

No. \_\_\_\_\_

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

HECTOR GASTELUM VALENZUELA,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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

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## QUESTION PRESENTED FOR REVIEW

The Fifth Circuit affirmed a district court's finding of exigent circumstances to justify a search of Hector Valenzuela's motel room. The officers: knew a co-conspirator had distributed methamphetamine from a different room at the motel; watched the co-conspirator leave the motel; found in his pocket the key for a different room; believed that there might be a firearm in the room; erroneously concluded that the co-conspirator had actual or apparent authority to consent to a search of the room; attempted to open the motel room with the key; and demanded entry at 1:30 a.m. when they found the door locked from the inside. The Fifth Circuit found that officers "believed there was a possibility of danger to the officers because they thought there might be a gun in the room" and "were unable to ascertain whether anyone else was in the room who might attempt to destroy evidence before a search warrant was obtained." This case presents two issues for review:

Whether the mere presence of a person in a motel room—that officers believe contains drugs and a gun—creates exigent circumstances sufficient to justify a protective sweep.

and

Whether officers create or manufacture an exigency when they learn that someone occupies a motel room by attempting to enter and then knocking and demanding entry at one in the morning.

## TABLE OF CONTENTS

Question Presented for Review .....	i
Appendix <i>United States v. Valenzuela</i> .....	iii
Table of Authorities .....	iv
Parties to the Proceeding .....	1
Opinion Below .....	1
Jurisdiction of the Supreme Court of the United States .....	1
Constitutional Provision Involved .....	1
Statement of the Case .....	2
Reasons for Granting Cert .....	6
The Fifth Circuit has finally broken with this Court's precedent and that of other circuits by finding exigent circumstances merely because there was probable cause to believe a person was in a residence with drugs and a possibility those drugs would be destroyed due to the officers' actions .....	8
Conclusion .....	14
Appendix <i>United States v. Valenzuela</i>	
(5th Cir. May. 22, 2023)	

## TABLE OF AUTHORITIES

### Cases

<i>DeMayo v. Nugent</i> , 517 F.3d 11 (1st Cir. 2008) .....	7, 10
<i>Florida v. Jardines</i> , 569 U.S. 1 (2013) .....	10, 12, 13
<i>Harris v. O'Hare</i> , 770 F.3d 224 (2d. Cir. 2014) .....	11
<i>Katz v. United States</i> , 389 U.S. 347 (1967) .....	6
<i>Kentucky v. King</i> , 563 U.S. 452 (2011) .....	passim
<i>United States v. Howard</i> , 106 F.3d 70 (5th Cir. 1997) .....	11
<i>United States v. Iwai</i> , 930 F.3d 1141 (9th Cir. 2019) .....	8, 11, 12
<i>United States v. Jones</i> , 565 U.S. 400 (2012) .....	13
<i>United States v. Lundin</i> , 817 F.3d 1151 (9th Cir. 2016) .....	13
<i>United States v. Lynch</i> , 934 F.2d 1226 (11th Cir. 1991) .....	10
<i>United States v. Menchaca-Castruita</i> , 587 F.3d 283 (5th Cir. 2009) .....	11
<i>United States v. Moreno</i> , 701 F.3d 64 (2d Cir. 2012) .....	12
<i>United States v. Ramirez</i> , 676 F.3d 755 (8th Cir. 2012) .....	8, 10

*United States v. Santa*,  
236 F.3d 662 (11th Cir. 2000) ..... 8, 10

*Vale v. Louisiana*,  
399 U.S. 30 (1970) ..... 6, 7, 9

## **Statutes**

18 U.S.C. § 3231 ..... 2

21 U.S.C. § 841(b)(1)(C) ..... 2

21 U.S.C. § 846 ..... 2

28 U.S.C. § 1254(1) ..... 1

## **Rules**

Supreme Court Rule 13.1 ..... 1

## **Constitutional Provisions**

U.S. Const. Amend. IV ..... 1

## **PETITION FOR WRIT OF CERTIORARI**

Hector Gastelum Valenzuela asks that a writ of certiorari issue to review the opinion and judgment entered by the United States Court of Appeals for the Fifth Circuit on May 22, 2023.

## **PARTIES TO THE PROCEEDING**

The caption of the case names all the parties to the proceedings in the court below.

## **OPINION BELOW**

The unpublished opinion of the court of appeals is appended to this petition.

