

No. 19-1374

IN THE
Supreme Court of the United States

ARTURO FERNANDO SHAW GUTIERREZ,
Petitioner,

v.

PEOPLE OF THE STATE OF CALIFORNIA,
Respondent.

On Writ Of Certiorari
To The California Court of Appeals,
Fourth District Division Three

PETITION FOR REHEARING

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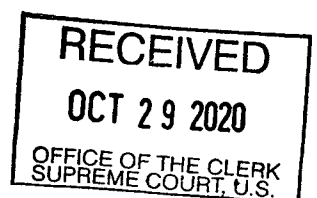


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TEXT OF AUTHORITIES USED

United States Code

18 U.S.C. § 2701

- (a) Offense.— Except as provided in subsection (c) of this section whoever—
 - (1) intentionally accesses without authorization a facility through which an electronic communication service is provided;

18 U.S.C. § 2703

- (a) Contents of Wire or Electronic Communications in Electronic Storage.— A governmental entity may require the disclosure by a provider of electronic communication service of the contents of a wire or electronic communication, that is in electronic storage in

an electronic communications system for one hundred and eighty days or less, only pursuant to a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures) by a court of competent jurisdiction. A governmental entity may require the disclosure by a provider of electronic communications services of the contents of a wire or electronic communication that has been in electronic storage in an electronic communications system for more than one hundred and eighty days by the means available under subsection (b) of this section.

18 U.S.C. § 2703

(f) REQUIREMENT TO PRESERVE EVIDENCE.—

(1) IN GENERAL.— A provider of wire or electronic communication services or a remote computing service, upon the request of a governmental entity, shall take all necessary steps to preserve records and other evidence in its possession pending the issuance of a court order or other process.

18 U.S.C. § 2704

(a) BACKUP PRESERVATION.—

(1) A governmental entity acting under section 2703(b)(2) may include in its subpoena or court order a requirement that the service provider to whom the request is directed create a backup copy of the contents of the electronic communications sought in order to preserve those communications. Without notifying the

subscriber or customer of such subpoena or court order, such service provider shall create such backup copy as soon as practicable consistent with its regular business practices and shall confirm to the governmental entity that such backup copy has been made. Such backup copy shall be created within two business days after receipt by the service provider of the subpoena or court order.

California Penal Code

§ 1524.3

(g) A provider of wire or electronic communication services or a remote computing service, upon the request of a peace officer, shall take all necessary steps to preserve records and other evidence in its possession pending the issuance of a search warrant or a request in writing and an affidavit declaring an intent to file a warrant to the provider. Records shall be retained for a period of 90 days, which shall be extended for an additional 90-day period upon a renewed request by the peace officer.

PETITION FOR REHEARING
REQUEST FOR THIS COURT'S GVR ORDER

Petitioner Arturo Fernando Shaw Gutierrez respectfully petitions for a rehearing of the Court's Oct. 5, 2020 order denying his petition for a writ of certiorari pursuant to Supreme Court Rule 44.2.

The facts and issues of this case present clear grounds for this Court to issue a GVR on one or several grounds.

The charges stem from the interactions with the government, while the government was committing federal felonies. The government then made accusations based on fabricated evidence using a statute that violates void for vagueness. Then, the government obtained warrants based on perjury, concealed illegal searches, and concealed exculpatory evidence. Thereafter, the government destroyed the jury pool through the dissemination of lies to the media. The government then threatened multiple years in prison if the case was brought to trial. All the while the government was concealing multiple material exculpatory documents. Followed by the courts denying due process of law by refusing to allow for an evidentiary hearing.

"Can it be that the Constitution affords no protection against such invasions of individual security?" *Olmstead v. United States*, 277 U.S. 438, 474 (1928) (Brandeis, J., dissenting).

PART I.
INTERVENING CASE LAW

The holding in *Carpenter v. United States*, 138 S.Ct. 2206, 2222 (2018) directly overrules the trial court's ruling.

Regarding the warrantless searches of e-mail by police, the trial court ruled as follows:

“So I agree with *Warshak* with respect to the reasonable expectation of privacy that a person holds in the message itself, but once it is sent, once the send button is pushed, whether it is e-mail or text or, in this case, message from one Facebook account to another, that Fourth Amendment expectation of privacy is gone. [¶] For that reason I don't find that the defendant has an expectation of privacy in the messages that were received by the account of the alleged victim, and the motion to suppress is denied.” (App. D 42a-43a).

“Accordingly, we hold that a subscriber enjoys a reasonable expectation of privacy in the contents of emails ‘that are stored with, or sent or received through, a commercial ISP [Internet Service Provider].’ *Warshak I*, 490 F.3d at 473.” [Emphasis added.] *United States v. Warshak*, 631 F.3d 266, 288 (6th Cir. 2010).

