

No. 18-_____

In the
Supreme Court of the United States

EDWIN A. VEGA,

Petitioner,

v.

THE STATE OF OHIO,

Respondent.

On Petition for Writ of Certiorari
to the Supreme Court of Ohio

PETITION FOR WRIT OF CERTIORARI

JUSTIN M. WEATHERLY

COUNSEL OF RECORD

HENDERSON, MOKHTARI & WEATHERLY

3238 LORAIN AVENUE

CLEVELAND, OH 44113

(216) 774-0000

JW@HMWLAWFIRM.COM

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QUESTIONS PRESENTED

1. In its decision in the above captioned matter did the Ohio Supreme Court reverse this honorable Court's decision in *Rodriguez v. United States*, 135 S.Ct. 1609 (2015) by permitting the unlawful and lengthy detention of appellant herein absent a reasonable suspicion of criminal activity prior to unlawfully searching sealed U.S.P.S. packages located in the passenger compartment of his lawfully stopped vehicle in violation of his Fourth Amendment rights?
2. In its decision in the above captioned matter did the Ohio Supreme Court reverse this honorable court's long-standing decision in *United States v. Ross*, 456 U.S. 798 (1982) by holding that probable cause did exist to open sealed U.S.P.S. packages located in the passenger compartment of appellant's lawfully stopped vehicle in violation of his Fourth Amendment rights?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	iv
PETITION FOR WRIT OF CERTIORARI	1
OPINIONS BELOW	1
JURISDICTION.....	1
CONSTITUTIONAL PROVISIONS INVOLVED.....	2
STATEMENT OF THE CASE.....	2
REASONS FOR GRANTING THIS PETITION.....	11
I. LENGTH OF AND REASON FOR DETENTION CONSTITUTIONALLY IMPERMISSIBLE.....	11
II. LACK OF PROBABLE CAUSE TO OPEN THE U.S.P.S. PACKAGES	13
CONCLUSION.....	17

TABLE OF CONTENTS – Continued

	Page
APPENDIX TABLE OF CONTENTS	
Opinion of the Supreme Court of Ohio, 2018 Ohio 4002 (October 4, 2018).....	1a
Opinion of the Eighth District Court of Appeals for Ohio, 79 N.E.3d 600 (February 23, 2017)	9a
Opinion and Judgement Entry of the Trial Court for the Court of Common Pleas, Cuyahoga County, Ohio (January 25, 2016).....	23a
Transcript of Proceedings of the Oral Argument on Defendant’s Motion to Suppress Evidence (January 11, 2016).....	36a
Body Camera Footage Recorded on the Date of the Appellant’s arrest.....	145a

TABLE OF AUTHORITIES

	Page
CASES	
<i>Rodriguez v. United States</i> , 135 S.Ct. 1609 (2015)	i, 10, 11, 13
<i>State v. Gonzales</i> , 2009 WL 105636 (Ohio App. 6th Dist.)	6
<i>State v. Moore</i> , 90 Ohio St.3d 47 (2000).....	3
<i>State v. Welch</i> , 18 Ohio St.3d 88, 480 N.E.2d 384 (1985).....	8
<i>State v. Young</i> , 146 Ohio App.3d 245, 765 N.E.2d 938 (11th Dist. 2001)	8
<i>United States v. Ross</i> , 456 U.S. 798 (1982).....	passim
CONSTITUTIONAL PROVISIONS	
U.S. Const. amend. IV	i, 1, 2, 7, 17
U.S. Const. amend. XIV	2, 7, 17
STATUTES	
28 U.S.C. § 1254(1)	2
O.R.C. § 2923.24(A).....	5
O.R.C. § 2925.03(A)(2)	5
O.R.C. § 2925.11(A).....	5



PETITION FOR WRIT OF CERTIORARI

Edwin Vega respectfully petitions this Honorable Court for a Writ of Certiorari to review the judgement of the Ohio Supreme Court, which reversed the decisions of two lower courts granting his Motion to Suppress Evidence on Fourth Amendment grounds.



