No. _____

In the
Supreme Court of the United States

Eduardo Alvarez, Jr.,

Petitioner,

v.

United States of America,

Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

Petition for a Writ of Certiorari

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Question Presented for Review

In *Utah v. Strieff*, 579 U.S. 232 (2016), this Court held that an officer's discovery of a valid, pre-existing arrest warrant for the defendant himself attenuated the connection between the officer's unlawful investigatory stop of the defendant and evidence seized from the defendant during a search incident to his arrest.

The question presented here is whether an officer's discovery of someone else's outstanding arrest warrant necessarily attenuates the illegality of a defendant's own detention under *Strieff*.

Related Proceedings

The United States District Court for the District of Nevada denied Petitioner Eduardo Alvarez, Jr.'s motion to suppress on September 8, 2022. App. 11a–30a. The Ninth Circuit affirmed in an unpublished decision on October 10, 2023 (App. 6a–9a), and denied rehearing after ordering a government response (App. 4a) on April 5, 2024 (App. 2a).

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Petition for Writ of Certiorari

Petitioner Eduardo Alvarez, Jr., respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

Opinions Below

The district court's order denying Alvarez's motion to suppress is unpublished but is available from the District of Nevada's electronic docket at *United States v. Alvarez*, No. 3:21-cr-37-MMD-CSD-1, ECF No. 55 (D. Nev. Sept. 8, 2022). App. 11a–30a.

The Ninth Circuit's memorandum affirming the district court is unpublished but is available electronically at *United States v. Alvarez*, No. 23-403, 2023 WL 6567602 (9th Cir. Oct. 10, 2023). App. 6a–9a.

The Ninth Circuit's order directing the government to respond to Alvarez's petition for rehearing and en banc review is unpublished but available on the Ninth Circuit's electronic docket at *United States v. Alvarez*, No. 23-403, ECF No. 33 (9th Cir. Feb. 28, 2024). App. 4a.

The Ninth Circuit's order denying rehearing and en banc review is unpublished but available on the Ninth Circuit's electronic docket at *United States v. Alvarez*, No. 23-403, ECF No. 35 (9th Cir. Apr. 5, 2024). App. 2a.

Jurisdiction

The Ninth Circuit entered final judgment denying rehearing on April 5, 2024. App. 2a. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1). This petition is timely. Sup. Ct. R. 13.1.

Relevant Constitutional Provision

Under the Fourth Amendment, "[t]he 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." U.S. Const. amend. IV.

Introduction

In *Utah v. Strieff*, 579 U.S. 232 (2016), this Court held that a police officer's discovery of a valid, pre-existing arrest warrant for the defendant himself attenuated the connection between unlawful investigatory stop and evidence seized from the defendant during a search incident to arrest. *Strieff* reached this result by applying the attenuation doctrine. *Id.* at 238–41. This doctrine renders evidence "admissible when the connection between unconstitutional police conduct and the evidence is remote or has been interrupted by some intervening circumstance, so that 'the interest protected by the constitutional guarantee that has been violated would not be served by suppression of the evidence obtained.'" *Id.* at 238 (quoting *Hudson* v. *Michigan*, 547 U.S. 586, 593 (2006)).

In *sua sponte* extending *Utah v. Strieff* here, the Ninth Circuit created a new attenuation rule. Per the Ninth Circuit, an officer's discovery of a warrant for one person in a group attenuates the illegal detention of everyone else in the group. This novel expansion of the attenuation rule apparently applies regardless of temporal proximity, purpose, or flagrancy of officer conduct—the three factors historically considered to assess attenuation. Thus, in the Ninth Circuit, courts can now ignore the unconstitutionality of a defendant's illegal detention if someone else in the vicinity has a valid, pre-existing arrest warrant.

The Ninth Circuit's unprecedented extension of *Strieff* conflicts with the approach taken by every other court of appeals to address the issue, all of which consider whether an intervening event concerned the defendant himself. And it undermines the individualized-to-the-defendant analysis at the core of the reasonable suspicion and probable cause inquiries. This important constitutional issue warrants the Court's review. *See* S. Ct. R. 10(a).