## **JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES**

The opinion and judgment of the court of appeals were entered on May 22, 2023. This petition is filed within 90 days after entry of judgment. *See* Supreme Court Rule 13.1. The Court has jurisdiction to grant certiorari under 28 U.S.C. § 1254(1).

## **CONSTITUTIONAL PROVISION INVOLVED**

The Fourth Amendment to the U.S. Constitution provides, in pertinent part, that “The right of the people to be secure in their ... houses ... against unreasonable searches and seizures, shall not be violated.”

## STATEMENT OF THE CASE

Petitioner Hector Gastelum Valenzuela was found guilty after a stipulated bench trial of conspiring to possess with intent to distribute more than 50 grams of actual methamphetamine, in violation of 21 U.S.C. §§ 841(b)(1)(C) and 846.<sup>1</sup>

Before the bench trial, Valenzuela had moved to suppress the methamphetamine discovered in his motel room as the result of an illegal search. A hearing on the motion to suppress showed that officers commenced an investigation into Juvencio Camargo-Garcia for distributing methamphetamine. Using an informant, officers purchased methamphetamine from Camargo in room 118 of the Deluxe Inn in Odessa, Texas. Officers later saw Camargo leave from that motel room. The officers followed.

Away from the motel, officers stopped Camargo for a traffic violation. They noticed Camargo was wearing an empty firearm holster. They frisked him and found a key to a different room—room 219—in his pocket. Camargo stated that he had checked out of room 219 earlier that day. Camargo said he consented to a search

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<sup>1</sup> The district court exercised jurisdiction under 18 U.S.C. § 3231.

of the room provided motel management also consented to the search.

Officers traveled to the motel and met with management in the front lobby. The manager gave the officers a card with information about who had rented the room. It showed the room was rented to someone other than Camargo. When officers told the manager that the person renting the room had consented to a search if the manager also consented, the manager gave his consent.

Officers proceeded to room 219 with the key they had obtained from Camargo. They surrounded the room, guns drawn, peering into the curtains. When they tried the key, the door did not open; it was locked from the inside. At that point, there was no indication that the officers' presence had been noticed by someone inside the room. Officers began knocking on the door and demanding entry.

Enter Valenzuela. As officers knocked and announced themselves, Valenzuela exited from the bathroom, dressed only in a towel. When officers saw him, they pointed their firearms at him through the window and ordered him to open the door. Valenzuela

complied. Officers escorted Valenzuela out of the room and held him there while they swept the room.

During the sweep, officers noticed a substance they believed to be methamphetamine. They detained Valenzuela while they secured a warrant for room 219 as well as room 118. The officers did not attempt to perform a protective sweep of room 118—the room from which they knew Camargo had distributed methamphetamine—or otherwise approach it. They obtained the warrants, easily, by telephone.

Valenzuela moved to suppress the warrantless search of room 219. The government argued that the search was justified by consent or, in the alternative, exigent circumstances. The district court rejected the first argument finding that Camargo's statements that he was not the renter of the room, officers' observations of him in a different room, and the motel's information that the room was rented to a different occupant showed the officers did not have consent from someone with actual or apparent authority. Instead, the district court found that officers reasonably believed—based on their observation of drug paraphernalia in room 219—that evidence of narcotics would be destroyed if they

did not conduct a protective sweep. The search was justified, therefore, under the exigent circumstances doctrine.

After the district court held that the methamphetamine found in Valenzuela's room would not be suppressed, Valenzuela proceeded to a stipulated bench trial. He was convicted of possession with intent to distribute 50 grams or more of actual methamphetamine and sentenced to 188 months' imprisonment.

Valenzuela appealed, challenging the district court's denial of his motion to suppress. The Fifth Circuit affirmed. It found that the risk of the destruction of evidence and the danger of the possibly present firearm justified a search based on exigent circumstances.

## REASONS FOR GRANTING CERT

This Court has consistently held “that only in ‘a few specifically established and well-delineated’ situations may a warrantless search of a dwelling withstand constitutional scrutiny, even though the authorities have probable cause to conduct it.” *Vale v. Louisiana*, 399 U.S. 30, 34 (1970) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)). But, since *Vale*, this Court has not provided much guidance about when exigent circumstances create such a situation. *See, e.g., Kentucky v. King*, 563 U.S. 452, 471 (2011) (assuming for purposes of argument that an exigency existed). Here, the Fifth Circuit found officers’ belief that drugs were in a motel room authorized them to attempt to open the room—without a warrant or effective consent—and, upon finding it was locked from the inside, order the occupant out of his residence at gunpoint. This case exemplifies the need for further guidance.