“We hold only that a warrant is required in the rare case where the suspect has a legitimate privacy interest in records held by a third party.” *Carpenter v. United States*, 138 S.Ct. at 2222. *Warshak* confirms that expectation of privacy in “sent” email.

Congress has declared “*that the parties to an e-mail transmission have a ‘reasonable expectation of privacy’ and that a warrant of some kind is required*”

(House of Representatives Report (H.R.) 99-647 (1986) at 22) under the Fourth Amendment, and the “contents of” an “electronic communication” are accessible “only pursuant to a warrant” (18 U.S.C. §2703(a)) “*before the government may obtain access to the contents of ... an electronic communication in storage*” (H.R. 99-647 at 67) on an internet service provider’s server because Congress expressly stated the Third Party Doctrine does not apply (H.R. 99-647 at 72-73).

Subsequent to the Court of Appeals opinion (issued Jan. 9, 2018), in *Carpenter v. United States*, this Court overruled the lower court ruling on June 22, 2018.

PART II.

DENIAL OF RIGHT TO EVIDENTIARY HEARING

The trial court denied the motion to suppress without an evidentiary hearing, cf. *Stone v. Powell*, 428 U.S. 465, 481-482 (1976) (constitution requires “an opportunity for full and fair litigation of a Fourth Amendment claim”). No evidence was received, and no witnesses were called to the stand (App. D 39a-41a).

PART III.

CONCEALMENT OF WARRANTLESS SEARCHES FROM AFFIDAVITS

The affiant willfully concealed his federal felony (18 U.S.C. § 2701(a)(1)) warrantless searches of e-mail from the affidavits, claiming the searches of email were initially conducted after 10/30/12 (Sealed App. 57sa). However, in the police reports, the affiant Detective Jacob Sorensen, admitted to these

warrantless searches prior to the aforementioned date, 10/30/12 (Sealed App. H 69sa-70sa).

Sorensen's police reports discuss the date of "October 12, 2012" "I reviewed [M.P.'s] Facebook account and found a conversation with Arturo Gutierrez that took place on September 29, 2012 and continued to October 5, 2012." That same paragraph continues onto the next page and ends with: "No other information was located on her Facebook at this time." Then three paragraphs later Sorensen reports: "On October 30, 2012 [M.P.] gave me access to her Facebook and allowed me to assume her profile." (Sealed App. H 69sa-70sa) But does not report that consent was limited to an unrelated male.

"In the absence of a warrant, a search is reasonable only if it falls within a specific exception to the warrant requirement." *Riley v. California*, 134 S.Ct. 2473, 2482 (2014). The warrantless searches were done without consent (see Petition for Certiorari pages 3-4).

"More confusing still, what have I done to 'manifest my willingness to accept' the risk that the government will pry the document from my friend and read it *without* his consent?" [Emphasis in original.] *Carpenter v. United States*, 138 S.Ct. at 2263 (Gorsuch, J., dissenting).

Justice Gorsuch's concerns about the need to protect e-mail are well-founded. The modern use of electronic communications on a global scale is revealing and salient, in that it shows both our advancement and reliance upon them. Only an

average of 12.4 billion¹ calls are made daily, by contrast **over 240 billion² e-mails are sent daily.**

The warrants were based on warrantless illegal searches of Facebook's servers in violation of federal law, see 18 U.S.C. §§ 2701(a)(1); 2703(a), see *Alderman v. United States*, 394 U.S. 165, 177 (1968) (prohibiting illegal searches from forming basis of search warrant) therefore "nothing short of mandatory exclusion of the illegal evidence will compel respect for the federal law" *Lee v. Florida*, 392 U.S. 378, 385-386 (1968). These illegal searches were willfully concealed from the affidavits.

PART IV. **PERJURY AND INTENTION TO RETALIATE**

The affiant Sorensen had committed federal felonies (18 U.S.C. § 2701(a)(1)) against M.P., and only after the affiant illegally read attorney-client privilege pertaining to the affiant, did Gutierrez become the target.

October 20, 2012:

M.P.: Hey, I have a question. So the police like four days ago went on my email and changed my password so I can't log on. And the backup email that you use to see what the password is... is the cops' email... Are they allowed to do that without mine or my parents' permission? It's random that they did this... Hello? (Sealed App. 65sa)

¹ Source last visited on Oct. 14, 2020:

https://www.answers.com/Q/How_many_phone_calls_are_made_every_day_in_the_world

² Source last visited on Oct. 14, 2020:

<https://www.worldometers.info/> (Citing: The Radicati Group Inc.)

