

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

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

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ANTONY JUNIOR HARRIS,  
a.k.a. Anthony Harris,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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**On Petition For Writ Of Certiorari  
To The United States Court Of Appeals  
For The Eleventh Circuit**

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**PETITION FOR WRIT OF CERTIORARI**

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## **QUESTIONS PRESENTED**

- I. Does an individual possess a reasonable expectation of privacy in a package shipped under an alias name, such that the individual has standing to assert a Fourth Amendment challenge to the government's search and seizure of the package?
- II. Is a package unreasonably seized in violation of the Fourth Amendment when it is removed from the conveyor belt of a private shipping facility by law enforcement and subjected to a K9 sniff, without reasonable suspicion that the package contains contraband?

**LIST OF RELATED PROCEEDINGS**

- *United States v. Harris*, No. 9:20-cr-80088-RS-1, United States District Court for the Southern District of Florida. Judgment entered March 18, 2022.
- *United States v. Harris*, No. 22-10887, Eleventh Circuit Court of Appeals. Judgment entered September 28, 2023.

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*United States v. Harris*, 2021 U.S. Dist. LEXIS 191712, 2021 WL 4554655 (S.D. Fla. October 5, 2021).

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## STATEMENT OF JURISDICTION

The Eleventh Circuit Court of Appeals (Case No. 22-10887) issued its Opinion on September 28, 2023. (App.1). Petitioner timely moved for a panel rehearing. An order denying the motion for panel rehearing was issued on October 31, 2023. (App.50). This petition is filed within 90 days of that order. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

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## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

**U.S. Const. amend. 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.

**21 U.S.C. § 841(a)(1)—Prohibited acts A**

## (a) Unlawful acts

Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally—

- (1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

**21 U.S.C. § 846—Attempt and conspiracy**

Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

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**STATEMENT OF THE CASE**

Petitioner was charged by Superseding Indictment in the United States District Court for the Southern District of Florida with conspiracy to possess with intent to distribute 400 grams or more of a mixture and substance containing a detectable amount of fentanyl, and 500 grams or more of a mixture and substance containing a detectable amount of methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and 846 (Count 1); and attempted possession with intent to distribute 400 grams or more of a mixture and substance containing a detectable amount fentanyl, and 500 grams or more

of a mixture and substance containing a detectable amount of methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and 846 (Count 9). (DE 41).<sup>1</sup>

Petitioner thereafter moved to “suppress and otherwise exclude from evidence at trial any and all items seized and observations made by law enforcement during the execution of a warrantless search of a package seized from a Federal Express facility, along with all derivative evidence gathered as a result of the items seized.” (DE 73). The government filed a response (DE 90) and Petitioner replied (DE 93).

An evidentiary hearing was held on the motion to suppress on August 17, 2021. (DE 111). Agent Rey Paniagua was the government’s first witness. Agent Paniagua testified he’s employed with the Palm Beach County Sheriff’s Office (PBSO) and assigned to the Drug Enforcement Agency. (DE 111 at 22). He’s a narcotics task force officer. (DE 111 at 22). On July 28, 2020, law enforcement came across a parcel that was found to contain drugs at a FedEx facility. (DE 111 at 23). Agent Paniagua was not present at the time of the seizure of the parcel. (DE 111 at 23). The parcel contained approximately 2 kg of crystal meth and 2 kg of fentanyl. (DE 111 at 23). Sergeant Combs was working with a PBSO interdiction unit and came across a suspicious package. He performed a K9 sniff, and the dog alerted on the package. (DE 111 at 24). The package

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<sup>1</sup> Documents not required to be appended by rule will be referenced by their respective docket entry number in *United States v. Antony Harris*, No. 9:20-cr-80088-RS-1 (S.D. Fla.).

was subsequently opened by FedEx personnel. (DE 111 at 24). A search warrant was prepared to conduct a controlled delivery of the package. (DE 111 at 24). The package was sent by a company named "Mailbox Plus" and the recipient was C. Bucklin at an address in Lantana, Florida. (DE 111 at 25). Investigation revealed that the address was leased to Alexis Bucklin. (DE 111 at 27-28). Law enforcement began surveillance at the residence at approximately 2:00 PM and the package was delivered a little after 3:00 PM. (DE 111 at 29). The package sat in the front doorway where it was delivered for over an hour. At approximately 5:00 PM, an unknown female came out and picked up the package and walked towards the area of the apartment. (DE 111 at 29-30). At the time the controlled delivery was performed, the package contained "sham" narcotics. (DE 111 at 30). Approximately 20 minutes after the female walked back to the apartment with the package, a black Mercedes Benz pulled up. (DE 111 at 31). Law enforcement conducted an inquiry of the tag which revealed the car belong to Petitioner. (DE 111 at 31). Agents watched Petitioner exit the vehicle, walk over to the apartment, stay for approximately 11 minutes, walk back to the vehicle with the package, and leave the area. (DE 111 at 32-33). Agents followed Petitioner to an apartment building in Boynton Beach, Florida. (DE 111 at 34). Agents were able to ascertain Petitioner's apartment number by showing his picture to the leasing office. (DE 111 at 34-35). The leasing office knew Petitioner as Jose Lopez. (DE 111 at 35). By the time agents responded to Petitioner's apartment, Petitioner had already fled on foot. (DE 111 at 35). A

