No. 24-6589

ORIGINAL

22-7054

IN THE

SUPREME COURT OF THE UNITED STATES

Zackary Ellis Sanders — PETITIONER
(Your Name)

v..

United States of America --- RESPONDENT(S

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

Zackary Ellis Sanders
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Joint Base MDL, NJ 08640
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(Phone Number)

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PETITION FOR A WRIT OF CERTIORARI

Mr. Sanders respectfully petitions for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit.

QUESTIONS PRESENTED

1. Whether the government may improperly seize files that exceed the scope of a warrant, and fail to review and return unrelated files, claiming the device in which they are contained is subject to forfeiture, thereby evading Fourth Amendment protections.

2. Whether electronic files are a part of the device in which they are contained, or whether they are, in fact, separate property.

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 this proceeding in the court whose judgment is the subject of this petition are as follows:

RELATED CASES

This case arises from the following proceedings in the United States District Court for the Eastern District of Virginia and the United States Court of Appeals for the Fourth Circuit.: United States v. Sanders, *No. 22-4242 (4th Cir. Final judgment Sep. 25, 2024) and United States v. Sanders, No. 20-CR-00143 (E.D. Va. Final judgment Apr. 1, 2022).*

There is petition for certiorari in the above case, however the issues in this petition for certiorari, while related, are not relevant to the issues raised in this Petition. The appellate case history for this Petition is United States v. Sanders, 107 F. 4th 223 (4th Circuit 2024) and United States v. Sanders, 622 F. Supp 3d 223 (E.D. Va. 2022).

OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Fourth Circuit is reported at *United States v. Sanders* and is included in the Appendix. A petition for rehearing and rehearing en banc was denied by an order dated September 6, 2024 and is included in the appendix.

JURISDICTION

The Court of Appeals entered final judgement upon the denial of a request for rehearing en banc on September 6, 2024. This Court granted a 60-day extension of time requiring filing by February 3, 2025. This Court has jurisdiction under 28 S U.S.C. §1254 (1). This writ for petition of certiori is timely filed.

TABLE OF AUTHORITIES

CONSTITUTIONAL PROVISIONS INVOLVED

1. United States Constitution Amendment IV
2. United States Constitution Amendment VIII

STATUTES INVOLVED

18 U.S.C. § 2253 (a) (1) and (3)

CASES

United States v. Gilberson, 527 F. 3d 882, 888 (9th Cir. 2008)...

United States v. Yu Qin, 688 F. 3d 257 (6th Circ. 2012)

United States v. Williams, 592 F. 3d 511 (4th Cir. 2010)

Yates v. United States 574 U.S. 528, 537 (2015)

STATEMENT OF THE CASE

In August, 2019, the Federal Bureau of Investigation ("FBI") received a notice from a foreign law enforcement entity identifying a U.S. IP address that allegedly accessed a website that contained child pornographic materials during a one-second time frame in May, 2019. Based on this notice, the FBI obtained a search warrant and conducted a search of Sanders' residence on February 12, 2020. During the search, the FBI seized several iPads, iPhones, computers, and hard drives. A digital forensic examination revealed images and videos depicting alleged child pornography and graphic chats with several teens in their from a time when Mr. Sanders was in his early 20's.

The grand jury returned a twelve-count indictment charging Sanders with various child pornography offenses. On October, 2021, Sanders was convicted on the twelve counts following a seven-day jury trial. Sentencing was delayed until April 1, 2022 for reasons unrelated to this petition.

On March 28, 2020, Sanders filed a motion pursuant to Fed. R. Crim. Pro. 41 (g) seeking the return of his legally possessed educational, professional, and personal data stored on the seized devices, and preemptively objecting to a preliminary order of forfeiture, which up until this point, had *not* been sought by the government. Sanders argued that the forfeiture statute did not reach so broadly as to require the forfeiture of non-contraband documents that were also stored on the electronic devices. He further argued that the data files lacked the requisite nexus to the offenses as required by Fed. R. Crim. P. 32.2 and 18 U.S.C. 2253 (a) and that the electronic files constituted property separate from the forfeitable storage devices in which they were stored.

After Sanders filed his motion seeking the return of his legally possessed property, the government then filed a Motion for Entry of a Preliminary Order of Forfeiture seeking to forfeit nine electronic devices that it had seized from Sanders. Simultaneously, it opposed Sanders's previously filed Motion for Return of Property, arguing that the devices were forfeitable "in their entirety" under 2253 (1) and (3). Sanders filed his Appel to the Fourth Circuit on January 13, 2023. The panel incorrectly found that Sanders's Rule 41 motion was "contemporaneously" filed. It was not. The panel also erroneously stated that Sanders did not seek the extraction and return of the electronic data files representing non-contraband files and did not argue that the government unlawfully possessed the non-contraband files

On April 1, 2022, the district court sentenced Sanders to 216 months and on August 19, 2022, the district court issued its order and accompanying memorandum opinion denying Sanders' Rule 41 (g) motion for return of his legally possessed computer files and entered a preliminary order of forfeiture, ordering the devices forfeited "in their entirety", including all of their contents. Court interpreted the term "other matter" in 2253 (a) (1) as applying to the physical devices themselves and not to the individual files stored within the devices. The court also interpreted the term "property" in § 2253 (a) (3) as referring to the storage devices and their contents.

