No. _____

In The

Supreme Court of the United States

JUAN FRANCISCO MALDONADO,

Petitioner,

v.

STATE OF TEXAS,

Respondent.

On Petition For Writ Of Certiorari To The Thirteenth Court Of Appeals For The State Of Texas

PETITION FOR WRIT OF CERTIORARI

VICTORIA GUERRA
3219 N. McColl Rd.
McAllen, Texas 78501
(956) 618-2609
(956) 618-2553 (f)
vguerralaw@gmail.com

Attorney for Petitioner

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

QUESTION PRESENTED

The Court of Appeals erred in applying the incorrect Fourth Amendment standard to Mr. Maldonado's traffic stop. Once the purpose of the traffic stop concluded, reasonable suspicion did not exist to extend the already-completed stop for a canine sniff, a drive to the nearest checkpoint, or Mr. Maldonado's signing of a consent to search his vehicle.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Juan Francisco Maldonado (Mr. Maldonado) respectfully petitions this Court for a writ of certiorari to review the judgment of Texas' Thirteenth Court of Appeals.

OPINION AND ORDER BELOW

The unpublished opinion of the Thirteenth Court of Appeals of Texas appears at App. 1 to this petition. The unpublished opinion is found at *Maldonado v. State*, No. 13-12-00696-CR, 2014 Tex. App. LEXIS 11175 (Tex. App.—Corpus Christi 2014, pet. denied).

JURISDICTION

The Texas Court of Criminal Appeals granted Petitioner's writ of habeas corpus which sought an out of time appeal to file a petition for discretionary review (PDR). App. 20. *See Ex parte Maldonado*, No. WR-87,226-01, 2017 Tex. Crim. App. Unpub. LEXIS 565 (2017). The Court of Criminal Appeals denied Mr. Maldonado's PDR, App. 22, and denied Petitioner's motion for rehearing of that denial. App. 23. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

Although the Fourth and Fourteenth Amendments were not specifically raised in Mr. Maldonado's motion to suppress, C4–7, the constitutionality of the police officers' actions was the focal point of the hearing on

Mr. Maldonado's motion to suppress. 2R. The constitutionality of the officers' actions was tried by consent, without objection from the State, and effectively served as a "hearing" amendment to Mr. Maldonado's motion to suppress. 2R, C4–7. Mr. Maldonado also raised and argued federal constitutional illegality of the stop in question in his brief on direct appeal to the Court of Appeals. The Court of Appeals' opinion utilized analysis under the Fourth Amendment. App. 1–19. As such, the constitutional issue has been preserved in the Courts below.

CONSTITUTIONAL PROVISIONS

Mr. Maldonado's Petition for a Writ of Certiorari involves the Fourth Amendment right to be free from unreasonable searches and seizures. Fourth Amendment rights are applied to the States through the Due Process Clause of the Fourteenth Amendment:

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

> . . . . 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

1. The traffic stop

Texas Department of Public Safety ("DPS") Trooper Eugenio Garcia testified that on September 21, 2009 (2R12), he received a telephone call from DPS Narcotics Sergeant Jorge Lopez, who informed Trooper Garcia that:

> they were doing an ongoing investigation on a tractor-trailer with Illinois plates, if I could help him out with a traffic stop, find PC, and do a solid stop.

2R16.

Trooper Garcia further testified as follows:

- A tractor-trailer passed him with its license plate light out. 2R16.
- The broken license plate light served as his probable cause for the traffic stop. 2R19.

