the evidence cannot be suppressed based on the lack of a search warrant. The same result would apply to a search by a private citizen.

The search in this case was made by a Postal Service mail carrier, a government actor, to whom the Fourth Amendment applies. Searches by postal employees do not fall within the private party (entity) exception. But, the Fifth Circuit through its legal contortions fashions an exception for governmental actors who do not undertake law

enforcement activities, or are motivated by a desire to investigate a legal violation, and who conduct the warrantless search out of a subjective personal motivation to avoid the application of the Fourth Amendment. To buttress its reasoning, the Fifth Circuit opined that Johnlouis could have argued the mail carrier “was a private person acting in the capacity of a government agent by searching the package with the knowledge of, or in order to assist, law enforcement” citing United States v. Pierce, 893 F. 2d 669, 673 (5th Cir. 1990), cert. denied, 506 U.S. 1007 (1992) id at 673. Pierce held that if search is conducted by someone acting as an agent or instrument of the government, the Fourth Amendment can be violated, provided that “(1) the government knew of and acquiesced in the intrusive conduct and (2) the party performing the search intended to assist law enforcement efforts or to further his own ends.” Id at 673. This is a strawman argument - the mail carrier is an employee of the government and a government actor, not a private party acting as an agent of the government. The letter carrier was performing her duties delivering mail when she decided to search the Priority mail box. The letter carrier could not objectively meet the Pierce test, any better than being able to rationally apply the subjective personal motivation/desire to investigate a legal violation/inspecting the package to enforce the law “test” of the Fifth Circuit’s government actor exception to the Fourth Amendment. This letter carrier’s search was an arbitrary invasion [by a government

official] of the defendant's papers and legal effects, and an infringement of his reasonable expectation of privacy, which is all the Fourth Amendment requires.

The Fifth Circuit focuses on the fact that the letter carrier cannot be considered a postal inspector, a member of the postal inspection service or law enforcement authority, which somehow removes her actions from the Fourth Amendment prohibition against warrantless searches. But, did they? The mail carrier was motivated by a desire to investigate a legal violation and a personal motive/law enforcement activity to keep narcotics away from the children, interdict narcotics trafficking/distribution. The Postal Service has broad law enforcement authority vested in postal inspectors and the postal inspection service. The vast majority of mail carriers follow the postal rules and regulations and consult supervisors or the postal inspection service when in possession of suspicious packages and turn them over for inspection. That was what occurred in VanLeeuwen, *supra*. That is the proper procedure; but, the mail carrier in the instant case chose not to follow the postal rules and regulations and took it upon herself to open the package by pulling back the flap and searching (she says "inspecting") the box's contents in order to determine its identity.

In U.S. v. Ackerman, 831 F. 3d 1292 (10th Cir. 2010), Judge Gorsuch, now Justice Gorsuch, determined that a computer analyst employed by the National Center

for Missing and Exploited Children (NCMEC) was a government actor who exceeded her delegated authority by searching all four intercepted emails of a suspected child pornographer, rather than just the one email flagged by AOL with a hash value that matched suspect photographs thought to be child pornography. The warrantless search of the other three emails violated the defendant's Fourth Amendment rights. Consequently, the trial court's denial of the motion to suppress was reversed and the case was remanded for further proceedings.

In Ackerman, the government argued that the "private entity" doctrine applied to NCMEC which was a private corporation, therefore, the action of its analyst, who, was not a trained law enforcement officer, was not subject to the exclusionary rule for violation of the defendant's Fourth Amendment rights. That argument was dismissed. The Court of Appeals found that because NCMEC had Congressionally delegated police functions, it became a government entity or agent, not a private corporation; consequently, the violation of the Fourth Amendment by the NCMEC computer analyst was not subject to the "private entity" or "private party" exception to warrantless searches and seizures.