Sanders filed his Appeal to the Fourth Circuit on January 13, 2023. The panel affirmed, holding that the Fourth Amendment does not apply to criminal forfeitures. The panel then found "the criminal forfeiture of matters containing child pornography does not simply serve the function of removing the visual depiction of child pornography themselves...Rather, the purpose of the entire forfeiture provision is also to serve as [punishment and deterrence[,]".

The panel rejected Sanders's argument that 2253(a) (3)'s definition of "property" includes two separate forms of property- tangible and intangible- that could be into contraband and non-contraband files, as well as Sanders's argument that Rule 41(g) required the court to order the return of his personal information still retained in the electronic storage devices that exceeded the scope of the warrant. Although the panel appropriately credited Sanders with raising " a legitimate policy argument based on the fact that today computers and cellphones regularly store large quantities of personal information, even though they may also contain contraband:,:" it limited its application to the context of Fourth Amendment search and seizures.

The panel further held that as a textual matter 18 U.S.C, §2253 (a)(1) , the statute providing for criminal forfeiture of "any other matter" containing child pornography, and 18 U.S. C. § 2253 (a) (3) , providing for criminal forfeiture of "any property" used to commit such child pornography offense, required forfeiture of all of the electronic devices with all data contained on them at the time of forfeiture. The panel incorrectly found that Sanders's Rule 41 motion was "contemporaneously" filed. It was not. The panel also erroneously stated that Sanders did not seek the extraction and return of the electronic data files representing non-contraband files and did not argue that the government unlawfully possessed the non-contraband files The panel incorrectly found that Sanders's Rule 41 motion was "contemporaneously" filed. That was not accurate.

Sanders filed a motion for rehearing en banc on August 23, 2024 and that was denied. Thus, Sanders now files this motion for *certiorari.*

REASONS FOR GRANTING THE WRIT

The questions raised in this case are of exceptional importance societally and to resolve splits among the Circuits and even within circuits. This issue is vitally important as our reliance upon cell phones and other electronic devices for everything from monitoring our health, conducting business, banking transactions, and socializing are dependent upon our devices. Interpretation of statutes regarding forfeiture could not have forecast these change in the way we conduct our daily lives, and forfeiture cases require the Supreme Court to help bring clarity to this vital issue.

Multiple circuits have recognized that data stored on computers are separate property, but inconsistent application continues and even occur within the same Circuits. While other circuits are recognizing the distinction between the device itself that warehouses the documents and that the documents are separate pieces of property, the Fourth Circuit in *United States v. Sanders* creates a rule that undermines the fundamental protections of the Fourth Amendment in forfeiture cases and will allow the government to abdicate their responsibility to inventory property they collect during a search and seizure in order to properly segregate the material that is covered under a warrant and to then return to the property holder that which is irrelevant to the case, and which would result in an an excessive and overbroad seizure based upon the warrant. The issue related to forfeiture also raises critical questions of statutory construction, specifically, whether the terms *"other matter" and* "property" in 18 U.S.C. 2253 (9) and (3) are defined as the "entirety of the physical devices on which electronic data are stored. In our society, it would not be an over-statement to say that these issues affect most Americans, given the ubiquitous role cellphones and other electronic devices play in our daily lives.

This petition for certioari should be granted as there exists a wide split in the ways Circuits have interpreted the law as well as conflict within the Fourth Circuit. In re *Search Warrant Issued June 13, 2019,* 942 F. 3d 159 (4th Cir. 2019), as amended (Oct. 31, 2019) as well as the Ninth Circuit's decision in *United States v Comprehensive Drug Testing , Inc.,* 621 F3d 1162, 1171-72) (Ninth Circuit 2010), the Court required the government to promptly review the digital data stored on lawfully seized electronic devices and to return any digital data still stored on the devices that exceeded the scope of the warrant. The Fourth Circuits' ruling in the present case (United States v Sanders) is in direct conflict with their own earlier ruling that forensic treatment of digital files stored on electronic storage devices are separate and distinct property in *America Online (AOL), Inc. v. St. Paul Mercury Ins., Co.,* 347 F.3d 89 (2003).

