

NO: \_\_\_\_\_

---

IN THE  
SUPREME COURT OF THE UNITED STATES

---

ALAN E. SANCHEZ,

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

---

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

---

PETITION FOR WRIT OF CERTIORARI

---

Respectfully submitted,

s/ Razmi M. Tahirkheli

Razmi M. Tahirkheli  
Tahirkheli & Premer-Chavez  
Law Office, LLC  
650 Minnesota Avenue, 2<sup>nd</sup> Floor  
Kansas City, Kansas 66101  
(913) 371-0554 – Office  
(913) 371-0559 – Fax  
Email: tpclawyers@gmail.com  
CJA Counsel of Record for Petitioner

## **QUESTION PRESENTED**

Whether a district court and appellate court can declare deliberate false testimony of law enforcement, a mistake, irrelevant, and ignore it, when analyzing a defendant's Fourth Amendment rights.

## **TABLE OF CONTENTS**

	Page No.
QUESTION PRESENTED .....	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES .....	iv-
PETITION FOR WRIT OF CERTIORARI .....	1
DECISION BELOW .....	1
JURISDICTION.....	1
FEDERAL RULE INVOLVED.....	1
STATEMENT OF THE CASE .....	2 - 5
I.    The timing of the change in testimony shows a deliberately planned falsehood, not a mistake. .....	2
II.   Ignoring purposeful misconduct of law enforcement nullifies the exclusionary rule created to protect the citizens' Fourth Amendment rights. ....	3-5
III.  The Eighth Circuit's ruling that false testimony by law enforcement was irrelevant, obviates the Fourth Amendment protections. ....	5
REASONS FOR GRANTING THE WRIT .....	5 - 9
CONCLUSION .....	9

## **TABLE OF AUTHORITIES**

<b>Cases</b>	<b>Page No.</b>
<i>Carpenter v. United States</i> , 585 U.S. 296, 303–04, 138 S. Ct. 2206, 2213, 201 L. Ed. 2d 507 (2018).....	7
<i>Franks v. Delaware</i> , 438 U.S. 154, 168–69, 98 S. Ct. 2674, 2682–83, 57 L. Ed. 2d 667 (1978).....	7
<i>Jones v. Commonwealth of Kentucky</i> , 97 F.2d 335, 338 (6TH CIR. 1938).....	6
<i>Manuel v. City of Joliet, Ill.</i> , 580 U.S. 357, 364, 137 S. Ct. 911, 917, 197 L. ED. 2d 312 (2017).....	7
<i>Manuel v. City of Joliet, Ill.</i> , 580 U.S. 357, 366–67, 137 S. Ct. 911, 918–19, 197 L. ED. 2D 312 (2017).....	8
<i>Napue v. People of State of Ill.</i> , 360 U.S. 264, 271, 79 S. Ct. 1173, 1178, 3 L. Ed. 2d 1217 (1959).....	6
<i>Napue v. People of State of Ill.</i> , 360 U.S. 264, 269–70, 79 S. Ct. 1173, 1177, 3 L. Ed. 2d 1217 (1959).....	8
<i>Niemotko v. State of Md.</i> , 340 U.S. 268, 271, 71 S. Ct. 325, 327, 95 L. Ed. 267 (1951).....	6
<i>United States v. Rodgers</i> , 466 U.S. 475, 479, 104 S. Ct. 1942, 1946, 80 L. Ed. 2d 492 (1984).....	8
<b>Statutes</b>	<b>Page No.</b>
28 U.S.C. § 1254.....	1

## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner Alan E. Sanchez respectfully requests the issuance of a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

### **DECISION BELOW**

The unpublished decision of the United States Court of Appeals for the Eighth Circuit was issued on November 8, 2024, and is attached hereto as Petitioner's Appendix 1a.

### **JURISDICTION**

The Eighth Circuit entered judgment on November 8, 2024. This Court's jurisdiction is invoked under 28 U.S.C. § 1254.

### **FEDERAL RULE INVOLVED**

Fourth Amendment of the United States Constitution:

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.

