No. _____

IN THE

Supreme Court of the United States

LUIS MIGUEL SIERRA-AYALA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

ERIC A. VOS
Chief Defender
Federal Public Defender
District of Puerto Rico
241 F.D. Roosevelt Ave.
San Juan, PR 00918
(787) 281-4922
Kevin_Lerman@fd.org

FRANCO L. PÉREZ-REDONDO
Assistant Federal Public Defender

KEVIN E. LERMAN*
Research & Writing Attorney

**Counsel of Record*

Counsel for Petitioner

QUESTION PRESENTED

A police officer cannot touch a person's body or possessions without consent or legally sufficient basis. Likewise, an officer cannot force himself upon a person's private personal space, impeding their freedom to leave without justification.

Agreeing with these bedrock privacy concerns, the First Circuit determined that when a police raid squad descended upon a residential street and accosted Petitioner Luis Sierra-Ayala, his Fourth Amendment rights were violated. When the squad, directed by Sergeant López-Maysonet, burst upon Petitioner and others on a Sunday morning, none of the sergeant's excuses for seizing Petitioner sufficed. Neither the flight of others, nor the idea of a high-crime area, nor the use of a fanny pack gave rise to reasonable suspicion.

Nevertheless, while López-Maysonet halted and controlled Petitioner without cause or consent, the First Circuit conceived of a separate basis to deny Petitioner's request to suppress contraband found during the illegal encounter. The First Circuit concluded that Petitioner — *despite his illegal and non-consensual placement under the sergeant's official control* — consensually opened up the accessory bag he wore to reveal drugs inside. The bag opening act immediately followed the illegal seizure. The question presented is:

> Should evidence obtained during an illegal police seizure be suppressed where the rights-violating officer testifies that the person in his custody consensually turned over contraband?

PARTIES

Luis Miguel Sierra Ayala, petitioner on review, was the defendant-appellant below.

The United States of America, respondent on review, was the plaintiff-appellant below.

RELATED PROCEEDINGS

The following proceedings are directly related to this case.

- *United States v. Sierra-Ayala*, No. 20-1145 (1st Cir. July 5, 2022) (reported at 39 F.4th 1)
- *United States v. Sierra-Ayala*, No. 3:17-cr-063-PAD (D.P.R. Jan. 16, 2020)

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OPINIONS BELOW

Luis Miguel Sierra-Ayala respectfully petitions for a writ of certiorari to review the judgment of the First Circuit, which is reported at 39 F.4th 1. App. 1a-20a. The District Court's judgment is unreported. App. 21a-28a.

JURISDICTION

The First Circuit entered judgment on July 15, 2022, and denied a petition for rehearing on October 17, 2023. App. 68a. On January 12, 2023, Justice Jackson extended the time with-

in which to file a petition for a writ of certiorari to and including February 14, 2023. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

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

"To enforce the Fourth Amendment's prohibition against 'unreasonable searches and seizures,' this Court has at times required courts to exclude evidence obtained by unconstitutional police conduct." *Utah v. Strieff*, 579 U.S. 232, 234-35 (2016). This rule of exclusion developed to deter official misconduct that is intentional and flagrant. *Herring v. United States*, 555 U.S. 135, 141 (2009). To focus on deterring illegal conduct, the Court has looked to, for example, whether an independent act of the person searched or seized attenuates official illegalities. *See Brown v. Illinois*, 422 U.S. 590, 602 (1975).

If government officials have not complied with the Fourth Amendment, a person may still consent to search of their per-

son or premises, *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973), provided the prosecution proves the voluntariness of the consent, *Bumper v. North Carolina*, 391 U.S. 543 (1968).

Questions of consent are evaluated based on the communities' shared social expectations. *See Fernández v. California*, 571 U.S. 292, 303 (2014).

The First Circuit's decision here in *United States v. Sierra-Ayala*, 39 F.4th 1 (1st Cir. 2022), lands at the apex of this Court's Fourth Amendment jurisprudence on attenuation and consent. This Court has not reached the question of whether a person, while undergoing illegal detention, could nevertheless consensually intervene to permit an officer to see inside their private belongings. This case presents that question.

