

No. _____

*In the
Supreme Court of the United States*

RONALD SMITH,

PETITIONER,

v.

BEXAR COUNTY; RAMIRO SANCHEZ, *DEPUTY*

RESPONDENTS.

**APPLICATION FOR EXTENSION OF TIME TO FILE PETITION
FOR WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT**

To the Honorable Justice Samuel Alito, Associate Justice of the United States Supreme Court, and Circuit Justice for the Fifth Circuit.

A. CASE CHRONOLOGY

This is a Civil Rights case filed under 42 U.S.C. 1983; primarily based upon violations of the 4th Amendment. The basis of this Court's jurisdiction is 28 U.S.C. 1254(1).

Final Judgment was issued on August 16, 2024 in the Western District of Texas. Ronald Smith filed a timely appeal on September 11, 2024, and paid the filing fee.

The Case was assigned Appeal No. 24-50724 in the Fifth Circuit. Oral Argument was heard on June 3, 2025. The Fifth Circuit issued a terse “1 sentence affirmation” of the District Court’s Judgment on June 5, 2025. Petitioner Ronald Smith filed a Petition for Rehearing En Banc on June 6, 2025. Rehearing was denied on June 23, 2025. This would indicate any Certiorari Petition is due on or before September 22, 2025.

B. REASONS FOR AN EXTENSION OF TIME, AND THE NECESSITY FOR THIS COURT’S REVIEW

1. Petitioner Ronald Smith, through Counsel, requests a 58 day extension of time to file his Certiorari Petition.
2. This case involves “police violations” effected during a sham “emergency mental health detention.” This faux mental crisis arose after 39 minutes into a routine traffic stop. Petitioner was physically blocked by Respondent Sanchez’ motorcycle, seized, handcuffed, searched, and placed in the back of a cruiser for 2 hours and 27 minutes. No criminality was discovered, asserted, or charged.

Respondent suddenly found Smith was having a mental crisis after 39 minutes of being handcuffed and safely tucked away in the back of a

locked cruiser. Smith was transported to a Hospital—where he was summarily discharged on his own accord. No mental crisis had occurred, and Smith was quite calm and rational. Smith and his car had been scoured for guns, drugs, contraband, stolen vehicles, and fugitive wants and warrants. This foray proved useless. The purported basis of the stop—Speeding, was never addressed.

3. This Court has briefly broached the subject of the Civil Mental Health Process in several cases, *O'Connor v. Donaldson*, 422 U.S. 563 (1975), and *Addington v. Texas*, 414 U.S. 418 (1975). However, there is no holding from this Court on what is required to justify a warrantless “emergency mental health detention” in the context of a traffic stop or street encounter with the public.

The Fifth Circuit tried to ingrain its own personal impressions of what could constitute a lawful basis for such a seizure—rather than empirical criteria and definitions used by mental health practitioners. In other words, subjective criteria, rather than objective standards. This Court should address these issues and pronounce a standard of what would satisfy a warrantless basis to seize a citizen in a street encounter

based upon an emergency mental crisis. The Fifth Circuit found “odd answers” and “strange behavior” satisfied the probable cause requirement. However, to represent a mental crisis, there must generally be elements of self-destructive behavior (suicidal), or harm to third parties (homicidal).

4. On July 22, 2025, Petitioner’s Counsel Andres Cano suffered a serious fall due to a plumbing overflow. Counsel Cano slipped and fell on concrete, tearing a thigh muscle in his leg, and fracturing his right knuckles. The thigh muscle is making progress. However, the fractured right knuckles are deformed. This hinders and prevents typing (Cano is right-handed). Furthermore, it is unclear if Orthopedic surgery will be required to repair them. Beyond that, it is unclear if anything could restore the hand’s previous form and function. Counsel Cano is forced to exclusively type and input data with his left hand. It seriously hampers brief writing and involved legal stylings.

5. Contemporaneously with the physical harm from falling, Counsel Cano experienced a total system “computer crash.” A valued laptop for 5 years shut down and failed. This system had much legal research,

writing, case law, and templates. Most of the data was not recoverable. Thus, Counsel Cano may have to reinvent “the wheel” and recreate documents and templates which he previously created and stored. This will greatly slow the creative, the writing, and the argument processes.

6. On a personal and familial level, Counsel Cano is the primary caregiver for his 91 year old Mother. She has many conditions reflective of her age, and cannot take care of herself. These medical conditions are worsening. It has not yet reached the stage where care in a facility is required. But, she requires constant care and attention to perform the routine tasks of living. In fact, Counsel Cano had to curtail the acceptance of new cases based upon these familial needs. These are labors of love. Yet, there are only so many hours in a day.

