

No. 24-6412

**ORIGINAL**

IN THE  
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.

FILED

DEC 31 2024

OFFICE OF THE CLERK

JOEY LAMONT BRUNSON — PETITIONER  
(Your Name)

vs.

UNITED STATES of AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

JOEY LAMONT BRUNSON  
(Your Name)

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(Address)

FLORENCE, CO 81226  
(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED

1. WHETHER THE "GOOD FAITH EXCEPTION" TO THE FOURTH AMENDMENT EXCLUSIONARY RULE OF UNITED STATES VS. LEON, 468 U.S. 897 (1987), APPLIES TO TITLE III WIRETAP ORDERS THAT ARE "INSUFFICIENT ON IT'S FACE" UNDER 18 U.S.C. §2518(10)(a)(ii); TO RESOLVE A SPLIT AMONG THE CIRCUITS?
2. WHETHER A WIRETAP ORDER THAT FAILS TO IDENTIFY THE D.O.J. OFFICIAL AUTHORIZING THE APPLICATION IS A TECHNICAL DEFECT UNDER 18 U.S.C. §2518(4)(d) OR REQUIRES SUPPRESSION UNDER 18 U.S.C. §§2515 AND 2518 (10)(a)(ii), (c); IN LIGHT OF DAHDA VS. UNITED STATES, 584 U.S. 440 (2018), TO RESOLVE A SPLIT AMONG THE CIRCUITS?

(i)

## **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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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,  
 is unpublished.

The opinion of the United States district court appears at Appendix C 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 is unpublished.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 is unpublished.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 August 1, 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: NOVEMBER 4, 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

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STATEMENT OF THE CASE

Petitioner, Joey Lamont Brunson, a defendant in a criminal prosecution challenges the legality and denial of a Certificate of Appealability of wiretap orders authorizing wiretaps on the grounds that the orders did not on their face, sufficiently identify the persons authorizing the applications for the orders as required by law; 18 U.S.C. §2518(4)(d).

The District Court denied the motion to suppress evidence using the "good faith exception" of United States v. Leon, 468 U.S. 897 (1987), and the evidence was used to indict and convict Brunson at trial of numerous drug trafficking and related crimes.

The Wiretap Act (Title III) 18 U.S.C. §2510 et. seq. requires that the wiretap order authorizing the wiretap to "specify... the identity of the Agency authorized to intercept communications and of the Person authorizing the Application." *Id.* §2518(4)(d). Failing to include this information, the orders become "insufficient" and evidence obtained from the wiretap MUST be suppressed. See *Id.* §§2515 and 2518(10)(a)(ii).

Petitioner contended that because the Government in this case identified in each application for wiretap orders the Senior Justice Department Official by title and name who submitted the application, but in each proposed order that it submitted to the District Court it included ONLY the title and NOT the NAME OF THE OFFICIAL, the orders were statutorily insufficient and therefore all evidence derived from them should have been suppressed.

Petitioner's Direct Appeal was denied by Split Decision of the Fourth Circuit Court of Appeals, with the majority deciding that the "good faith exception" of Leon applied to deny suppression of wiretap orders that were facially insufficient and that it was a "technical defect" not addressed by Dahda v. United States, (2018). The Dissent of Senior Circuit Judge, Diana Motz, opined that Dahda controlled the suppression issue and required suppression for failing to provide information in §2518(4)(d) as required by statute under §2518(10)(a)(ii).

Certiorari was denied by this Court. Petitioner, then filed a 28 U.S.C. §2255(a) motion to vacate convictions and sentences among other things in claims. In particular, claim Fourteen of §2255 Petitioner averred that there was a Circuit Split on whether Leon's "good faith exception" applied to Title III wiretap orders, as well as a intracircuit split with conflicting opinions in the Fourth Circuit on Title III suppression remedies in §2515. The District Court denied the §2255 motion on September 26, 2023.

Petitioner sought application for a certificate of appealability to the Fourth Circuit Court of Appeals to resolve the intracircuit split between United States v. Crabtree, 565 F.3d 887 (4th cir. 2009) and United States v. Brunson, 968 F.3d 325 (4th Cir. 2020) on Title III suppression and use of the "clean hands doctrine" and the "exclusionary rule" application. C.O.A. was denied by same judge who ruled on Direct Appeal and En Banc Rehearing was also denied, August 1, 2024 and November 4, 2024 respectively.

Petitioner Now, Humbly and prayerfully asks this Court to resolve this long-standing circuit split and intracircuit splits within many circuits across the nation on whether the "good faith exception" applies to Title III wiretap orders and whether omission of statutorily required information is a technical defect?

## REASONS FOR GRANTING THE PETITION

Petitioner, Joey Lamont Brunson asks this Court grant Writ for Certiorari under Rule 10 (a),(c) of Supreme Court Rules to resolve circuit splits on Two Questions of exceptional national importance on the use of Title III wiretap orders and whether the plain text of suppression remedies must be followed or otherwise?

Petitioner's case for example, has in recent years been the center of Appellate and lower court debate since this Court's decision in Dahda v. United States, 584 U.S. 440 (2018), and even before Dahda, courts have grappled with question of Leon, being applied to bar suppression of wiretap orders that were in violation of statute requirements and were deemed "technical defects".