Statement of the Case

At around 3:30 a.m. on July 28, 2021, a Nevada sheriff's deputy stopped and seized Alvarez and his friend in the parking lot of a school's athletic track. App. 12a–13a. The deputy offered three bases for doing so: (1) it was late at night; (2) Alvarez's friend's car was parked in allegedly dim light; and (3) the car had its interior light on. App. 14a. These observations, the deputy thought, suggested criminal activity was afoot: "perhaps a vehicle burglary." *Id.* So the deputy stopped and seized Alvarez by turning on the patrol car's takedown lights, limiting his

friend's car's ability to leave the lot, and demanding to know what Alvarez and his friend were doing. *Id.*

About four minutes after detaining both Alvarez and his friend, the deputy asked his dispatch officer to run records checks on each. App. 15a–16a. Dispatch advised that Alvarez had no warrants of any sort. *See id.* Alvarez's friend, however, did have an outstanding misdemeanor warrant. *Id.*

Officers eventually searched the car, found a handgun under the driver seat, and arrested Alvarez. App. 19a–20a. Alvarez was later indicted in federal district court for unlawful possession of a firearm under 18 U.S.C. §§ 922(g)(1) and 924(a)(2). App. 20a.

Alvarez moved to suppress evidence of the gun, arguing, as relevant here, that his detention was unlawful at its inception because it was unsupported by reasonable suspicion. *Id.*

The district court denied Alvarez's motion, holding that being in an athletic-track parking lot at night gives rise to reasonable suspicion that criminal activity is afoot. App. 11a–30a. The district court did not address, let alone decide, any argument that the discovery of the warrant for Alvarez's friend somehow attenuated the illegality of Alvarez's detention under *Utah v. Strieff*, 579 U.S. 232 (2016). *See generally* App. 11a–30a. Rather, the district court only referred to *Strieff* once—in a separate prolongation analysis and only for the proposition that officers have "a sworn duty" to carry out arrest warrants. App. 28a (quoting *Strieff*, 579 U.S. at 240).

After entering a conditional guilty plea, Alvarez appealed the district court's resolution of his suppression motion, challenging, as relevant here, the district court's conclusion that the deputy had reasonable suspicion to detain him.

In its appellate briefing, the government, like the district court, never suggested that the officer's discovery of a warrant for Alvarez's friend attenuated the illegality of Alvarez's detention. *United States v. Alvarez*, No. 23-403, ECF No. 19 (9th Cir. June 20, 2023). The government's appellate briefing, like the district court's order, only referred to *Strieff* once—likewise for a separate prolongation argument and likewise only for the proposition that officers have "a sworn duty" to carry out arrest warrants. *Id.* at 33 (quoting App. 28a).

The Ninth Circuit nonetheless held that the deputy's discovery of a warrant for Alvarez's friend's attenuated any illegality of Alvarez's own detention. App. 6a–9a. The Ninth Circuit's analysis was one sentence long: "Assuming, without deciding, that [the deputy] did not have reasonable suspicion to justify an investigatory stop, the discovery of [the friend]'s warrant roughly six minutes into the encounter attenuated the illegality of the stop [as to Alvarez]." App. 7a. In so concluding, the Ninth Circuit apparently read *Strieff* to hold that the "discovery of a valid warrant" for a third party will, by itself, "attenuate[]" an "unlawful stop" as to nearby people—even if those people, like Alvarez, are confirmed to have no arrest warrants. *Id.* (providing that explanation in an explanatory parenthetical).

Alvarez petitioned for rehearing and en banc review, explaining that the Ninth Circuit's approach to *Strieff* deviated from that taken by every other circuit. *United States v. Alvarez*, No. 23-403, ECF No. 32 (9th Cir. Nov. 27, 2023).