The only difference between the NCMEC analyst/employee and the USPS mail carrier in the case at bar is that the USPS is a government entity and its employees are government actors or officials. Numerous CFR's and postal

regulations previously cited specifically prohibit postal service employees from opening sealed mail. Ex Parte Jackson, *supra*, and VanLeeuwen, *supra*. The warrant requirement to search sealed mail is a well entrenched concept of the Fourth Amendment and an obligation of employees of the postal service. The Fifth Circuit found that the mail carrier was not law enforcement and conducted the warrantless search out of her personal motivation. Consequently, it found the Fourth Amendment does not apply to the mail carrier's violation of defendant's rights. This is legally wrong and misreads the meaning of a governmental actor and the applicability of the Fourth Amendment prohibition against warrantless searches. Such reasoning foists a strawman for the court to knock down while the illegal activity goes unnoticed, unchecked, and unrestrained. As Judge Johnson stated in Oliver v. U.S., *supra*, “[r]easonableness in search and seizure is not a matter of what the things done have developed but of legal fairness in the things which have been done.” 239 F. 2d 818 at 823.

3) A Fourth Amendment violation requires suppression of the evidence.

The purpose of the Exclusionary Rule is to deter unconstitutional warrantless search violations. If not applied to letter carriers and the postal service in this case, the court cannot protect any person's reasonable expectation of privacy from warrantless searches of their first class mail or priority sealed mail packages.

Little doubt exists after Ex Parte Jackson, supra, that searches of sealed First Class mail, which includes priority mail packages, requires a search warrant pursuant to the Fourth Amendment before a search can take place. Calling a search an “inspection” or being “nosy” or “nosiness” does not somehow transform the warrantless act and unconstitutional search of a package or letter into a lawful “inspection” of that package’s or letter’s contents. Her unlawful search determined the contents were methamphetamine. She subsequently decided not to deliver the packages to the recipient address but to deliver them to the apartment manager and advise her to call law enforcement.

The apartment manager, did not state to law enforcement at the scene or in her statement to the FBI, that she could see anything in the box. LMNTF Agent Lemelle, when writing his search warrant affidavit after seizing the boxes from her, never stated he could see “methamphetamine” within the box. His statement relied upon information relayed to him by the apartment manager which she received from the mail carrier. Lemelle had a Lafayette Metro Narcotics Task Force Officer employ a canine drug sniff to confirm that narcotics were present. Based upon that, he made an electronic application for a search warrant to the state district court judge, not a Federal Magistrate Judge.

The exclusionary rule is designed to protect an individual's reasonable expectation of privacy by excluding evidence obtained from a warrantless search or by a search warrant secured without probable cause. In this case, the sender of the priority mail package and the recipient were entitled to expect that the contents would remain private and that the box would not be searched absent a warrant issued pursuant to the Fourth Amendment.

While the boxes were still in postal custody and in the process of being delivered to the addressee (the mail stream), a warrantless search was conducted by the mail carrier to determine its contents. This was not merely "nosiness" on her part, but an intentional act to look inside the box to determine its contents. When you open the box and expose its contents by whatever artifice or means, an unlawful warrantless search occurs and the Fourth Amendment is implicated. See, Oliver v. U.S., supra.

The subsequent obtaining of a warrant by law enforcement in state court does not cure, nor does it absolve, the unlawful warrantless initial search by the government agent and the information gained by her unlawful warrantless search. This unlawfully seized information was used by law enforcement to obtain a state search warrant for the boxes. Therefore, the information gained by the USPS mail carrier's unlawful initial warrantless search provided the basis for the dog sniff search

which established probable cause for Lemelle's search warrant affidavit. The subsequent evidence gained through the search warrant must also be suppressed as the fruit of the poisonous tree. Wong Sun v. United States, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963). These federal substantive laws are designed to effectuate the Fourth Amendment's guarantee to its citizens: to protect an individual's reasonable expectation of privacy.

