

No. _____

In the Supreme Court of the United States

FABIAN HERNAN HERNANDEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT*

PETITION FOR A WRIT OF CERTIORARI

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March 4, 2026

QUESTION PRESENTED

Did the affidavit in support of a search warrant include enough information about the veracity or reliability of the confidential informant to supply officers with a good-faith basis to rely on the warrant?

RULE 14.1(b)(iii) STATEMENT

The following proceedings are “directly related” within the meaning of Rule 14.1(b)(iii):

U.S. District Court for the Northern District of Texas:

United States v. Fabian Hernan Hernandez
Docket Number: 2:24-cr-44
Judgment Entered: March 12, 2025

U.S. Court of Appeals for the Fifth Circuit:

United States v. Fabian Hernan Hernandez
Docket Number: 25-10386
Judgment Entered: December 4, 2025

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PETITION FOR A WRIT OF CERTIORARI

Fabian Hernan Hernandez respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The Fifth Circuit's opinion below was not selected for publication. It is reprinted on pages 1a–3a of the Appendix. The district court's written order denying Petitioner's motion to suppress evidence is reprinted on pages 5a–14a of the Appendix.

JURISDICTION

The Fifth Circuit entered written judgment on December 4, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the U.S. Constitution 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

While executing a search warrant at the home of Petitioner Fabian Hernandez, police discovered a pistol, \$7,600 in cash, and approximately 1 kilogram of suspected methamphetamine. A federal grand jury returned a two-count indictment charging him with conspiracy to distribute methamphetamine and possession of methamphetamine with intent to distribute.

Mr. Hernandez moved to suppress the fruits of that search, but the district court denied that motion. Pet. App. 4a–15a. Petitioner then entered a conditional guilty plea possession of methamphetamine with intent to distribute, reserving the right to appeal the denial, and to withdraw the plea if the appeal were successful. The district court sentenced him to 189 months of imprisonment, followed by three years of supervised release.

A. Search Warrant Affidavit

On May 23, 2024, a deputy sheriff named Kerry Blackerby applied for a warrant to search Mr. Hernandez’s home for drugs and drug-trafficking accoutrements. Pet. App. 16a–19a. The most important allegations in the affidavit came from someone Blackerby characterized as a “reliable confidential informant.” Pet. App. 17a. According to the informant:

- the informant had been inside the residence “on numerous occasions over the last couple of months”;
- the informant saw “distributable amounts of Methamphetamine” up to ½ pound or more “every other day during this time”; and
- within 48 hours before the warrant application, a “suspected party” (separately identified as either Mr. Hernandez or “Hispanic/Male ‘Luis’”) told the informant that the suspected party would soon have possession, at the residence, of a distributable amount of methamphetamine.

Pet. App. 17a–18a.

The affidavit included a few additional details—mostly old, and mostly unconnected to the residence. Blackerby averred that, back in 2022, he “began a DEA investigating [sic] the suspected party as a large-scale methamphetamine trafficker.” Pet. App. 17a. That same year, someone carrying drugs in Alabama claimed that she had picked them up at Mr. Hernandez’s place of business, which was soon closed.

Pet. App. 17a. There were also allegations that Mr. Hernandez might be living beyond his apparent financial means:

Law Enforcement also contacted the Texas Comptroller's Office and learned the suspected party has never completed proper paperwork for any business that he has opened, and he never had any reportable income. The suspected party owns several vehicles and the house the suspected party lives in shows to be paid for.

Pet. App. 17a. The affidavit also mentioned a social media photograph of Mr. Hernandez wearing a religious emblem that Blackerby incorrectly asserted was *only* associated with “high-level narcotics trafficker.” Pet. App. 17a.

Here is what the affidavit asserted about the confidential informant’s reliability:

The confidential informant knows that the substance is Methamphetamine because the confidential informant has purchased and used Methamphetamine in the past. The confidential informant has provided information to the affiant and other law enforcement partners about narcotics traffickers in the past and through investigations, the affiant, and the affiant’s partners, was able to establish the information has been proven to be reliable, true and correct. The confidential informant has been told by the affiant and other narcotic agents

and the confidential informant is aware that possession of Methamphetamine is a violation of the Texas Health and Safety Code.