These questions have been left unresolved for years and have become of national importance due the wide split of the circuits; and considering that the vast amount of federal criminal prosecutions involve Title III wiretap authorization, in an ever evolving digital era, are used more and more to secure indictments and evidence for trials.

The need to have these federal questions answered goes far beyond due process rights of the Fifth Amendment but also expose a Constitutional controversy between Article I powers of Congress and Article III powers of the Judicial Branch; whose use of judicial decrees as in Leon's "good faith exception" to the Fourth Amendment has been used to supplant legislative acts of Congress. These questions have never been asked or clearly answered by this Court.

## QUESTION ONE

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WHETHER LEON'S "GOOD FAITH EXCEPTION" APPLIES TO TITLE III  
WIRETAP ORDERS?

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Title III of the Omnibus Crime Control and Safe Streets Act of 1968 ( The Wiretap Act) authorizes the Attorney General and various other designated officials in the Department of Justice, including any Deputy Assistant Attorney General in the criminal division or National Security Division, to apply for a wiretap order, and it requires that the application for the order include the identity of the officer authorizing the application, 18 U.S.C. §2518(1)(a) and also that the order authorizing the wiretap specify the identity of the agency authorized to intercept communications AND the person authorizing the applications, 18 U.S.C. §2518(4)(d). Failing to include this information, the order becomes insufficient and evidence obtained from the wiretap must be suppressed; §§2515 and 2518(10)(a).

The language and legislative history of Title III and the Omnibus crime Control and Safe Streets Act, §2510 et. seq.; strongly militate against engrafting the good faith exception into Title III warrants.

First, the language in Title III provides that it's exclusion is the exclusive remedy for an illegally obtained warrant, §2518(10)(c). In contrast to the law governing probable cause under the Fourth Amendment, the law governing electronic surveillance via wiretap is codified in a comprehensive statutory scheme providing explicit requirements, procedures and protections.

The statute is clear on it's face and does not provide for any exception; §2515. Courts must suppress illegally obtained wire communications.

The use of Leon's good faith exception to allow illegally obtained wiretap evidence violates Fifth Amendment due process rights in the grand jury and trial context, which §2515 does not permit a "clean hands" exception, even if the government is not involved and is an issue that has also divided the courts. See United States v. Crabtree, 585 F.3d 887 (4th Cir. 2009)<sup>1</sup>. So the more can be said when the government, as in Brunson's case admits it did not follow the statute.

Second, the Senate Report discussing Title III indicates no desire to press the scope of the suppression rule beyond present law. Finally, the U.S. Supreme Court's Leon decision is the product of judicial balancing of the social costs and benefits of the exclusionary rule.

The judicial branch created the exclusionary rule and thus modification falls to the province of the judiciary. The rule announced in Leon, was borne out of a lengthy discussion, where the U.S. Supreme Court explained that the Fourth Amendment contains no provision expressly precluding the use of evidence obtained in violation of it's commands, and that the exclusionary rule developed as a judicially created remedy.

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<sup>1</sup> District court erred by applying a clean hands exception to 18 U.S.C. §2515.

Thus, the rationale supporting the holding in Leon was firmly rooted in the idea that the exclusionary rule is a judicially created remedy used to ameliorate violations of the Fourth Amendment, and not Title III.

In contrast, under Title III, Congress has already balanced the social cost and benefits and has provided that suppression is the sole remedy for violations of §2510 et. seq., see §2515 and §2518 (10)(a), (c). The rationale behind judicial modification of the exclusionary rule is thus, absent with respect to Title III warrants. See 18 U.S.C. §2510's Congressional Findings.

Yet, as in Petitioner's case, the district court and the Fourth Circuit used Leon's social utility analysis and applied it to deny suppression of evidence in violation of §2518(4)(d); where the D.O.J. officials name of the person authorizing the application was omitted on all of it's orders. the Fourth Circuit had split decision after oral argument, with the 2-1 majority favoring Leon to deny statutory suppression remedy of Title III.

Several other circuits have remained split on the issue of Leon, as well as several district courts. Most have decided that Leon does not apply. See United States v. Scurry, 821 F.3d 1 (D.C. cir. 2016) ("good faith exception did not apply to facially insufficient wiretap order."); United States v. Lewis, 116 F.4th 1144 (10th cir. 2024)(same); United States v. Lomeli, 676 F.3d 734 (8th cir. 2012) ("the good faith exception under the fourth amendment did not apply."); United States v. Rice, 478 F.3d 704 (6th cir. 2007) ("the district court also found that the good faith exception did not apply, the federal court of appeals affirmed.")

; United States v. Romero, 2018 U.S. DIST LEXIS 218754 (November 2, 2018 E.D. of TX) ("while neither the Supreme Court nor the Fifth Circuit has addressed whether the good faith exception applies to suppression claims brought under §2518, this issue has been litigated with varying results.")

## QUESTION TWO

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### WHETHER OMISSION OF STATUTORY REQUIRED INFORMATION OF §2518(4)(d) OF OFFICIALS'S NAME IS A TECHNICAL DEFECT IN LIGHT OF DAHDA V. UNITED STATES, (2018)?