The Ninth Circuit ordered the government to respond to Alvarez's petition for rehearing and en banc review. App. 4a. In its response, the government conceded that, unlike the Ninth Circuit's *sua sponte* attenuation holding, "no [other] circuit court" had applied *Strieff* to the discovery of someone else's warrant. *United States v. Alvarez*, No. 23-403, ECF No. 34 at 20 (9th Cir. Mar. 20, 2024) ("To be clear, no circuit court has addressed the application of *Strieff* to an arrest warrant for a non-defendant.").

The Ninth Circuit denied both rehearing and en banc review. App. 2a. Alvarez now seeks this Court's review of the Ninth Circuit's unprecedented expansion of *Strieff*.

Reasons for Granting the Petition

Strieff does not hold that the discovery of a valid arrest warrant as to one person in a group necessarily attenuates the illegality of detaining everyone else in the group. The Ninth Circuit's attenuation holding—which it reached without district court analysis and without the government advancing the issue on appeal—is thus at odds both with *Strieff* itself and with every other court of appeals to address the issue.

The Ninth Circuit's opinion otherwise is likely to undermine the core individualization requirement at the heart of the reasonable suspicion and probable cause analyses. If someone else's warrant can attenuate the illegal detention of anyone nearby, then a raft of precedents forbidding group-based detention now come with an asterisk when a member of the group has a valid arrest warrant. For

these reasons, the Ninth Circuit's opinion presents an issue of exceptional importance concerning the proper interpretation and application of *Strieff*.

I. No other circuit has applied *Strieff* to attenuate detention based on someone else's warrant.

Perhaps because the Ninth Circuit lacked district court reasoning or appellate briefing on the subject, it ultimately misapplied *Strieff* in a way that conflicts with every other court of appeals to address the issue. Unlike the Ninth Circuit here, other circuits do not base *Strieff*-attenuation entirely on the discovery of a valid arrest warrant. And when those circuits do hold that someone's warrant attenuates the illegality of a detention, that someone is always the defendant—not someone else. This split in authority warrants the Court's review.

Attenuation is a narrow exception to the exclusionary rule. *Strieff*, 579 U.S. at 238. It is designed to capture circumstances where "the connection between unconstitutional police conduct and the evidence" "is remote" or "has been interrupted by some intervening circumstance." *Id.* In these limited settings, the discovered evidence is effectively disconnected from the illegal officer conduct such that "the interest protected by the constitutional guarantee that has been violated would not be served by suppression of the evidence obtained." *Id.*

In analyzing whether the government has proven the attenuation exception applies, courts weigh three factors:

(1) the "temporal proximity" between the conduct and the discovery of the evidence;

(2) the "presence of intervening circumstances;" and

(3) "the purpose and flagrancy of the official misconduct."

Brown v. Illinois, 422 U.S. 590, 603–04 (1975). Only if the government proves that the balance of those factors favor attenuation will a court permit the evidence to be admitted. *Id.*

Strieff did not rewrite this three-prong attenuation analysis; it applied it. *Strieff* held the discovery of a valid arrest warrant as to the defendant him- or herself will often—but not always—be a prong-two "intervening circumstance[]." 579 U.S. at 240–41 (holding the discovery of an outstanding warrant as to the defendant himself was an "intervening circumstance[]" that "strongly favor[ed] the State"). But *Strieff* does not absolve the government of its obligation to prove the balance of all three prongs favor attenuation. *See id. Strieff* similarly does not create a categorical rule that the discovery of a warrant will always attenuate an illegal stop—and especially does not create one that allows attenuation-by-someone-else's-warrant, the approach the Ninth Circuit embraced here. *Cf. id.*

Against this backdrop, the Ninth Circuit made two missteps—both at odds with the approach taken by other circuits. First, the Ninth Circuit concluded that a warrant for someone in a group attenuates the illegality of another member of the group's detention. Second, the Ninth Circuit focused on an intervening warrant discovery to the exclusion of the other prongs of the attenuation analysis. Both missteps warrant this Court's review.