- Trooper Garcia turned on his overhead lights to pull Mr. Maldonado over around 11:00 p.m. to 11:30 p.m. 2R34.
- Trooper Garcia issued a warning ticket. 2R34.
- After pulling over the tractor-trailer, Trooper Garcia spoke with Mr. Maldonado. 2R26.
- Trooper Garcia gave Mr. Maldonado a warning for the license plate light violation. 2R32.
- After giving Mr. Maldonado the warning, Trooper Garcia agreed that he was "pretty much done." That is, his personal reason for pulling Mr. Maldonado over (2R34) had concluded around 11:29 p.m. 2R33–35.
- But upon completion of his business, Trooper Garcia did not return Mr. Maldonado's driver's license. 2R34–35.
- When Trooper Garcia checked on Mr. Maldonado's truck, the paperwork was in compliance with all requirements. 2R38–39. Mr. Maldonado was very cooperative. 2R39–40.
- After Trooper Garcia spoke to Mr. Maldonado, everything checked out. 2R40. At the end of Trooper Garcia's interview of Mr. Maldonado, Trooper Garcia had no additional grounds to believe that Mr. Maldonado was somehow carrying contraband. 2R40.
- Sergeant Jorge Lopez submitted a consent to search form to Mr. Maldonado which he signed at 11:46 p.m. 2R44.

DPS Sergeant Jorge testified as follows:

- He was working on September 21, 2009. 2R51.
- What drew his attention to the vehicle in question was that "the signs were getting changed on it." 2R51. The decals on the driver's side of the tractor's door were getting changed. 2R51.
- The vehicle was from Illinois, but the decals were being changed in Pharr, Texas. 2R53.
- These decals changed along with the fact that the vehicle was clean and shiny, were the only reasons why Lopez turned around to investigate the vehicle. 2R54–55.
- During surveillance, Lopez observed Mr. Maldonado's trailer being backed into a stall for loading. 2R59–60. Thereafter, the tractor-trailer went to a weight scale. 2R60. It then returned to the Loop Cold Storage as it appeared to be overweight. 2R60.
- Lopez surmised that the trailer was offloaded because it was overweight, and then he observed that the tractor-trailer returned back to the weight scale, and then took off. 2R60–61.
- Thereafter, the tractor-trailer was followed northbound on Ware and then eastbound on 83. 2R62.
- Lopez identified Mr. Maldonado as the driver of the truck. 2R63.
- The tractor-trailer was loaded with limes. 2R64.

- At Harlingen, Lopez saw the tractor-trailer take a left and head north on Highway 77. 2R69.
- When Lopez questioned Mr. Maldonado, he truthfully admitted that he had just gotten the decal work done on the same day and had paid $120 cash for the decal work. 2R69.
- State's Exhibit 2 Is the consent to search form which is signed and bears a time of "1146p" State's Ex. 2; 2R79–80.
- Had he not gotten consent, he would have seen if there was an available canine close by. 2R82.
- If consent had not been given and there was not a dog close by, he would have cut Mr. Maldonado loose. 2R82.
- Mr. Maldonado was "asked" to follow Lopez to the checkpoint in Falfurrias. 2R84.
- At the Falfurrias checkpoint, a dog hit on primary, which is where you are stopped at the checkpoint. 2R86.
- An x-ray at the checkpoint showed an anomaly up on the vent area also known as the wind jam. 2R87.
- One hundred kilograms of cocaine was found in the wind jam. 2R89.
- Mr. Maldonado was placed under arrest. 2R90.

- Prior to the time that the cocaine was found, Mr. Maldonado was not free to leave. 2R90–91.
- At the time Mr. Maldonado was interviewed on the side of the road, Mr. Maldonado was not free to leave. 2R90–91.
- Yet, at the time Mr. Maldonado was on the side of the road, Sergeant Lopez did not have probable cause to believe that Mr. Maldonado's vehicle contained contraband. 2R91.
- Lopez testified that Mr. Maldonado's meeting of a girl named Jessica was not in and of itself an indication of drug activity. 2R91–92.
- The fact that Mr. Maldonado only knew the crossroads where Jessica lived (Mile 4 Line and Ware Road) was not in itself an indication of illegality. 2R92.
- Cash payment for the decals did not raise a concern. Lopez admitted that it was possible that a business in Pharr, Texas could have some concern about taking a check from an out-of-state entity. 2R93.
- Lopez also admitted that leaving a truck at a truck stop was not unusual. 2R93–94.
- It was not unusual for a truck driver to be given a ride by a third party when their truck is parked. 2R94.
- Spending the weekend in the Valley was not in and of itself an indication of criminal intent. 2R94.

