

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

JOSE GABRIEL DURAN GARCIA,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

Petition for a Writ of Certiorari

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QUESTION PRESENTED

Whether probable cause may be based solely on a handler's interpretation of a drug-detection dog's subtle behavioral changes when the dog fails to perform its trained final response.

LIST OF PARTIES

All parties in the proceeding in the court below whose judgment will be reviewed are the following:

Jose Gabriel Duran Garcia

United States of America

RELATED PROCEEDINGS

U.S. District Court for the District of South Carolina

United States v. Jose Gabriel Duran Garcia, No. 7:21-cr-00523-DCC-1 (D.S.C. Oct. 6, 2023) (criminal judgment).

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

United States v. Jose Gabriel Duran Garcia, No. 23-4631 (4th Cir. Mar. 5, 2026) (judgment affirmed).

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Jose Gabriel Duran Garcia respectfully petitions this Court to issue a *writ of certiorari* to the U.S. Court of Appeals for the Fourth Circuit.

OPINIONS AND ORDERS BELOW

The Fourth Circuit's opinion is unpublished and is reproduced at App. 1a-13a. The district court's order denying petitioner's motion to suppress is unpublished and is reproduced at App. 14a-32a.

JURISDICTION

The district court had jurisdiction over the underlying criminal action. 18 U.S.C. § 3231. It entered final judgment on Oct. 6, 2023.

The U.S. Court of Appeals for the Fourth Circuit had jurisdiction to consider the district court's final judgment. 28 U.S.C. §§ 1291, 1294.

This Court has jurisdiction to review the Fourth Circuit's judgment. 28 U.S.C. § 1254(1). The Fourth Circuit entered judgment on March 5, 2026. No rehearing was sought.

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment provides as follows:

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 prob-

able cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. Amend. IV.

STATEMENT OF THE CASE

I. The Search at Issue

Petitioner Duran was a passenger on an interstate commercial bus traveling from Atlanta to New York. During a traffic stop in South Carolina, officers obtained the bus driver's consent to open the bus's exterior luggage hold. App. 2a. Although law enforcement had no particularized reason to suspect that the bus was in any way connected with illegal activities, they arranged for a drug dog, Kaos, to do a free-air sniff around the luggage compartment. App. 2a-3a.

Kaos was trained to alert for drugs by engaging in a specific behavior: sitting down. App. 3a. The handler brought Kaos to the opened luggage hold, which had approximately 15 pieces of luggage inside. *Id.* Kaos was taken past the luggage compartment twice, but he never sat down. *Id.*

Despite Kaos's failure to perform his trained final response, the handler nevertheless "determined that Kaos had alerted him to the presence of drugs based on his assessment of Kaos's 'breathing,' 'walking speed,' and the speed

and ‘pattern’ of Kaos’s tail.” *Id.* (quoting district court record). Law enforcement proceeded to begin opening all the luggage in the compartment, eventually coming to a suitcase that contained ten bricks of cocaine. *Id.*

Without opening the identical black suitcase to the one that contained cocaine, law enforcement asked the passengers to exit the bus and claim their luggage. App. 3a. As Mr. Duran exited the bus, law enforcement asked him whether he had any luggage in the compartment, and he denied having any. App. 3a-4a.

After all the passengers had claimed their bags, two black suitcases remained: the suitcase that had already been found to contain cocaine and an unopened, identical suitcase. App. 4a. Officers opened the second suitcase and found additional cocaine. *Id.*

Later-obtained surveillance video from the Atlanta terminal showed that Mr. Duran had placed the two black suitcases in the luggage hold. *Id.*

II. The Proceedings in the District Court

Mr. Duran was charged below with conspiracy to possess with intent to distribute cocaine, possession with intent to distribute cocaine, and interstate travel in aid of drug trafficking. *Id.*

He moved to suppress the cocaine. Among other things, he argued that the search of the luggage lacked probable cause because Kaos did not give his trained final alert. At the hearing on the motion to suppress, he presented expert testimony that Kaos did not indicate the presence of narcotics.