CONCLUSION

An extension of 58 days until November 19, 2025 will not unduly delay further review of this case. It will give time for clarity on troublesome circumstances preventing Counsel Cano’s legal proficiency. The Supreme Court Rule of Court §13(5) permits this Court to extend the time file a Petition for Certiorari Review up to 60 days.

Respectfully Submitted,

/s/ *Andres Roberto Cano*

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CERTIFICATE OF SERVICE

I hereby affirm a true and correct copy of this Motion for an Extension of time to file a Petition for Certiorari was electronically transmitted to the following on August 7, 2025 and mailed to the U.S. Supreme Court Clerk.

/s/ *Andres Cano*

Jose Herrera
Respondents' Counsel
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/s/ Andres Cano

Petitioner's Counsel

ATTACHMENTS

- A. June 5, 2025 Opinion in No. 24-50724**
- B. June 6, 2025 Petition for Rehearing En Banc in No. 24-50724**
- C. June 23, 2025 Order denying Rehearing in No. 24-50724**
- D. June 30, 2025 Mandate and Judgment in No. 24-50724**

ATTACHMENT A

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

June 5, 2025

Lyle W. Cayce
Clerk

No. 24-50724

RONALD SMITH,

Plaintiff—Appellant,

versus

BEXAR COUNTY; RAMIRO SANCHEZ, *Bexar County Deputy,*

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:23-CV-623

Before ELROD, *Chief Judge*, ENGELHARDT, *Circuit Judge*, and GUIDRY,
District Judge.^{*}

PER CURIAM:^{**}

Having reviewed the briefs, record, and opinion of the district court,
and having heard oral argument, we see no reversible error. **AFFIRMED.**
5TH CIR. R. 47.6.

^{*} United States District Judge for the Eastern District of Louisiana, sitting by
designation.

^{**} This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

June 05, 2025

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 24-50724 Smith v. Bexar County
USDC No. 5:23-CV-623

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and Fed. R. App. P. 39, 40, and 41 govern costs, rehearings, and mandates. **Fed. R. App. P. 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. Fed. R. App. P. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

The judgment entered provides that each party bear its own costs on appeal.

Sincerely,

LYLE W. CAYCE, Clerk

Lisa E. Ferrara

By: _____

Lisa E. Ferrara, Deputy Clerk

Enclosure(s)

Mr. Andres Roberto Cano
Mr. Jose Emmanuel Herrera

ATTACHMENT B

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

CASE NO. 24-50724

**RONALD SMITH,
*Plaintiff-Appellant,***
v.
**BEXAR COUNTY, TEXAS,
BEXAR COUNTY SHERIFF'S DEPUTY RAMIRO SANCHEZ
*Defendants-Appellees.***

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF TEXAS, SAN ANTONIO DIVISION
NO. 5:23-CV-00623-JKP

APPELLANT'S PETITION FOR REHEARING EN BANC

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Link to Oral Argument in No. 24-50724

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CERTIFICATE OF INTERESTED PERSONS

Appellant Ronald Smith certifies the following listed persons and entities under FRAP 28.2.1 have an interest in the outcome of this case. These representations are made so the Honorable Judges of this Court may evaluate any potential recusal or disqualification.

<u>Name of Interested Person</u>	<u>Connection and Interest</u>
(1) Ronald Smith	Plaintiff-Appellant
(2) Andres Cano	Counsel for Appellant
(3) Bexar County, Texas	Defendant-Appellee
(4) Deputy Ramiro Sanchez	Defendant-Appellee
(5) Jose Herrera	Counsel for Appellees

/s/ Andres Cano
Appellant's Counsel

A. NECESSITY OF EN BANC CONSIDERATION

Appellant, through Counsel Andres Cano, asserts that En Banc consideration is necessary for the following under Fed. Rule App. Pro. 40:

A. The Panel’s decision conflicts with several 5th Circuit precedents. The Court’s En Banc consideration is necessary to maintain uniformity of its precedents.

B. The Panel’s decision conflicts with several U.S. Supreme Court standards. *Vertical stare decisis* compliance is required.

C. The Panel’s decision disregards the highest Texas Criminal Court’s interpretation of its own laws. Comity is required with State courts.

B. STATEMENT OF THE ISSUES

(1) Whether Emergency Mental Health Seizures can be effected based upon anything less than a bona fide mental illness and “dangerousness?”

(2) Whether Rule 12(b)(6) Motions can be converted to Summary Judgment **without any** of the *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496 (5th Cir. 2000) criteria present?

(3) Whether dubious hearsay evidence is adequate to produce a Final Judgment?