The Fifth Circuit found exigent circumstances—sufficient to justify not obtaining a warrant—because officers had probable cause to believe that there was methamphetamine and a firearm inside Valenzuela’s motel room and had learned that the room

was occupied. Such a holding abrogates, almost entirely the requirement that officers obtain a warrant before searching a residence.

Further, the officers only learned that there was a person in the room when they attempted to open it. They had attempted to open the room with a key they obtained from someone who—the district court held—did not have actual or apparent authority to consent to a search of the room. It was their attempt and inability to open the door, followed by loudly knocking and announcing their presence, then ordering Valenzuela to open the door, that led to them learning there was someone in the room that could destroy evidence or wield a firearm. The Fifth Circuit applied the exigent circumstances exception, ignoring entirely Valenzuela’s argument that the officers had caused any exigency through their illegal conduct. Such a holding would permit officers to search a drug suspect’s residence without a warrant merely by knocking and announcing their presence—thereby creating a risk of destruction of evidence.

The Fifth Circuit’s holdings are irreconcilable with this Court’s reasoning in *Vale* and *King*, as well as the First Circuit’s holding in *DeMayo v. Nugent*, 517 F.3d 11, 16 (1st Cir. 2008), the Eight

Circuit’s holding in *United States v. Ramirez*, 676 F.3d 755 (8th Cir. 2012), the Ninth Circuit’s holding in *United States v. Iwai*, 930 F.3d 1141, 1156 (9th Cir. 2019), and the Eleventh Circuit’s holding in *United States v. Santa*, 236 F.3d 662 (11th Cir. 2000).

**The Fifth Circuit has broken with this Court’s precedent and that of other circuits by finding exigent circumstances merely because there was probable cause to believe a person was in a residence with drugs and a possibility those drugs would be destroyed due to the officers’ actions.**

The Fourth Amendment protects against unreasonable searches. A “warrant must generally be secured.” *Kentucky v. King*, 563 U.S. 452, 459 (2011). “[S]earches and seizures inside a home without a warrant are presumptively unreasonable.” *Id.* But, “the warrant requirement is subject to certain reasonable exceptions.” *Id.*

“One well-recognized exception applies when the exigencies of the situation make the needs of law enforcement so compelling that a warrantless search is objectively reasonable.” *Id.* at 460. The “need to prevent the imminent destruction of evidence has long been recognized as a sufficient justification for a warrantless search.” *Id.* The government, thus, must show that officers reason-

ably believed a warrantless search was required to prevent the destruction of evidence and the police must not “create the exigency by engaging or threatening to engage in conduct that violates the Fourth Amendment.” *Id.* at 462.

1. *The mere fact of a person being present in a residence with narcotics is not sufficient to create exigent circumstances that justify a warrantless search.*

The government had the burden to show that exigent circumstances gave officers a reasonable belief that the narcotics in Valenzuela’s motel room were about to be destroyed. *Id.* at 460; *see also Vale*, 399 U.S. at 34. In *Vale*, officers detained Vale after they had seen him sell narcotics to someone just outside of his house. *Id.* at 32. Officers searched the house and found a quantity of narcotics in the rear bedroom. *Id.* at 33. This Court rejected the lower court’s reliance on exigent circumstances to justify the search, in part, because “by their own account the arresting officers satisfied themselves that no one else was in the house when they first entered the premises.” *Id.* This case presents a slightly different question: whether exigent circumstances justify a warrantless search when officers have probable cause to believe a person is inside a residence with narcotics.

The appellate courts to address this question have found that mere probable cause plus occupancy is insufficient to overcome the requirement that officers must seek a warrant to search a home, the Fourth Amendment’s “first among equals.” *Florida v. Jardines*, 569 U.S. 1, 6 (2013). In *Ramirez*, the Eighth Circuit concluded that exigent circumstances did not justify the forced entry because “knowledge that drugs were in the room” with the suspects “does not suffice to conclude that destruction was imminent.” 676 F.3d at 763.<sup>2</sup> The Eleventh Circuit has consistently held that the “mere presence of contraband … does not give rise to exigent circumstances.” *Santa*, 236 F.3d at 669 (quoting *United States v. Lynch*, 934 F.2d 1226, 1232 (11th Cir. 1991)). So have the First and Ninth Circuits. *DeMayo*, 517 F.3d at 16 (“The contents of the package were not in immediate danger of disposal and no threat