This Court fashioned the exclusionary rule to exclude from use at a criminal trial evidence seized from a defendant in violation of his Fourth Amendment rights. This exclusion extends to the fruits of such evidence. Weeks v. United States, 232 U.S. 383, 34 S. Ct. 341, 58 L. Ed. 652 (1914) and Mapp. v. Ohio, 367 U.S. 643, 81 S. Ct. 1685, 6 L. Ed. 2d 1081 (1961) Since its creation, courts have held that the exclusionary rule exists to prevent the prosecution from using evidence at trial that was obtained in violation of a defendant's Fourth Amendment rights: a person's reasonable expectation of privacy. In the case before this Court, Johnlouis filed a Motion to Suppress and a Reply seeking to suppress from use at trial evidence initially seized without a warrant from three (3) postal first class priority mail boxes (sealed mail) due to the warrantless search by the USPS letter carrier while the sealed mail remained in the federal mail stream and in U.S. Postal Service custody. Defendant further contends that the subsequent search by law enforcement with a

warrant was illegal and should be suppressed as the fruit of the prior illegal warrantless search by the letter carrier.

The founding fathers were familiar with searches and seizures by the British government, and the prohibition against warrantless searches and seizures was directed to the government's (United States') intrusion into a Constitutionally protected thing or space: "persons, houses, papers, and effects" or when it infringes on a reasonable expectation of privacy. Law enforcement officials of the Crown were known to the founding fathers, and they knew that searches by such authorities would be covered by the law of agency - - acting as a governmental agent - - no different from a mail carrier, an employee of the USPS and United States. What is clear is that any warrantless search by a government actor, here a letter carrier, is unconstitutional. The letter carrier's actions were intentional and not merely accidental. She consciously made an unreasonable and warrantless search, prohibited by the Fourth Amendment, Postal Service regulations, and federal jurisprudence.

The exclusionary rule encompasses "the primary evidence obtained as a direct result of the illegal search or seizure" as well as "evidence later discovered and found to be a derivative of the illegality" the fruit of the poisonous tree. Utah v. Strieff, 579 U.S. 232, 136 S. Ct. 2056, 2061 (2016) (quoting Segura v. United States, 468 U.S. 796, 804 (1984)). This is exactly what the Fourth Amendment was designed to do:

prevent warrantless searches, and if one occurs and Constitutional rights are adversely affected, to suppress the evidence and prevent prosecutors from using that evidence in a subsequent criminal prosecution.

The Fourth Amendment applies to government action that violates an individual's reasonable expectation of privacy. It just so happens, that in almost all criminal prosecutions, those charged with enforcing the laws are law enforcement officers; but, the Fourth Amendment protects the right to be free from unreasonable search and seizures by governmental intrusions into a protected space or thing, such as a Priority Mail box or if it infringes on a reasonable expectation of privacy. Consequently, a USPS letter carrier is not exempt from the sanctions of a Fourth Amendment violation; they are not private persons and the "private entity" doctrine or "private party" exception does not apply to them. A letter carrier may not be law enforcement, but she is a government actor who works for a government entity that exercises broad law enforcement powers to which the sanctions of a Fourth Amendment violation apply. The sanction, suppression of the evidence, may seem extreme, but the purpose is to protect the Constitutional right of privacy of citizens sending sealed mail through the Post Office, and to reasonably deter similar unlawful conduct in the future.

The government's position is that the USPS employee is not law enforcement, therefore, her search cannot rise to a warrantless, unlawful search nor does it violate the Fourth Amendment. This reasoning is misplaced. The court, in Ackerman, *supra*, exhaustively examined how a computer analyst employee of the National Center for Missing and Exploited Children ("NCMEC") a private entity given broad law enforcement powers by Congress, and which collaborates with local, state, and federal law enforcement was found to be a governmental entity to which the Fourth Amendment warrant requirement applies. Emails opened by a NCMEC computer analyst who was not actively pursuing law enforcement activities were suppressed. The question is whether the actions by the governmental entity employee ("NCMEC" or "USPS") raise issues of constitutional or statutory prohibition. They do. But, the inquiry into an employee of the Postal Service is much clearer: he/she is a government actor.

