

ORIGINAL

No. 22-5708

**FILED**

SEP 25 2024

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

ANDREW OCANAS GARZA

— PETITIONER

(Your Name)

vs.

UNITED STATES OF AMERICA

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FIFTH CIRCUIT COURT OF APPEALS

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ANDREW OCANAS GARZA

(Your Name)

FCC FORREST CITY-MEDIUM

P.O. BOX 3000

(Address)

FORREST CITY, AR 72336

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Whether the 5th Circuit En Banc Panel decision dated 06/26/2024, 2024, conflict with the Fifth Circuit Court of Appeals Panel decision in (1) *United States v. Julius Osmond Brathwaite*, 458 F.3d 376, 2006 U.S.A pp. LEXIS 191162 No. 05-10384 July 31, 2006 whereas the Fifth Circuit Affirmed In Part, Reversed In Part, and Remanded and HEED: As to defendant's statements regarding ownership of guns, the court held that the statements should have been suppressed because the agents violated defendant's Fifth Amendment rights by failing to give Miranda Warnings before questioning him. Circuit Judge Tolly was a Panel Member here in *Brathwaite*, 458 F.3d 376 (CA5 July 31, 2006) and also a Panel Member on Petitioner Garza's Direct Appeal, Case No. 22-11007 (CA5 Feb. 26, 2024).

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See *United States v. Chhay Lim*, 897 F.3d 673, 2018 U.S. App. LEXIS 121239 No. 17-30469 July 31, 2018 whereas the Fifth Circuit Affirmed in part, reversed in part, vacated and remanded, and HEED: [4] - A protective sweep could not support the validity of the search that located the rifle in the laundry room. The second weapon, however, was located in an area of the house where him was never present during this sequence of events. Though a gun is easily removable and disposable, we have "consistently held that the presence of a firearm alone does not create an exigency." Thus, that theory cannot support the admission of the rifle discovered in the laundry room. Here in *Lim* 897 F.3d 673, the Officers either were in the process of conducting a protective sweep or had not yet performed one when Lim was questioned. There was no concern for the general safety of the public, given that the public did not have access to Lim's residence, and no violent crime had immediately preceded the arrest. The Officers had formally arrested Lim outside his house, so he was fully within their control. (See *U.S. v. Garza* No. 22-11007 5th Circuit Feb. 26, 2024, they executed a warrant on Sept. 16, 2021. Officers arrived, saw Garza backing his truck into his driveway and immediately Sgt. Macias, ordered him to exit the vehicle after blocking him in his driveway and surrender peacefully which he (Garza) did. Garza's mention about an un-Mirandized "Bedroom Gun Statement" was conceded to by the Government. See type 4, Opinion Case No. 22-11007, Doc 109-1 02/26/2024.

2. whether the Fifth Circuit En Banc violates *Miranda*, 384 U.S. 436 (1966).

## LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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### RELATED CASES

1. *United States v Julius Osmond Brathwaite*, (CAS July 31, 2006)  
458 F.3d; 2006 U.S.App. (EX18 19162 No. 05-10384).
2. *United States v Chiray Lim*, (CAS July 31, 2018)  
897 F.3d 673; 2018 U.S.App. (EX18 21239 No. 17-30469)
3. *Miranda v Arizona*, 384 US 436, 16 LEd 2d 694, 86 S Ct 1602 [Nos. 759, 760, 761, and 584] June 13, 1966.
4. *Miranda - Public Safety Exception Manual*  
Nos. 8 [b] and [b] 9.

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### CASES

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Miranda v Arizona, 86 SCT 1602, 16 LED2D 694,  
384 US 436, June 13, 1966.

United States v Julius Osmond Brathwaite (CAS July 31, 2006),  
458 F.3d 376; 2006 U.S.App. LEXIS 19162 No. 05-10384.

United States v Chhay Lim, (CAS July 31, 2018) 899 F.3d 673;  
2018 U.S.App. LEXIS 51239 No. 17-30469.