search warrant was later executed on Petitioner's apartment and officers found the sham narcotics in the master bedroom on top of a nightstand, and other contraband. (DE 111 at 36). The tracking beacon that was placed inside the package was found on the first floor as it appeared it was thrown from the fifth floor window. (DE 111 at 36). After the package was seized by law enforcement, Mailbox Plus in Signal Hill, California, was contacted. (DE 111 at 39). Mailbox Plus revealed the identity of the individual who paid for the shipment of the package as Luis Sanchez. (DE 111 at 40-41). Further investigation revealed that Luis Sanchez sent approximately 18 packages through Mailbox Plus. (DE 111 at 41). The agents received all the records from Mailbox Plus regarding shipments of packages paid for by Luis Sanchez. (DE 111 at 42-43). Among the several packages that were sent by Luis Sanchez on prior occasions, three of the packages were addressed to the recipient "C. Bucklin." (DE 111 at 49-50).

On cross-examination, Agent Paniagua testified that he listened to recordings of calls that were made by Petitioner to FedEx regarding the location of the package as it was in transit. (DE 111 at 77). Agent Paniagua could say with 100% certainty that it was Petitioner's voice. (DE 111 at 78). Four calls were made that day from Petitioner to FedEx and he identified the tracking number on those calls. (DE 111 at 78). He gave the operator the name "Frederick Bucklin," the same pronunciation of the last name on the package. (DE 111 at 78). He wanted to know where the package is. (DE 111 at 79). He gave the same name every time.

(DE 111 at 79). FedEx told him they were going to investigate and create a ticket to see what's going on with the package. (DE 111 at 79).

The government's next witness was Cosimo Dimarco. Mr. Dimarco testified that he's a manager with FedEx at the West Palm Beach Airport location. (DE 111 at 87). He is familiar with FedEx policy regarding inspection of shipments. (DE 111 at 87). FedEx has a policy which allows them custodial control over the packages, including the right to open the package and search its contents. (DE 111 at 87). Illegal items and contraband are prohibited, according to the policy. (DE 111 at 88).

On July 28, 2020, Mr. Dimarco was working at the FedEx facility, as well as personnel from the PBSO. (DE 111 at 89-90). PBSO is present there 95% of the time. (DE 111 at 90). They have dogs with them and they're searching for contraband. (DE 111 at 90). They are certified "SIDA" which stands for security identification display area. It is a badge given by the airport that allows them to be on the airport property. (DE 111 at 90). Law enforcement with SIDA badges are not employed by FedEx and they do not work at FedEx's direction. (DE 111 at 91).

On July 28, 2020, Mr. Dimarco saw one of the K9's alert to a package. (DE 111 at 91). When the officer was bringing the package back to the conveyor belt, Mr. Dimarco stopped the officer, took the package from him, told him that the dog alerted on the package and asked him to please not put it back. (DE 111 at 92).

After that Mr. Dimarco opened the package. (DE 111 at 92). The officer did not tell him or encourage him to open the package; he did it on his own accord. (DE 111 at 92). Nobody from PBSO assisted him. (DE 111 at 92-93). Once the package was opened he discovered what appeared to be drugs. (DE 111 at 93). At that point law enforcement seized the package. (DE 111 at 93).