(4) Whether unlawful arrests can be remedied by subsequent discoveries under the Community Caretaking function?

(5) Whether temporary detentions under *Terry v. Ohio*, 392 U.S. 1 (1968) can be exponentially expanded without legal justification?

(6) Whether Federal Courts are free to disregard State Court interpretations of state statutes?

C. SUMMARY OF THE ARGUMENT

I. CONFLICT WITH EMERGENCY MENTAL HEALTH SEIZURES

The panel decision conflicts with 5th Circuit precedent regarding Emergency Mental Health Detentions in *Cantrell v. City of Murphy*, 666 F.3d 911 (5th Cir. 2012) and *Rich v. Palko*, 920 F.3d 288 (5th Cir. 2019). Probable cause must exist for Police to believe: (1) a person is mentally ill; and (2) a danger to themselves or others. “Dangerousness” in the form of suicidal or homicidal behavior is required. The panel seemed to recognize those traits were not present. Yet, the panel felt “odd” behavior was a justifiable basis for a warrantless detention, a free pass to arrest Appellant, and rummage through his automobile. The Court’s En Banc consideration is necessary to maintain uniformity of its precedents.

II. CONFLICT WITH INCORPORATION BY REFERENCE STANDARD

The panel’s decision conflicts with 5th Circuit precedent regarding the “Incorporation by Reference” conversion of Rule 12(b)(6) Motions to Summary Judgment. The Appellees couldn’t satisfy any of the 4 criteria in *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496 (5th Cir. 2000). (1) Documents must be central to the Plaintiff’s claims. (2) The documents must be repeatedly referenced. (3) The documents must be authenticated. (4) The documents must be attached to the Rule 12(b)(6) Motion and simultaneously filed. The Defendants persuaded the District Court to convert to Summary Judgment based upon unauthenticated videos the

Plaintiff did not possess, were not central to his claims, and were not filed with the Rule 12(b)(6) Motion. The Court's En Banc consideration is necessary to maintain uniformity of its precedents.

III. CONFLICT WITH HEARSAY EVIDENCE STANDARD

The panel's decision conflicts with 5th Circuit precedent regarding challenges to unauthenticated evidence in *Lee v. Offshore Logistical & Transport*, 859 F.3d 353 (5th Cir. 2017), and the specter of judgments caused by hearsay evidence in *Weinhoffer v. Davie Shoring*, No. 20-30568 (5th Cir. 2022). The Appellee's evidence was unauthenticated, was challenged, had a dubious provenance, and directly caused a Final Judgment. The Court's En Banc consideration is necessary to maintain uniformity of its precedents.

IV. CONFLICT WITH SUPREME COURT UNLAWFUL ARRESTS

The panel's decision conflicts with Supreme Court precedent in *Henry v. United States*, 361 U.S. 98 (1959), and *Beck v. Ohio*, 379 U.S. 89 (1964). Under Supreme Court precedent, Police cannot justify illegal arrests with subsequent discoveries. Here, Appellant was summarily handcuffed and placed in the back of a cruiser. Further, no criminality was present or discovered. The Appellee attempted to justify an unlawful arrest with a subsequent "mental health crisis" 39 minutes later. The 5th Circuit must adhere to *vertical stare decisis*, *Ballew v. Continental Airlines, Inc.*, 668 F.3d 777 (5th Cir. 2012).

V. CONFLICT WITH SUPREME COURT *Terry v. Ohio* STANDARD

This panel’s decision conflicts with Supreme Court precedent regarding *Terry v. Ohio*, 392 U.S. 1 (1968) type encounters. Appellant’s encounter with Appellee lasted 2 hours and 27 minutes. Since the panel didn’t deem it an “arrest,” it stretched the boundaries of a legal *Terry* stop. *Terry* stops require a “reasonable suspicion” criminal activity is afoot. These are limited by time, *United States v. Sharpe*, 470 U.S. 675 (1985), and purpose, *Rodriguez v. United States*, 575 U.S. 348 (2015). The 5th Circuit must obey Supreme Court precedent.

VI. THE 5th CIRCUIT MUST RECOGNIZE STATE COURT INTERPRETATIONS OF STATE LAWS

The panel’s decision conflicts with the federal circuits’ mandatory reliance on State Court interpretations of criminal law, *Hartfield v. Thayer*, 403 S.W.3d 234 (Tex. Crim. App. 2013). The Texas Transportation Code §543.004 states a Peace Officer cannot arrest a motorist solely for the offense of Speeding, *Tores v. State*, 518 S.W.2d 378 (Tex. Crim. App. 1975). The District Court ruled the Appellee had probable cause to arrest the Appellant for the offense of Speeding—which justified all other conduct by Appellee. Texas statutory law does not permit arrests under the §543.004 statute. The En Banc Court consideration is necessary to maintain comity with State Courts.