It is undoubtable that one's electronic devices in present day society do now contain, as this Court said so eloquently "all the privacies of life"- business records and contracts, academic records, family documents, sensitive financial and medical information, and so on. When these Statutes were originally written, they could not have forecast the reality that electronic devices

would have in our lives ,and that we now are able to carry the equivalent of multiple large filing cabinets of our life's history and work in our pocket or purse. In *Riley v. California* 573 U.S. 373 (2014) this Court granted to cell phones the same protections guaranteed to one's home, under the Fourth Amendment. In fact, this Court rightfully noted that when it comes to the data found on cell phones that "more than 90% of American adults who own a cell phone keep on their person a digital record of nearly every aspect of their lives...".

Courts, such as the Sixth Circuit have ruled that electronic files, like their physical counterparts, can have separate owners and should be treated as separate property from the containers in which they are stored (*United States v. Yu Qin,* 688 F.3d 257, 259-260, 264-265, (Sixth Cir. 2012).

The volume of data has been determined to be irrelevant. In *United States v. Williams,* 592 F 3d 511 (4th Circuit) the Fourth Circuit endorsed the principle that the sheer amount of information contained on a computer does not distinguish the authorized search of the computer from an analogous search of a file cabinet containing a large number of documents, holding that neither is legally relevant under the Fourth Amendment. The government has an obligation under the Fourth Amendment, to, with a lawful warrant, search (and seize at least temporarily if the amount of property is too large to go through on the premises), and to then segregate contraband from non-contraband material, and return documents not covered under the warrant, to their owner.

In *re: Search Warrant Issued June 13, 2019,* 942, F.3d 159, (4th Cir. 2019) as amended (Oct. 31, 2019) the Court made clear that the seized electronic devices from an attorney's office were to be treated as separate property from the devices themselves. Every file was individually reviewed by a Magistrate, including nearly 20,000 emails. In re In *United States v. David,* 756 F. Supp. 1385, 1390 (D. Nev. 1991) the Judge rulled the computer memo book "is indistinguishable from any other closed container, and is entitled to the same Fourth Amendment protection". *Grand Jury Subpoena Duces Tecum,* 846 F. Supp. 11, 12-13 (S.D.N.Y) the Judge analogized computer hard drives and floppy disks that contained electronic documents to file cabinets that contained paper documents in determining the subpoena was unreasonably overbroad.

The Fourth Circuit contradicts itself in the reading of "other matter". The determination of what "other matter" actually means is critical to harmonizing rulings among the various Circuits which are now disparate. As the Fourth Circuit ruled in *United States v. Johnson,* 915 F.3d 223 (4th Cir. 2019) "we interpret the relevant words not in a vacuum, but with reference to the statutory context." Furthermore, nothing in the text or context of Statute 2253 (a) (1) or its' legislative history indicates that Congress intended to broaden the meaning of "other matter" beyond those matters sharing the same attributes as "books, magazines, films, or videotapes." Thus, "other matter " which contains any such visual depiction "must be read to include only "matters" that share features common to books, magazines, periodicals, and the like. In other words, items from which content cannot be removed without destroying their original form

(see *Yates v. United States*, 574 U.S. 528 (2015). The placement of the term "other matter" after a series of terms with shared features also signals that the term "other matter" was not intended to include "all matters".

In America Online (AOL), Inc v. St. Paul Mercury Ins. Co., 347 F3d 89 (2003) the Court described the distinction between the "physical magnetic material in which data are retained or stored" (i.e., the forfeitable physical devices themselves), and "the data and information which are codified in a binary language for storage on the hard drive," (i.e., the separate data files contained in the devices). They recognized the separation between the medium used for storage (a hard drive0 like a filing cabinet, as distinct from the data stored in it when they wrote there is a difference in damage to a hard drive versus to the documents or software and that "data, information, or instructions and the physical machines that give them meaning" are separate from one another.

Finally, volume should be irrelevant. As the Ninth District held in *United States v. Gilberson*, 527 F. 3d 882, 888 (9th Cir. 2208) "neither the quantity of information, nor the form in which it is stored, is legally relevant in the Fourth amendment context...and we see no reason to depart from them in the context of electronic files"). They further instructed that when the amount of files to be searched is significant that"...it is certain that some innocuous documents will be examined...in order to determine whether they are, in fact, among those papers authorized to be seized.....if documents not covered by the warrant are improperly seized, the government should promptly return the document"

CONCLUSION

For the foregoing reasons, and given the enormous relevance in contemporary society of the prevalence and dependence on electronic property in the lives of nearly all Americans, the differences between circuits in interpreting the relevant statutes as well as the critical issue of the definition of separate property, this Court should grant Mr. Sanders' petition for a writ of certiorari.

Zack Sanders 1/30/25

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