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### STATUTES AND RULES

U.S. Const. Amend IV

U.S. Const. Amend V

U.S. Const. Amend VI

21 USC § 802(47)

21 USC § 841(b)(1)(D)

21 USC § 851

81 LED 2d 990 Miranda-Public Safety Exception [8]b and  
[9]b.

### OTHER

Self-Incrimination Clause

Due Process Clause

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☒ reported at No. 22-11007 5th Cir. Feb. 26, 2024; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

☐ For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

## JURISDICTION

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was February 26, 2024.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: June 26, 2024, and a copy of the order denying rehearing appears at Appendix B.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

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☐ For cases from state courts:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Amend IV, V, and VI

28 USC § 1254(c)

21 USC § 841(b)(1)(D)

Self Incrimination Clause

Due Process Clause

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## STATEMENT OF THE CASE

The 5<sup>th</sup> Circuit Court of Appeals and the 5<sup>th</sup> Circuit En Banc Panel has entered a decision in conflict with the decision of another 5<sup>th</sup> Circuit Court of Appeals Panel on the same important matter that also violates the U.S. Supreme Court's decision in *Miranda v Arizona*, 384 US 436 (June 13, 1966), and certiorari is necessary to resolve the circuit split in which the 5<sup>th</sup> Circuit Panel in *Brathwaite*, 458 F.3d 376 (2006) HOLD: - Miranda violated and statements regarding gun ownership should have been suppressed because the agents violated defendant's Fifth Amendment Rights by failing to give Miranda warnings before questioning him. The Court Reversed the district court's denial of defendant's motion to suppress statements

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regarding guns. Statement of gun ownership was inadmissible as Miranda violation. The Honorable Judge Jolly was on this Circuit Panel. He was also on the Circuit Panel affirming Petitioner Andrew Garza's Direct Appeal, Case No. 22-11007 February 26, 2024. His opinions contradicts the Public Safety Exception clause.

The Fifth Circuit Panel in *United States v Chhay Lim* 897 F.3d 673; July 31, 2018 HOLD: - [4] - A protective sweep could not support the validity of the search that located the rifle in the laundry room. "Miranda warnings must be administered prior to 'custodial interrogation'." *United States v Bengivena*, 845 F.2d 593, 595 (5<sup>th</sup> Cir. 1988) (en banc). A person is in "custody" for Miranda purposes when placed under formal arrest." *Id.* at 596. There is no dispute that Lim was placed under formal arrest before the questioning, nor is it disputed that he was not given Miranda warnings until after the initial questioning.

In Garza's direct appeal, 5<sup>th</sup> Cir. No. 22-11007 (2024) Page 3 Document: 109-1, I Factual And Background, A. Relevant Factual Background, it says - While prone and handcuffed, Garza informed officers that his wife Cassandra Ortiz was inside the house when asked by the officers. When first asked about guns, Garza said no. As Breach Team entered Garza's house, Garza was again asked if there was firearm in his home by a DEA agent on scene. This time, Garza said yes.

## REASONS FOR GRANTING THE PETITION

To resolve the Panel Circuit split in *Brathwaite* and *Lim*, whom *Miranda* was violated and the *En Bare* and Fifth Circuit ruling in other cases that *Miranda* not violated due to Public Safety Exception in light of *Miranda*, 384 US 436 (1966).

The Fifth Circuit Panels in *Lim* and *Brathwaite* contradicts the Fifth Circuit Panels that ruled in opposite to *Miranda*'s Public Safety Exception and violative of *Miranda* Warnings.

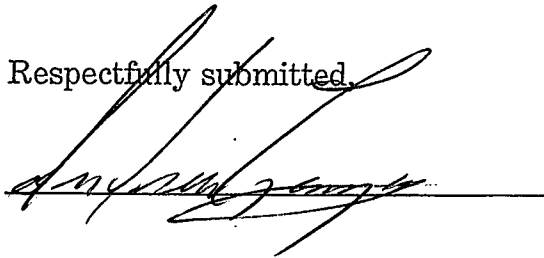
This is my Reason I feel my Petition should be Granted per Supreme Court Rule 10a.

Petitioner Andrew Garza respectfully request that this Court grant him a writ of certiorari for the Supreme Court Rule 10 violation of the lower court Fifth Circuit En banc Panel and Fifth Circuit Court of Appeals decision dated Feb. 26, 2024, No. 11007. En Banc decided on June 26, 2024

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 09/23/24