Gutierrez: In my opinion they cannot do that! There is no basis for the government to do that. They can subpoena your records and emails and they can review it for evidence. But they cannot change your password and deny you access. There is no authority to do that. You should speak to your attorney about seeking an injunction and you can sue them civilly for violating your civil rights, specifically your right to privacy and right to free speech. Their actions are outside of the law and not supported by any authority that I am aware of. I think you need to get a civil attorney to sue them. It's not my field, so I cannot do it for you. Keep me posted.[3] (Sealed App. 65sa)

On 10/24/12, only after the affiant, Sorensen, feloniously read attorney-client privileged⁴ emails pertaining to himself, did Sorensen begin to research and investigate Gutierrez, proven by the dates on the RAP sheet (police background check) and DMV print out and private skip tracing company utilized by Sorensen (Sealed App. H 73sa-77sa). Sorensen further perjured himself in the affidavits regarding the date the investigation began, stating that a

³ Spelling errors are corrected above for ease of reading as the issue is important. The "..." as shown above is in the original. The original misspellings are at (Sealed App. 65sa).

⁴ "When a party seeking legal advice consults an attorney at law and secures that advice, the relation of attorney and client is established prima facie." [citation]." *People ex rel. v. SpeeDee Oil Change Systems, Inc.*, 86 Cal.Rptr.2d 816, 825 (1999). See also: "No statutory exception to the attorney-client privilege excludes email..." *DP Pham, LLC v. Cheadle*, 246 Cal.App.4th 653, 668 (2016).

request for information was obtained on 10/10/12 and 10/30/12 (Sealed App. G 56sa-57sa). However, the only documents in discovery prove that this information was obtained on 10/24/12, a date completely omitted in the police reports and affidavits (Sealed App. G 56sa-57sa; Sealed App. H 69sa-70sa). From its inception, this case was born of federally felonious searches, and thereafter an intention to retaliate, subjecting Gutierrez to “unconstitutional animus” *Butz v. Economou*, 438 U.S. 478, 512 (1978).

“Details of the investigatory process potentially affected [the officer’s] credibility and, perhaps more importantly, the weight to be given to evidence produced by his investigation.” *United States v. Sager*, 227 F.3d 1138, 1145 (9th Cir. 2000) (relying on *Kyles v. Whitley*, 514 U.S. 419 (1995))

An intention to retaliate by the government precluded Gutierrez from being brought before the courts, cf. *Hartman v. Moore*, 547 U.S. 250, 256 (2006); *Menna v. New York*, 423 U.S. 61, 62-63 (1975) (per curiam).

The affiant’s concealment of exculpatory evidence and perjury usurped the magistrate’s role in evaluating the totality of the circumstances. The lower courts found that perjury and concealment of exculpatory evidence was reckless and negated one of the allegations (App. A 23a) but found probable cause using a statute that violated void for vagueness without allowing for a hearing, or even argument, to further establish that even that statute was not violated because the affiant also concealed evidence regarding that allegation.

“In *Franks [v. Delaware]*, 438 U.S. 154 (1978)], we held that police negligence in obtaining a warrant did not even rise to the level of a Fourth

Amendment violation, let alone meet the more stringent test for triggering the exclusionary rule. We held that the Constitution allowed defendants, in some circumstances, ‘to challenge the truthfulness of factual statements made in an affidavit supporting the warrant,’ even after the warrant had issued. 438 U.S., at 155-156, 98 S.Ct. 2674. If those false statements were necessary to the Magistrate Judge’s probable-cause determination, the warrant would be ‘voided.’ *Ibid.*” *Herring v. United States*, 129 S.Ct. 695, 703 (2009).

“Power is a heady thing; and history shows that **the police acting on their own cannot be trusted.**” [Emphasis added.] *McDonald v. United States* 335 U.S. 451, 455-456 (1948). Do the police not act alone when they subjectively circumvent the magistrate’s role by concealing truth with perjury?

When the affiant commits perjury and/or conceals evidence and constitutional violations as a part of the totality of the circumstances, the remainder of the affidavit becomes untrustworthy and therefore unreliable, “[e]ncapsulated in the common law maxim ‘falsus in uno, falsus in omnibus,’” *People v. Cook*, 22 Cal.3d 67, 86 (1978). “Any other rule would undermine ‘the right of the people to be secure in their persons, houses, papers, and effects,’ and would obliterate one of the most fundamental distinctions between our form of government, where officers are under the law, and the police-state where they are the law.” [Footnote omitted.] *Johnson v. United States*, 333 U.S. 10, 17 (1948).

Gutierrez did prove, and the lower courts agreed, that the reckless and willful concealment of

exculpatory evidence by the affiant disproved probable cause regarding one of the many false accusations.