The First Circuit's decision conflicts with the D.C. Circuit's opinion in *United States v. Brodie*, 742 F.3d 1058, 1063 (D.C. Cir. 2014), where the D.C. Circuit held that a person's voluntary discarding of weapons during an unlawful seizure was not an intervening, taint-purging circumstance. Simply put, such a discarding "flowed directly from the seizure." *Id.* The First Circuit's decision also conflicts with the Eleventh Circuit. In *United States v. Bailey*, 691 F.2d 1009, 1017 (11th Cir. 1982), the accused discarded marijuana during an illegal traffic stop. Attenuation was not recognized. *Id.*

The D.C. and Eleventh Circuits follow this Court's settled caselaw, requiring suppression of the fruits of a lawman's suspicionless detention of a person. Surely, future illegal seizures will be deterred if this Court holds that a person enduring an illegal penetration of their person cannot, without

more, be said to independently turn over a private bag an officer stated he was concerned about before accosting the person. The First Circuit's rule expressed here risks promoting nonverbal constitutional violations that are just as damaging and intrusive as verbal orders to permit nonconsensual searches. Because this case presents an intractable conflict on an important question of constitutional law, and because this case presents an excellent vehicle in which to resolve that conflict, the petition for a writ of certiorari should be granted.

A. Factual Background

One morning in January 2017, at around 8:00 am, a dozen-plus Puerto Rico Police Department officers deployed to Melilla Street, a residential street located in Loíza, Puerto Rico. App. 6a. The officers were tasked with executing an "operational plan."[1] The plan's stated goal was to surveil a "known drug point" located in a "wooded area of Melilla Street adjacent to an empty lot." App. 6a. Should they witness criminal activity, the plan stated, officers were authorized to "act." App. 6a.

Sergeant López-Maysonet oversaw the surveillance plan's execution. "As he arrived" at Melilla Street with other officers, López-Maysonet saw seven or eight people wearing fanny

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[1] By federal consent decree, the Puerto Rico Police Department must formulate and follow these operational plans. *See* Reply Br. of Petitioner, 1st Cir. Case No. 20-1145, 2021 WL 3721546, at *15 n.3 (1st Cir. Aug. 18, 2021); *see also* ACLU, Island of Impunity: Puerto Rico's Outlaw Police Force (June 2012), *available at* https://www.aclu.org/report/island-impunity-puerto-ricos-outlaw-police-force?redirect=puertorico; *United States v. Puerto Rico*, No. 12-cv-2039 (D.P.R.) (lawsuit resulting in consent decree).

packs. App. 6a. Believing fanny packs frequently stored contraband, the sergeant felt suspicious about the people wearing them. App. 6a. And he perceived the street (where Petitioner's parents live) as a "high-crime area." App. 14a. But he saw no criminal activity.

Nevertheless, López-Maysonet abandoned the stated operation, driving his squad car upon a sidewalk a few feet away from pedestrians in the area. App. 6a. López-Maysonet's police crew leapt from his car and ran toward the group. *See* App. 6a, 13a.

As officers blitzed the group while yelling "police!", Petitioner was the only person there who did not run away; others ran toward the adjacent wooded area. App. 6a**.** Police gave chase as the other police units involved poured in. App. 6a.

As his supervisees gave chase, López-Maysonet noticed Petitioner in a chair wearing a black shoulder bag. App. 6a López-Maysonet approached him while announcing he was police. App. 6a. Without additional verbal prompting from the sergeant who just penetrated Petitioner's personal space, Petitioner "stood up … and showed [López-Maysonet] the contents of the bag." App. 6a. López-Maysonet "looked inside" to discover drug packaging. App. 7a. López-Maysonet then arrested Petitioner and proceeded to feel around Petitioner's body with his hands, finding a gun on his waist. App. 7a.

B. Suppression Proceedings

Indicted federally on drugs and firearms-related offenses, App. 7a, Petitioner moved to suppress the evidence found during his arrest, arguing his seizure was unlawful and that López-Maysonet had ordered him to turn over the handbag, which he was holding for his cousin, who had fled as López-Maysonet's armed team chased them. App. 7a-8a.

A magistrate held a suppression hearing at which Petitioner and López-Maysonet testified. App. 8a. Petitioner maintained the sergeant had commanded him to turn over the bag. App. 7a.

The magistrate issued a report recommending the motion's denial. App. 9a; 28a-41a. The magistrate opined that López-Maysonet had a "convincing" demeanor and tone and told a "plausible" and "logical" story. App. 9a. Crediting López-Maysonet's account over Petitioner's, he concluded Petitioner was not seized and lacked standing to challenge the sergeant's actions. App. 9a.