On cross examination, Mr. Dimarco testified his facility handles about 1,300 packages on any given day. (DE 111 at 104). What made him suspicious about this particular package was that he saw the dog alert on the package. (DE 111 at 104). Mr. Dimarco does not have K9 training, but he has built relationships with law enforcement working in the facility and they explained how things work. (DE 111 at 104). They told him what a K9 normally does. (DE 111 at 104-05). During his time working at FedEx he has witnessed K9's reactions of sitting and staying at a package when they alert. (DE 111 at 105). Sergeant Combs regularly works at the facility and has the same K9 with him 99% of the time. (DE 111 at 106-07). He never had any agreement with Sergeant Combs about what happens if a dog alerts on a package. (DE 111 at 107). There have been other times where he saw a K9 alert on the package and he would stop the package. (DE 111 at 07). Mr. Dimarco testified that when a FedEx aircraft comes in, he goes out onto the floor where the conveyor belt is to oversee the operations, and if a dog is working and he sees an alert, that's when he intercedes. (DE 111 at 111-12). Mr. Dimarco agreed that nothing about this particular package was out of the ordinary other

than the K9 alerting to it. (DE 111 at 112). After he opened the package, Sergeant Combs told him he was seizing it. (DE 111 at 113).

Sergeant Anthony Combs testified he's been working for the PBSO for over 20 years and has a K9 assigned to him named "Kaya." (DE 111 at 127-28). On July 28, 2020, he was working at the Palm Beach International Airport FedEx facility doing interdiction duties. (DE 111 at 128). The airport authorized him to be there because he was approved for a SIDA badge. (DE 111 at 128). He was not employed by FedEx to be there and neither did he work at their direction. (DE 111 at 129). The way Sergeant Combs works the line is that parcels are brought off the plane and placed on the conveyor belt for distribution. When he sees a suspicious parcel, he removes it from the line and puts it with other like parcels within the warehouse and releases Kaya. (DE 111 at 129). Kaya searches the parcels and if she comes to "final response" on a particular box, then that's a positive alert. (DE 111 at 129). A final response is where the dog has reached the most saturation and it could be a sit, a lay down, a lock position, or it could be an abnormal gesture if they have an abundance of odor; the dog will try to get as close as it can to the source. (DE 111 at 129).

Kaya had a final response to the package in this case. Sergeant Combs was working the conveyor belt when he saw a package of interest, so he removed it, put it among other parcels, released Kaya and she came to a final response on the parcel that he removed. (DE 111 at 130). As he was walking back towards the

conveyor belt he was approached by FedEx management. (DE 111 at 130). Mr. Dimarco stated that he saw the dog alert and took the box from Sergeant Combs and opened it. (DE 111 at 130). Sergeant Combs did not tell Mr. Dimarco to open the package or otherwise encourage him. (DE 111 at 131). Once Mr. Dimarco opened the box, he saw what appeared to be 4 kg of narcotics. (DE 111 at 131). At that point he called the interdiction unit supervisor and the package was seized. (DE 111 at 131-32).

On cross examination, Sergeant Combs testified he was not walking back to return the package to the beltway; he agreed he "may have seized it." (DE 111 at 133). He did not advise Mr. Dimarco that he was seizing the package prior to Mr. Dimarco opening the package. (DE 111 at 134). After Kaya alerted on the package, he was walking toward a desk and he would have made a decision whether to seize the package at that point, but he did not get that far because FedEx management approached. (DE 111 at 136). He agreed he had probable cause at that point to get a search warrant, if he so desired. (DE 111 at 136). The package belongs to FedEx until the point that it's either seized or delivered. (DE 111 at 137). Sergeant Combs testified there have been other times where his dog alerted on a package and then FedEx opened it up to look at the contents, but he could not recall a specific case number this occurred in off the top of his head. (DE 111 at 138). When he pulled the package off the conveyor belt something sparked his interest about the package. (DE 111 at 140). The "source state" from which the package

came from was suspicious because California is known to ship narcotics to the state of Florida. (DE 111 at 141). The sole reason why Sergeant Combs picked the package out as being suspicious is because it came from California. There was nothing in his report about the way the package was taped or the shape and size of the package being a factor in this case, only that it came from a source state. (DE 111 at 142-43). Sergeant Combs admitted that he pulls every box from California from the conveyor belt as often as he can. (DE 111 at 143). Other than the FedEx scenario, Sergeant Combs has never let a civilian take a package from his hands which he believed had narcotics in it. (DE 111 at 144-45). In this case he had no right to stop Mr. Di-marco from taking the package from him because he was in FedEx's facility. (DE 111 at 145).