D. STATEMENT ON COURSE OF PROCEEDINGS

This case was filed in State court under 42 U.S.C. 1983 on April 14, 2023. It was removed to federal court in May 2023. The District Court dismissed many claims in a Rule 12(b)(6) Order on November 2, 2023. This Order converted the 12(b)(6) Motion to one for Summary Judgment. Summary Judgment was granted on the remaining claims on August 16, 2024. This served as a Final Judgment. Appellant filed his Appeal on September 11, 2024. All briefs were submitted by December 25, 2024. Oral Argument was held June 3, 2025. The Unpublished Opinion issued on June 5, 2025.

E. STATEMENT OF FACTS

Nearly all of the following facts exist in the Appellee's own hearsay evidence.

Deputy Sanchez Video A

- 1. Min. 30-45 seconds**, Sanchez turns around and lost sight of whatever car he was pursuing.
- 2. Min. 46 seconds**, Sanchez encounters Smith coming out of a neighborhood, and blocks his path with his motorcycle.
- 3. Min. 1:10**, Smith says he didn't do 61 in a 40.
- 4. Min. 3:28**, Smith is handcuffed.
- 5. Min. 4:38**, Sanchez takes Smith's car keys.
- 6. Min. 4:40**, Smith is placed in a Sheriff's cruiser, and never leaves.
- 7. Min. 7:30**, the car registration comes back to Ronald Smith, owner.
- 8. Min. 9:43, (3)** Deputies are searching Smith's car. Sanchez calls Natalie Smith—his wife.

9. **Min. 12:30**, Sanchez asks Smith's wife to come pick up her husband. Natalie does drive over there.
10. **Min. 13:38**, One Deputy proposes Smith has 'excited delirium.' **Sanchez says "I don't think it's excited delirium."**
11. **Min. 14:08**, No wants or warrants exist for Ronald Smith from the dispatcher.
12. **Min. 20:46**, Sanchez says, **"he might need to recalibrate his radar."**
13. **Min. 24:48**, **Sanchez says, I don't think it's a mental issue.**
14. **Min. 38:32**, Now, Sanchez says "emergency detention."
15. **Min. 40:12**, Now, Sanchez says, "Smith is a danger to himself."
16. **Min. 43:35**, Wife Natalie Smith arrives.
17. **Min. 45:05**, "Smith is going to the hospital," said the Deputies
18. ROA.24-50724.382. **"Incident duration: 2 hours and 27 minutes."**
19. ROA.24-50724.383. **Four Hospitals didn't want to receive Smith** under an emergency mental detention.
20. ROA.24-50724.384. Sanchez did confirm the vehicle's ownership, and Smith had no warrants.
21. ROA.24-50724.389. Sanchez says he searched Smith for illegal drugs and weapons.
22. ROA.24-50724.389. Smith was handcuffed behind his back and placed in a locked cruiser
23. Smith was pulled over for a **traffic violation**. ROA.24-50724.393.
24. **Smith was summarily discharged from the Hospital with no mental crisis.** ROA.24-50724.441-446.
25. Deputy Sanchez never wrote any traffic tickets, nor pursued traffic violations. ROA.24-50724.434.
26. No criminal charges or tickets issued from Smith's seizure. ROA.24-50724.434.
27. Smith was denied the videos of his traffic stop and seizure in a pre-suit Public Information Act Request. ROA.24-50724.464-467.

ARGUMENT

(1) THE 5th CIRCUIT AND DISTRICT COURTS ARE BOUND BY VERTICAL STARE DECISIS

In the legal realm, all lower courts, Attorneys, parties, and citizens must adhere to rulings by our U.S. Supreme Court. In *State Oil Co. v. Khan*, 522 U.S. 3 (1997), the U.S. Supreme Court overruled some of its holdings in *Albrecht v. Herald Co.*, 390 U.S. 145 (1968). The Supreme Court confirmed its sole right to overrule its own precedents, “the Court of Appeals was correct in applying that principle despite disagreeing with *Albrecht*, for it is this Court’s prerogative alone to overrule its own precedents.” *Khan* at 20.

The 5th Circuit is a strict *stare decisis* court, *National Coalition for Men v. Selective Service System*, No. 19-20272 (5th Cir. 8/13/2020). The 5th Circuit, “can’t ignore a decision from the Supreme Court unless directed to do so by the Court itself,” *Ballew v. Continental Airlines, Inc.*, 668 F.3d 777 (5th Cir. 2012).