OPINIONS BELOW

The Opinion of the Supreme Court of Ohio in the matter of *State v. Vega*, 2018 Ohio 4002, published October 4, 2018 is included below at App.1a. The Opinion of the Eighth District Court of Appeals for Ohio in the matter of *State v. Vega*, 79 N.E.3d 600, published February 23, 2017, is included below at App.9a. The Opinion and Judgement Entry of the Trial Court for the Court of Common Pleas, Cuyahoga County, Ohio, the Honorable Dick Ambrose presiding, case no. 15 CR 599025, is included below at App.23a.



JURISDICTION

Petitioner seeks review by this Honorable Court from the decision of the Ohio Supreme Court published October 4, 2018 in the matter of *State of Ohio v. Vega*, 2018 Ohio 4002. On January 2, 2019, Justice Sonia Sotomayor granted an extension within which to file a writ of certiorari to and including March 4,

2019. Jurisdiction is conferred on this Honorable Court pursuant to 28 U.S.C. § 1257(a).



CONSTITUTIONAL PROVISIONS INVOLVED

- U.S. Const. amend. IV**

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.

- U.S. Const. amend. XIV, § 1**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.



STATEMENT OF THE CASE

On or about March 28, 2015 at approximately 11:00 a.m. Officer Jeffrey Madej of the Cleveland State

University Police allegedly observed Petitioner (Defendant-Appellant below Edwin A. Vega) turn left through a solid red light and proceed northbound on E. 18th Street from Euclid Avenue (App.51a). The officer immediately initiated a traffic stop as a result of the traffic violation (App.55a). On approach, Officer Madej informed Petitioner that he could smell an odor of marijuana emanating from the vehicle (App.56a). Petitioner denied possessing any marijuana (App.56a). However, due to the strong odor of raw marijuana, Officer Madej made the decision to search Defendant-Appellant's vehicle (App.56a). The Ohio Supreme Court has consistently held that, "the smell of marijuana, alone, by a person qualified to recognize the odor, is sufficient to establish probable cause to search a motor vehicle, pursuant to the automobile exception to the warrant requirement." *State v. Moore*, 90 Ohio St.3d 47, 48 (2000). Mr. Vega was asked to step out of the vehicle and was detained by an assisting officer while Officer Madej conducted a search of Defendant-Appellant's vehicle (App.90a).

During the search, three large marijuana buds and a preponderance of what the officer termed "shake weed" was located in Mr. Vega's center console (App. 90a). A package of Sweet Stone Candy was also discovered however the officer did not notice anything illegal about the candy at the time (App.92a). Soon after collecting the loose marijuana in the center console, Officer Madej observed the sealed U.S.P.S. packages at issue in the rear of Mr. Vega's vehicle (App.94a). The packages themselves exhibited no signs of illegality at all (App.94a). Moreover, the packages could not have been the object of Officer Madej's search, to wit, the source of the odor of raw

marijuana he detected. This is due to the fact that the packages did not emit any odor of marijuana whatsoever (App.118a). As such, Officer Madej requested consent to open said packages. Mr. Vega declined consent to open the packages, claiming that they contained only stickers (App.94a).

Officer Madej located the packages in Defendant-Appellant's vehicle approximately eighteen (18) minutes after initiating the traffic stop of Mr. Vega's vehicle (App.104a). Subsequent to that time, Officer Madej located no other contraband or illegal materials in Mr. Vega's car (App.104a). As the Ohio Supreme Court noted, however, the officer did discover three cell phones, several cases of rolling papers and aerosol canisters containing an odor masking agent. All items discovered were observed within the first twenty (20) minutes of the traffic stop at issue. Officer Madej detained Mr. Vega for a total of approximately one (1) hour and twelve (12) minutes prior to arresting him. The justification for the detention following the discovery of the sealed packages was Officer Madej's request for a K9 sniff of the packages, as well as a request to the Ohio State Highway Patrol as to the legality of continuing to detain Mr. Vega and potentially conduct a warrantless search of the packages in his car (App.98a).

With no answer from OSHP and no K9 on the way, Officer Madej made the decision to issue citations for the traffic violation and the marijuana possession approximately fifty (50) minutes after the initial traffic stop (App.99a). Both offenses are minor misdemeanors, and non-arrestable offenses in the State of Ohio (App. 89a). Over the next twenty (20) minutes subsequent to

issuing said citations, Officer Madej received information from the Ohio State Highway Patrol indicating he was within his rights to open the packages without a warrant or K9 on scene. He then unlawfully opened the packages at issue only to discover more Sweet Stone Candy. This time, however, he read the label, and realized the candy itself contained THC and was contraband. He then arrested Mr. Vega approximately one (1) hour and twelve (12) minutes after initiating his traffic stop (App.100a).

