24-6245

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

BRAD A. SMITH — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Brad A. Smith, Reg. No. 19541-035, pro se
(Your Name)
United States Penitentiary Terre Haute
PO Box 33
(Address)

Terre Haute, IN 47808-0033
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Did authorities violate The Fourth, Fifth, andSixth Amendments to The United States Constitution when seeking to perform a "knock-and-talk" interrogation by first calling the phone number posted at the electronically-secured motorized gated entrance, but after being refused, climbing through that secured gated entrance, and after searching the curtilage, encountering Petitioner, telling him that he could not refuse their presence under color of federal immigration law, thereby demanding his identification, leading authorities directly into Petitioner's house, where Petitioner was interrogated and items were seized, although Petitioner refused to sighn a consent, and specifically invoked his right to counsel, then after leaving, summoning Petitioner to their office, and further interrogating him outside the presence of his attorney, previously requested.

LIST OF PARTIES

[X] 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:

TABLE OF CONTENTS

INDEX TO APPENDICES

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 _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court is unavailable to this incarcerated Petitioner, and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.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 April 17, 2024.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: August 19, 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).

[ ] 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

This case involves search and seizure protections and privacy concerns of The Fourth Amendment, as well as The Fifth Amendment's protection against self-incrimination, and the right to counsel guaranteed by both The Fifth and Sixth Amendments.

STATEMENT OF THE CASE

During the course of investigating, agents were lead to a pecan farm in Louisiana. This particular farm is encompassed by a fence, adorned with "NO TRESPASSING" signs. The driveway was barricaded by an automated security gate, requiring a code to be entered on a keypad for access up the driveway. [JA 135][1] The gate did not offer an opening for a person to walk through. [JA 301] A sign at the gated entrance listed a phone number, and read "for deliveries." [JA 208,256-57]

At that time, agents had been unable to satisfy probable cause for issuance of a search warrant. [JA 301] Sans warrant, agents called the phone number listed and asked if tours were available. Smith answered the call and told agents that no such tours or visits are conducted. [JA 300] Agents subsequently returned to the farm and called the number again. This time, they received no answer. [JA 302] Agents then squeezed through the secured, gated entry. [JA 143-44]

After penetrating the security gate, agents walked up the driveway and began searching and photographing the curtilage. [JA 306] When Smith asked why they were there, they lied, and told Smith they were there under federal statutory authority "to talk about immigrants working on the farm." [JA 146-47,308] Agents continued

1) "JA" refers to the Joint Appendix, Vol. I, filed during direct Appeal, and is Smith's only record references. See United States v. Smith, 919 F.3d 1 (1st Cir. 2019)

their ruse, deceptively demanding access to the inside of Smith's residence, as well as Smith's identification. [JA 152,310-11] Once inside, agents pulled their "bait and swith," intended all along, and interrogated Smith about pornography downloads, abandoning their immigration farce.

Once told the true purpose for the agents' visit, Smith refused to sign a consent form. [JA 314] Agents seized items anyway. Smith was asked to accompany agents to their "office" for further questioning. Smith declined. When asked, "Do you intend on hiring an attorney?" Smith answered unequivocally, "...yes." Agents then advised Smith "He can turn himself in" after Smith's attorney conferred with the prosecution team.

Less than an hour after leaving Smith's house, agents created yet another lie, to lure Smith into the police station, without his lawyer, ostensibly to retrieve his confiscated property. [JA 187,245,323] When Smith arrived at the police station to collect his things, he was immediately arrested and questioned once more outside the presence of counsel, after Smith had affirmatively invoked his right, and even signed a form indicating Smith did not wish to waive his rights. [Form presented as Exhibit at the Supression Hearing]

Smith was subsequently indicted for violating 18 U.S.C. §2251(a). See United States v. Smith, No. 16-cr-91-JL (D. NH 2016). Smith proceeded to trial, and was convicted. All the evidence obtained

by agents the day Smith was arrested was introduced as evidence during trial. Smith was sentenced to an aggregate fifty-year imprisonment. The First Circuit affirmed on appeal. See United States v. Smith, 919 F.3d 1 (1st Cir. 2019). This Court denied certiorari. See United States v. Smith, 205 L.Ed.2d 107 (2019).

Smith filed a Motion to Vacate, Set Aside, or Correct his Judgment and Sentence, pursuant to 28 U.S.C. §2255. See Smith v. United States, No. 20-cv-1034 (D. NH 2020). After a hearing, the district court denied Smith's Motion, and declined to issue a Certificate of Appealability. The First Circuit also declined to issue a Certificate of Appealability. See United States v. Smith, No 22-1682 (1st Cir. 2024). This Petition now follows.