“Following the law as it respects the Supreme Court’s singular role in deciding the viability of its own precedents,” *Perez v. Stephens*, 745 F.3d 174 (5th Cir. 2014).

Vertical Stare Decisis applies within the 5th Circuit itself. District Courts are bound by 5th Circuit holdings on federal law, *United States v. Tompkins*, 130 F.3d 117 (5th Cir. 1997). Only En Banc panels can overrule prior case law; 3 member panels can’t, *Rohner Gehrig Inc. v. Motor Transit*, 950 F.2d 1079 (5th Cir. 1992).

(2) **EMERGENCY MENTAL HEALTH DETENTIONS REQUIRE PROBABLE CAUSE OF MENTAL ILLNESS AND DANGEROUSNESS**

All of the federal circuits to have addressed the issue of emergency mental health detentions require **probable cause**. Emergency mental detentions are proper when: (1) there is **probable cause** to believe; (2) a person is mentally ill; **and** (3) **dangerous to themselves or others**.

In all situations, the 5th Circuit previously required the presence of **suicidal tendencies** to justify an emergency mental health detention, *Cantrell v. City of Murphy*, 666 F.3d at 923 (5th Cir. 2012). However, in *Rich v. Palko*, 920 F.3d at 296 (5th Cir. 2019), the 5th Circuit held **a substantial physical threat to others** would also justify an emergency mental health detention under Texas law.

Smith was never agitated, suicidal, or dangerous to himself or anyone else. See Smith's Medical Records from April 14, 2021. ROA.24-50724.441-446. Smith was lucid, calm, rational, unemotional, and summarily discharged by the examining physicians at the hospital. *Id.*

Deputy Sanchez stated, **"it wasn't excited delirium."** Sanchez Video at Min. 13:38. Deputy Sanchez also stated, **"it wasn't a mental issue."** *Id.* at Min. 24:38. Thus, Appellee Sanchez doesn't believe it's a mental crisis either. This "mental crisis" arose at Min. 38:32. Smith was handcuffed at Min. 3:28, and placed

in the back of a cruiser at Min. 4:40. Smith is immobilized, and hardly a danger.

Smith said he wasn't agitated, emotional, violent, or suicidal. ROA.24-50724.435.

During Oral Argument, the Judges wouldn't acknowledge the 5th Circuit case law in *Cantrell* and *Palko*. They desired Counsel to accept a "lesser standard" than mental illness, suicidal tendencies, and homicidal inclinations. This included "strange answers," Oral Argument at Min. 5:55-6:05. "Strange Answers" at Min. 8:08. "Behaving strangely" at Min. 9:26. "Can't remember information" at Min. 12:03-12:08. "Schizophrenia" at Min. 17:30. "Any kind of issues which are not suicidal or homicidal" at Min. 17:55 to 18:00.

The incident took 2 hours and 27 minutes—plenty of time to get a mental health warrant. ROA.24-50724.382. Deputy Sanchez didn't get one. The En Banc Court must recognize the liberty intrusion of mental health seizures requires "dangerousness," *O'Connor v. Donaldson*, 422 U.S. 563 (1975). Psychiatric confinements assail Civil Due Process, *Addington v. Texas*, 414 U.S. 418 (1975).

(3) INCORPORATION BY REFERENCE WASN'T MET

Under 5th Circuit precedent in *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496 (5th Cir. 2000), Rule 12(b)(6) Motions are sometimes converted to Rule 56 Summary Judgment. However, this requires 4 criteria. None of them were met. Oral Argument at Min. 37:45-38:31. (1) The videos of the actual traffic stop and

seizure weren't provided to Appellant before the filing of his 1st Amended Complaint. ROA.24-50724.73-124. ROA.24-50724.464-477. **Thus, they were not "vital."** (2) The Appellant only referred to the matter in 1 paragraph in the Amended Complaint. ROA.24-50724.81. **Appellant doesn't repeatedly refer to the videos. They are not central to his claims, *Villareal v. Wells Fargo Bank*, 814 F.3d 763 (5th Cir. 2016), (3) The videos were unauthenticated and contested. ROA.24-50724.407-410. They couldn't be utilized, *Walch v. Adjutant Gen.'s Dept.*, 533 F.3d 289 (5th Cir. 2008). (4) Appellee's Counsel **didn't attach the video "evidence" or any documents to his Rule 12(b)(6) Motion, or file them simultaneously on June 16, 2023.** ROA.24-50724.126-145. They were improperly "supplemented" by Appellee's Counsel on October 19, 2023. ROA.24-50724.273-282. Smith moved to strike this "evidence." ROA.24-50724.283-315.**

The District Court converted the 12(b)(6) Motion to Summary Judgment. ROA.24-50724.368-369. In fact, the matter was done in an **ex parte manner** like *Allen v. Hays*, No. 19-20360 (5th Cir. 2020). Summary Judgment was granted. ROA.24-50724.664-677. The En Banc Court must enforce the proper procedure to protect Plaintiffs from unwarranted conversions to Summary Judgment.