Objections by Petitioner resulted in a de novo hearing — sort of. App. 9a-10a. Once the district court scheduled a de novo hearing, the government moved to limit the hearing to standing. Without awaiting a defense response, the court so limited the hearing. App. 10a.

At the new hearing, Petitioner and López-Maysonet rehashed their testimony. App. 10a. Petitioner added that, when his cousin handed him the fanny pack while he broke a

$10 bill for him, Petitioner felt responsible for it and felt he could not hand it to others. App. 10a.

The district court adopted the magistrate's conclusions and assumed López-Maysonet had commanded Petitioner to turn over the bag. App. 10a. Its ruling, though, was that Petitioner lacked standing to challenge the search. App. 10a-11a.

The defense moved for a supplemental order on Petitioner's standing to challenge the search of his body when the gun was purportedly discovered. App. 11a.

In a subsequent order, the district court credited "López-Maysonet's testimony … about how the encounter unfolded." App. 11a. It rejected the argument that Petitioner "was seized at the time Sergeant López-Maysonet approached, and concluded that, because [Petitioner] *voluntarily* displayed the contents of the bag, the sergeant had probable cause to arrest him. The … discovery of the gun … was therefore a permissible consequence of a constitutional search incident to arrest." App. 11a. The district court landed on a final view of the encounter as a friendly, police-citizen interaction where a person opts to reveal drugs to an officer.

Convicted on all counts after trial, Petitioner was sentenced to 72 months. App. 12a.

C. The First Circuit's Affirmance

On appeal, the panel first determined that Petitioner was "clearly seized" by López-Maysonet. App. 13a. The "heavy police presence and rapidity with which the officers pursued

the fleeing individuals" would lead a reasonable person to conclude they were not free to go. App. 13a. The district court therefore had erred as to this point.

The panel next concluded that López-Maysonet lacked reasonable suspicion to conduct a *Terry* stop of Petitioner. App. 13a-14a; *see Terry v. Ohio*, 392 U.S. 1 (1968). The location of the stop, the possession of messenger-style bags, and the flight of others did not add up to reasonable suspicion. App. 14a. "The most that can be said is that [Petitioner] was standing near a known drug point — close to his parents' home — while holding a bag that can be used to transport … any number of … objects." App. 14a-15a.

But the panel found an "intervening voluntary act" (Petitioner's fanny-pack opening) supplied probable cause for arrest and a search incident to arrest. App. 15a.[2] Petitioner also challenged the finding that López-Maysonet had not ordered him to display the fanny pack's contents; the opinion found no clear error there. App. 15a-16a.

Petitioner further argued that the bag-showing act was "inextricably linked to the initial unconstitutional search that precipitated his display of the bag," so the items were fruits of the poisonous tree. App. 16a.

The First Circuit recognized that the district court left the fruit-of-the-poisonous-tree issue unreached but it reached it anyway. App. 17a-18a. The First Circuit showed no concern over the fact that the district court's findings were rooted in

[2] The opinion did not address the standing issue. App. 15a n.11.

an erroneous determination that López-Maysonet had engaged Petitioner in a consensual police-citizen encounter. App. 18a-19. It looked at the various orders and case record and held that López-Maysonet's visual discovery of contraband during his illegal seizure of Petitioner was not fruit of the poisonous tree. For the First Circuit, it was enough that Sergeant López-Maysonet said Petitioner revealed drugs willingly to López-Maysonet. *See* App. 18a-19a. The Circuit denied a petition for hearing.

REASONS FOR GRANTING THE PETITION

The court of appeals' decision implicates a circuit conflict on the question whether a person being seized by law enforcement officers can be said to intervene during the illegality to show an officer inculpatory evidence. When a law officer penetrates a person's physical space and overcomes their will to freely decline a police encounter, the attendant liberty deprivation does not evaporate into thin air when the person opens up the object driving the officer's hunch in the first place. This Court's well-considered precedents don't allow it. There is therefore a conflict the Court's Fourth Amendment jurisprudence.

In 2023, moreover, the question of deterring unrecorded breaches of bodily autonomy is of paramount importance. Social expectations surrounding aggressive police interventions do not support the naming of what happened here as consensual behavior on Petitioner's part where Petitioner lived in the area he was accosted in, had suffered suspicionless searches in the past, *see Fernández*, 571 U.S. at 303,

by the same police department which so struggled to police constitutionally that it was under federal supervision as a result of a consent decree, *see supra* p.4 n.1.