A. The Ninth Circuit improperly extended *Strieff* to hold that someone else's warrant will attenuate a defendant's illegal detention.

The Ninth Circuit's novel rule stands alone in applying *Strieff* to the discovery of someone else's—rather than the defendant's own—warrant. The Ninth Circuit did not explain why it concluded that the warrant for Alvarez's friend attenuated Alvarez's detention. *See* App. 7a. But its apparent reasoning was that discovering a warrant for one member of a group (here, the friend) will attenuate the illegal detention of others in the group (here, Alvarez). *See id.* The Ninth Circuit purported to rely on *Strieff* for that proposition. *See id.* (citing *Strieff*, 579 U.S. at 243). But such an attenuation-by-someone-else's-warrant reasoning both diverges from *Strieff* itself and conflicts with the application of *Strieff* in every other circuit. Certiorari is thus warranted to resolve this conflict.

Strieff involved the discovery of a warrant for the defendant himself—not a warrant for someone else. 579 U.S. at 240–41. This fact was central to the warrant discovery being an intervening circumstance: once the warrant was discovered for defendant Strieff, the officer could arrest and then search him. *Id.* ("[O]nce Officer Fackrell was authorized to arrest Strieff, it was undisputedly lawful to search Strieff as an incident of his arrest."). Doing so was a "ministerial act" "independently compelled by the pre-existing warrant" for Strieff himself. *Id.* at 240. The warrant functionally created a new, legal, reason to detain the defendant himself. *Id.*

But *Strieff*'s reasoning does not apply when officers discover someone else's warrant. *Cf. id.* at 240–41. That one person in a group has a warrant does not

permit officers to arrest and search everyone else in the group. *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979) (citation omitted) ("a person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person"). Rather, any "search or seizure of a person must be supported by probable cause particularized with respect to that person." *Id.* Detaining someone with no warrant—even when that person is physically near someone with a warrant—is thus not a "ministerial act" that is "independently compelled" by anything. *Strieff*, 579 U.S. at 240. Thus, the discovery of someone else's warrant does not "break the causal chain" as to the person with no warrant. *Id.* at 239.

Applying these time-honored principals, every court of appeals to find warrant-based attenuation under *Strieff* has only done so where the warrant was discovered for the defendant himself—not, as the Ninth Circuit did here, where it was discovered for someone else. *United States v. Lowry*, 935 F.3d 638, 644 (8th Cir. 2019) (discovery of arrest warrant as to defendant himself attenuated the defendant's own illegal detention); *United States v. Thomas*, 730 F. App'x 700, 703 & n.2 (10th Cir. Apr. 16, 2018) (same); *United States v. Patrick*, 842 F.3d 540, 542 (7th Cir. 2016) (same); *see United States v. Gaspar*, 782 F. App'x 635, 635 (9th Cir. Oct. 28, 2019) (per curiam) (Ninth Circuit itself applying attenuation doctrine to discovery of warrant for defendant himself); *see also United States v. Zuniga*, 860 F.3d 276, 283 n.4 (5th Cir. 2017) (similar, suggesting without holding that discovery of arrest warrants for defendant himself would likely attenuate the defendant's own detention).

Indeed, the government has expressly conceded that "no [other] circuit" has extended *Strieff* to the discovery of someone else's warrant. *United States v. Alvarez*, No. 23-403, ECF No. 34 at 20 (9th Cir. Mar. 20, 2024) ("To be clear, no circuit court has addressed the application of *Strieff* to an arrest warrant for a non-defendant.").

Other forms of attenuation follow the same mold; courts uniformly focus on whether the intervening event concerned the defendant, not whether the intervening event concerned the people around the defendant. *See e.g.*, *United States v. Mendez*, 885 F.3d 899, 912 (5th Cir. 2018) (discovery of ammunition in defendant's own house attenuated illegal arrest of the defendant); *United States v. Forjan*, 66 F.4th 739, 749 (8th Cir. 2023) (discovery that defendant himself had an invalid license and lacked proof of insurance attenuated illegal stop of defendant).