## **STATEMENT OF THE CASE**

Mr. Sanchez filed a Motion to Suppress for violations of his Fourth Amendment rights, claiming that law enforcement had no reasonable suspicion to stop and question him, or no probable cause to search him, and the consent to search coerced from him was not voluntary. (Doc. 34).

At a Motion to Suppress hearing, Detective Winders of the Kansas City Missouri Police Department testified that he stopped Mr. Sanchez because he saw Mr. Sanchez come out of a bus carrying a large suitcase, and that aroused Detective Winders suspicion. Detective Winders believed that if a big suitcase is not checked under the bus, it means that there is something important in that piece of luggage, and the person carrying it does not want to be far away from it. This could mean that the person was either carrying narcotics, or other illegal substances. (TR., Suppression, p. 13-14).

The prosecutor showed a video exhibit from the bus stop to the Detective during the Motion to Suppress hearing, and the Detective told the court he could see Mr. Sanchez carrying the large suitcase out of the bus in the video exhibit. (TR., Suppression, p. 26, 28, 53, 69-70).

At the jury trial, Detective Winders changed his testimony, and testified that after looking at the video, he could see that Mr. Sanchez did not carry the large suitcase out of the bus, and instead the suitcase was stored underneath the bus. (TR., Vol.1, p. 25).

Based on Detective Winder's testimony, the magistrate court found that the Detective's encounter with Mr. Sanchez was consensual, and even if the encounter was not consensual, it was a proper investigatory seizure, and even if the seizure was not proper, the consent to search was voluntary. (Doc. 49, p. 14-19).

**I. The timing of the change in testimony shows a deliberately planned falsehood, not a mistake.**

Before the jury trial, the law enforcement's narrative was that Mr. Sanchez came out of the bus with a big suitcase, which aroused Detective Winders suspicion, because the suitcase was big enough that it should have been stored under the bus and not in the bus. That suspicion then led Detective Winders to approach, question and search Mr. Sanchez. (Doc 1. p. 2) (TR., Grand Jury Testimony, p. 7) (TR., Suppression, p. 26, 28, 53, 69-70).

This narrative was told again and again before the jury trial. It was sworn to in a written affidavit by the law enforcement to the court, told to the grand jury in a sworn testimony, and testified to at the motion to suppress hearing. Until the jury trial. At the jury trial the narrative was changed to explain that the suitcase was actually under the bus, consistent with the video exhibit. (Doc 1. p. 2) (TR., Grand Jury Testimony, p. 7) (TR., Suppression, p. 26, 28, 53, 69-70) (TR., Vol.1, p. 25).

At the Motion to Suppress hearing, a year after Mr. Sanchez was arrested, Detective Winders testified that he had reviewed the videos secured by the law enforcement when Mr. Sanchez was arrested. The Detective testified that he had reviewed the videos before the suppression hearing. Detective Winders testified that

the videos were a correct representation of the events. Parts of the videos, selected by the prosecution, were entered into evidence during the suppression hearing. And when the videos were shown to the Detective in court, he testified that the videos showed Mr. Sanchez climbing out of the bus with a large suitcase. (TR., Suppression, p. 26-28).

At the trial, however, the Detective changed his testimony and claimed that after reviewing the video footage, it was discovered that Mr. Sanchez did not have the bag on the bus with him after all, and instead it was underneath the bus. (TR., Vol.1, p. 25).

At the jury trial, the testimony had to be changed for the sake of the Detective's credibility. If the Detective told the jury what he had told the court, and the jury could see from the video exhibit that it was not true, then the Detective's credibility could be questioned. The Detective's testimony had to be changed to conform with the evidence. The timing in the change of testimony shows a deliberately planned falsehood, not a mistake

## **II. Ignoring purposeful misconduct of law enforcement nullifies the exclusionary rule created to protect the citizens' Fourth Amendment rights.**

The district court during the jury trial found that Detective's prior testimony to be just a mistake, after it became clear that the Detective's prior testimony in the Motion to Suppress did not match the video evidence. (TR., Vol.2, p. 11-113).