Petitioner testified for the defense. On July 27, 2020, he traveled to Southern California with his girlfriend, Alexis Bucklin. (DE 111 at 154). Petitioner helped Alexis because she was behind on her rent and they traveled to Los Angeles together a few times. (DE 111 at 155). He would often stay at her apartment in Lantana, Florida. (DE 111 at 156). He stayed the night there at least 10 or 20 times. (DE 111 at 156-57). He had a key to the apartment and could come and go as he pleased. (DE 111 at 157). The keychain that was confiscated by law enforcement, which had the key to his Mercedes Benz and the key to his other apartment, also has the key to Alexis Bucklin's apartment and it is still there. (DE 111 at 158). On the day in question, he used his key to get inside Alexis Bucklin's

apartment to retrieve the package. (DE 111 at 158). When Petitioner arranged for the package to be sent from California, the sender texted him the tracking number to his phone and he told the sender to use the name “C. Bucklin” as the recipient. (DE 111 at 160). The following day, when the package was not delivered timely, Petitioner made several phone calls to FedEx in an attempt to track the package. (DE 111 at 161-62). Petitioner identified himself as “Frederick Bucklin” and gave the tracking number. (DE 111 at 163-64). He eventually saw that the FedEx website said the package was delivered at 10:29 AM, so he called Alexis to verify that the package was outside and traveled over to the apartment to pick up the package. (DE 111 at 165).

On cross-examination, Petitioner agreed that on July 28, 2020, he took possession of the FedEx parcel that had been mailed from California to the recipient C. Bucklin. (DE 111 at 169-70). Petitioner admitted he never used the name C. Bucklin other than for the purpose of mailing drug-filled packages. (DE 111 at 186). Petitioner admitted he used a lot of aliases in the past. (DE 111 at 92). Petitioner admitted that he made the calls to FedEx pretending to be Frederick Bucklin, but he’s not actually Frederick Bucklin. (DE 111 at 193-92). Petitioner agreed that he never used the name Frederick Bucklin for any other purpose than mailing drug-filled packages. (DE 111 at 196).

On August 25, 2021, the Magistrate Judge entered a report and recommendation on the motion to suppress. (App.9). The Magistrate rejected Petitioner’s

argument that he established a strong nexus or alter ego relationship with the fictitious name “C. Bucklin.” (App.38). The Magistrate found that Petitioner repeatedly asked Luis Sanchez to ship packages full of narcotics to various of Petitioner’s girlfriends, and, each time, used a girlfriend’s accurate last name with a random letter before that last name which was in no way tied to the girlfriend’s real first name. (App.39). The Magistrate further found that Petitioner failed to establish a sufficient nexus between himself and the name “Fredrick Bucklin” because although he did use the fictitious name Fredrick Bucklin when he called FedEx four times on July 28, 2020, there was no evidence that he used the name for any other purpose outside of shipping drugs. (App.39).

The Magistrate further determined Petitioner had no standing because he lacked a reasonable expectation of privacy in Alexis Bucklin’s Lantana apartment, the address to which the package was shipped. (App.40). The Magistrate found that other than Petitioner claiming he had a key to the apartment, there was no credible evidence supporting his claim that he resided there and simply having a key does not equate to having a reasonable expectation of privacy. (App.40). In any event, the Magistrate concluded the entire issue regarding whether Petitioner had a reasonable expectation of privacy in the apartment was irrelevant in part because the package was not seized from that apartment. (App.40-41).

As for the package itself, the Magistrate concluded Petitioner had no expectation of privacy because no

nexus was established between Petitioner and the fictitious name listed as the recipient, and Petitioner had no reasonable expectation of privacy in the delivery address listed on the package. (App.41). There is simply no indicia of Petitioner's ownership, possession, or control of the package which existed at the time of the search and seizure. (App.41). The Magistrate observed:

Defendant appears to have lived a life of lies and deception while engaging in narcotics trafficking and he has done everything he can to avoid having any ownership interest in or connection to the package at issue and other illicit packages which have been shipped to him. In effect, for purposes of his drug trafficking business, he has disassociated himself in all possible ways from the illicit package at issue so he could disclaim ownership if the package was intercepted by law enforcement; however, for purposes of the suppression hearing, he has endeavored to testify in a manner that ties himself to the package so that he can contrive standing and attempt to establish a reasonable expectation of privacy in the package to permit him to challenge the search and seizure of the package. Although clever, this effort must ultimately fail.

(App.42).