- Lopez verified that there had been a change in ownership in the truck company. 2R94.
- At the time Mr. Maldonado was stopped on the side of the road, Lopez admitted that he would not have been able to get a search warrant due to a lack of probable cause. 2R96–97.
- Fifteen minutes possibly elapsed from the time Trooper Garcia handed Mr. Maldonado off to Lopez to the time he obtained consent to search. 2R98.
- Lopez admitted that the video (State's Exhibit 1) showed what appeared to be an approximate delay of 17 minutes between the time Trooper Garcia issued the warning until the time Lopez obtained consent to search. 2R99.
- Lopez admitted that he held Mr. Maldonado on the side of the road for 17 minutes after Trooper Garcia concluded his business with Mr. Maldonado and during that time he was not free to leave. 2R99.
- Mr. Maldonado never made any incriminating admissions during the interview. 2R99.
- Lopez did not believe that Jessica existed, but admitted that he had no objective evidence that Jessica does or does not exist. 2R102–03.
- Mr. Maldonado was on the side of the road for approximately 20 or 25 minutes by the time Lopez finally got consent to search. 2R104.
- Lopez admitted asking Trooper Garcia to find probable cause to pull over Mr. Maldonado's vehicle. 2R67–68, 104.

- Lopez admitted that prior to the consent, Lopez had no probable cause to search the vehicle. 2R82, 105.
- At the time of the stop, there were six law enforcement officials who had weapons at the scene. 2R109.
- Mr. Maldonado was never told that he was free to leave. 2R110–11.
- Lopez admitted that he never asked Mr. Maldonado if he had any other reason for being in Chicago other than to get this truck. 2R112.
- Lopez admitted that he never included in his report that the drug dog alerted at the Falfurrias checkpoint. 2R115.
- Lopez never sought a warrant to search Mr. Maldonado's vehicle. 2R115–16.
- Lopez admitted that 5:30 in the evening was the first time he had seen Mr. Maldonado's vehicle and that prior to that time he had no knowledge about what happened to the vehicle. 2R116.

2. District Court Proceedings

After hearing, the District Court denied Mr. Maldonado's motion to suppress a warrantless search. 2R147. Thereafter, Mr. Maldonado pleaded guilty. 3R4–5. Said plea was accepted. 3R7. Mr. Maldonado was sentenced to 15 years imprisonment to serve in the Institutional Division of the Texas Department of Corrections. 3R7–8. The plea bargain specifically allowed Mr.

Maldonado to appeal all pre-trial matters raised by pre-trial motion. 2R8. This appeal ensued.

3. The Decision of the Court of Appeals

The challenged Court of Appeals opinion is found at App. 1–19. Focal points of the opinion are primarily located at App. 6–8, and portions of the opinion may be cited below.

After the grant of an out of time appeal, the Texas Court of Criminal Appeals denied Mr. Maldonado's petition for discretionary review and his motion for rehearing of that decision. App. 20–23.

GRANTING THE PETITION

The Court of Appeals erred in applying the incorrect Fourth Amendment standard to Mr. Maldonado's traffic stop. Once the purpose of the traffic stop concluded, reasonable suspicion did not exist to extend the already-completed stop for a canine sniff, a drive to the nearest checkpoint, or obtaining Mr. Maldonado's signature on a consent to search form.

Standard of Review

To assess a district court's ruling on a motion to suppress evidence under the Fourth Amendment, a reviewing court reviews its factual determinations for clear error and the ultimate Fourth Amendment

conclusions de novo. *United States v. Brigham*, 382 F.3d 500, 506 n.2 (5th Cir. 2004) (*citing Ornelas v. United States*, 517 U.S. 690, 699 (1996)). The evidence is considered in the light most favorable to the prevailing party. *United States v. Orozco*, 191 F.3d 578, 581 (5th Cir. 1999).