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The use of Leon debate extends further among the circuits and lower courts even before and after Dahda was decided in 2018. Several circuits have ruled that Leon applied to stop suppression where there was omissions of statutory required information, such as in Brunson and United States v. Friend, 992 F.3d 728 (8th cir. 2021), for violations of §2518(4)(d) as a "technical defect".

This confusion and misguidance left by the Court in Dahda has continued to leave the circuits and lower courts with no clear direction; as many court have stated time and time again. See United States v. Lewis, 116 F.4th 1144 (10th cir. 2024) Id. at n.18; ("because Dahda didn't define with precision the class of defects that require suppression under subparagraph (ii), other circuits since Dahda have grappled with that question...See Brunson".)

As other circuits before and after Dahda, have held that the omission of statutory required information in a Title III wiretap application or Order is not a reason for suppression, but a "technical defect" and that Leon's good faith exception applies; were ideologies rooted in the "core concerns" test then, but now use the language of Dahda's second holding that stated, " 18 U.S.C. §2518(10)(a)(ii) did not cover each and every error that appeared in an otherwise sufficient order"; and have ran afoul by manipulating the first portion of the holding. They have overlooked the complete statement of the entire holding by negating that it says also, " but it covered AT LEAST AN ORDER'S FAILURE TO INCLUDE INFORMATION THAT 18 U.S.C. § 2518(4)(a-e) SPECIFICALLY REQUIRES THE ORDER TO CONTAIN". See Dahda at Headnote (6), (2018).

In Brunson, the Fourth Circuit majority held the district court did not err in denying defendant's motion to suppress, because in context, " the orders contained sufficient information to identify the authorizing official's Name as required" by §2518(4)(d), but even if the absence in the name of the authorizing official in the order was a defect, it would not be the type of defect that rendered the orders "insufficient" under §2518(10)(a)(ii), and "even if the wiretap orders were thought to be facially insufficient, defendant's motion to suppress would have appropriately been denied under Leon's good faith doctrine".

In Brunson, the required information in §2518(4)(d) was NOT provided, so how could there exist an "otherwise sufficient order" or said to have contained "sufficient information"?

That error of the Fourth Circuit has continued to foster other erroneous interpretations of Dahda. See United States v. Friend, 992 F.3d 728 (8th cir. 2021) (holding "evidence obtained through the government's interception of defendant's wire and electronic communications did not have to be suppressed because they failed to specify the identity of the person who authorized the applications for orders; 18 U.S.C. §2518(10)(a)(ii) incorporated the Good Faith Exception to the exclusionary rule adopted by Leon decision, and even today in light of Brunson decision [it was a technical defect] ..objectively reasonable for investigators to rely on the court orders".) (emphasis mine).

This issue has been long carried over. See also, United States v. Gray, 521 F.3d 514, 526-28 (6th cir. 2008)(same); United States v. Callum, 410 F.3d 571 (9th cir. 2005) ("the omission of the name of the authorizing official from a wiretap order was technical defect, that did not require suppression"); United States v. Radcliff, 331 F.3d 1153 (10th cir. 2003) ("18 U.S.C. §2518(10)(a)(ii) does not require suppression if the facial insufficiency of the wiretap order is no more than a technical defect") [wiretap order did not name D.O.J. official in order.] and see United States v. Lasher, 2019 U.S. DIST. LEXIS 109365 (N.D. of GA, July 1, 2019) (same).

As noted, the circuits remain split and intra-circuit conflicts exist within those circuits on the issue of Leon's good faith doctrine and ruling that violations of statutory required information under §2518(4)(a-e) are technical defects. Even after Dahda, the

courts still grapple with these unanswered questions.

The Department of Justice and it's officers need to be reminded a mere seven years later or less after Dahda, that "Title III is an exacting statute obviously meant to be followed punctilioiusly.." See Callum, 410 F.3d at 579. Yet, it is routinely overlooked and intentionally forgotten on a national scale because of abstract rulings of the circuits or no defining clarification from the Supreme Court.

The Eastern District Court of Texas has said, " Nearly every circuit and district courts have addressed the sufficiency of wire tap orders, with analogous facts to this case and yet many of the same deficiencies or issues keep occurring requiring Court intervention and some instances, suppression is the result."

Such clear and unequivocal violations of Title III not only affect suppression of evidence but Petitioner's Fifth Amendment Due Process Rights in the grand jury and trial context under §2515's prohibition of illegally obtained evidence used in grand jury and trial proceedings.

Notwithstanding, the Constitutional controversy created by the Separation Of Powers Clause of the United States Constitution via Article I powers of Congress being usurped by Judicial decrees such as Leon, by Article III judges of the Judicial Branch; which the laws of Federalism do not allow or entail under Constitution.

### **CONCLUSION**

The Writ of Certiorari should be granted under Supreme Court Rule 10 (a),(c) to resolve a circuit split of important federal questions that conflict with relevant decisions of this Court and not been settled. The petition for a writ of certiorari should be granted.

Respectfully submitted,

Joey L. Brunson

Date: 12-30-2024