PART V.
FABRICATION OF EVIDENCE AND
INTENTION TO RETALIATE

Perjury is fabricated evidence. Fabricated evidence precludes an individual from being brought to court because “there is a clearly established constitutional due process right not to be subjected to criminal charges on the basis of false evidence that was deliberately fabricated by the government.” *Halsey v. Pfeiffer*, 750 F.3d 273, 292–93 (3d Cir. 2014). This right is not waived by a guilty plea, see *Spencer v. Peters*, 857 F. 3d 789, 812-813 (9th Cir. 2017).

“[I]f any concept is fundamental to our American system of justice, it is that those charged with upholding the law are prohibited from deliberately fabricating evidence and framing individuals.” *Limone v. Condon*, 372 F.3d 39, 44-45 (1st Cir. 2004).

The first manifestation of an intent to frame an innocent person, is on the first page of the affidavit, wherein the affiant announced that numerous men had committed crimes on M.P. and then introduced Gutierrez right after, making it appear as though Gutierrez had committed these crimes as well (Sealed App. 56sa). **Yet, the evidence proves that Gutierrez was the only man not committing crimes on M.P.**

Evidence discovered after the conviction, provided in the Petition for Habeas Corpus, proves that there were approximately 9,000 pages between both Gutierrez and M.P.’s Facebook accounts, all of which were organized chronologically, with one

exception: the attorney-client privileged communications with a third party, Lauren Steinhaus; said communications were specifically placed out of chronological order by Facebook.

From Gutierrez's Facebook account obtained with a perjury-based warrant:

<i>Name</i>	<i>Date</i>
Lauren	11/27/12
[M.P.]	11/30/12
Sean	11/29/12
Morgan	11/28/12
Mobile	11/22/12
Stone	11/20/12
Travis	11/16/12

The right column shows the order as prepared by Facebook:

11/27, 11/30, 11/29, 11/28, 11/22, 11/20, 11/16. (See Vol. II App. I 79a-90a; Vol. II Sealed App. K 94sa-101sa) Notice that the messages with Lauren were placed in first position, but should have been in fourth position.

The only way a computer would have placed data out of chronological order was if a human commanded it to, and Facebook stated they will only "search for data" "that is specified with particularity" in "an appropriate form of legal process" (See Vol. II App. J 92a) pursuant to "a warrant" under "18 U.S.C. Sections 2701-2712" (See Vol. II App. J 91a). The evidence proves that Lauren's messages were out of chronological order. Facebook expressly advised law enforcement that they will only search for content

data that is specified in a warrant. Therefore the only inference can be that Facebook was sent some other version of the warrant, by Sorensen, naming Lauren as the targeted information. This warrant was concealed from the prosecution and the defense.

Prior to questioning M.P. about Gutierrez on 11/6/12, (wherein M.P. advised that Gutierrez was the only one not committing crimes on her), Sorensen prepared an affidavit for an account preservation request on 10/31/12, without any evidence of criminal conduct by Gutierrez, stating that a warrant was forthcoming for Gutierrez, then concealed this affidavit from the prosecution and the defense. However, the evidence proves, as a matter of state and federal law⁵, this affidavit exists because Facebook preserved Gutierrez's Facebook account on 10/31/12 (See Vol. II App. I 81a).

“The Fourteenth Amendment prohibits the deliberate fabrication of evidence by a state official. *Devereaux v. Abbey*, 263 F.3d 1070, 1074–75 (9th Cir. 2001) (en banc) (*Devereaux*). Deliberate fabrication can be established by circumstantial evidence. For example, evidence that officials ‘continued their investigation of [a person] despite the fact that they knew or should have known that he was innocent,’ *id.* at 1076, can raise the inference that the investigator has an ‘unlawful motivation’ to frame an innocent person. *Costanich v. Dep’t of Soc. & Health Servs.*, 627 F.3d 1101, 1111 (9th Cir. 2010). [Brackets in original.] *Spencer v. Peters*, 857 F. 3d at 793.

⁵ See 18 U.S.C. §§ 2703(f)(1); 2704(a)(1); California Penal Code § 1524.3(g).

The affidavit contains numerous acts of perjury and misrepresentations that fabricate evidence to effect the retaliation for advising M.P. to take legal action against the affiant Sorensen, but also to retaliate and obtain access to a third party's attorney-client privileged communications with Gutierrez. Because Gutierrez had filed an internal affair's complaint four months prior to the perjury-ridden warrants being issued against officers for their treatment of a pregnant woman who was beaten and strangled; and the police refusal to effectuate her demand for a citizen's arrest. Obtaining these privileged communications was a Fourth Amendment violation, as federal law commanded adherence to the "State warrant procedures" (18 U.S.C. § 2703(a)) and because "materials protected by the attorney-client privilege are not subject to disclosure pursuant to a search warrant. [citations]" *People v. Superior Court (Laff)*, 25 Cal.4th 703, 717 (2001).