The district court denied suppression. App. 14a-32a. It held that petitioner lacked standing to challenge the luggage searches because he had disclaimed ownership at the scene. App. 4a-5a. In the alternative, it found that Kaos reliably alerted to the presence of narcotics in the luggage hold and that the alleged alert supplied probable cause to open the luggage. App. 5a.

Mr. Duran entered a conditional guilty plea, reserving his right to appeal the denial of his motion to suppress. App. 5a.

He was sentenced to 108 months' imprisonment, plus the special assessment and a term of supervised release. *Id.*

III. The Fourth Circuit's Decision

Contrary to the district court, the Fourth Circuit determined that Mr. Duran did have standing as to the first suitcase. Because that search preceded the verbal disclaimer of the luggage, he could not have abandoned it at the time of the search. App. 6a-8a. As to the second suitcase, like the district court, the Fourth Circuit found no standing due to the verbal disclaimer of ownership. App. 6a-7a.

As to the merits, the Fourth Circuit affirmed the judgment. It held that the district court did not clearly err in finding that Kaos alerted based on the dog's certification and training records, the handler's testimony, and the district court's credibility determinations. App. 8a-12a. Yet, the Fourth Circuit also recognized that the same record would have supported a conclusion that probable cause was lacking because Kaos had not performed his trained response and because Mr. Duran's expert challenged the reliability of Kaos's training. App. 12a.

REASONS FOR GRANTING THE PETITION

This case presents a recurring Fourth Amendment question that lower courts have answered inconsistently: what qualifies as a drug-detection dog's "alert" for purposes of establishing probable cause.

This Court's decision in *Florida v. Harris*, 568 U.S. 237 (2013), addressed when a trained and certified drug-detection dog may be considered reliable. But *Harris* assumed the existence of an alert. It did not address the antecedent question presented here: what showing is required before a court may conclude that an alert occurred in the first place.

Lower courts have adopted differing approaches to that recurring and important question. This Petition presents a good vehicle to provide them with the guidance that they need.

I. The Lower Courts Disagree About When a Dog Alerts.

The lower courts have not adopted a uniform rule for drug-detection dogs that fail to perform their trained final response. Some courts defer to handler testimony that the dog exhibited recognized alert behavior even without the final response. Other courts require more objective indicia and reject vague “interest,” “casting,” or subtle behavioral changes as insufficient.

A. Courts that Do Not Require a Final Alert

At least two Circuits have held in published opinions that a non-final alert from a drug dog can establish probable cause.

The Tenth Circuit so held in *United States v. Parada*, 577 F.3d 1275, 1282 (10th Cir. 2009). The court rested its decision in part on practical grounds, noting that “it might be dangerous to permit a narcotics dog to pinpoint the location of the drugs in certain circumstances, such as here, where the vehicle’s occupants were still inside and the dog was trained to indicate by barking, scratching, and biting at the source of the odor.” *Id.*

The Ninth Circuit agrees that a trained final response is not needed. *United States v. Thomas*, 726 F.3d 1086, 1098 (9th Cir. 2013) (joining *Parada*, 577 F.3d 1275). In its view, “[e]vidence from a trained and reliable handler about alert behavior he recognized in his dog can be the basis for probable cause. Whether

a particular dog displays enough signaling behavior will depend on the facts and circumstances of each case.” *Id.*

The decision below aligns with this view. The Fourth Circuit accepted a non-final alert even though the dog’s trained final response was to sit, the dog did not sit, and the alleged alert depended on the handler’s interpretation of subtle changes in breathing, speed, and tail movement. App. 3a, 11a-12a. It affirmed the decision to credit the handler over an expert. App. 11a-12a.