The U.S. Bureau of Labor Statistics states there are approximately 335,540 mail carriers delivering mail in the United States each day (U.S. Bureau of Labor Statistics 3/31/22). If the Constitutional guarantees to privacy do not extend to mail carriers delivering First Class sealed mail and Priority Mail boxes according to the Fifth Circuit, then they can open and search sealed mail packages for contraband, just as long as they do it out of a personal motivation or reason and not undertaking a law

enforcement activity or motivation or desire to investigate a legal violation. The reason the jurisprudence is not overflowing with mail carrier search cases is the USPS and its employees honor their sacred trust of the U.S. mail and its Constitutional protections. They do their job and do not let their personal beliefs or motivations sway them to violate their Constitutional duties. This search by the mail carrier, not the motives or reasons for the search or that she is not a law enforcement official, implicates her conduct and puts it within the reach of the Fourth Amendment and the exclusionary rule for making a warrantless search. Ackerman puts the argument that the exclusionary rule only applies to law enforcement officials to rest - - No.

The Fifth Circuit seeks to interpose a narrow exception - “non-law enforcement acting government actor with a personal motive for the search” to get around the Fourth Amendment’s warrant requirement. It is unclear from the opinion whether the mail carrier actually met the subjective “test” to avoid Fourth Amendment sanctions, but it is clear this judicial exemption to the Fourth Amendment is not objectively rational and workable and this is contrary to over one hundred thirty (140) years of federal jurisprudence since Ex Parte Jackson, *supra*. The Fourth Amendment’s search warrant requirement applies to USPS employees, whether they act as law enforcement or not. To affirm the Fifth Circuit’s holding (opinion) allows it to render the Fourth Amendment meaningless, by allowing the government, by creating the U.S. Postal

Service, to delegate to its agents investigative work the government was forbidden to do. This Court has applied the Fourth Amendment to private parties who act as an instrument or agent of the government. See, Skinner v. Ry. Labor Execs' Ass'n, 489 U.S. 602, 614, 109 S. Ct. 1402, 103 L. Ed. 2d 639 (1989). No such exemptions were granted to government actor violations of the Fourth Amendment's warrant requirements for searches and seizures. The conduct of a postal employee and/or a NCMEC employee, Ackerman, *supra*, constitutes action by a government actor and can rise to the level of violating a constitutional or statutory prohibition.

In re Benny, 29 B.R. 734, a bankruptcy trustee's actions in redirecting a debtor's mail was found to violate the Fourth Amendment. A bankruptcy trustee, a government agent, is no more law enforcement than a USPS employee. Birnbaum v. United States, 436 F. Supp. 967, affirmed in part, reversed in part, 588 F. 3d 319 (2d. Cir. 1978) found the action of the CIA in opening, reading, and copying first class mail without a warrant and without probable cause for a warrantless search to be illegal under the First and Fourth Amendments. As such, the Fourth Amendment is implicated and the exclusionary rule applies.

The postal service exercises law enforcement powers through its postal inspectors and it can obtain search warrants. The mail carrier could have returned to the post office and requested her supervisor to inspect the packages, contact the postal

inspector, and request a search warrant. Furthermore, if searches of First Class sealed mail by postal workers, without obtaining a search warrant is tolerated without sanctions to stop or prevent it, why would a warrant ever be needed in the future? In essence, the Fifth Circuit tries to avoid addressing the obvious issue raised by this case by stating it is limited to its facts. But it is not. There are approximately 335,540 mail carriers working in the United States each day, delivering millions of pieces of mail. If they are allowed to search First Class sealed mail and/or Priority Mail boxes without a warrant, as long as it is done for a personal reason or personal motivation and not for a law enforcement purpose, what is to stop them from systematically being allowed to act on their own and search mail? What is then left of the Fourth Amendment and one's reasonable expectation of privacy? The consequences are too great to allow this judicial exception to the Fourth Amendment's warrant requirement to stand.