CONCLUSION

The notion of law and order is obliterated when the government is the one committing crimes in order to persecute those that advocate for legal redress (*Mine Workers v. Illinois Bar Assn.*, 389 U.S. 217, 222 (1967)). This Court has been provided documents and admissions that prove multiple felony acts by the affiant Sorensen, all done in violation of the Constitution of the United States. "If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy." *Olmstead v. United States*, 277 U.S. at 485 (Brandeis, J., dissenting).

"In such cases there is no safety for the citizen, except in the protection of the judicial tribunals,

for rights which have been invaded by the officers of the government, professing to act in its name.” *Bivens v. Six Unknown Named Agents Of Federal Bureau Of Narcotics*, 403 U.S. 388, 394-395 (1971).

In *Alderman v. United States*, 394 U.S. at 167 this Court was concerned with “electronic surveillance which might have violated their Fourth Amendment rights and tainted their convictions” moreover the above proves “this case reveals a shocking series of violations of constitutional rights’ [citation]” *Rochin v. California*, 342 U.S. 165, 167 (1952) “its occurrence undermines the public’s confidence in the criminal justice system and creates an impression that our government officers are our worst enemies, not our public servants. (Cf. *Berger v. United States*, 295 U.S. [78] at p. 88 [(1935)]; []) Justice was not done here.” *Merrill v. Superior Court*, 27 Cal.App.4th 1586, 1594 (1994).

The Petition for Rehearing should be Granted, the conviction Vacated, and the matter Remanded to the trial court in the interests of justice.

Respectfully submitted,



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October 26, 2020

CERTIFICATION

I certify that this Petition for Rehearing is restricted to the grounds specified in Rule 44.2 and it is presented in good faith and not for delay.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'A. Shaw', written over the typed name.

ARTURO FERNANDO SHAW GUTIERREZ

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VOLUME II.
APPENDICES I-J
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APPENDIX I

II. FACTUAL BASIS FOR THE WRIT OF HABEAS CORPUS

Before addressing the facts that lead to an involuntary plea (*Blackledge; In re Bower*) and pursuant to *North Carolina v. Alford* (1970) 400 U.S. 25, 37–38, (permitting the innocent to enter a guilty plea), we must first jump to the end and address the reason why law enforcement committed extensive perjury, concealed material exculpatory evidence and fabricated the appearance of crimes to obtain the warrants and arrest of Gutierrez; followed by the Time Line of events, then the factual basis to recall the remittitur due to misrepresentations by the Attorney General. Then the facts of the case will be addressed chronologically. Albeit, some facts will be grouped out of chronological order when relevant to explain a particular section. On critical points, case law will be injected into the facts.

3. Actual Facts of the Case

The actual facts of this case (from Facebook and Audio Recordings) are presented for the Court to review. The affidavits and police reports are used to demonstrate the multiple felonious lies employed by the police.

4. Concealed Purpose of the Warrants and Investigation

The primary and paramount fact to establish, is the purpose of the warrant, i.e., the primary target of the warrant. **These next five pages are the most important to begin the path of establishing the truth of this case.**

Unbeknownst to all, was the first date that Facebook had been requested to generate and preserve Gutierrez's Facebook account. That occurred on 10/31/12.

[(Remainder of page intentionally left blank.)]

Gutierrez account was generated twice
(Exhibit I, PE 733-734):

Generated 2012-10-31 Date Range

Creation to 2012-10-31

Generated 2012-12-12 Date Range 2001-
01-01 to 2012-11-30

The second time that Facebook had been requested to generate Gutierrez's Facebook account was on 11/29/12 at midnight between 11/30/12, the date the warrant issued was 11/29/12. (Note Exhibit I, PE 733 shows 11-30 at 08:00 UTC, which was 8 hours ahead of PDT.)

Each time the account was generated, each party's messages with Gutierrez were grouped, and then organized in chronological order according to whom last communicated with Gutierrez, with one monumental exception.

Below as organized by party, from Facebook, are the warrant proceeds from discovery. (Exhibit J, PE 737-744 and PE 745-753)¹.

¹ To avoid submitting hundreds of pages, only the transition page between each party is submitted,

Note when a party (left column) communicated with Gutierrez under the “1st Date” (center column) it is in no discernable order, but the “Last Date” (right column) is organized chronologically by Facebook.