Taken to its natural conclusion, the First Circuit's analysis would embolden not only law officers who've violated the law in encounters, but also perpetrators of assault, kidnapping, abuse by prisoner guards, and other invaders of personal autonomy seeking to skirt liability with claims of consent. Suppression of the fruits of the forced, illegal police encounter here is necessary to deter official misconduct.

A. The *Sierra-Ayala* Decision Conflicts with the Court's Jurisprudence and with Decisions of the D.C. and Eleventh Circuits

Evidence obtained following Fourth Amendment violations by police must be carefully assessed for exclusion from use at trial with an eye toward deterring official misconduct. The attenuation doctrine provides that some circumstances do not warrant suppression where such action is not likely to deter future misconduct.

Here, since the district court found no unlawful seizure, the First Circuit was the first forum to evaluate attenuation. Despite the district court's failure to reach the attenuation question and the panel's nearly complete dismantling of the findings the lower court did make, the panel affirmed based on a conclusion that the illegal-seizure taint was attenuated.

The resulting decision conflicts with the Court's caselaw, which does not permit excusing López-Maysonet's Fourth Amendment violations simply because he testified that, when

illegally detaining Petitioner, he did not use words to make Petitioner to reveal the contents of a previously closed bag. App. 11a.

The *Brown* attenuation test examines several factors to determine if evidence "is obtained by exploitation of an illegal arrest" including: "(1) the time that elapsed between the underlying illegality and the later acquisition of the evidence … ; (2) the presence or absence of intervening circumstances [in that time]; and (3) the purpose and flagrancy of the official misconduct in question." 422 U.S. at 603-04.

As stated below, the First Circuit's assumptive findings under these factors, and the court's analysis conflicts with established caselaw in other circuits and from this Court. Though the First Circuit correctly notes that Supreme Court doctrine bears the "sole purpose" of "deter[ring] future Fourth Amendment violations," App. 16a (citations omitted), it applies an overly rigid and a-contextual approach that does not weigh the strength of the relevant interests or the strength of any voluntariness finding. In *Kaupp v. Texas*, 538 U.S. 626 (2003), for instance, the defendant was also under unlawful police control when police obtained inculpating statements from him in violation of the Fourth Amendment. *Id.* at 628.

Though the circumstances and evidence turned over were different in *Kaupp* (statements versus out-of-view contraband), *Kaupp* emphasizes the test for whether the government meets the burden of proving an independent act strong enough to break the causal connection between the illegality and the discovery of inculpatory evidence. *See id.* at 632-33.

Caselaw does not support treatment of attenuation and free will as binary factors. Each must occur to such a high degree that it can be said that the "connection between the lawless [police conduct] … and the discovery of the challenged evidence" has "become so attenuated as to dissipate the taint." *Wong Sun v. United States*, 371 U.S. 471, 487 (1963) (citation and quotation marks omitted). Courts' power to suppress evidence obtained during illegal police activity is not *just a prudential mechanism*; its purpose is "to deter — to compel respect for the constitutional guaranty in the only effectively available way — by removing the incentive to disregard it." *Elkins v. United States,* 364 U.S. 206, 217 (1960). The strength of deterrence is further measured in the weighted inquiry as to whether the benefits of deterring the police misconduct that produced the Fourth Amendment violation outweigh the costs of excluding relevant evidence. *Herring*, 555 U.S. at 141.

Deterrence of official wrongdoing and attenuation are analytically linked in caselaw, which focuses on the deliberate wrongfulness and reoccurrence of unconstitutional police conduct. Hence, if police comply with existing precedent, and the law later changes, there is no deliberate wrong to deter. *Davis v. United States*, 564 U.S. 229, 240 (2011). Conduct that's "sufficiently deliberate" exists where police are "sufficiently culpable that such deterrence is worth the price paid by the justice system." *Herring*, 555 U.S. at 144. This means police conduct that's deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence. *Herring*, 555 U.S. at 144.

Thus, at the root of Fourth Amendment jurisprudence is a flexible weighing in which more culpable police conduct preponderates over the resulting costs of exclusion. *Davis*, 564 U.S. at 238. And likewise, the Rule is intended to not cover an officer's mere "blunder" "or slight and unintentional miscalculation." *Herring*, 555 U.S. at 151 (Ginsburg, J., dissenting) (internal citations and quotation marks omitted).

