

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

CESAR ALEXIS GONZALEZ — PETITIONER, PRO SE
(Your Name)

VS.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT of APPEALS for the EIGHTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CESAR ALEXIS GONZALEZ, PRO SE
(Your Name) Fed. Reg. No. 69768-308

Federal Correctional Institution

P. O. Box 7000

(Address)

Texarkana, TX 75505-7000

(City, State, Zip Code)

903-838-4587

(Phone Number)

QUESTION(S) PRESENTED

If a defendant, in criminal case proceedings, can show or demonstrate to the Court using evidence, testimony, documents, records, and/or reports that show or reveal that a trained K-9 dog used in a search has, can, does and/or will reveal the presence of or absence of non-contraband substances or items to its handler during a presumably Constitutionally allowable "brief" dog sniff, and the K-9 handler is aware of this information or knowledge regarding the non-contraband items:

- 1) Does that K-9 dog sniff become a warrantless search for Fourth Amendment purposes?
- 2) Does that warrantless search violate the defendant's rights under the Fourth Amendment?
- 3) Does that warrantless search taint the evidence, and require that the evidence be suppressed?

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:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	6
CONCLUSION.....	9

INDEX TO APPENDICES

APPENDIX A	DECISION of EIGHTH CIRCUIT COURT of APPEALS.....	A.1 - A.3
APPENDIX B	DECISION of U.S. DISTRICT COURT (S.D. Ia.).....	B.1 - B.11
APPENDIX C	ORDER/MANDATE DENYING EIGHTH CIRCUIT PANEL REHEARING..	C.1 - C.2
APPENDIX D	OTHER MATERIAL IN RELEVANT PART (See Rule 14.1(i)(vi)) Field Training Notes, Conclusion - Expert Report, and Handler Testimony Transcript (Excerpts)	D.1 - D.6

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Florida v. Harris , 568 U.S. 237, 133 S. Ct. 1050, 185 L. Ed. 2d 61 (2013).....	6
United States v. Jacobsen , 466 U.S. 109, 104 S. Ct. 1652, 80 L. Ed. 2d 85 (1983).....	6
United States v. Place , 462 U.S. 696, 103 S. Ct. 2637, 77 L. Ed. 2d 110 (1983).....	6, 8

STATUTES AND RULES

OTHER

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 _____ 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 _____ 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 May 8, 2017.

☐ 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: July 10, 2017, and a copy of the order denying rehearing appears at Appendix C.

☐ 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

U.S. Const. amend. IV. provides:

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

On July 1, 2013, the U.S. District Court for the Southern District of Iowa held a suppression of evidence hearing, after which suppression was denied.

On the following day, July 2, 2013, Defendant-Petitioner Gonzalez entered a conditional plea of guilty, reserving his rights to appeal or pursue post-conviction relief.

On February 14, 2014, the Sentencing Court imposed a 168-month sentence of incarceration. *United States v. Gonzalez*, No. 3:12-CR-0048-04-JAJ, 2014 U.S. Dist.LEXIS 185662 (S.D. Ia., 2014).

Appeal was submitted to the Eighth Circuit on November 12, 2014, and judgement denying appeal issued on March 23, 2015. *United States v. Gonzalez*, 781 F.3d 422 (8th Cir., 2015), cert. denied, 136 S. Ct. 139, 193 L. Ed..2d 105 (2015).

On August 15, 2016, Petitioner Gonzalez filed a motion seeking Federal Habeas Corpus relief pursuant to 28 U.S.C. § 2255 in the District Court (S.D. Ia.), which erroneously dismissed the Defendant's petition for relief.

The District Court erred in its understanding of Claim One of Gonzalez's Petition for Habeas Corpus relief. The District Court states in its Order regarding Claim One:

Petitioner contends that a drug dog sniff does not provide probable cause to search a container for controlled substances where there is the possibility that the dog will alert to the presence or absence of a non-contraband item.

The error lies with the District Court's interpretation of the question as an issue that has a completely different standard of review. The District Court's standard for review looks at whether there was probable cause

to issue a warrant to search. The Petitioner's intended and requested standard for review is to look at the information that is revealed by the particular K-9 dog during the sniff. Petitioner Gonzalez claims that the K-9 dog "Lazer" revealed information that is protected by the Fourth Amendment when he performed the dog sniff. That information, regarding the presence or absence of non-contraband items (smokeless powders), violated Defendant Gonzalez's rights to privacy. The District Court erred in its failure to suppress the evidence due to a dog sniff that reveals information that is protected by the Fourth Amendment.

On January 9, 2017, the District Court denied both the Petition for Habeas relief, and issuance of a Certificate of Appealability. Petitioner Gonzalez filed a timely motion to appeal with the Eighth Circuit Court of Appeals, which also denied his application for a COA.

On May 8, 2017, Petitioner Gonzalez timely filed a motion for Rehearing En Banc, which was subsequently denied on July 10, 2017.