Application – No Reasonable Suspicion Emerged During Stop

Pursuant to *Terry v. Ohio*, 392 U.S. 1, 19–20 (1968), the legality of police investigatory stops is tested in two parts. Courts first examine whether the officer's action was justified at its inception, and then inquire whether the officer's subsequent actions were reasonably related in scope to the circumstances that justified the stop.

Under the second prong of the *Terry* test, the question before this court is whether the officers' actions after the legitimate stop of Mr. Maldonado for the broken license plate light were reasonably related to the circumstances that justified the stop, or to dispelling his reasonable suspicion developed during the stop. This is because a detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop, **unless further reasonable suspicion, supported by articulable facts, emerges**. *United States v. Brigham*, 382 F.3d 500, 507 (5th Cir. 2004) (*citing Dortch*, 199 F.3d 193, 200 (5th Cir. 1999) and *United States v. Machuca-Barrera*, 261 F.3d 425, 434 (5th Cir. 2001)) (emphasis added).

A reviewing court's reasonable suspicion determination, which must have merged during the initial traffic stop (as per *Brigham*), is made by looking at the totality of the circumstances of each case to see whether the detaining officer has a particularized and objective basis for suspecting legal wrongdoing. *United States v. Arvizu*, 534 U.S. 266, 273 (2002). This process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that "might well elude an untrained person." *United States v. Cortez*, 449 U.S. 411, 418 (1981). *See also Ornelas v. United States*, 517 U.S. 690, 699 (1996) (reviewing court must give "due weight" to factual inferences drawn by resident judges and local law enforcement officers). Although an officer's reliance on a mere "'hunch'" is insufficient to justify a stop, *Terry*, 392 U.S. at 27, the likelihood of criminal activity need not rise to the level required for probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard. *United States v. Sokolow*, 490 U.S. 1, 7 (1989).

The Appellate Court noted that the second step of the *Terry* inquiry required determining whether the officer's subsequent actions were related in scope to the circumstances that caused him to stop the vehicle in the first place and whether the facts showed the development of a "reasonable suspicion of additional criminal activity" during the investigation of the initial traffic offense. App. 7–8.

The evidence at the suppression hearing clearly showed that the officers' subsequent actions were not related in scope to the circumstances that caused him to stop the vehicle. Further, the undisputed evidence did not establish reasonable suspicion of additional criminal activity during the investigation of the initial traffic offense.

Prior to the stop, and as noted in the Appellate Court's opinion, the following information was known by DPS Narcotics Sergeant Jorge Lopez:

> On September 21, 2009, DPS Narcotics Sergeant Jorge Lopez was working narcotics interdiction in Hidalgo County, Texas. At around 5:30 p.m., he was driving an unmarked vehicle on his way home when he noticed a clean, shiny, green tractor-trailer, with Illinois license plates, having its signage changed on the cab's driver and passenger doors. Sergeant Lopez testified that based upon his training and experience, he found it unusual the tractor-trailer was based out of Illinois but having the signage changed in Texas. After further investigation, Sergeant Lopez discovered the company that owned the truck was a brand new company, and that it only owned one truck. According to Sergeant Lopez, this business arrangement is consistent with using tractor-trailers to transport narcotics. Sergeant Lopez continued surveillance of the truck as it was loaded and noticed that appellant was the driver of the truck. Sergeant Lopez further noted that appellant was using his phone and pacing back and forth in front

> of the truck as it was being loaded. After the truck was loaded, Sergeant Lopez and other agents followed the truck as it began to travel eastbound on highway 83 towards highway 281. Sergeant Lopez, believing that it was going to travel northbound on highway 281, called to prepare highway patrol units to stop the truck. The truck, however, continued eastbound when it reached highway 281. Sergeant Lopez, with fellow agents, continued to follow the truck until it reached Harlingen, at which point the truck turned northbound onto highway 77.