After his arrest, Mr. Vega was indicted on charges of Drug Trafficking in violation of O.R.C. § 2925.03 (A)(2), a felony of the third degree; Drug Trafficking in violation of O.R.C. § 2925.03(A)(2), a felony of the fifth degree; Drug Possession in violation of O.R.C. § 2925.11(A), a minor misdemeanor; and Possessing Criminal Tools in violation of O.R.C. § 2923.24(A), a felony of the fifth degree. After entering pleas of not guilty at his arraignment on September 23, 2016, counsel for defense filed a motion to suppress. The motion, filed on October 16, 2016, challenged the constitutionality of Mr. Vega's prolonged detention despite having only committed a minor traffic offense as well as being in possession of marijuana, also a non-arrestable offense. The motion also argued that no probable cause existed to open the sealed packages, as the packages themselves exhibited no indication that they contained anything criminal in nature and could not have concealed the object of Officer Madej's search, to wit, the source of the raw marijuana odor, as the packages exhibited no odor whatsoever.

During the January 11, 2016 oral hearing on the motion, the aforementioned timeline was revealed by

the body camera worn by Officer Madej. After testifying that the packages were not evidence in and of themselves of illegal contraband, Officer Madej was asked by counsel for defense to smell the package to see if it could have been the source of the strong odor of marijuana that caused him to continue the search of Mr. Vega's car even after discovery of the loose marijuana in his center console. Upon doing so, Officer Madej testified definitively that the packages did not produce an odor of marijuana at all (App.118a). Following testimony, both counsel for defense and the State of Ohio submitted supplemental motions with supporting authority on January 15, 2016. On or about January 25, 2016, the trial court issued an order granting Defendant-Appellant's motion to suppress.

The trial court first determined that the State's reliance on *State v. Gonzales*, 2009 WL 105636 (Ohio App. 6th Dist.) to justify Officer Madej's warrantless search of the packages discovered in Mr. Vega's car was unfounded. The State asserted that pursuant to that case, the odor of marijuana permitted Officer Madej to conduct a full search of the vehicle and all of the contents therein to determine the source of the smell. The trial court pointed out that *Gonzales, supra*, cited the Supreme Court's decision in *United States v. Ross*, 456 U.S. 798 (1982) which held that the search of an automobile is "defined by the object of the search and the places in which there is probable cause to believe it may be found." *Id.* at 824. In short, Officer Madej was only permitted to search packages he had probable cause to believe were the source of the odor of marijuana. At an oral hearing, Officer Madej testified that the packages exhibited no signs of criminality (App.94a) and confirmed that they

produced no odor of marijuana (App.118a), which was the object of the search at the time and the only grounds upon which probable cause existed to search the vehicle in the first place.

The trial court concluded further that Mr. Vega was seized in violation of his constitutional rights for an unreasonable period of time subsequent to the discovery of the loose marijuana in his center console and prior to the opening of the sealed packages in his back seat. Specifically, the court held that Mr. Vega was unlawfully detained for the thirty-eight (38) minute time frame after the initial stop and search of his vehicle which produced the loose marijuana but prior to his arrest. Furthermore, the delay which occurred while Officer Madej waited for a K9 and sought advice from other officers “exceeded constitutionally permissible grounds” (Journal Entry and Opinion). As a result, all evidence seized from the packages was ordered suppressed pursuant the Fourth and Fourteenth Amendments to the U.S. Constitution, and Defendant-Appellant’s motion to suppress was granted.

The trial court opinion in this matter was filed on or about January 25, 2016. State filed a notice of appeal on or about January 28, 2016. The State’s *Brief of Appellant* was filed on or about April 27, 2016. Counsel for Defendant-Appellee submitted a timely *Brief in Opposition*. Following oral arguments, the Eighth District Court of Appeals for Cuyahoga County, Ohio in a split decision affirmed the decision of the trial court in a written opinion issued February 23, 2017.