This perfectly timed and last-minute change in testimony during the jury trial shows a purposeful deception rather than a mistake. Because at the motion to suppress stage, the government was trying to justify the law enforcement's intrusion on the Defendant's Fourth Amendment rights as proscribed by *Terry v. Ohio*<sup>1</sup>. Therefore, the Detective's testimony was designed to justify the stop. If this was truly a mistake, it could have been corrected long before the jury trial, and specifically, when the videos were being published to the court, and while the Detective was testifying about the videos, during the Motion to Suppress hearing.

But the change in testimony only came when the consistency between the testimony and video evidence was important in front of the jury, but the Fourth Amendment analysis was no longer important.

The district court's ruling during the jury trial that the change in testimony was just a mistake completely ignores the bad faith conduct of the law enforcement, which is an inherent part of the Fourth Amendment analysis, and the purpose of the

---

<sup>1</sup> To justify a particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. The scheme of the Fourth Amendment becomes meaningful only when it is assured that at some point the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances. And in making that assessment it is imperative that the facts be judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate? Anything less would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches, a result this Court has consistently refused to sanction. And simple "good faith on the part of the arresting officer is not enough." If subjective good faith alone were the test, the protections of the Fourth Amendment would evaporate, and the people would be 'secure in their persons, houses, papers and effects,' only in the discretion of the police. *Terry v. Ohio*, 392 U.S. 1, 21–22, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889 (1968) (internal citations omitted).

exclusionary rule, which was created specifically to punish law enforcement misconduct.

**III. The Eighth Circuit's ruling that false testimony by law enforcement was irrelevant, also obviates the Fourth Amendment protections.**

The Eighth Circuit Court of Appeals found that the discrepancy between the Detective's testimony does not matter on appeal because the initial encounter between Detective Winders and Mr. Sanchez was not a seizure, and Detective Winders's reason for approaching Mr. Sanchez is irrelevant because the search was found to be consensual by the district court. (Pet. App. 1a. p. 3).

Even though, at the Motion to Suppress hearing, the testimony about receiving consent to search from Mr. Sanchez came from the same Detective who falsely testified about the large bag being on the bus. (TR., Suppression, p. 31). In other words, the Detective's untrue testimony became irrelevant and divorced from any other testimony that he may have given. In other words, the clock striking thirteen no longer matters, and it does not put everything else in doubt.

Mr. Sanchez' punishment was enhanced because the district court *believed* that Mr. Sanchez' testimony at the trial was misleading. (TR., Sentencing, p. 5-6). The Eight Circuit affirmed that sentence. (Pet. App. 1a. p. 5).

**REASONS FOR GRANTING THE WRIT**

**False testimony by the law enforcement violates citizens' Fourth Amendment Rights, which cannot be ignored.**

A system of justice cannot survive if it allows its enforcers to lie with impunity, while punishing its citizens for lying to the enforcers.

The U.S. Supreme Court has stated, “The duty of this Court to make its own independent examination of the record when federal constitutional deprivations are alleged is clear, resting, as it does, on our solemn responsibility for maintaining the Constitution inviolate.” *Napue v. People of State of Ill.*, 360 U.S. 264, 271, 79 S. Ct. 1173, 1178, 3 L. Ed. 2d 1217 (1959).

When there is a claim of denial of rights under the Federal Constitution, the Supreme Court is not bound by the conclusions of lower courts but will re-examine the evidentiary basis on which those conclusions are founded. *Niemotko v. State of Md.*, 340 U.S. 268, 271, 71 S. Ct. 325, 327, 95 L. Ed. 267 (1951).

It is an old established principle that the constitutional protections cannot be satisfied by mere pretense of following the constitution, if the government has contrived a conviction through the pretense of a trial that deprives the defendant of liberty through a deliberate deception of court and jury, by the presentation of testimony known to be false. To procure a conviction and imprisonment through false testimony is as inconsistent with the rudimentary demands of justice as is obtaining a conviction through intimidation. “[T]he fundamental conceptions of justice which lie at the base of our civil and political institutions must with equal abhorrence condemn as a travesty a conviction upon perjured testimony if later, but fortunately not too late, its falseness is discovered, and that the state in the one case as in the other is required to afford a corrective judicial process to remedy the alleged wrong,

if constitutional rights are not to be impaired.” *Jones v. Commonwealth of Kentucky*, 97 F.2d 335, 338 (6th Cir. 1938).