App. 2–3.

With this information on hand, Sergeant Lopez did not conduct an investigative stop or detention of Mr. Maldonado and his vehicle. Instead, he instructed Trooper Garcia "to find probable cause" to conduct a stop. 2R67–68. Trooper Garcia complied, and stopped Mr. Maldonado for a broken license plate light, which became the purpose of the stop. 2R19.

State's Exhibit 1 constitutes the DVD of the traffic stop which was introduced into evidence at the suppression hearing. At 3:50 into the stop, Trooper Garcia is seen showing Mr. Maldonado the defective license plate light. At 4:06, Trooper Garcia tells Mr. Maldonado that he will be given a warning. At 7:31, Trooper Garcia tells Mr. Maldonado that he is going to do a computer check. At 11:43, Trooper Garcia tells Mr. Maldonado that everything came back clear, that the tractor-trailer came out clear, and then issued him a

warning. Trooper Garcia told Mr. Maldonado that he was waiting for Sergeant Lopez to clear Mr. Maldonado's release. Trooper Garcia then is seen walking to the front of the tractor-trailer to speak with Sergeant Lopez.

During the stop, further reasonable suspicion, supported by articulable facts, did not emerge. *Brigham*, 382 F.3d at 507. The officers learned at the scene that his license and paperwork came out clear; the tractor-trailer was clean with no evidence of fictitious decals or signage, and nervousness on Mr. Maldonado's part. 2R35, 69.

A discussion on how courts treat nervousness and how it relates to reasonable suspicion is warranted. An individual's nervousness when accosted by a police officer is often cited as one basis supporting reasonable suspicion. E.g., *United States v. Ellis*, 501 F.3d 958 (8th Cir. 2007) (finding nervousness and furtive conduct in a suspected drug house provided reasonable suspicion to pat down defendant). To have value in the totality of circumstances, most circuits require the defendant show extreme nervousness because "it is not uncommon for most citizens – whether innocent or guilty – to exhibit signs of nervousness when confronted by a law enforcement officer." *United States v. Monsivais*, 848 F.3d 353, 359 (5th Cir. 2017), which held in part:

> We have never held that nervousness alone is sufficient to create reasonable suspicion of criminal activity. In fact, we often give little or no weight to an officer's conclusional statement that a suspect appeared nervous. Many

> other courts look skeptically upon the probative value of an individual's nervousness in assessing whether reasonable suspicion of criminal activity exists. There are sound and compelling reasons for such skepticism. Nervousness is an entirely natural reaction to police presence. And therefore it is common for most people 'to exhibit signs of nervousness when confronted by a law enforcement officer' whether or not the person is currently engaged in criminal activity. Accordingly, nervousness per se carries with it no readily discernible connection to criminal activity. (citations and internal quotation marks omitted)

See also United States v. Urrieta, 520 F.3d 569 (6th Cir. 2008) (court gave little weight to nervousness by Hispanics who were being asked numerous immigration questions); *United States v. Contreras*, 506 F.3d 1031 (10th Cir. 2007); *United States v. Wilson*, 506 F.3d 488 (6th Cir. 2007) (extreme nervousness, by itself, does not generate reasonable suspicion to pat down a passenger in a stopped vehicle); *United States v. Sanchez*, 417 F.3d 971 (8th Cir. 2005); *United States v. Johnson*, 364 F.3d 1185 (10th Cir. 2004) (although the defendant did not exhibit extreme nervousness, officer may still consider the lower level of nervousness in the totality of circumstances; officer may discount the value of such nervousness but need not disregard the nervousness); *United States v. Beck*, 140 F.3d 1129 (8th Cir. 1998) (officer was not familiar with Beck and testified that approximately one-quarter of the persons stopped by the officer were at least as nervous as Beck); *United States*