10/31/12 Generation

<i>Name</i>	<i>1st Date</i>	<i>Last Date</i>
Lauren	10/16/10	10/31/12
Morgan	4/14/11	10/30/12
[Jane Doe]	7/23/11	10/26/12
Audra	10/24/12	10/24/12 (21:26)
Travis	9/2/11	10/24/12 (21:24)
Arbeiter	10/22/12	10/22/12 (21:19)
Andrea	10/21/12	10/22/12 (01:24)

The October generated version was organized chronologically by last date, in the right column: 10/31, 10/30, 10/26, 10/24, etc., (Exhibit J, PE 745-753). **There is nothing abnormal about the October version.**

[(Remainder of page intentionally left blank.)]

cutting out the unnecessary middle pages, as well as preserving privilege.

Below as organized by party, pursuant to the warrant request sent to Facebook, is the November generated version, obtained with the search warrants.

Note the “*Last Date*” (right column) again:

11/30/12 Generation

<i>Name</i>	<i>1st Date</i>	<i>Last Date</i>
Lauren	10/16/10	11/27/12
[Jane Doe]	7/23/11	11/30/12
Sean	3/2/10	11/29/12
Morgan	4/14/11	11/28/12
Mobile	11/16/12	11/22/12
Stone	7/20/12	11/20/12
Travis	9/2/11	11/16/12

The right column shows the order as: 11/27, 11/30, 11/29, 11/28, 11/22, 11/20, 11/16 (Exhibit J, PE 737-744).

Lauren Steinhaus’ messages were placed as #1 in the November generated version but should have been #4. **Lauren Steinhaus’ messages were placed out of chronological order** (Exhibit J, PE 738).

Evid. Code § 410 “As used in this chapter, ‘direct evidence’ means evidence that directly proves a

fact, without an inference or presumption, and which in itself, if true, **conclusively establishes that fact.**" [Emphasis added.]

There were approximately 9,000 pages of discovery from Facebook when combining all versions of Gutierrez and Jane Doe's accounts. Every item in those accounts was organized chronologically, except for the messages to Lauren Steinhaus.

As an offer of proof, an expert would testify that the computer program's directive was to organize all data chronologically, the program can only deviate from that directive if a human commanded it to. But it is common knowledge that a computer program will not deviate from its parameters unless directed to by a human. The fact that Lauren Steinhaus' messages to Gutierrez were placed out of chronological order proves that a human at Facebook directed the program to locate those messages and prioritize their placement out of order.

Facebook Guidelines for Law Enforcement-
"We will **search for** and disclose **data** that is ***specified*** with ***particularity*** in an appropriate form of legal

process and which we are reasonably able **to locate and retrieve.**" [Emphasis added.] (3 CT 653).

Facebook Information for Law Enforcement U.S. Legal Process- "We disclose account records in accordance with... the federal Stored Communications Act ('SCA'), 18 U.S.C. Sections 2701-2712". The third bullet point states that access to **content will only be provided through a warrant** (3 CT 652).

The messages with Lauren Steinhaus were placed out of chronological order by Facebook, from what should have been 4th chronologically to 1st position; according to Facebook's guidelines Lauren Steinhaus' messages were "specified with particularity" proven by the fact that they were "able to locate and retrieve" Lauren Steinhaus' messages and place them out of chronological order; and furthermore, per Facebook guidelines, they would only locate Lauren Steinhaus' messages if it was so stated in "an appropriate form of legal process." Therefore, Facebook was told that the target

communications for the warrants, were the communications with Lauren Steinhaus.

It is now conclusively established that Facebook was told by law enforcement that Lauren Steinhaus was the “data” that was “specified with particularity” in “an appropriate form of legal process” i.e., the warrant as per the Stored Communication Act 18 U.S.C. § 2703(a) (a warrant is required to access content of an electronic communication).

The only problem with this direct evidence as a conclusive fact (Evid. Code § 410), is that **Lauren Steinhaus was not the alleged victim of Gutierrez.**

Why did the police communicate to Facebook that the individual to target was the complainant involved in an internal affairs’ investigation from Orange County?

Lauren Steinhaus was the victim of police misconduct in Orange County and the complainant of an internal affairs’ complaint, filed by Attorney Arturo F.S. Gutierrez (SB# 232276) (petitioner) on July 23, 2012 pursuant to Penal Code § 832.5; Cal.

Const. art. I, § 3 (a) [petition government for redress of grievances]; Cal. Const. art. I, § 28 (c)(1) [attorney for crime victim seeking vindication of rights]; U.S. Const. First Amendment [petition for redress of grievances].