In rendering its decision, the Eighth District relied on the Ohio Supreme Court’s prior decisions, stating,

... the Ohio Supreme Court has held that held that “where police officers have probable cause to search an entire vehicle, they may conduct a warrantless search of every part of the vehicle and its contents, including all movable containers and packages, that may logically conceal the object of the search.” (Emphasis added.) *State v. Welch*, 18 Ohio St.3d 88, 92, 480 N.E.2d 384 (1985). *See also State v. Young*, 146 Ohio App.3d 245, 257, 765 N.E.2d 938 (11th Dist. 2001) (“[t]he right to be free of unreasonable searches precludes the issuance of a search warrant for a litany of narcotics based upon the observation of a misdemeanor amount of marijuana”). *State v. Vega*, 79 N.E.3d 600, 602 (Ohio App. 8th Dist. 2017).

Clearly the Eighth District, much like the trial court, was focused on the fact that the packages in question could not conceal the object of the search, to wit, the odor of raw marijuana, because the packages themselves emitted no such odor.

The Eighth District also took issue with the amount of time Mr. Vega was detained, stating, “... the police cannot extend the search of a vehicle—after the search revealed no further contraband—to wait for a K9 unit to arrive and sniff a sealed package.” *Id.* Essentially, the Eighth District held that Petitioner Vega was unconstitutionally detained and that Officer Madej had no probable cause to open and search the sealed packages found in the rear of Mr. Vega’s vehicle.

Following the decision published by the Eighth District Court of Appeals, the State then filed an

application for reconsideration, which was denied on or about March 24, 2017. The State then filed a notice of appeal and memorandum in support of jurisdiction to the Ohio Supreme Court. The Ohio Supreme Court granted discretionary review of the above captioned matter on or about December 20, 2017. The State submitted its *Brief of Appellant* on or about March 6, 2018. Mr. Vega's *Brief in Opposition* was filed on or about April 5, 2018. The State of Ohio submitted a *Brief in Reply* on or about April 25, 2018. Oral arguments were held on or about June 12, 2018. The Ohio Supreme Court issued a unanimous decision reversing the two lower courts on or about October 4, 2018.

In a less than exhaustive opinion the Ohio Supreme Court based its reversal on the simple fact that probable cause existed both to detain Mr. Vega seemingly indefinitely as well as search the sealed packages at issue due to the fact that Officer Madej lawfully observed signs of marijuana trafficking during the initial search of Defendant-Appellant's vehicle. Though Officer Madej himself testified at oral hearing that the purpose of his continued search of the vehicle was for no other reason than to discover the source of the odor of raw marijuana he detected, the Ohio Supreme Court concluded that the odor, coupled with the discovery of the cell phones, rolling papers, and aerosol cans, expanded the Officer's investigation from marijuana possession, a minor misdemeanor, non-arrestable offense, to possible marijuana trafficking, a felony. The conclusion of the court that these items created "other evidence of trafficking" was reached despite the fact that nothing identified by the court is actually unlawful to possess save for the marijuana itself.

The Ohio Supreme Court's decision herein flies in the face of both the decisions of this Honorable Court in *Rodriguez v. U.S.*, 135 S.Ct. 1609 (2015) and *United States v. Ross, supra*. In *Rodriguez*, this Honorable Court held that prolonged detentions of citizens for purposes of conducting a drug sniff following a lawful traffic stop are constitutionally impermissible absent a reasonable suspicion of criminal activity. Here, Mr. Vega was detained for a total of thirty (38) minutes following the discovery of a violation of the law for which the maximum penalty is a \$150 fine. The citation, as such a violation is not an arrestable offense, was given to Defendant-Appellant, yet he was not free to go. No additional evidence of criminal activity was discovered during this time. No drug dog ever arrived. No basis existed as grounds for this detention whatsoever.