REASONS FOR GRANTING THE PETITION

The Eighth Circuit's decision directly conflicts with this Court's decision in **Florida v. Harris**, 568 U.S. 237, 133 S. Ct. 1050, 1055, 185 L. Ed. 2d 61 (2013).

The Eighth Circuit's decision directly conflicts with **Florida v. Harris**, 568 U.S., by denying the Petitioner the correct standard of review of a K-9 drug dog sniff that reveals information that is protected by the Fourth Amendment. When the Court denies a Defendant-Petitioner the correct standard of review of the nature of, and/or reliability of a K-9 dog sniff, it denies the Defendant-Petitioner the right and ability to challenge the nature of that dog sniff given these circumstances. This Court should grant Certiorari and reverse the Eighth Circuit's conflicting decision.

In **Florida v. Harris**, this Court indicated that a defendant must be given an opportunity to challenge a dog's reliability, and that a dog's sniff is subject to any conflicting evidence a defendant can offer. *Id.*

B. The Eighth Circuit's decision also conflicts with this Court's reasoning in *United States v. Jacobsen*, 466 U.S. 109, 104 S. Ct. 1652, 80 L. Ed. 2d 85 (1984) and *United States v. Place*, 462 U.S. 696, 103 S. Ct. 2637, 77 L. Ed. 2d 110 (1983).

Government conduct that can only reveal information about contraband items, and no other arguably "private," noncontraband fact, does not compromise a privacy interest. *Jacobsen*, 466 U.S.. In *Place*, the Court stressed: "A dog sniff is not a search in part because it discloses only the presence or absence of narcotics, a contraband item." *Place*, 462 U.S. at 707. But these characterizations do not describe this particular situation with the K-9 dog sniffs in question.

Petitioner Gonzalez presents the field training notes from February 19, 2011 for K-9 dog "Lazer." In these notes, the Court will find that K-9 dog "Lazer" reveals the presence or absence of non-contraband items (smokeless powders).

To date, the Government, K-9 dog handler Langenberg, Midwest Narcotics Detection, nor the United States Police Canine Association have not produced any evidence, records, documentation, reports, or video footage showing this Court that this error was ever fixed or corrected. They have not produced for the Court any evidence that shows any corrective measures, exercises, and/or tests have been conducted and successfully completed to demonstrate that K-9 dog "Lazer" would not reveal information regarding the presence or absence of non-contraband items (smokeless powders) on March 22, 2012, the date of the sniff in this case.

Additionally, the K-9 dog's handler Langenberg testified at the suppression hearing and admitted that he knew it was possible for K-9 dog "Lazer" to reveal to him information regarding the presence or absence of non-contraband items (smokeless powders) when K-9 dog "Lazer" performed his sniff on March 22, 2012. See Suppression Hearing transcripts (Attached as Exhibit

The Petitioner wishes to qualify the bare minimum of corrective measures, exercises and/or tests that must be completed when discovering this type of error in a K-9 drug dog's sniff, within the approximate time frame of a year, that would ensure, and persuade the Court to believe, that this error was fixed and corrected, so as not to reveal information that is protected by the Fourth Amendment.

The Petitioner requests that the Court hold the Government to a standard that requires a burden of proof of tangible evidence that shows the errors in a K-9 dog's sniffs were addressed and corrected, in order to convince the Court that a particular K-9 dog's sniffs no longer reveal information that is protected by the Fourth Amendment when it conducts subsequent sniffs with that K-9 drug dog.

It is Petitioner Gonzalez's contention that the Government's inability to produce any tangible evidence or record that demonstrates to this

Court that:

- (1) The errors discovered in the sniffs of K-9 dog "Lazer" were addressed and corrected;
- (2) The corrective measures, exercises, and/or tests were actually completed and demonstrably effective;
- (3) Ensures that K-9 dog "Lazer" would not reveal information that is protected by the Fourth Amendment when the dog performs a sniff.

Petitioner Gonzalez asserts that his rights to privacy and rights to be free from improper warrantless searches were violated by the use of K-9 dog "Lazer" and his sniff revelation capabilities, regarding non-contraband items, and the reasonable expectations afforded by the Fourth Amendment from such warrantless searches. The Petitioner asserts that the sniff by K-9 dog "Lazer" violates his Fourth Amendment protections because the sniff discloses more than "only the presence or absence of narcotics, a contraband item." *Place*, 462 U.S. at 707. Therefore, the dog sniff/search did, in fact, violate the Petitioner's reasonable expectations of privacy and freedom from warrantless searches, thereby tainting the search and any information that it did or did not reveal. The Petitioner further contends that the Lower Courts should have suppressed the evidence obtained from this K-9's sniff. Petitioner requests this Court grant the Petition and plenary review, or summarily reverse the Eighth Circuit's judgment.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



CESAR ALEXIS GONZALEZ, Pro Se
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08-28-17
CAG

Date: August 28, 2017