What are the odds that a computer program would deviate from its directive and out of approximately 9,000 pages of data that is organized chronologically only place one person out of chronological order? The odds are astronomical. Now... what are the odds that this same astronomically unlikely event resulted in the internal affairs' complainant's (Lauren Steinhaus) communications with Gutierrez being placed out of chronological order? There are no odds to calculate this being random, it can only be the result of intentional human direction at Facebook.

Because Facebook states in their law enforcement guidelines, they will only do so through "an appropriate form of legal process", **then the only conclusion can be that law enforcement told Facebook**

that the warrants were for the communications between Gutierrez and Lauren Steinhaus, (the internal affairs' complainant), because:

“The possession of a warrant by officers conducting an arrest or search greatly reduces the *perception* of unlawful or intrusive police conduct.” [Emphasis added.] *Gates* at p. 236.

It is conclusive that the warrant itself was a lie, obtained through the employment of multiple acts of perjury and concealment of exculpatory evidence, all factually unrebutted by the People, for the purposes of gaining access to attorney-client privilege and as additional evidence will demonstrate, for retaliation for advocacy against the police. Retaliation for protected speech violates the First Amendment, see *Hartman, supra*; *Butz, supra*; *Nieves v. Bartlett* (2019) 587 U.S. ____; *Houston v. Hill*, (1987) 482 U.S. 451; *Perry v. Sindermann*, (1972) 408 U.S. 593; *Johnson v. Avery*, (1969) 393 U.S. 483; *United States v. Jackson*, (1968) 390 U.S. 570; *Griffin v. California*, (1965) 380 U.S. 609; *NAACP v. Alabama*, (1958) 357 U.S. 449; *Speiser v. Randall, supra*.

“There is no question that speech critical of the exercise of the State’s power lies at the very center of the First Amendment.” *Gentile v. State Bar of Nevada*, (1991) 501 U.S. 1030, 1034 (*Gentile*).

“A public employee might, for instance, use the courts to pursue personal vendettas or to harass members of the general public. That behavior could cause a serious breakdown in public confidence in the government and its employees.” [Emphasis added.] *Borough of Duryea, Pa. v. Guarnieri*, (2011) 131 S. Ct. 2488, 2496. “The right to petition traces its origins to Magna Carta,” (*id.* at p. 2499) “The Declaration of Independence of 1776 arose in the same tradition.” (*Id.*) And “also played a central part in the legislative debate on the subject of slavery in the years before the Civil War.” (*Id.*) “[P]etitions by women seeking the vote had a role in the early woman’s suffrage movement.” (*Id.* at p. 2500) And “the civil rights movement” (*id.*) “Litigation on matters of public concern may facilitate the informed public

participation that is a cornerstone of democratic society.” (*Id.*)

“No fraud is more odious than an attempt to subvert the administration of justice.” *Hazel-Atlas* at p. 251 (conc. opin. Roberts, J.). The rule has always been: “Fraud vitiates everything.” *United States v. Throckmorton*, (1878) 98 U.S. 61, 64 (quoting *Tovey v. Young* (1702) Pr. Ch. 193).

APPENDIX K

Information for Law Enforcement Authorities | Facebook

Page 1 of 3

Sign Up

Email or Phone

Password

☐ Keep me logged in

Forgot your password?

Log In

Safety Center

Like Share 833,110 people like this. Sign Up to see what your friends like

Welcome

Philosophy

Community

Tools

Safety and You

Parents

Teachers

The Law

Information for Law Enforcement Authorities

These operational guidelines are for law enforcement officials seeking records from Facebook. For private party requests, including requests from civil litigants and criminal defendants, visit: facebook.com/help/?page=1057. Users seeking information on their own accounts can access Facebook's "Download Your Information" feature from their account settings. See facebook.com/help/?page=18630. This information may change at any time.

These guidelines can also be downloaded in their original English as a PDF.

US Legal Process Requirements

We disclose account records solely in accordance with our terms of service and applicable law, including the federal Stored Communications Act ("SCA"), 18 U.S.C. Sections 2701-2712. Under US law:

- A valid subpoena issued in connection with an official criminal investigation is required to compel the disclosure of basic subscriber records (defined in 18 U.S.C. Section 2703 (d)(2)), which may include: name, length of service, credit card information, email address(es), and a recent login/logout IP address(es), if available.
- A court order issued under 18 U.S.C. Section 2703(d) is required to compel the disclosure of certain records or other information pertaining to the account, not including contents of communications, which may include message headers and IP addresses, in addition to the basic subscriber records identified above.
- A search warrant issued under the procedures described in the Federal Rules of Criminal Procedure or equivalent state warrant procedures upon a showing of probable cause is required to compel the disclosure of the stored contents of any account, which may include messages, photos, videos, wall posts, and location information.
- We interpret the national security letter provision as applied to Facebook to require the production of only 2 categories of information: name and length of service.