That no other circuit has extended *Strieff* to this setting makes sense. At its core, *Strieff* concerns "situations where police officers illegally stop someone who they later realize has a valid, pre-existing, and untainted arrest warrant"—not, as the Ninth Circuit held here, where officers discover that another person nearby has an outstanding warrant. *United States v. Hernandez*, 847 F.3d 1257, 1261–62 (10th Cir. 2017); *contra* App. 7a. That the Ninth Circuit embraced a contrary rule warrants this Court's review.

B. The Ninth Circuit improperly focused on someone else's warrant to the exclusion of the other prongs of the attenuation analysis.

The Ninth Circuit also created a split by basing its attenuation conclusion on the existence of an arrest warrant for Alvarez's friend without analysis of other attenuation factors. *See* App. 7a (failing to explain how the other prongs affected the

analysis).[1] But both *Strieff* itself and authorities from other circuits require the government to prove the balance of all three attenuation prongs favor admission. *See Strieff*, 579 U.S. at 239–41. This split likewise warrants review.

First and most obviously, focusing just on the friend's warrant diverges from *Strieff* itself. *Strieff* did not just address the warrant issue—it also examined how temporal proximity as well as purpose and flagrancy affected the balance of factors. 579 U.S. at 239 ("[T]emporal proximity . . . favors suppressing the evidence."), 241 ("[T]he third factor . . . strongly favors the State."). The Ninth Circuit's failure to examine these other factors therefore conflicts with *Strieff*.

The Ninth Circuit's focus on just the warrant discovery is similarly at odds with other circuits applying *Strieff*. The Second Circuit, for instance, has made clear that even the discovery of a warrant as to the defendant himself does not necessarily attenuate the illegality of the defendant's own detention. *United States v. Walker*, 965 F.3d 180, 188–90 (2d Cir. 2020). Rather, the Second Circuit holds that suppression post-*Strieff* is still possible if, for instance, the officers were

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[1] The Ninth Circuit's one-sentence discussion did refer to temporal proximity—noting the warrant came back "roughly six minutes into the encounter"—but seemed to draw the wrong conclusion from that fact. App. 7a. The Ninth Circuit apparently thought the closeness-in-time supported an attenuation finding. *See id.* But the rule is actually the opposite: close temporal proximity cuts against attenuation, not for it. *Strieff*, 579 U.S. at 239–40 (discovery of warrant "only minutes after the illegal stop" is a "short time interval" that "counsels in favor of suppression"); *United States v. Walker*, 965 F.3d 180, 188 (2d Cir. 2020) ("no question" that "the temporal-proximity factor cuts against finding attenuation" where "only approximately ten minutes elapsed").

"woefully short" of reasonable suspicion in the first place. *Id.* (granting suppression on those grounds).

The Fifth Circuit, too, holds that an "intervening development" (like the discovery of a warrant) is "not by itself sufficient to establish attenuation" under *Strieff*. *Mendez*, 885 F.3d at 910. As the Fifth Circuit has emphasized, it is "error" to "base [an] attenuation analysis" solely on the intervening-circumstance prong. *Id.* ("[I]t was error for the district court to base its attenuation analysis on a single factor."). Instead, the government must prove that the balance of all three prongs—including temporal proximity and purpose and flagrancy—support attenuation. *Id.*

As these courts' reasoning illustrates, the mere fact that the deputy found a warrant for Alvarez's friend would not have even necessarily attenuated the illegality of even the friend's own detention. *See Walker*, 965 F.3d at 188–90; *Mendez*, 885 F.3d at 910. That the Ninth Circuit "base[d] its attenuation analysis" entirely on Alvarez's friend's warrant without considering the other prongs thus misreads and misapplies *Strieff*'s attenuation analysis. *Mendez*, 885 F.3d at 910. At least two other circuits expressly reject that framing. *See id.* This split in authority likewise warrants examination by this Court.