Notwithstanding the Magistrate's finding that Petitioner lacked standing to challenge the search and seizure of the package, the Magistrate addressed the issue of whether the search and seizure violated Petitioner's Fourth Amendment rights. (App.42). The

Magistrate found, *inter alia*, that Mr. Dimarco lawfully opened the package as a private person employed by FedEx; there was no law enforcement encouragement of Mr. Dimarco to get him to open the package on behalf of law enforcement; there was no implied or express agreement between Sergeant Combs and Mr. Dimarco and each operated in their own orbit and acted independently of one another; Mr. Dimarco, as an agent of FedEx, took it upon himself to take the package from Sergeant Combs and open the package after Mr. Dimarco independently observed the K9 show interest in the package; After opening the package on his own and observing the illegal contents, Mr. Dimarco then turned the package over to law enforcement (Sergeant Combs), and, at that point, law enforcement seized the package. (App.45). The Magistrate concluded:

In sum, the Court finds that Defendant did not have a reasonable expectation of privacy in the package and that he therefore lacks standing to contest the search and seizure. And, to the extent it is relevant, Defendant did not have a reasonable expectation of privacy in Ms. Bucklin's apartment. Further, even if the Court assumed that Defendant does possess standing to challenge the search and seizure of the package (which he does not), the Court nonetheless finds that the package was opened by a FedEx employee, Mr. Dimarco, and did not involve government or law enforcement action. It was only after Mr. Dimarco lawfully and properly opened the package as a non-governmental actor that the

narcotics were observed and seized by Sergeant Combs. There is simply no Fourth Amendment violation as claimed by Defendant.

(App.48).

Petitioner timely filed objections (DE 102) to the Magistrate's report and recommendation and the Government filed a response. (DE 104). On October 5, 2021, the District Judge entered an Order adopting the Magistrate's report and recommendation and denying the motion to suppress. (App.7).

Jury trial commenced on October 12, 2021. (DE 211). On October 14, 2021, the jury returned a verdict finding Petitioner guilty as charged for Counts 1 and 9. (DE 144). On March 18, 2022, Petitioner was sentenced to concurrent terms of 30 years of imprisonment followed by 10 years of supervised release. (DE 199).

Petitioner thereafter appealed the judgment to the Eleventh Circuit Court of Appeals, arguing the district court erred by denying the motion to suppress. The Eleventh Circuit issued its Opinion affirming the judgment of the district court on September 28, 2023. (App.1). The Eleventh Circuit concluded that Petitioner failed to demonstrate a legitimate expectation of privacy because he was neither the sender nor the listed addressee on the package. (App.4). The Eleventh Circuit agreed with the district court that Petitioner failed to establish "a strong nexus or alter ego relationship" between himself and the fictitious name listed on

the package. (App.5). The Eleventh Circuit further agreed with the district court's alternative ruling that even if a legitimate expectation of privacy was shown, Petitioner demonstrated no Fourth Amendment violation because the package was opened by a FedEx employee who was not acting as an instrument or agent of the government. (App.6).

Petitioner sought a panel rehearing, which was denied by the Eleventh Circuit by Order dated October 31, 2023. (App.50). This petition timely follows.

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## **REASONS FOR GRANTING THE PETITION**

- I. The Eleventh Circuit Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Court. To Petitioner's knowledge, this Court has never determined if and to what extent an individual maintains a reasonable expectation of privacy in a package shipped under an alias name. Courts throughout the United States are divided on the matter, resulting in differing outcomes for similarly situated individuals depending on which jurisdiction they're in. This Court's guidance is needed to resolve the disparity between jurisdictions on this important constitutional question.**

This Court should grant the petition to resolve an important question of law which has yet to be decided

by the Court—namely, does an individual possess a reasonable expectation of privacy in a package shipped under an alias name, such that the individual has standing to assert a Fourth Amendment challenge to the government’s search and seizure of the package?

It has long been recognized that “[l]etters 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, 114 (1984); *see also Ex parte Jackson*, 96 U.S. 727, 733 (1877) (holding that “sealed packages . . . are as fully guarded from examination and inspection . . . as if they were retained by the parties forwarding them in their own domiciles”).

Yet, what if an individual uses an alias or pseudonym when shipping the package? Does any reasonable expectation of privacy that the individual has in that package become neutralized or diminished just because they don’t use their actual legal name on the shipping label?

The answer to this question—and how they arrived at it—varies amongst the several Circuits to have considered it.

In *United States v. Stokes*, 829 F.3d 47 (1st Cir. 2016) the First Circuit acknowledged that “many of the federal courts of appeals have been reluctant to find that a defendant holds a reasonable expectation of privacy in mail where he is listed as neither the sender nor the recipient, *at least absent some showing by the defendant of a connection*, and here Stokes has shown

none.” *Id.* at 52 (emphasis added). Nevertheless, the court declined to determine whether a defendant *ever* could have a reasonable privacy interest in mail where he is not listed as addressee or addressor. *Id.* at 52-53.