Pet. App. 18a.

Based on Blackerby's affidavit, a Texas state judge signed the warrant. Pet. App. 20a. As previously noted, officers executed the warrant at Mr. Hernandez's house and found methamphetamine, a firearm, and \$7,600.

B. Motion to Suppress

After he was indicted, Mr. Hernandez moved to suppress the fruits of the May 2024 search. He provided a copy of an earlier warrant application (dated June 2023) in which Blackerby used nearly identical language, including a grammatical error, to "establish" a confidential informant's reliability:

The confidential informant has provided information to the affiant and other law enforcement partners about narcotics traffickers in the past and through investigations, the affiant and the affiants partners, was able to establish the information has been proven to be reliable, true and correct. The confidential informant has been told by the affiant and other narcotic agents and the confidential informant is aware that possession of Cocaine is a violation of the Texas Health and Safety Code and that the suspected party was in violation of the Texas Health and Safety Code.

5th Cir. ROA 100. Mr. Hernandez argued that this copied-and-pasted assertion was insufficient to allow the magistrate judge to make an independent determination about the informant's credibility, and that the searching officers could not rely in good faith on the resulting warrant.

The district court disagreed. Pet. App. 4a–15a. The court held that the affidavit was hearty enough to support the good-faith exception to the exclusionary rule. Pet. App. 9a–13a. In the alternative, the court held that the affidavit was strong enough to establish probable cause. Pet. App. 13a–15a.

C. Appeal

The Fifth Circuit affirmed the denial of Petitioner's motion to suppress. The court decided that the bare-bones assertion that the informant had previously provided "reliable" information was good enough: "The warrant affidavit sets out sufficient facts confirming that the confidential informant (CI) in this case was reliable and truthful." Pet. App. 2a. The Court further held that a different suspect's accusation, nearly two years earlier, that Petitioner possessed drugs *at his former business* corroborated the informant's supposed reliability here. Pet. App. 3a.

REASONS FOR GRANTING THE PETITION

I. The search warrant affidavit was bare bones, so the good-faith exception does not apply.

This Court created the exclusionary rule "to safeguard Fourth Amendment rights generally

through its deterrent effect.” *United States v. Leon*, 468 U.S. 897, 906 (1984) (quoting *United States v. Calandra*, 414 U.S. 338, 354 (1974)). In *Leon*, this Court decided that prosecutors should generally be allowed to rely on illegally seized evidence if police first secured a search warrant from a detached and neutral magistrate. 468 U.S. at 913. This has come to be called the “good-faith exception” to the exclusionary rule.

Leon also identified *exceptions* to the good-faith exception; this case focuses on one of those—the “bare bones” doctrine. An officer *cannot* rely in good faith “on a warrant based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.” *Leon*, 468 U.S. at 923 (internal quotations and citations omitted).

A. Officers cannot rely on a warrant issued in response to “conclusory statements.”

A search warrant “affidavit must provide the magistrate with a substantial basis for determining the existence of probable cause.” *Illinois v. Gates*, 462 U.S. 213, 239 (1983). The affidavit must include “sufficient information” to allow the magistrate to independently find probable cause; her “action cannot be a mere ratification of the bare conclusions of others.” *Id.* A textbook example of an inadequate affidavit is one asserting that police “have received reliable information from a credible person and believe’ that heroin is stored in a home.” *Gates*, 462 U.S. at 239 (quoting *Aguilar v. Texas*, 378 U.S. 108, 109 (1964)); *see also id.* at 230 (“[A]n informant’s

‘veracity,’ ‘reliability’ and ‘basis of knowledge’ are all highly relevant in determining the value of his report.”).

B. The affidavit’s assertions about the informant’s reliability were all conclusory.

The informant claimed to have personally observed illegal drugs in Mr. Hernandez’s home and to have heard Mr. Hernandez promise to have drugs available at his home around the time of the search. Pet. App. 17a–18a. The tip would be enough to provide probable cause, *assuming the tipster was reliable*.