Consistent with the focus on deterring constitutional violations, evidence should not be suppressed if some independent, voluntary disclosure of statements or evidence happens in a way in which the illegal police act and the disclosure have "become so attenuated as to dissipate the taint." *Brown*, 422 U.S. at 598 (internal citations and quotation marks omitted). As such, the *Brown* factors are an approximation of the balancing concerns presented in *Wong Sun* and its progeny once evidence shows that police conduct has tainted the proceedings through an unlawful detention. *Wong Sun*, 371 U.S. at 488).

Here, this Court's precedent did not support a finding that Petitioner's immediate surrender of the bag to López-Maysonet was secondary evidence that was sufficiently attenuated to remove the taint of the unlawful seizure. Once we reach the First Circuit's conclusion that López-Maysonet illegally detained Petitioner, the government's only reason for alleging that the act was a separate, "voluntary" act was López-Maysonet's testimony that he did not verbally order Petitioner to show him the contents of the bag. *See* App. 16a.

Since the showing of the bag was contemporaneous to the illegal seizure, independent voluntariness must not rise and fall on a truthful statement *vel non* by López-Maysonet about getting Petitioner to turn over the bag. *Cf. United States v. Brodie*, 742 F.3d 1058, 1063 (D.C. Cir. 2014) (discarding weapons during unlawful seizure not an intervening, purge-tainting circumstance because "those events flowed directly from the seizure"); *United States v. Bailey*, 691 F.2d 1009, 1017 (11th Cir. 1982) (defendant's discarding of marijuana during illegal car stop not an attenuating circumstance).

Petitioner already had submitted to a cumulative show of force when the officers burst on the scene, chasing anyone who declined their encounter and illegally seizing anyone who did not. López-Maysonet admitted he prejudged anyone who ran as "in the midst of criminality." Appx. to Opening Br. 145 (filed in First Circuit record). López-Maysonet and his squad's actions were vividly intentional. This is not contested. They started with a consent-decree-required operational plan that provided for search-and-seizure actions only "if the officers observed criminal activity." App. 6a. But they never surveilled or showed any intention to surveil.

López-Maysonet and his squad brought a "heavy police presence and rapidity" of pursuit that restrained Petitioner's free exercise of individual liberty. App. 13a. The police squad's actions are not attenuated by good faith or unintentional actions. The abandonment of the operational plan went unexplained. And as his squad went chasing others, López-Maysonet pursued Petitioner with no *reasonable* suspicion of a crime. App. 13a-15a. Yet, the Puerto Rico Police Department

cadre repeatedly showed it would continue to act, against its operational plan and against the Fourth Amendment, even without seeing evidence of a crime. App. 6a, 13a. And Petitioner's lived experience of suspicionless police seizures and searches went unrebutted.

The little testimony the magistrate permitted from Petitioner disclosed that he felt "[s]cared," Appx. to Opening Br. 204, but the district court did not hear testimony about how Petitioner felt when he turned over the bag to López-Maysonet when López-Maysonet illegally seized him. *See* App. 10a.

As Petitioner explained, a combination of factors, including the officers converging on the area, "*made him feel that he had no choice but to hand over the bag*." App. 7a (emphasis added).

At the initial hearing before a magistrate, the defense tried to ask Petitioner how many times he had been "arrested or stopped by police" while living in Loíza. Appx. to Opening Br. 199. But the prosecution objected to the question; the defense explained the question went to Petitioner's belief as to whether he was seized, which in turn "goes to … ***why he reacted the way he reacted when the police approached him***." Appx. to Opening Br. 200 (emphasis added). The magistrate initially allowed the question, and Petitioner said stop and frisks were "common" in Melilla Street. Appx. to Opening Br. 200-01.

This shows the inadequacy of the First Circuit's approach, which substitutes an a-contextual approach to consent inqui-

ries that are dependent on common social expectation to form analysis. Common social expectations inform the analysis. *See, e.g.*, *Fernández*, 571 U.S. at 303 (consent analysis depends on "widely shared social expectations" or "customary social usage"); *Georgia v. Randolph*, 547 U.S. 103, 111 (2006).

Doubtless, the First Circuit ruminates abstractly about what might have happened during López-Maysonet's illegal seizure of Petitioner that don't reflect "widely shared social expectations." In finding a break in the causal link between López-Maysonet's ongoing illegality and Petitioner's opening of the shoulder bag, the First Circuit tells us "[a]ny number of scenarios could have followed Sergeant López-Maysonet's identification of himself as law enforcement…" App. 18a. The first scenario the Court sees would be that López-Maysonet would say out loud that he wanted Petitioner to "hand over the bag." App. 18a-19a. The court admits this scenario would have likely required suppression since it would have exploited the initial illegality. App. 19a.