In *United States v. Rose*, 3 F.4th 722 (4th Cir. 2021), the defendant was the intended recipient of a package containing cocaine. *Id.* at 725. However, the package listed the defendant’s deceased brother, Ronald West, as the recipient, along with West’s address. *Id.* The Fourth Circuit found that the defendant lacked standing under these circumstances—reasoning that a defendant receiving a package under another name must show there was “objective indicia” at the time of the search connecting him to the package. *Id.* at 729. The court noted that the name of the recipient, the address, or the phone number listed on the package provided any objective indicia that the defendant was the intended recipient. *Id.*

In *United States v. Richards*, 638 F.2d 765 (5th Cir. 1981), it was determined that a defendant who opened a post office box for “Mehling Arts & Crafts” had a reasonable expectation of privacy in a package addressed to Mehling. *Id.* at 770. The Fifth Circuit followed *Richards* in *United States v. Villarreal*, 963 F.2d 770 (5th Cir. 1992) finding that defendants, the intended recipients of a drum containing marijuana, had standing when the package was addressed to a fictitious name. *Id.* at 774-75. *But see United States v. Daniel*, 982 F.2d 146, 149 (5th Cir. 1993) (defendant had no standing

where the theory of defense was that the defendant and the alias were actually different persons).

In *United States v. James*, No. 19-2057, 2020 U.S. App. LEXIS 22766 (6th Cir. July 21, 2020) (unpublished), the defendant used a pseudonym, “J. Fevers,” to receive a package containing cocaine. *Id.* 2020 U.S. App. LEXIS 22766, at \*1-2. The Sixth Circuit stated that, even if the package arrived at the defendant’s actual address, “it would not, without more, establish that he had a legitimate expectation of privacy” when it was addressed to a different individual altogether. *Id.* 2020 U.S. App. LEXIS 22766, at \*9 (emphasis added). The court noted that it had never addressed the issue in a published opinion. *Id.* 2020 U.S. App. LEXIS 22766, at \*8.

In *United States v. Pitts*, 322 F.3d 449 (7th Cir. 2003), the defendant, using a fictitious name, “James Reed, Sr., and a false return address, mailed a package containing drugs. *Id.* at 451-52. The Seventh Circuit determined that the defendant had no legitimate expectation of privacy in the package because he had abandoned it. *Id.* at 456-57. In other words, he had no way of retrieving the package because he used *both* a fictitious name and a fictitious address. *Id.* However, the court took care to note that, absent abandonment, an individual can still have a legitimate expectation of privacy in a package sent under a fictitious name. *Id.* at 458-59. The court observed that senders and recipients of packages “might wish to remain completely anonymous for any number of reasons.” *Id.* at 458. “Some authors and journalists, such as the

incomparable Ann Landers, whose real name was Eppie Lederer, employ a pseudonym in their professional life. This is a common and unremarkable practice. In other situations, a celebrity may wish to avoid harassment or intrusion; a government official may have security concerns in using her real name or home address to receive mail; a business executive in merger talks might worry about potential investors misusing the information gained through the mail to manipulate the securities markets.” *Id.* Therefore, individuals with completely legitimate reasons for remaining anonymous should not lose their expectation of privacy in their packages because others use pseudonyms “for nefarious ends.” *Id.* The court further reasoned that a rule that only senders and recipients, who employ pseudonyms for lawful ends, maintain a reasonable expectation of privacy would be inconsistent with the Fourth Amendment. *Id.* at 458-59. Such a rule would allow the police to open any package sent to or addressed from a fictitious name without a warrant on the chance that the discovery of contraband provides post hoc justification for the search. *Id.* In other words, if the government ascertains that a parcel was sent or received by anyone unknown to a particular address, it would have free license to search those packages without a warrant.

In *United States v. Lewis*, 738 F.2d 916 (8th Cir. 1984), the defendant was convicted for implementing a fraudulent credit card scheme, pursuant to which he received mail addressed to “David Woods,” a fictitious name. The government seized and opened the mail,

and the defendant moved to suppress its contents. *Id.* The Eighth Circuit found that the defendant lacked standing because he had no legitimate expectation of privacy that society accepted as reasonable in the mail due to the fraudulent use of a fictitious name. *Id.* at 919 n.2.

The Ninth Circuit “has not decided whether an individual has a legitimate expectation of privacy with respect to a package that is not addressed to him.” *United States v. Lozano*, 623 F.3d 1055 (9th Cir. 2010). “In an unpublished, nonprecedential decision, however, we held that a defendant did not have a legitimate expectation of privacy in a package addressed to a co-resident of his home.” *Id.* at 1062 (citing *United States v. Perez*, 64 Fed. Appx. 635, 636 (9th Cir. 2003)).