In Wong Sun v. United States, *supra*, this Court held that the purpose of the exclusionary rule was to prevent these violations of a person's reasonable expectation of privacy. In order to effectuate the Constitutional purposes in cases like the one at bar, the exclusionary rule must apply. The subsequent warrant was based on information resulting from the prior illegal warrantless search. The later issued search warrant cannot somehow "dissipate the taint" of the prior illegal Fourth

Amendment violation by the mail carrier on which Lemelle based his warrant affidavit. The narcotics in this case would never have been discovered without the unlawful warrantless search of the package by the government actor, the mail carrier.

In Silverthorne Lumber Company v. United States, 251 U.S. 385, 40 S. Ct. 182, 64 L. Ed. 319 (1920), Justice Holmes, speaking for the Court held that “the government might not make use of information obtained during an unlawful search to subpoena from the victims the documents that it illegally viewed, expresses succinctly the exclusionary rule. The essence of a provision forbidding the acquisition of evidence a certain way is that not merely evidence so acquired shall not be used before the court but shall not be used at all. Of course, this does not mean that the facts thus obtained become sacred and inaccessible. If knowledge of them is gained from an independent source that may be proved like any others, but the knowledge gained by the government’s own wrong cannot be used by it in the way proposed.” 251 U.S. at 392, 40 S. Ct. 182, at 183.

That applies to the case at bar. The government obtained information through an unlawful warrantless search of the USPS priority mail box by the mail carrier and cannot now rely on that illegally obtained information to establish probable cause to obtain a warrant to search the boxes to determine what it already has been told exists and move forward with a prosecution of the defendant.

“We need not hold that evidence is fruit of the poisonous tree simply because it would not have come to light but for the illegal actions of the police. Rather, the more apt question in such a case is ‘whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.’” Maguire, Evidence of Guilt, 221 (1959).

Even though each act by an individual letter carrier may be an isolated violation does not free it from the Constitutional requirement that evidence obtained by a warrantless search be suppressed. The defendant acknowledges that the letter carrier in this case was not a member of law enforcement (a postal inspector), but the Fourth Amendment applies to any government actor’s violation of the Fourth Amendment’s prohibition against unreasonable warrantless searches and seizures which, in turn, triggers the exclusionary rule. In Ackerman, *supra*, the NCMEC computer analyst was not law enforcement, but the Fourth Amendment’s proscriptions against warrantless searches applied to her.

The Fifth Circuit’s decision was “tailored to the peculiar facts of this case and the particular activities of individual government actors.” Appx. B, p. 9. But, its distinguishing factors are subjective and not easily subjected to objective testing or inquiry and application to other fact scenarios. It overlooks the fact that the Fourth

Amendment applies to all governmental actors' conduct, including the mail carrier's. It does not specifically limit its prohibition of unreasonable warrantless searches to law enforcement or private persons acting with law enforcement training or serving law enforcement functions; it is directed toward governmental action. The logic of the Fifth Circuit's decision holds that as long as a mail carrier is not acting with a law enforcement function, or at the behest of the government, but with a "private" personal motive, she can open first class sealed mail without violating the Fourth Amendment's warrant requirement. Congress has not exempted First Class sealed mail or Priority Mail boxes from the Fourth Amendment's warrant requirement before they can be searched. How can the Fifth Circuit?

This case presents an important question of first impression to the Court: does the Fourth Amendment's prohibition against warrantless searches require the exclusion or suppression of any evidence obtained from a warrantless search made by a postal service mail carrier of First Class sealed mail, priority boxes?