Yet, the First Circuit imagined another scenario, an unbelievable one on the Sunday morning in question: that, after López-Maysonet and his raid squad accosted Petitioner, the sergeant would have simply made "a notification that [he] was free to go…." App. 19a.

The López-Maysonet raid squad already exceeded social expectations. *See Florida v. Jardines*, 569 U.S. 1, 8 (2013); *French v. Merrill*, 15 F.4th 116, 130 (1st Cir. 2021) (Officers' aggressive actions, *i.e.*, banging, yelling outside a house and knocking on a bedroom window, "exceeded the limited scope

of the customary social license…."). The López-Maysonet raid squad already exceeded — with no explanation whatsoever — the scope of its operation plan. App. 6a. The armed squad was willing, without forming reasonable suspicion a crime was afoot, App. 14a, to chase down every person that moved and penetrate the personal space of the one that did not. That very exceeding of expectations and attendant seizure of Petitioner leaves no space for an improvised view[3] that Petitioner consensually opened a shoulder bag amidst the terrifying encounter to show illegal items to the sergeant.

B. Evolving Understandings of Consent Render the First Circuit's Opinion a Harmful Legal Fiction

The D.C. and Eleventh Circuit decisions in *Brodie* and *Bailey* provide an appropriate approach to very similar factual situations. Once a person is under custody or control of police officers, especially armed ones, it becomes exceedingly difficult to determine, without more, that a person undertakes voluntary action to reveal contraband that was previously not in public view. The court of appeals' decision offers a steep slippery slope for many types of wrongdoers who would look to consent to excuse overt, unexcused wrongs like that of the López-Maysonet raid squad.

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[3] The finding at issue was reached for the first time on appeal. *See* App. 18a (acknowledging that the district court made no specific fruit-of-the-poisonous-tree determination but asserting that the district court's "factual findings … [gave] [the court of appeals] sufficient information to determine whether [Petitioner's] display of the bag was" an exploitation of the underlying illegality).

For example, many courts have faced claims by prison guards that their prisoner consented to sexual relations. It is difficult to characterize sexual relationships in prison as truly the product of free choice. *See, e.g.*, *Chao v. Ballista*, 772 F. Supp. 2d 337, 350-51 (D. Mass. 2011).

Consent searches, as understood by this Court, "normally occur on a person's own familiar territory." *See Schneckloth*, 412 U.S. at 246. *And* this Court conceives of such search as taking place when someone person is generally *not* in a custodial situation during a consent search, the individual is not as vulnerable or dependent. *Id.* at 231. This makes sense. Official custody is the foremost example of a situation in which a special relationship exists. *See DeShaney v. Winnebago County Dept. of Soc. Serv.,* 489 U.S. 189 (1989); *Kneipp v. Tedder,* 95 F.3d 1199, 1204 (3d Cir. 1996) (custodial setting example of special relationship).

The reasons for not allowing consent, or at least closely scrutinizing consent claims, in such a situation are due to the power imbalance inherent in official custody. When the State takes a person into custody and holds them there against their will, the Constitution imposes upon the State and its agents a "corresponding duty to assume some responsibility for his safety and general well-being." *DeShaney,* 489 U.S. at 197-200. The affirmative exercise of the State's awesome power renders the decision here highly suspect. Even under federal court supervision, the Puerto Rico police force demonstrated exceptionally low regard to Petitioner's Fourth Amendment rights. This Court should grant certiorari and provide guidance on the important constitutional question of

whether a bare claim of voluntary action by Petitioner — during illegal detention — decoupled Sergeant López-Maysonet's search inside Petitioner's bag from López-Maysonet's ongoing illegality.

C. This Petition Presents a Great Vehicle to Reach This Important Issue

Though essentially legal questions, the issues raised here were presented and preserved. Nothing is walled off by a plea agreement, appellate waiver, or other obstacle. Resolution of this case would provide clarification to a Puerto Rico Police Department that has long struggled with constitutional compliance. *See supra* p.4 n.11.

CONCLUSION

Based on the reasons above, the petition for a writ of certiorari should be granted.

Respectfully submitted.

ERIC A. VOS
Federal Public Defender
District of Puerto Rico
FRANCO L. PÉREZ-REDONDO
Assistant Federal Public Defender
KEVIN E. LERMAN*
Research & Writing Attorney
**Counsel of Record*

February 14, 2023