(4) CONFLICT WITH EVIDENTIARY STANDARDS

"Hearsay evidence" is that which is not authenticated by a witness or other

means. The primary view is that evidence must be authenticated in order to support a valid Judgment, *Weinhoffer v. Davie Shoring*, No. 20-30568 (5th Cir. 2022). Appellant objected to the unauthenticated Appellee evidence on Summary Judgment. ROA.24-50724.407-410. Counsel emphasized this at Oral Argument. Min. 15:33-17:20. Min. 41:20-41:56. In fact, Counsel had reason to believe the videos were edited and cropped. ROA.24-50724.464-477.

While the Summary Judgment Rule 56 has been “relaxed” in a sense regarding evidence, the 5th Circuit has always held a party has a right to challenge unauthenticated evidence on Summary Judgment. **Ronald Smith did timely object**, *Donaghey v. Ocean Drilling Exploration, Corp.*, 974 F.2d 646 (5th Cir. 1992). Under *Lee v. Offshore Logistical, Transp, LLC*, 859 F.3d 353 (5th Cir. 2017), the challenged party must **demonstrate** how the evidence is **authentic**. Bexar County and Deputy Sanchez refused, or were unable to. Ronald Smith objected to all the Bexar County Video evidence and government documents in detailed objections. ROA.24-50724.407-410.

It’s vital this En Banc Court deny the government a “free pass” to proffer dubious hearsay as substantive evidence. In fact, this Court has required the government to authentic records under **both** Rule 803(6) and 803(8) as a requisite of admissibility, *U.S. v. Cain*, 615 F.2d 380 (5th Cir. 1980).

(5) **CONFLICT WITH SUPREME COURT ARREST STANDARDS**

Probable Cause is required to arrest. It must exist **at the moment of arrest**. Subsequent discoveries cannot remedy the unlawful arrest, *Beck v. Ohio*, 379 U.S. 89 (1964). An illegal search which results from an unlawful arrest cannot produce retroactive evidence to justify the illegal arrest, *Henry v. United States*, 361 U.S. 98 (1959). Such illegally discovered evidence would be the “fruit of the poisonous tree,” *Wong Sun v. United States*, 371 U.S. 471 (1963). Unlawful contacts render all following events invalid, *United States v. Frisbie*, 550 F.2d 335 (5th Cir. 1977).

The initial basis to stop Smith was based on allegations of Speeding. ROA.24-50724.393. That is a criminal Misdemeanor category of offense under the Texas Penal Code §12.23. There was no Community Caretaking function, *Corbin v. State*, 85 S.W.3d 272 (Tex. Crim. App. 2002). Community Caretaking and criminal investigations cannot coexist; one cannot spawn the other. *Id.*

Deputy Sanchez never tried to write Smith any tickets. ROA.24-50724.434. Smith denies committing any traffic violations. ROA.24-50724.432. Sanchez Video at Min. 1:10. The Texas Transportation Code §543.004 states a Peace Officer can’t arrest for Speeding unless the Driver refuses to sign a ticket. See *Tores v. State*, 518 S.W.2d 378 (Tex. Crim. App. 1975). The Supreme Court held the States **may limit the arrest of fine only offenses through statutes**, *Atwater v.*

City of Lago Vista, 532 U.S. at 352 (2001). The Texas Transportation Code §543.008 states an Officer can be suspended for violating §543.004.

Sanchez actually lost sight of the vehicle he pursued. ROA.24-50724.389. Video at 30-45 seconds. See *Klare v. State*, 76 S.W.3d 68 (Tex. App. 2002), where Police lost sight of the pursued vehicle, and any reasonable suspicion under *Terry*.

The Panel was fine with Deputy Sanchez blocking Smith's car with his motorcycle, Video at 46 seconds. They also approved of Sanchez handcuffing Smith at Min. 3:28, taking his car keys at Min. 4:38, and permanently placing Smith in the back of a cruiser before searching for criminality. See Min. 9:43, where (3) Deputies search Smith's car for guns, drugs, and contraband. At Min. 7:30, the car came back registered to Smith. At Min. 14:08, Smith had no fugitive wants or warrants. At that point, the Deputies had to let Smith go, *Rodriguez v. United States*, 575 U.S. 348 (2015). No criminality was discovered. The Panel approved of this police arrest technique. Oral Argument Min. 8:17-9:26.