REASONS FOR GRANTING THE PETITION

"Generally, all persons have an implied license to enter property and knock on a homeowner's door." Kentucky v. King, 563 U.S. 452, 469 (2011). This questions first, whether Smith "exhibited an actual (subjective) expectation of privacy, and, second, that the expectation be one that society is prepared to recognize as 'reasonable.'" Katz v. United States, 389 U.S. 347,361 (1967). A concept "generally managed without incident by the Nation's Girl Scouts and trick-or-treaters." Florida v. Jardines, 569 U.S. 1,8 (2012). Apparently, not so easily done for law enforcement. Nevertheless, no Girl Scout, trick-or-treater, or any other reasonable person would believe it is reasonable or acceptable to squeeze through a closed gated entrance, accessible only by entering a security code into a keypad. Indeed, a business protecting its crops from poachers and insulating against civil liability incurred by visitors, trespassers, and intruders alike. Not to mention the standard plethora of privacy concerns well established by This Court.

Yet even with all the extra security, nonetheless, the district court pronounced "the presence of directions for delivery persons to call in order to drive through the gate does not convey a message to the casual visitor that the homeowner has revoked the implied license to enter." United States v. Smith, 2017 DNH 223 (D. NH 2017)(emphasis in original). However, this ridiculous

statement was not well taken by the First Circuit Panel which properly and correctly "assume[d] arguendo that the locked gate revoked the implied license of entry." United States v. Smith, 919 F.3d 1,14 (1st Cir. 2019). "When a law enforcement officer physically intrudes on the curtilage to gather evidence, a search within the meaning of the Fourth Amendment has occurred." Collins v. Virginia, 584 U.S. 586,593 (2018). But agents did not stop with just busting through the gate. They then searched and took photos under a carport, "an area adjacent to the home and 'to which the activity of home life extends." Id., 594 (citations omitted). Therefore, it is clear that agents should not have trespassed onto the property, and everything that followed is fruit of the poisonous tree. See Wong Sun v. United States, 371 U.S. 471 (1963).

That should conclude the matter. However, the initial poisonous first encounter with Smith, is itself, further toxic. When Smith initially asked the purpose for their snooping, agents asserted federal statutory authority to search the farm for immigrant work violations, thereby "announc[ing] in effect that [Smith] ha[d] no right to resist the search" agents were fraudulantly insisting to perform. Schneckloth v. Bustamonte, 412 U.S. 218,234 (1973)(quoting Bumper v. North Carolina, 391 U.S. 543 (1968)). Such false assertion of authority certainly invalidates any subsequent actions or consents. "'Where, as here, the law enforcement officer without a warrant uses his official position of authority and falsely claims that he has legitimate police business to

conduct in order to gain the premises when, in fact, his real reason is to search inside for evidence of a crime...this deception under the circumstances is so unfair as to be coercive and...renders the consent invalid.'" Pagan v. Moreno, 919 F.3d 582,593 (1st Cir. 2019)(quoting People v. Daugherty, 161 Ill. App.3d 394, 514 N.E.2d 228,233 112 Ill. Dec. 762 (Ill. App. Ct. 1987)).

Unquestionably, these "deceptive tactics" clearly prevented Smith from making "an essentially free and unconstrained choice." Schneckloth, at 225. Such "deception vitiates consent transforming the entry into a trespass," Pagan-Gonzalez, at 594,n.10 (citing Laurent Sacharoff, Trespass and Deception, 2015 B.Y.U.L. Rev. 359,364 (2015)), because "where there is coercion there cannot be consent." Schneckloth, at 234 (quoting Bumper, supra); see also Pagan-Gonzalez, at 14 (quoting United States v. Bosse, 898 F.2d 113,115 (9th Cir. 1990)(per curiam)(invalidating consent where agents depicted themselves as state licensing officials)).

Nevertheless, here, not only has the district court declared government agents can literally crawl through a gated security entrance to conduct a "knock and talk" interrogation, but also that these same agents may falsely assert statutory authority (to which a subject cannot refuse) compelling their presence. Moreover, after tricking a suspect, and illegally gaining access to property, they may then proceed to perform an illegal search and seizure, as well as badger a subject whom has refused to sign a consent (which was their admitted objective from the start)

all absent Constitutionally required finding of probable cause and accompanying warrant.