B. Courts Rejecting Probable Cause Based on a Nonfinal Alert

The Eighth Circuit invalidated a search warrant that had been obtained via an affidavit indicating that a drug dog showed interest in the package—but omitted that the dog had not performed its trained behavior. *United States v. Jacobs*, 986 F.2d 1231, 1235 (8th Cir. 1993). As the Eighth Circuit explained, “if the warrant application [at issue] were reworked to include the omitted phrase, it would read something like this: ‘The dog had showed an interest in the defendant’s package, but had not given a full alert to the package.’ We hold that such an application, on its face, would not support probable cause.” *Id.* In its view, nontrained behavior might afford reasonable suspicion to investigate further, “more is needed to overcome the Fourth Amendment right to privacy....” *Id.*

The Fifth Circuit has gone further. It has held that a drug dog’s “casting” behavior—that is, where a dog shows some generalized interest but does not perform a trained final response—did not support a finding of even reasonable suspicion, much less probable cause. *United States v. Rivas*, 157 F.3d 364, 368 (5th Cir. 1998). In its view, “casting is too distantly related to an alert to create reasonable suspicion on its own as a matter of law.” *Id.*

One district court has cogently explained the concerns with allowing a handler’s interpretation of nontrained behavior to substitute for the dog’s performance with the trained behavior:

A court cannot accept a handler’s subjective determination that a dog has made some otherwise undetectable alert, which conclusion would be, for all practical purposes, immune from review. Given the nature of the constitutional right at issue, the Supreme Court has found this premise to be unacceptable. “If [an officer’s] 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.” *Beck v. Ohio*, 379 U.S. 89, 97, 85 S. Ct. 223, 13 L. Ed. 2d 142 (1964). To allow a search predicated upon an officer’s interpretation of the utterly minimalist lesser showing exhibited by the dog in this case would be tantamount to permitting law enforcement officers to issue their own search warrants based upon their own subjective analysis, something the Framers explicitly prohibited.

United States v. Wilson, 995 F. Supp. 2d 455, 475 (W.D.N.C. 2014).

II. The Question Is a Recurring, Important One.

Dog sniffs are a routine feature of modern law enforcement. They occur during traffic stops, at bus stations, in airports, in parcel facilities, and around vehicles and luggage. And because, as here, drug dogs are frequently used in connection with common carriers, the stakes are high. When a dog allegedly alerts to a shared luggage compartment rather than to a particular bag, officers may treat every traveler's effects as searchable unless courts impose objective limits on what counts as an alert. The line between a trained final response and subtle, handler-interpreted interest therefore affects many searches.

The question is also an important one. This Court has allowed alerts from drug dogs to provide probable cause because proof of certification or reliable training provides reason to trust a dog's alert that a proposed search based on the alert will yield results. *Harris*, 568 U.S. at 247-48. Allowing non-trained response to count creates a constitutional catch-22: Probable cause exists if the dog performs its trained response—and even when it does not perform the trained response. If the trained response is not required, the training standard loses much of its constitutional significance. A dog's certification then proves reliability for one behavior, while probable cause is supplied by another.

III. This Petition Presents an Appropriate Vehicle.

The question presented was raised and ruled upon below.

Furthermore, a ruling that the alleged alert did not establish probable cause would require suppression of the cocaine found in the first suitcase—the evidence the Fourth Circuit held petitioner had standing to challenge—and would undermine the basis for the conditional plea.

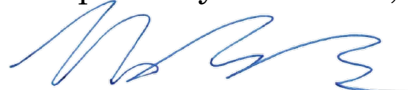
Nor does this case ask the Court to resolve factual issues. The facts are not in dispute. Kaos was trained to sit; Kaos did not sit. The alleged basis for probable cause consisted of changes in breathing, speed, and tail movement that the Fourth Circuit deemed sufficient to constitute an alert.

CONCLUSION

Accordingly, the petition for a *writ of certiorari* should be granted.

Dated: June 1, 2026

Respectfully submitted,



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**APPENDIX A: OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE
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23-4631 (MAR. 5, 2026).**

**APPENDIX B: ORDER OF THE UNITED STATES DISTRICT COURT FOR THE
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