In *United States v. Johnson*, 584 F.3d 995 (10th Cir. 2009), the Tenth Circuit offered reasoned dicta supporting a defendant’s reasonable expectation of privacy in an alias, stating “it is not necessarily illegal to use a pseudonym to receive mail unless fraud or a stolen identification is involved. . . . [B]ecause of the potential harm to innocent third parties, there is a fundamental difference between merely using an alias to receive a package and using another’s identity.” *Id.* at 1002.

The Eleventh Circuit’s approach to the matter has been somewhat inconsistent. In *United States v. Smith*, 39 F.3d 1143 (11th Cir. 1994), the court determined the defendant had no standing where defendant was neither the sender nor the addressee of the mail, and was

unable to otherwise establish an ownership interest in the mail. *Id.* at 1145. More recently, however, in *United States v. Garcia-Bercovich*, 582 F.3d 1234 (11th Cir. 2009), the Eleventh Circuit concluded that a defendant, the intended recipient of a package containing marijuana, had standing when the package was addressed to a fictitious company. *Id.* at 1238.

In the instant case, the Eleventh Circuit appears to have based its determination regarding standing on the fact that the Petitioner failed to establish “a strong nexus or alter ego relationship” between himself and the fictitious name “C. Bucklin.” (App.4). As a “for instance,” the court observed Petitioner “presented no evidence showing that he had fake identification using the name ‘C. Bucklin’ or that he had set up a corporation, bank account, utility, or bill using that name.” (App.5).

The foregoing illustrates that searches and seizures of packages which are shipped using an alias name or pseudonym routinely occur throughout the country. Yet, the circuit courts differ with respect to whether and to what extent an individual using an alias name has standing to bring a Fourth Amendment challenge, as well as the proper approach to arrive at that conclusion.

As this Court has never decided this issue which has important constitutional implications, and because of the disparity between jurisdictions throughout the country which may cause similarly situated individuals to be treated differently in relation to their

constitutional rights, this Court should grant the petition and accept jurisdiction over the cause.

**II. The Eleventh Circuit Court of Appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court and other circuit courts and/or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power. This Court has long determined that the government must have a reasonable suspicion of criminal activity before it may temporarily seize private property for further investigation.**

As an alternative ruling to the issue of standing in this case, the Eleventh Circuit agreed that even if a legitimate expectation of privacy was shown, Petitioner has demonstrated no Fourth Amendment violation because the package was opened by a FedEx employee who was not acting as an instrument or agent of the government. (App.6). However, in reaching this conclusion, the court wholly ignored Petitioner's argument that the actual violation occurred long before the package was ever opened by the FedEx employee, when law enforcement seized the package from the conveyer belt and subjected it to a K9 sniff without a reasonable suspicion that the package contained contraband.

Sergeant Anthony Combs was the sheriff's deputy who removed the package from the conveyor belt inside the FedEx facility. Sergeant Combs expressly testified that *the only reason* why he found the package suspicious is because it came from California, which he identified as "a source state." (DE 111 at 140-41). There was nothing in his report about the way the package was taped or the shape and size of the package being a factor in this case, only that it came from a source state. (DE 111 at 142-43). Sergeant Combs admitted that he pulls every box from California from the conveyor belt as often as he can. (DE 111 at 143).

This Court has previously held that no Fourth Amendment violation occurs by detaining mail based on facts that create reasonable suspicion until a search warrant can be obtained. *United States v. Van Leeuwen*, 397 U.S. 249 (1970). There, the defendant mailed two 12-pound packages at the post office in Mt. Vernon, Washington, a town some 60 miles from the Canadian border. One package was addressed to a post office box in Van Nuys, California, and the other to a post office box in Nashville, Tennessee. The defendant informed the postal clerk the packages contained coins. *Id.*

The postal clerk alerted a policeman who happened to be present that he was suspicious of the packages and the policeman at once noticed that the return address on the packages was a vacant housing area of a nearby junior college. Additionally, the license plates of the defendant's car were from British Columbia. Other evidence showed that the defendant had

brought the two packages in from Canada without declaring them. *Id.* at 251.

This Court observed that “[t]he nature and weight of the packages, the fictitious return address, and the British Columbia license plates of respondent who made the mailings in this border town certainly justified detention, without a warrant, while an investigation was made.” *Id.* at 252. Based upon this reasonable suspicion the packages were held by postal officials for twenty-nine hours until a search warrant could be obtained. The packages were opened, inspected, and found to contain illegal coins. This Court concluded that “detention for this limited time was, indeed, the prudent act rather than letting the packages enter the mails and then, in case the initial suspicions were confirmed, trying to locate them en route.” *Id.* at 253.