None of this complies with This Court's decisions in these areas. Furthermore, in Pagan-Gonzalez, supra, the First Circuit meticulously reviewed the relevant Fourth Amendment law in all the Circuits. Following that extensive analysis, as well as This Court's decisions, Pagan-Gonzalez, supra, offered an extremely well reasoned opinion which defies each and every aspect of the agents' conduct in this case. These precedents make undeniable that agents violated nearly every protection afforded by the Fourth, Fifth, and Sixth Amendments to the United States Constitution, piling up violation after violation, each in sequence further exacerbating the dimensions of the agents' unconstitutionality.

And if all that is not bad enough, after illegally searching Smith's property and unconstitutionally seizing Smith's personal items, agents further attempted to initiate questioning. At that time, Smith unequivocally invoked his right to counsel for interrogation, thereby affirmatively communicating his "desire to deal with police only through counsel." Edwards v. Arizona, 451 U.S. 477,484-85 (1981). So in order to circumvent this request for counsel, yet another ruse was employed to perform further interrogation of Smith. Less than an hour after leaving Smith's residence, agents them summoned Smith to the police station under the guise of returning Smith's personal property which agents had illegally seized only moments before, during the unconstitutional

penetration and search of the farm. [JA 187,245,323] Upon arriving at the police station, Smith was immediately arrested, and subsequently signed a notice of rights, checking the box on the form which indicated that Smith chose not to waive his Miranda rights at that time, absent counsel. [Form presented as Exhibit at Suppression Hearing]. Once again, affirming his decision not to waive his right to counsel.

Furthermore, in light of the agent telling Smith previously that giving information to the agents "can't hurt" him, it is extremely unlikely "that he was aware of the [agents'] intention to use his statements to secure a conviction" against him. Moran v. Burbine, 475 U.S. 412,422 (1986). This Court has made clear that statements like this render any subsequent consent invalid. "[I]t is inconsistent with Miranda and its progeny for the authorities, at their instance, to reinterrogate an accused in custody if he has clearly asserted his right to counsel." Edwards, at 485. Indeed, "Edwards rested on the view that once 'an accused... ha[s] expressed his desire to deal with the police only through counsel' he should 'not [be] subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication:'" Patterson v. Illinois, 487 U.S. 285,291 (1988)(quoting Edwards, at 484-85); cf. also Michigan v. Mosley, 423 U.S. 96,104,n.10 (1975).

Although, as fully on display here, trained interrogators have improved skillfully, reducing the Constitution to a myth with

a litany of convenient technology failures, memory lapses, evidence destruction, and frankly, obvious-out-right-lies, all tailored to circumvent every protection our founding fathers demanded to secure individual rights of citizens. Rulings in this area are designed to prevent police from badgering a person into waiving his previously stated Miranda rights, as was done here. Michigan v. Harvey, 494 U.S. 344,350 (1990). To endorse the decisions made by the district court in this case is to continue to rubberstamp further Constitutional manipulation by authorities, thereby killing the Rule of Law.

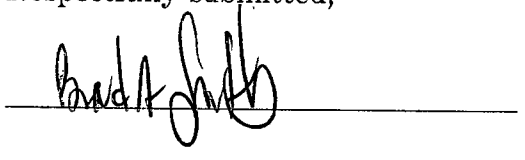
Obviously, the district court strained itself in order to justify the conduct of the agents in this case, which far exceeds any level of objective reasonableness. However, "The Constitution's historic protections for the sanctity of the home and its surroundings demand more respect from [courts] than was displayed here." Bovat v. Vermont, 592 U.S. __ (2020)(Statement of Gorsuch, J., Respecting Denial of Certiorari). Allowing such egregious conduct by authorities to stand uncorrected would be to spit in the face of stare decisis and The Constitution. Indeed, the actions taken by the agents in this case is the very reason that people are literally rioting in thew streets for justice reform. Smith has easily "demonstrate[d] that reasonable jurists would find the district court's assessment of the Constitutional claims debatable or wrong." Miller v. Estelle, 463 U.S. 880,893,n.4 (1983); see also Slack v. McDaniel, 529 U.S. 743,484 (2000). Simple debatability of these claims is a minimal hurdle, which Smith has easily cleared. Especially since the analysis is to "start with a presumption that [Smith]

did not waive his rights," United States v. Carpentino, 948 F.3d 10,26 (1st Cir. 2020). The district court's decision is clearly debatable by jurists of reason.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: Novermber 14, 2024