v. Salzano, 158 F.3d 1107, 1113 (10th Cir. 1998) (in addition to stating there was no evidence that defendant exhibited nervousness beyond the norm for persons confronted by police, court discounted the officer's testimony describing defendant's hands as shaking because the officer was not familiar with defendant and could not contrast defendant's usual demeanor with demeanor during the traffic stop); *United States v. Wood*, 106 F.3d 942 (10th Cir. 1997) (court stated that nervousness is of limited significance in determining reasonable suspicion); *United States v. Torres-Sanchez*, 83 F.3d 1123 (9th Cir. 1996) (driver of the vehicle appeared scared); *United States v. Kopp*, 45 F.3d 1450 (10th Cir.), cert. denied, 514 U.S. 1076, 115 S. Ct. 1721 (1995) (extreme nervousness). In *Illinois v. Wardlow*, 528 U.S. 119 (2000), the Court stated that flight from police is a major form of nervous, evasive behavior that may be considered in the reasonable suspicion analysis. And some courts discount even extreme nervousness. *United States v. Noble*, 762 F.3d 509, 522 (4th Cir. 2014) (stating "time and again, we have said that nervousness—even extreme nervousness—'is an unreliable indicator' of someone's dangerousness, 'especially in the context of a traffic stop' ").

The objective circumstances leading the officer to conclude the individual was nervous should be described in detail. For example, in *United States v. Green*, 52 F.3d 194, 199 (8th Cir. 1995), the officer testified that the defendant appeared so nervous, the officer thought she might run. The officer, however, did not provide the richness of detail that conveyed the

mental picture of a nervous person. The court indicated a preference for more detailed information and gave an example of an officer's testimony that the defendant's "voice was unsteady, his speech rapid, hands shook and body swayed." *Green*, 52 F.3d at 199. *See also United States v. Salzano*, 158 F.3d 1107, 1113 (10th Cir. 1998).

Here, the officers gave no such detail about Mr. Maldonado's purported nervousness. "As I continued my interview with him, I noticed nervous movement on him." 2R35. Mr. Maldonado's demeanor appeared nervous—a little nervous. 2R69. It therefore cannot be said that Mr. Maldonado's nervousness—a very natural response for any person in the same or similar circumstance—constituted emerging reasonable suspicion during the stop.

Likewise, all other elements of purported reasonable suspicion fail. Objectively, what Sergeant Lopez had before him was a clean tractor-trailer with no evidence of it bearing fictitious emblems, a fledgling tractor-trailer business and a new driver (Mr. Maldonado), who liked to talk on his cell phone, and who seemed "a little nervous." Further, no evidence exists that the route that Mr. Maldonado took to Illinois was unusual as Illinois lies northeast of Texas, and traveling past highway 281 to highway 77 is in an eastbound direction. At no point during the stop was Mr. Maldonado free to leave the scene. Trooper Garcia gave Mr. Maldonado a warning, but did not return his I.D., even though the reason for the stop had concluded. 2R90–91; 2R99; 2R110–11; 2R32. Trooper Garcia also

testified that he had an opportunity to interview Mr. Maldonado; that at the end of his interview he had no additional grounds to believe that Mr. Maldonado was carrying contraband; and that the consent to search form was signed after clearance by the officers. 2R40, 44.

Sergeant Lopez' subsequent actions, after the issuance of the warning, were not reasonably related in scope to the stop of the vehicle, which was for the broken license plate light, and not as an investigative stop. This detention should have been temporary and should have lasted no longer than necessary to effectuate the purpose of the stop—a broken license plate light—unless further reasonable suspicion, supported by articulable facts, emerged.

"The cases are about timing and sequence: after the computer checks came up 'clean,' there remained no reasonable suspicion of wrongdoing by the vehicle occupants. Continued questioning thereafter unconstitutionally prolonged the detentions." *Brigham*, 382 F.3d at 510. The continued questioning after the issuance of the warning unconstitutionally prolonged the detention. The fruits therefrom should have been suppressed. The suppression ruling should be reversed under the proper federal Fourth Amendment standard.