II. The Ninth Circuit's unique attenuation-by-someone-else's-warrant approach presents an important question.

The Ninth Circuit's decision is likely to have significant consequences. Its attenuation-by-someone-else's-warrant approach creates an end run against long-established constitutional protections. The Ninth Circuit's attenuation holding effectively appends an "unless" clause to all the following rules:

- you cannot be detained simply for being in a public tavern at which a drug sale might happen[2]—unless someone else in the tavern turns out to have a warrant;
- you cannot be detained simply for being with others who "have the physical characteristics identified with Mexican ancestry"[3]—unless someone else in the group turns out to have a warrant;
- you cannot be detained simply for riding in a car with others engaged in criminal activity[4]—unless someone else in the car turns out to have a warrant;
- you cannot be detained simply for being part of the same performance troupe[5]—unless someone else in the troupe turns out to have a warrant; and

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[2] *Ybarra*, 444 U.S. at 91; *see also, e.g.*, *Williams v. Kaufman Cnty.*, 352 F.3d 994, 1003–07 (5th Cir. 2003) (an individual cannot be strip-searched simply for being at a nightclub for which officers had obtained a warrant; denying qualified immunity for strip-searching officer).

[3] *United States v. Brignoni-Ponce*, 422 U.S. 873, 886 (1975); *see also, e.g.*, *United States v. Manzo-Jurado*, 457 F.3d 928, 936–38 (9th Cir. 2006) (an individual cannot be detained simply for being part of a Spanish-speaking work crew at a football stadium).

[4] *United States v. Di Re*, 332 U.S. 581, 593–95 (1948); *see also, e.g.*, *Poolaw v. Marcantel*, 565 F.3d 721, 737–38 (10th Cir. 2009) (an individual cannot be detained for being related to a suspect and driving that relative's vehicle; denying qualified immunity for stopping officer).

[5] *Santopietro v. Howell*, 73 F.4th 1016, 1024–28 (9th Cir. 2023) (citing, among other authorities, *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 918–19 (1982) and *Healy v. James*, 408 U.S. 169, 186 (1972)).

- you cannot be detained simply for being at a workplace suspected of employing undocumented immigrants[6]—unless someone else in the workplace turns out to have a warrant.

The Ninth Circuit's attenuation-by-someone-else's-warrant holding thus undermines the longstanding principle that "a person's mere propinquity to others independently suspected of criminal activity" cannot justify a detention. *Ybarra*, 444 U.S. at 91.

Certiorari is therefore warranted to correct course.

III. This question presented is ripe for review.

The question presented is squarely before this Court and ripe for review. The Ninth Circuit assumed the deputy lacked "reasonable suspicion to justify an investigatory stop" of Alvarez but held the deputy's discovery of a warrant for Alvarez's friend "roughly six minutes into the encounter attenuated the illegality of the stop [as to Alvarez]." App. 7a. Thus, even though the Ninth Circuit raised the attenuation issue *sua sponte*, its reliance on a novel attenuation-by-someone-else's-warrant rule to excuse the illegality of Alvarez's detention are preserved and ripe for this Court's review.

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[6] *Perez Cruz v. Barr*, 926 F.3d 1128, 1138 (9th Cir. 2019); *see also, e.g.*, *Johnson v. Bay Area Rapid Transit Dist.*, 724 F.3d 1159, 1174–76 (9th Cir. 2013) (an individual cannot be detained simply for being part of a group of Black men wearing similar clothing on a train).

Conclusion

The Ninth Circuit's novel attenuation-by-someone-else's-warrant rule is unique among circuits applying *Strieff*. And it undermines all manner of traditional Fourth Amendment rules requiring analyses individualized to the person stopped. This Court should grant certiorari.

Dated this 2nd day of July, 2024.

Respectfully submitted,

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