The En Banc panel is necessary to ensure compliance with arrest axioms. The Deputies held Smith for 2 hours and 27 minutes. ROA.24-50724.382.

(6) CONFLICT WITH *Terry v. Ohio* STANDARD

Initial Police encounters with citizens are an important principle under the 4th Amendment, *Terry v. Ohio*, 392 U.S. 1 (1968). Police must have a "reasonable

suspicion” criminal activity is afoot to justify a *Terry* stop. *Terry* stops have a finite duration of 20 minutes, *United States v. Sharpe*, 470 U.S. 675 (1985). Law enforcement can’t go on **fishing expeditions** to find criminality during *Terry* stops, *Rodriguez v. United States*, 575 U.S. 348 (2015).

In (Min. 30 to 45 seconds), **Sanchez had to turn around and lost sight of the vehicle he sought**. ROA.24-50724.389. See *Klare v. State*, 76 S.W.3d 68 (Tex. App. 2002) for lost contact with traffic suspects and a lack of reasonable suspicion. At 46 seconds, Sanchez blocks Smith’s car with his motorcycle.

Smith is handcuffed at Min. 3:28, and placed in a cruiser at Min. 4:40—where he never leaves. At Min. 6:53, Deputies search his car for guns, drugs, and contraband. None were found. Smith is held **2 hours and 27 minutes**. ROA.24-50724.382. At Min. 7:30, the car comes back registered to Ronald Smith. At Min. 14:08, Smith has no wants or warrants. Smith must be released under *Rodriguez*.

Sanchez and crew “went on a fishing expedition.” No criminality was found. Still, the Deputies would not let Smith go. At Min. 45:05—“Smith is going to the hospital.” Smith was summarily discharged being quite calm, sane, and rational. ROA.24-50724.441-446.

The Panel was quite fine with Police “fishing expeditions” that have nothing to do with the original traffic stop or contact. Oral Argument at Min. 6:45-7:01. Min.

7:05-7:38. Min. 7:48-8:04. En Banc consideration is necessary to stop unlawful *Terry* stops.

5th CIRCUIT MUST OBSERVE STATE COURT LAW INTERPRETATION
(7)

Federal Courts must observe the highest State Court interpretations of State law, *Michigan v. Long*, 463 U.S. 1032 (1983). Federal Courts deciding matters which are based upon Texas law interpretations are bound by the holdings of the highest civil court, *Longoria v. Paxton*, No. 22-50110 (5th Cir. 2022). In the matter of a Texas criminal law issue, a federal court is to rely on the holdings of the Texas Court of Criminal Appeals, *Hartfield v. Thayer*, 403 S.W.3d 234 (Tex. Crim. App. 2013). The District Court held Sanchez had “probable cause” to arrest Smith for the offense of Speeding. That is impermissible under the Texas Transportation Code §543.004, and our highest criminal court’s ruling. *Tores v. State*, 518 S.W.2d 378 (Tex. Crim. App. 1975).

Counsel informed the Panel of this §543.004 statute, and how it forbids arrest for Speeding. Oral Argument at Min. 9:21-9:26. Min. 10:05-10:19. Apparently, the Panel disregarded the §543.004 statute, Texas law, and our court interpretation of that law. En Banc consideration is necessary to ensure comity with State courts.

CONCLUSION

The Panel’s “1 sentence” dismissal of Appellant’s combined 19,500 words, Arguments, and citations is erroneous, invalid, and the judgment must be reversed.

Respectfully Submitted,

/s/ Andres Cano

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CERTIFICATE OF SERVICE

I hereby affirm a true and correct copy of this brief and the affixed record excerpts were sent via electronic service to the following persons on June 9, 2025:

/s/ Andres Cano

Jose Herrera
Appellees' Counsel
101 West Nueva, Suite 735
San Antonio, Texas 78205
jose.herrera@bexar.org

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/s/ Andres Cano
Appellant's Counsel

June 9, 2025

ORAL ARGUMENT IN NO. 24-50724 LINK

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United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

June 5, 2025

Lyle W. Cayce
Clerk

No. 24-50724

RONALD SMITH,

Plaintiff—Appellant,

versus

BEXAR COUNTY; RAMIRO SANCHEZ, *Bexar County Deputy,*

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:23-CV-623

Before ELROD, *Chief Judge*, ENGELHARDT, *Circuit Judge*, and GUIDRY,
District Judge.^{*}

PER CURIAM:^{**}

Having reviewed the briefs, record, and opinion of the district court,
and having heard oral argument, we see no reversible error. AFFIRMED.
5TH CIR. R. 47.6.