Moreover, Officer Madej's search of the sealed packages cannot be justified. *United States v. Ross* clearly sets forth the principle that packages in a motor vehicle can only be searched should they reasonably be able to conceal the object of the search initiated. Here, the object of the search was the source of the odor of marijuana. Officer Madej mistakenly believed that the marijuana he discovered throughout the vehicle could not account for the overwhelming odor he observed. He proceeded to search for the source of that odor until coming upon the packages. The packages, however, emitted no odor, and therefore could not have been the source of what he sought. The Officer never suspected that Mr. Vega was involved in drug trafficking. He simply believed Mr. Vega possessed more marijuana than what was found. Only the Ohio Supreme Court made the determination that

there was probable cause to believe drug trafficking was afoot, thus permitting the opening of the packages following Mr. Vega's lengthy detention. Because opening the packages constituted a violation of Mr. Vega's Fourth Amendment rights, as was the detention which proceeded this constitutional violation, review by this Honorable Court is necessary.



REASONS FOR GRANTING THIS PETITION

I. LENGTH OF AND REASON FOR DETENTION CONSTITUTIONALLY IMPERMISSIBLE

In *Rodriguez, supra*, this Honorable Court set forth the critical issue involved when judging the constitutionality of detentions following lawful traffic stops, stating, “The critical question, then, is not whether the dog sniff occurs before or after the officer issues a ticket, as Justice Alito supposes, *post*, at 1624-1625, but whether conducting the sniff “prolongs”—*i.e.*, adds time to—“the stop,” *supra*, at 1615. *Id.* 1616.” Though no drug sniff occurred in the case herein, the request for the drug sniff was in fact the reason for the prolonged detention of Mr. Vega.

Officer Madej executed a traffic stop on Mr. Vega due to an observed illegal left turn. On approach, Officer Madej detected a strong odor of raw marijuana emanating from Mr. Vega's car. This odor gave Officer Madej the requisite probable cause to search Mr. Vega's car. During the search, Officer Madej discovered the source of the odor he detected, to wit, raw marijuana. He mistakenly and erroneously believed,

however, that the marijuana he discovered (less than 100g, a non-arrestable offense for which the maximum penalty is a \$150 fine), could not account for the overwhelming odor he detected.

As he continued to search the car, Officer Madej found absolutely no other illegal contraband other than the small amount of marijuana for which Mr. Vega was charged. His search was thorough and lengthy. Upon completion, the only portion of the vehicle left unsearched were the packages at issue. The packages themselves were immediately eliminated as the source of the odor of the marijuana detected by Officer Madej. Because the packages clearly were not the object of Officer Madej's search, and because Mr. Vega refused to consent to any unsealing of the packages, they remained unopened. Though the packages emitted no incriminating odor, nor appeared illegal in any way, Officer Madej believed they might contain illegal drugs. No evidence existed to support this belief. He therefore called for a drug dog to conduct a sniff of the packages to potentially confirm his hunch. According to the trial court, thirty-eight (38) minutes expired from this point forward until Officer Madej unlawfully searched the packages without a drug sniff.

During this aforementioned thirty-eight (38) minute detention, Officer Madej contacted several jurisdictions requesting for a K9 unit. None could provide one. Other than making these requests, as well as inquiries into the legality of opening the packages without a drug sniff, no continued investigation of Mr. Vega or his vehicle took place. The car was already searched completely, as was Mr. Vega. A warrant and license check had already been completed. Officer

Madej had even completed executing two citations and given them to Mr. Vega; one for the traffic violation and the other for the possession of marijuana. Yet during this thirty-eight (38) minute delay Mr. Vega was still not free to go.

The only justification for this detention was to wait for a drug dog that never arrived. *Rodriguez, supra*, specifically holds that drug sniffs which prolong a traffic stop without reasonable suspicion of criminal activity are constitutionally impermissible. Officer Madej had probable cause to search Mr. Vega's car to look for the raw marijuana he smelled. Once he found it, however, no justification existed to continue to detain Mr. Vega indefinitely. Officer Madej did, however, prolong Mr. Vega's detention for the express purpose of waiting for a K9 to conduct a drug sniff in direct contradiction to this Honorable Court's holding in *Rodriguez, supra*. By permitting Mr. Vega's detention herein the Ohio Supreme Court has created a state-wide precedent in direct contradiction to the prior decision of this Honorable Court, thus necessitating review and reversal.