The basic purpose of the Fourth Amendment protection is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials. It has been established that the Fourth Amendment protects people, not places. When an individual seeks to preserve something as private, and the expectation of privacy is reasonable, an official intrusion into that private sphere generally qualifies as a search and requires a warrant supported by probable cause. *Carpenter v. United States*, 585 U.S. 296, 303–04, 138 S. Ct. 2206, 2213, 201 L. Ed. 2d 507 (2018).

The requirement that a warrant is only issued upon probable cause, supported by oath or affirmation, would be reduced to nothing “if a police officer was able to use deliberately falsified allegations to demonstrate probable cause, and, having misled the magistrate, then was able to remain confident that the ploy was worthwhile.” *Franks v. Delaware*, 438 U.S. 154, 168–69, 98 S. Ct. 2674, 2682–83, 57 L. Ed. 2d 667 (1978).

“[T]he general rule [is] that Fourth Amendment seizures are ‘reasonable’ only if based on probable cause to believe that the individual has committed a crime.” *Manuel v. City of Joliet, Ill.*, 580 U.S. 357, 364, 137 S. Ct. 911, 917, 197 L. Ed. 2d 312 (2017)

The Fourth Amendment prohibits government officials from detaining a person in the absence of probable cause. That can happen when the police hold someone without any reason before the formal onset of a criminal proceeding. But it also can occur when legal process itself goes wrong—when, for example, a judge's probable-cause determination is predicated solely on a police officer's false statements. Then, too, a person is confined without constitutionally adequate justification. Legal process has gone forward, but it has done nothing to satisfy the Fourth Amendment's probable-cause requirement. And for that reason, it cannot extinguish the detainee's Fourth Amendment claim. *Manuel v. City of Joliet, Ill.*, 580 U.S. 357, 366–67, 137 S. Ct. 911, 918–19, 197 L. Ed. 2d 312 (2017).

“It is of no consequence that the falsehood bore upon the witness' credibility rather than directly upon defendant's guilt. A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth. \* \* \* That the district attorney's silence was not the result of guile or a desire to prejudice matters little, for its impact was the same, preventing, as it did, a trial that could in any real sense be termed fair.” *Napue v. People of State of Ill.*, 360 U.S. 264, 269–70, 79 S. Ct. 1173, 1177, 3 L. Ed. 2d 1217 (1959).

In this case, Mr. Sanchez's punishment was enhanced based on an assumption that a cooperating informant, who himself had been charged with the same crime, was telling the truth, instead of helping himself, when he testified that Mr. Sanchez

had been misleading. On the other hand, verifiable false testimony of the Detective was found to be just a mistake.

The system of law that punishes its citizens with imprisonment for lying to its law enforcement<sup>2</sup>, while allowing its law enforcement to lie with impunity, cannot be a just system of law.

## CONCLUSION

Mr. Sanchez respectfully requests that this Court issue a writ of certiorari.

Respectfully submitted this 29<sup>th</sup> day of January 2025.

s/ Razmi M. Tahirkheli  
Razmi M. Tahirkheli, SC #20252  
Tahirkheli & Premer-Chavez  
Law Office, L.L.C.  
650 Minnesota Avenue, 2<sup>nd</sup> Floor  
Kansas City, Kansas 66101  
(913) 371-0554 – Office  
(913) 371-0559 – Fax  
Email: tpclawyers@gmail.com  
CJA Attorney for the Petitioner,  
Alan E. Sanchez

---

<sup>2</sup> *United States v. Rodgers*, 466 U.S. 475, 479, 104 S. Ct. 1942, 1946, 80 L. Ed. 2d 492 (1984).