In *United States v. Jacobsen*, 466 U.S. 109 (1984), this Court reiterated that “[l]etters and other sealed packages are in the general class of effects in which the public at large has a legitimate expectation of privacy; warrantless searches of such effects are presumptively unreasonable. Even when government agents may lawfully seize such a package to prevent loss or destruction of *suspected contraband*, the Fourth Amendment requires that they obtain a warrant before examining the contents of such a package.” *Id.* at 114 (emphasis added).

Circuit courts have routinely approved the detaining of packages *upon reasonable suspicion* of criminal activity until probable cause for a search warrant

could be established by drug detection K9s. *See, e.g.*, *United States v. Aldaz*, 921 F.2d 227, 229 (9th Cir. 1990) (“Postal authorities may seize and detain packages if they have a reasonable and articulable suspicion of criminal activity.”); *United States v. Lux*, 905 F.2d 1379, 1382 (10th Cir. 1990) (“A temporary detention of mail for investigative purposes is not an unreasonable seizure when authorities have a reasonable suspicion of criminal activity.”); *United States v. LaFrance*, 879 F.2d 1, 4 (1st Cir. 1989) (The police seized a Federal Express package containing cocaine “on reasonable suspicion that it contained contraband,” and “despite the absence of probable cause at that point, the seizure was lawful.”); *United States v. Mayomi*, 873 F.2d 1049, 1053-54 (7th Cir. 1989) (When the facts create reasonable suspicion and the time for investigation is reasonable, warrantless detention of sealed envelopes sent to a private mailbox service until probable cause is established by drug detection K9s does not violate the Fourth Amendment.).

To determine whether reasonable suspicion exists, reviewing courts “must look at the ‘totality of the circumstances’ of each case to see whether the detaining officer has a ‘particularized and objective basis’ for suspecting legal wrongdoing.” *United States v. Arvizu*, 534 U.S. 266, 273 (2002). In evaluating the totality of the circumstances, the court may not consider each factor in isolation. *See id.* at 274 (rejecting evaluation of the listed factors in isolation from each other as a type of “divide-and-conquer analysis”).

Under the facts of this case, it is clear that Sergeant Combs lacked reasonable suspicion sufficient to permit a temporary seizure of the package from the conveyor belt to perform a K9 sniff. When Sergeant Combs was asked what about the package made it suspicious compared to all the other packages that were being processed, Sergeant Combs replied it was sent from California. (DE 111 at 141-42). Sergeant Combs admitted there was nothing else other than the fact that the package was sent from California that made it “suspicious.” (DE 111 at 142).

The fact that a package is sent from California, standing alone, does not give rise to a reasonable suspicion that the package contains contraband. *See, e.g., United States v. Vasquez*, 213 F.3d 425, 426 (8th Cir. 2000) (concluding that following factors did *not* support reasonable, articulable suspicion: *package was from source state*; package was shipped priority overnight mail; package had incorrect address, despite sender and recipient having same last name; package had handwritten air bill, suggesting person-to-person shipping; and package had no shipping account number); *United States v. Johnson*, 171 F.3d 601, 604-05 (8th Cir. 1999) (holding following factors to be *insufficient* to create reasonable suspicion that package contained narcotics when officer failed to explain why facts caused him to have suspicion: *source state*, package mailed person-to-person at same address, package mailed person-to-person at same address, handwritten label, and differing mailing zip code and return zip code); *see also United States v. Salzano*, 158 F.3d 1107

(10th Cir. 1998) (Trooper testified that his suspicions were aroused at the time of the stop because California is a source state for narcotics, yet government offered no evidence to support the assertion that vehicles coming from California are any more likely to contain drugs than those coming from other states; mere fact that one hails from a state known for drug trafficking is not sufficient to support reasonable suspicion.).

Because Sergeant Combs lacked reasonable suspicion when he seized the package from the conveyor belt to submit it to a K9 search, the seizure was unreasonable and violated the Fourth Amendment. Shockingly, the Eleventh Circuit failed to even address this issue, including the fact that Sergeant Combs admitted he has a standard practice of seizing every package he finds that is shipped from California and subjecting it to a K9 search *solely because it originates from California*. (DE 111 at 143).

This Court should grant the petition and accept jurisdiction over the cause because the Eleventh Circuit's decision conflicts with relevant decisions of this Court and other circuit courts requiring—at a minimum—reasonable suspicion before the government may seize a package, and/or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

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## CONCLUSION

For the reasons stated herein, Petitioner prays that the petition for writ of certiorari be **GRANTED**.

Respectfully submitted,

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