The search warrant affidavit here provided only bare assertions about the informant’s alleged reliability:

The confidential informant has provided information to the affiant and other law enforcement partners about narcotics traffickers in the past and through investigations, the affiant, and the affiant’s partners, was able to establish the information has been proven to be reliable, true and correct.

Pet. App. 18a.

Mr. Hernandez proved that this is boilerplate language, right down to the grammatical error, and it does not even explain how or why the affiant concluded the previous information was “reliable, true, and correct.”

In another case involving nearly identical boilerplate from the same officer (Deputy Blackerby), the district court said it was a “close call” whether the good-faith exception should apply. *See United States v. Vazquez-Ochoa*, No. 2:24-CR-16, 2024 WL 4150455, at *3 (N.D. Tex. Sept. 10, 2024). The court admonished the government “to ensure that the warrants underlying its cases are supported by thorough, sufficient affidavits.” *Id.*, 2024 WL 4150455, at *5 n.4. Yet the court applied the good faith exception here, and the Fifth Circuit affirmed.

C. The informant’s alleged familiarity with methamphetamine based on prior use does nothing to cover the bones.

Generally, we do not associate prior drug use with enhanced reliability. Here, the district court found that the informant “made an inculpatory statement against interest when he admitted past methamphetamine use.” Pet. App. 12a (citing *United States v. Harris*, 403 U.S. 573, 583 (1971)). But the affidavit does not even say when or where the informant allegedly used drugs. Cf. Pet. App. 18a. From the affidavit, no one could say whether the informant used drugs long ago (outside limitations) or in a different jurisdiction (outside the reach of Texas or even U.S. law).

D. The additional assertions in the affidavit do not fill the gaps.

The informant’s allegations provided the only connection to *current* drug-trafficking, and the only connection to Mr. Hernandez’s residence.

Simply identifying the homeowner as a “target” of a drug investigation is not enough. *See United States v. Brown*, 567 F. App’x 272, 282 (5th Cir. 2014). Here, the additional allegations—including the prior investigations—were from September 2022 or earlier. Pet. App. 17a–18a. That was nearly two years before the search, with no additional evidence in the interim (other than the informant’s tip). Pet. App. 18a–19a. The affidavit mentioned “a previous federal conviction for drug distribution,” without anything more.¹ Pet. App. 17. None of these assertions corroborated the informant’s assertions regarding drug possession at Mr. Hernandez’s home in 2024.

E. Officers did not corroborate any part of the informant’s tip.

There is no indication that officers ever independently confirmed the inculpatory or innocent details of the informant’s tip here. Thus, the magistrate could not rely on independent corroboration.

II. The district court’s alternative finding of probable cause was based on the same affidavit, without anything more.

The Fifth Circuit did not address the district court’s alterative holding that “[e]ven if the good-faith exception did not apply, the warrant is still valid because it is supported by probable cause.” Pet. App.

¹ The PSR would later reveal Mr. Hernandez’s prior conviction for carrying marijuana in his car in 2010. *See* 5th Cir. ROA 299.

13a. Thus, this Court need not address it. But that alternative holding was based on the very same inadequate affidavit. The court relied on the informant's "excellent track record of providing effective and accurate information to law enforcement." Pet. App. 14a. But there was no evidence in the affidavit or anywhere in the record to support that finding, other than the officer's bare assertion. Put another way, the federal district court below was in no better position than the state district judge who first reviewed the affidavit—it could not independently evaluate the informant's credibility. Both courts could do nothing more than "ratify" Deputy Blackerby's assertion that *previous* information was reliable.

The affidavit was insufficient to establish probable cause for the same reasons it was insufficient to allow good-faith reliance. The critical information was provided by a confidential informant, and the affidavit gave the magistrate no way to independently assess the credibility or reliability of that informant.

CONCLUSION

This Court should grant the petition and either summarily reverse the decision below or set the case for a decision on the merits.

Respectfully submitted,

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