Application—Detention Illegally Extended

At least 17 minutes elapsed from the time (11:29 p.m.) that Trooper Garcia concluded his traffic stop by issuing the warning and the time that Sergeant Lopez

obtained consent to search (11:46 p.m.). *See* State's Exhibit 2; 2R99, 104. Mr. Maldonado submits that the extension of the detention after the purpose of the traffic stop had been completed resulted in an illegally extended detention and that any search conducted after the illegal extension of the detention is in itself illegal.

Subsequent to the below Court of Appeals' decisions but before the exhaustion of this case's direct appeal to this Court, this Court issued its opinion in the case of *Rodriguez v. United States*, 135 S. Ct. 1609 (2015).[1] This Court held:

> A police stop exceeding the time needed to handle the matter for which the stop was made violates the United States Constitution's shield against unreasonable seizures. A seizure justified only by a police-observed traffic violation, therefore, becomes unlawful if it is prolonged beyond the time reasonably required to complete the mission of issuing a ticket for the violation.
>
> Beyond determining whether to issue a traffic ticket, an officer's mission includes "ordinary inquiries incident to [the traffic] stop." [Citation omitted]. Typically such inquiries involve checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance. [Citations omitted]. These checks serve the

[1] The *Rodriguez* case involved a seven to eight minute elapse from the time the officer issued the written warning until the dog indicated the presence of drugs. 133 S. Ct. at 1613.

> same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly. [Citations omitted].
>
> A dog sniff, by contrast, is a measure aimed at "detect[ing] evidence of ordinary criminal wrongdoing." [Citations omitted] . . . Lacking the same close connection to roadway safety as the ordinary inquiries, a dog sniff is not fairly characterized as part of the officer's traffic mission.

Rodriguez, 135 S. Ct. at 1612, 1615.

In *United States v. Ellis*, 330 F.3d 677, 680 (5th Cir. 2003), the issue was whether, after Border Patrol agents have completed an immigration check of bus passengers, those agents may continue to detain the passengers, absent individualized suspicion, to look for drugs. After inquiring of each passenger's citizenship, the same agent returned to the front of the bus, and began searching the carry-on baggage on the upper bin using the squeeze-and-sniff method. The agent felt a hard brick-like item, which turned out to be drugs and resulted in the Ellis' arrest. The Court held that because the Border Patrol agent extended the search without individualized suspicion after having completed the immigration check, the illegally extended detention violated the holding of *Portillo-Aguirre*, resulting in the reversal of his conviction.

The *Ellis* Court relied upon *United States v. Portillo-Aguirre*, 311 F.3d 647 (5th Cir. 2002). In *Portillo-Aguirre*, a Border Patrol agent had completed his immigration

check, and during the walk from the back to the front exit of the bus, stopped to interrogate Portillo-Aguirre, thereby extending the bus' detention for three minutes. The Fifth Circuit held that the three minute extension was unreasonable, reiterating that once the agent has completed his immigration inquiry at the checkpoint, he must end the seizure of the bus unless he has reasonable suspicion of criminal wrongdoing. *Portillo-Aguirre*, 311 F.3d at 655 (*citing United States v. Machuca-Barrera*, 261 F.3d 425, 434 (5th Cir. 2001)).

In *United States v. Jones*, 234 F.3d 234 (5th Cir. 2000), a vehicle was pulled over at 11:57 a.m. for speeding. At 12:14 p.m., the officer was advised that neither driver nor passenger had a criminal record and that both drivers' licenses were current. At 12:17, the driver responded negatively to a question about whether there were drugs in the car. *Id.* At 12:22, the officer found drugs. *Id.* The Court held:

> Similar to *Dortch*, the computer checks in the instant case were completed before the search of the vehicle occurred. At least three minutes transpired from the response by the dispatcher to the time Russell asked for consent to search the car. Except for obtaining Daniel's signature, Russell has completed the warning citation. But instead of obtaining Daniel's signature and returning his driver's license and rental agreement, Russell chose the more dilatory tactic of exiting the car, returning Jones's identification papers before doing the same for Daniel, and, most importantly, repeating to Jones the same questions that were

> asked of him before. After the computer checks were finished, any delay that occurred with respect to the warning citation being meted out was due to the officers' action or inaction. The basis for the stop was essentially completed when the dispatcher notified the officers about the defendants' clean records, three minutes before the officers sought consent to search the vehicle. Accordingly, the officers should have ended the detention and allowed the defendants to leave. And the failure to release the defendants violated the Fourth Amendment. The district court erred by not so holding.

In *United States v. Dortch*, 199 F.3d 193, 195 (5th Cir. 1999), Dortch was the driver of a vehicle pulled over for traveling too close to a tractor-trailer. Dortch exited the car, produced his license and car rental papers, and consented to a pat down search in which no weapons were found. *Id.* Dortch and the passenger gave inconsistent statements about Dortch's relationship to the person who rented the car. *Id.* Dortch told the officer they had been in Houston the past two days, while the rental agreement showed the car had been rented the day before in Pensacola, where Dortch lived, and he stated they had no baggage. 199 F.3d at 196. The officers stated that Dortch could leave after the computer check but that the vehicle was be detained until they had conducted a canine search of it. *Id.* Again, Dortch was patted down and no weapons were found. *Id.* After 14-15 minutes, Dortch's criminal record was obtained from the dispatcher and Dortch was

questioned about details. *Id.* Dortch was not told that the computer search had been completed or that he was free to go. *Id.* About 19-20 minutes after the initial stop, the officers saw the canine unit across the interstate highway. *Id.* Dortch was informed at that time that the computer check for outstanding warrants had been completed and turned up nothing, but that the canine unit was going to perform a search. *Id.* The dog alerted on the driver's side door and seat, but a search found no drugs there. *Id.* A third pat down of Dortch was done, and this time contraband was found. *Id.*

> Essentially, the government asks us to find that officers have reasonable suspicion to suspect drug trafficking any time someone is driving a rental car that was not rented in his name. We reason, to the contrary, that the law enforcement purposes to be served by the computer check were only to ensure that there were no outstanding warrants and that the vehicle had not been stolen.
>
> Those purposes were served when the computer check came back negative, and Dortch should have been free to leave in his car at that point. Once he was not permitted to drive away, the extended detention became an unreasonable seizure, because it was not supported by probable cause. To hold otherwise would endorse police seizures that are not limited to the scope of the officer's reasonable suspicion and that extend beyond a reasonable duration.

Dortch, 199 F.3d at 199-200.

Mr. Maldonado was pulled over by Trooper Garcia for a burned out license plate light. Officer Garcia issued a written warning to Appellant at 11:29 p.m. State's Exhibit 2. Any continued detention of Mr. Maldonado beyond that point in time was illegal and any search arising thereafter, even by consent, was illegal. *Rodriguez*, 135 S. Ct. 1609; *Portillo-Aguirre*, 311 F.3d 647 (5th Cir. 2002); *Jones*, 234 F.3d 234, 241 (5th Cir. 2000); *Ellis*, 330 F.3d at 680. As there was no reasonable suspicion that Mr. Maldonado had violated the law, he should have been allowed to leave at 11:29 p.m. once the warning ticket had been issued and given to him. Extension of the detention without reasonable suspicion mandates that the illegal search and its fruits be suppressed.

To stem any further erosion of the Fourth Amendment's safeguards, this Court should grant certiorari.

CONCLUSION

For the foregoing reasons, this Court should grant the Petition for Writ of Certiorari.

Respectfully submitted,

VICTORIA GUERRA
3219 N. McColl Rd.
McAllen, Texas 78501
(956) 618-2609
(956) 618-2553 (f)
vguerralaw@gmail.com

Attorney for Petitioner