II. LACK OF PROBABLE CAUSE TO OPEN THE U.S.P.S. PACKAGES

In *United States v. Ross, supra*, this Honorable Court was tasked with deciding whether or not to affirm an appellate court decision limiting the search of a vehicle to the vehicle itself, and not the containers therein. Officers in that case received a tip that the defendant therein was selling narcotics out of the trunk of his car. Officers confirmed the description of the car and the suspect, then executed a traffic stop. Officers then observed a bullet and firearm in the

passenger compartment of the vehicle, but no drugs. Officers then searched the trunk, finding a brown paper bag and a leather pouch. Inside each, the arresting officers found illegal narcotics.

The question posed to the Court was not whether or not the officers therein were permitted to search the trunk, as probable cause existed to do so based on the informant's tip and subsequent investigation, but whether or not the officers were permitted to search the individual containers found in the trunk. The court of appeals held that searching the bag and the pouch was unconstitutional. This Honorable Court reversed the decision of the court of appeals but did so with specific limitations. It is those limitations that the Ohio Supreme Court has now eliminated via its decision herein, essentially reversing the complete holding of *Ross, supra*.

In rendering its decision, the Court in *Ross, supra*, specifically held:

The scope of a warrantless search of an automobile thus is not defined by the nature of the container in which the contraband is secreted. Rather, it is defined by the object of the search and the places in which there is probable cause to believe that it may be found. Just as probable cause to believe that a stolen lawnmower may be found in a garage will not support a warrant to search an upstairs bedroom, probable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase. Probable cause to believe that a container placed in the trunk of a taxi

contains contraband or evidence does not justify a search of the entire cab . . .

We hold that the scope of the warrantless search authorized by that exception is no broader and no narrower than a magistrate could legitimately authorize by warrant. If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search. *Ross, supra*, at 824-825 (Emphasis added).

The decision of the Court, and the language used by the Justice Stevens in *Ross, supra*, clearly prohibits Officer Madej's search of the packages in the rear of Mr. Vega's car. Officers with probable cause to search a vehicle may only search those compartments within said vehicle which might reasonably conceal the object of the search. Justice Stevens uses the hypothetical example of an illegal alien hidden in a van. He writes that when an officer has probable cause to search a van for undocumented immigrants that probable cause does not extend to a suitcase, possibly within the van, which cannot reasonably conceal an entire human being, to wit, the object of the search. Much like it is unreasonable to believe a suitcase might contain the object of a search that is far too large to be concealed by such a small container, it is similarly unreasonable to believe a package might contain an amount of marijuana so large it's odor is "billowing out of the car" when said package emanates no such odor whatsoever.

The object of the search in Justice Steven's example was a person, who could not reasonably fit in a suitcase, and therefore could not reasonably be concealed

by the suitcase. Such an example was articulated to explain when probable cause might not exist to search a container located in a car, as the container cannot reasonably conceal the object of the search. The object of the search herein was raw marijuana, which was identified by, and produced, an overwhelming odor. The packages herein produced no such odor. They therefore were not the source of the odor identified by Officer Madej, were not the object of the justifiable search of Mr. Vega's car and could not reasonably have concealed the object of his search.

The Ohio Supreme Court in its decision herein has adopted a significantly broader interpretation of *Ross, supra*. *Ross, supra*, is composed of two essential principles. First, that probable cause to search a vehicle extends to the packages and containers therein. The second principle limits the first, requiring that said packages and containers reasonably contain the object of the search for the search of them to be constitutionally permissible. The Ohio Supreme Court has completely eliminated the second principle, which dictates that said containers can only be searched should they reasonably conceal the object of the search for which probable cause exists.

The court's decision herein now authorizes law enforcement officers in Ohio to search each and every package and container located within a lawfully stopped vehicle once probable cause to search said vehicle has been established. This authority is now extended even to those containers which cannot reasonably conceal the object of the search, giving the government the right to search anything and everything inside a vehicle with no regard for previously established limitations

designed to protect Fourth Amendment rights. This unlawful authority has now been granted upon Ohio law enforcement in contradiction to the Fourth and Fourteenth Amendment to the United States Constitution, necessitating a review and reversal of this dangerous and unconstitutional precedent by this Honorable Court.



CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

JUSTIN M. WEATHERLY

COUNSEL FOR PETITIONER

HENDERSON, MOKHTARI & WEATHERLY

3238 LORAIN AVENUE

CLEVELAND, OH 44113

(216) 774-0000

JW@HMWLAWFIRM.COM

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