Only Postal Service letter carriers deliver U.S. Mail to residences and businesses. The Fourth Amendment applies to governmental action and to its actors, people like the letter carrier in this case. In order to keep people's papers and effects secure, Congress by legislation and through its delegation of rule-making authority to the Postal Commission, have created laws and regulations which protect First Class

sealed mail, including priority mail packages from warrantless searches. 39 CFR §§ 113.2.2 and 233.3(c)(3).

There are several undisputed facts in this case:

- 1) The mail carrier was an employee of the United States Postal Service, a government entity;
- 2) At all times during the search and delivery of the first class sealed mail package, the mail carrier acted in the course and scope of her employment with the United States Postal Service while performing her job duties; and
- 3) The letter carrier made a warrantless search of the first class sealed mail package.

That warrantless search made and reinforced her decision not to deliver the package to the address “due to children being in the neighborhood and her experience with a relative.” This was not her acting as a private citizen out of private motivation, but as a government actor. Her actions violated the appellant’s Fourth Amendment right to be secure in his papers and effects and not have his parcel subject to a warrantless search by a postal employee. The Fifth Circuit’s decision conflates and fails to contextualize the Fourth Amendment’s application: if only postal inspectors and those associated with law enforcement, as the Fifth Circuit held, can be subject to the Fourth Amendment, any letter carrier is given the freedom by judicial fiat to open first class sealed mail packages in their possession if they suspect contraband is inside, or out of a personal motive, avoiding the necessity of obtaining a search

warrant. This decision creates another exception to the Fourth Amendment never contemplated by Congress and by the Courts.

CONCLUSION

The Fifth Circuit's opinion holding that the Fourth Amendment does not apply to a mail carrier's warrantless search of a First Class sealed mail Priority Mail box because she undertook no law enforcement activities or was motivated by a desire to investigate a legal violation and acted out of a personal motive, "her concern for children and her experience with a relative" and affirming the district court's denial of defendant's motion to suppress must be reversed and vacated. This matter be remanded to the U.S. Court of Appeals for the Fifth Circuit to reverse the district court's denial of the motion to suppress and remand the case with instructions to the district court to grant the motion to suppress and dismiss the indictment.

Alfonzo Johnlouis believes that in light of the errors committed, and the Constitutional issue raised concerning the application of the Fourth Amendment to warrantless searches by a USPS letter carrier, this court should grant this Writ of Certiorari.

Respectfully submitted,

FRANK GRANGER
A PROFESSIONAL LAW CORPORATION

FRANK GRANGER

FRANK GRANGER*
Federal ID No. 06219
1135 Lakeshore Drive, 6th Floor
Lake Charles, Louisiana 70601
Telephone: (337) 439-2732
Fax: (337) 439-1655
CJA Counsel for Alfonzo Johnlouis
*Counsel of Record
Member Supreme Court Bar

NUMBER _____

In The
SUPREME COURT OF THE UNITED STATES

ALFONZO JOHNLOUIS,

Petitioner,

Versus

UNITED STATES OF AMERICA,

Respondent,

Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

CERTIFICATE OF SERVICE

I, FRANK GRANGER, court appointed counsel for petitioner, ALFONZO JOHNLOUIS, hereby certify that on this 4th day of January, 2023, one copy of the Petition for Writ of Certiorari and of the Motion for Leave to Proceed "In Forma Pauperis" in the above captioned matter was mailed, first class postage prepaid, to the following:

Solicitor General of the United States
Room 5614
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Cristina Walker
Assistant U.S. Attorney
300 Fannin Street, Suite 3201
Shreveport, LA 71101

I further certify that all parties required to be served have been served.

FRANK GRANGER
FRANK GRANGER*
Federal ID No. 06219
1135 Lakeshore Drive, 6th Floor
Lake Charles, Louisiana 70601
Telephone: (337) 439-2732
Fax: (337) 439-1655

*Counsel of Record
Member Supreme Court Bar