International Legal Process Requirements

We disclose account records solely in accordance with our terms of service and applicable law. A Mutual Legal Assistance Treaty request or letter rogatory may be required to compel the disclosure of the contents of an account. Further information can be found here: facebook.com/about/privacy/other.

Account Preservation

We will take steps to preserve account records in connection with official criminal investigations for 90 days pending our receipt of formal legal process. You may expeditiously submit formal preservation requests through the Law Enforcement Online Request System at facebook.com/records, or by email, fax or mail as indicated below.

Emergency Requests

In responding to a matter involving imminent harm to a child or risk of death or serious physical injury to any person and requiring disclosure of information without delay, a law enforcement official may submit a request through the Law Enforcement Online Request System at facebook.com/records. Important note: We will not review or respond to messages sent to this email address by non-law enforcement officials. Users aware of an emergency situation should immediately and directly contact local law enforcement officials.

Child Safety Matters

We report all apparent instances of child exploitation appearing on our site from anywhere in the world to the National Center for Missing and Exploited Children (NCMEC), including content drawn to our attention by government requests. NCMEC coordinates with the International Center for Missing and Exploited Children and law enforcement authorities from around the world. If a request relates to a child exploitation or safety matter, please specify those circumstances (and include relevant NCMEC report identifiers) in the request to ensure that we are able to address these matters expeditiously and effectively.

Extras

Terms, Social Media, and Privacy, Now Research Center
www.pewinternet.org

"Bullying" Has Little Resonance with Teenagers, davis boyd
davisboyd.net

Parents: Understand Your Kids & Social Media, Rosalind Wiseman
www.rosalindwiseman.com

The OnLine Generation Gap: The Family Online Safety Institute
www.fosi.org

At Facebook, Defense is Offensive, Ethar Hibi
news.cnet.com

Five Myths About Bullying, Susan Swearer
www.washingtonpost.com

Character Education for the Digital Age, Jason Oiler
www.aacd.org

Safety and You

Parents

Teachers

The Law

<https://www.facebook.com/safety/groups/law/guidelines/>

8/6/2014 652

91a

Data Retention and Availability

We will search for and disclose data that is specified with particularity in an appropriate form of legal process and which we are reasonably able to locate and retrieve. We do not retain data for law enforcement purposes unless we receive a valid preservation request before a user has deleted that content from our service.

Details about data and account deletion can be found in our Data Use Policy (facebook.com/policy.php), Statement of Rights and Responsibilities (facebook.com/terms.php), and Help Center (facebook.com/help/?req=224562897555674).

Form of Requests

We will be unable to process overly broad or vague requests. All requests must identify requested records with particularity and include the following:

- The name of the issuing authority, badge/ID number of responsible agent, email address from a law-enforcement domain, and direct contact phone number.
- The email address, user ID number (<http://www.facebook.com/profile.php?id=100000000000000>) or username (<http://www.facebook.com/username>) of the Facebook profile.

User Consent

If a law enforcement official is seeking information about a Facebook user who has provided consent for the official to access or obtain the user's account information, the user should be directed to obtain that information on their own from their account. For account content, such as messages, photos, videos and wall posts, users can access Facebook's "Download Your Information" feature from their account settings. See facebook.com/help/?page=18830. Users can also view recent IP addresses in their Account Settings under Security Settings/Active Sessions. Users do not have access to historical IP information without legal process.

Notification

Our policy is to notify people who use our service of requests for their information prior to disclosure unless we are prohibited by law from doing so or in exceptional circumstances, such as child exploitation cases, emergencies or when notice would be counterproductive. Law enforcement officials who believe that notification would jeopardize an investigation should obtain an appropriate court order or other appropriate process establishing that notice is prohibited. If your data request draws attention to an ongoing violation of our terms of use, we will take action to prevent further abuse, including actions that may notify the user that we are aware of their misconduct.

Testimony

Facebook does not provide expert testimony support. In addition, Facebook records are self-authenticating pursuant to law and should not require the testimony of a records custodian. If a special form of certification is required, please attach it to your records request.

Cost Reimbursement

We may seek reimbursement for costs in responding to requests for information as provided by law. These fees apply on a per account basis. We may also charge additional fees for costs incurred in responding to unusual or burdensome requests.

We may waive these fees in matters investigating potential harm to children, Facebook and our users, and emergency requests.

Submission of Requests**Online**

Law enforcement officials may use the Law Enforcement Online Request System at facebook.com/records for the submission, tracking and processing of requests.

Please note that a government-issued email address is required to access the Law Enforcement Online Request System. You may also submit requests by email or fax as indicated below.

Email
records@fb.com

Fax