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<sup>2</sup> Officers had learned that three men who were transporting heroin in their shoes had checked into a motel room. *Id.* at 758. The police knew the men were inside and heard only the sound of an individual approaching the door. *Id.* An officer tried unsuccessfully to open the door with a key card. *Id.* After the officer knocked and announced “housekeeping,” one of the occupants opened and tried to shut the door because he realized it was an officer. *Id.* The officers forced entry. *Id.*

had been posed to officers. Holding that exigent circumstances justified [the] intrusion into Demayo’s home would be tantamount to creating a blanket rule permitting warrantless entry into a home in the controlled deliver context . . .”); *Iwai*, 930 F.3d at 1156 (“[T]he mere fact that agents knew there was meth in Iwai’s apartment is not sufficient.”). Circuit courts have also tended to hold that the mere presence of firearms does not create exigent circumstances. *See, e.g., Harris v. O’Hare*, 770 F.3d 224, 236 (2d. Cir. 2014).

The Fifth Circuit has previously stated, in dicta, that “the presence of drugs alone does not give rise to exigent circumstances.” *United States v. Howard*, 106 F.3d 70, 74 (5th Cir. 1997). But, the Fifth Circuit only has found an absence of exigent circumstances when officers, knowing of the presence of drugs, had no reason to believe that anyone capable of destroying the drugs occupied the residence. *United States v. Menchaca-Castruita*, 587 F.3d 283, 289 (5th Cir. 2009) (officers “had not heard or seen anything to suggest that anyone was inside the residence”). Here, officers learned Valenzuela’s motel room was occupied when they tried the key and found it locked from the inside. The Fifth Circuit found the occupation of the motel room combined with probable

cause to believe drugs were inside sufficient. Unlike cases where a likely destruction finding was based on some sound or behavior, here there was nothing more than Valenzuela's presence in the motel room with the drugs. *Cf. Iwai*, 930 F.3d at 1145 (highly trained narcotics investigator found retreat from door and rustling noise indicative of destruction of evidence); *United States v. Moreno*, 701 F.3d 64, 74 (2d Cir. 2012) (suddenly and forcefully slamming just-opened door raised legitimate concern of imminent drug destruction).

2. *To the extent that any exigency existed, it was created by the officers' attempted illegal entry into the motel room and subsequent demand that Valenzuela open the door.*

An officer who “violate[s] or threaten[s] to violate the Fourth Amendment prior to the exigency” will not be protected by the exigency doctrine. *King*, 563 U.S. at 462.

The officers violated the Fourth Amendment in two ways, both of which were critical to learning of Valenzuela's presence in the motel room: (1) they attempted to open the room without valid consent or a warrant and (2) they knocked, demanding entry, at one in the morning. Here, the Fifth Circuit implicitly rejected this argument without addressing it.

As the government conceded below, Gov’t Br. at 17, the officers’ insertion of the key into Valenzuela’s door’s lock and attempt to open the door was a search. *See Jardines*, 569 U.S. at 5; *United States v. Jones*, 565 U.S. 400, 404-07 (2012). Also conceded by the government, Gov’t Br. at 15, it was by trying the key that officers learned someone might be inside the room, because it was locked from the inside.

By knocking and demanding entry at one in the morning, officers exceeded the implied license extended to private citizens and law enforcement to approach and knock at the door of a residence. “[A]s a general matter,” a visitor may not “come to the front door in the middle of the night without express invitation.” *Jardines*, 569 U.S. at 19 (Alito, J., dissenting); *see also United States v. Lundin*, 817 F.3d 1151, 1158-59 (9th Cir. 2016) (implied license to approach the front door of a home applies only during “normal waking hours”). Much less may a visitor knock, point a firearm at the occupant through the window, and demand entry, as the officers did here.

Because officers learned of Valenzuela’s presence only through their unlawful attempt to search his motel room, the exigent circumstances exception to the warrant requirement did not apply.

The exigency arose only through law enforcement's unlawful conduct.

## CONCLUSION

This Court should grant review in this case to prevent the warrant requirement from becoming a nullity in the important and reoccurring context of narcotics investigations where officers have probable cause to believe a residence is occupied and there are narcotics inside. A grant here will realign the Fifth Circuit's Fourth Amendment jurisprudence with this Court's precedent and resolve the split this decision creates between the Fifth Circuit and First, Second, Ninth, and Eleventh Circuits.

For these reasons, Petitioner asks that this Court grant a writ of certiorari and review the judgment of the court of appeals.

s/ Shane O'Neal  
*Counsel of Record for Petitioner*  
Dated: August 21, 2023