^{*} United States District Judge for the Eastern District of Louisiana, sitting by
designation.

^{**} This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

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Suite 115
NEW ORLEANS, LA 70130

June 05, 2025

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 24-50724 Smith v. Bexar County
USDC No. 5:23-CV-623

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and Fed. R. App. P. 39, 40, and 41 govern costs, rehearings, and mandates. **Fed. R. App. P. 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. Fed. R. App. P. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

The judgment entered provides that each party bear its own costs on appeal.

Sincerely,

LYLE W. CAYCE, Clerk

Lisa E. Ferrara

By: _____
Lisa E. Ferrara, Deputy Clerk

Enclosure(s)

Mr. Andres Roberto Cano
Mr. Jose Emmanuel Herrera

ATTACHMENT C

United States Court of Appeals
for the Fifth Circuit

No. 24-50724

United States Court of Appeals
Fifth Circuit

FILED

June 23, 2025

Lyle W. Cayce
Clerk

RONALD SMITH,

Plaintiff—Appellant,

versus

BEXAR COUNTY; RAMIRO SANCHEZ, *Bexar County Deputy,*

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:23-CV-623

ON PETITION FOR REHEARING EN BANC

Before ELROD, *Chief Judge*, ENGELHARDT, *Circuit Judge*, and GUIDRY,
District Judge. *

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R.40 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R.

APP. P.40 and 5TH CIR. R.40), the petition for rehearing en banc is DENIED.

* United States District Judge for the Eastern District of Louisiana, sitting by designation.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

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600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

June 23, 2025

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

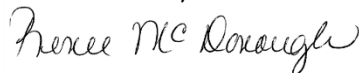
No. 24-50724 Smith v. Bexar County
USDC No. 5:23-CV-623

Enclosed is an order entered in this case.

See FRAP and Local Rules 41 for stay of the mandate.

Sincerely,

LYLE W. CAYCE, Clerk



By:

Renee S. McDonough, Deputy Clerk
504-310-7673

Mr. Andres Roberto Cano
Mr. Jose Emmanuel Herrera

ATTACHMENT D

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

June 5, 2025

Lyle W. Cayce
Clerk

No. 24-50724

RONALD SMITH,

Plaintiff—Appellant,

versus

BEXAR COUNTY; RAMIRO SANCHEZ, *Bexar County Deputy,*

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:23-CV-623

Before ELROD, *Chief Judge*, ENGELHARDT, *Circuit Judge*, and GUIDRY,
District Judge.^{*}

PER CURIAM:^{**}

Having reviewed the briefs, record, and opinion of the district court,
and having heard oral argument, we see no reversible error. AFFIRMED.
5TH CIR. R. 47.6.

^{*} United States District Judge for the Eastern District of Louisiana, sitting by
designation.

^{**} This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.



United States Court of Appeals for the Fifth Circuit

Certified as a true copy and issued
as the mandate on Jun 30, 2025

Attest: *Lyle W. Cayce*
Clerk, U.S. Court of Appeals, Fifth Circuit

No. 24-50724

United States Court of Appeals
Fifth Circuit

FILED

June 5, 2025

Lyle W. Cayce
Clerk

RONALD SMITH,

Plaintiff—Appellant,

versus

BEXAR COUNTY; RAMIRO SANCHEZ, *Bexar County Deputy,*

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:23-CV-623

Before ELROD, *Chief Judge*, ENGELHARDT, *Circuit Judge*, and GUIDRY,
District Judge.*

J U D G M E N T

This cause was considered on the record on appeal and was argued by counsel.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

IT IS FURTHER ORDERED that each party bear its own costs on appeal.

* United States District Judge for the Eastern District of Louisiana, sitting by designation.

The judgment or mandate of this court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. See Fed. R. App. P. 41(b). The court may shorten or extend the time by order. See 5th Cir. R. 41 I.O.P.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

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June 30, 2025

Mr. Philip Devlin
Western District of Texas, San Antonio
United States District Court
262 W. Nueva Street
Suite G65
San Antonio, TX 78207

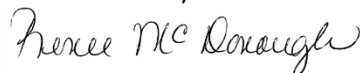
No. 24-50724 Smith v. Bexar County
USDC No. 5:23-CV-623

Dear Mr. Devlin,

Enclosed is a copy of the judgment issued as the mandate and a copy of the court's opinion.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Renee S. McDonough, Deputy Clerk
504-310-7673

cc:

Mr. Andres Roberto Cano
Mr. Jose Emmanuel Herrera