No. _____

In The
Supreme Court of the United States

—————♦—————

STEPHENO ALSTON,

Petitioner,

v.

THE STATE OF SOUTH CAROLINA,

Respondent.

—————♦—————

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

—————♦—————

PETITION FOR WRIT OF CERTIORARI

—————♦—————

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QUESTION PRESENTED

Does South Carolina's reasonable suspicion analysis, in the context of prolonged automobile detentions, violate due process when it fails to sufficiently narrow the category of presumably innocent travelers who are subject to seizure by law enforcement?

PARTIES TO THE PROCEEDING

The Petitioner is Stepheno Alston, the defendant and appellant in the court below.

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The South Carolina Supreme Court's opinion in *State v. Stepheno Alston* is reported at 422 S.C. 270, 811 S.E.2d 747 (2018).

JURISDICTION

The South Carolina Supreme Court rendered its opinion in this case on March 7, 2018, App. 1a, after granting certiorari to review the South Carolina Court of Appeals' decision issued on July 29, 2015. App. 28a. This petition for writ of certiorari comes from a final judgment rendered by the highest court of South Carolina and this Court has jurisdiction pursuant to 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISION

The Fourth Amendment of the Unites States Constitution provides, in pertinent part: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated… but upon probable cause.

STATEMENT

A. Factual Background

Stepheno Alston was indicted by the Spartanburg County Grand Jury for trafficking in cocaine. He was tried *in absentia* before the Honorable J. Derham Cole and a jury on March 18, 2013. On March 19, 2013, he was found guilty. His

sealed sentence was opened on September 19, 2013. He was sentenced to 25 years in prison and ordered to pay a $200,000 fine.

The Court of Appeals affirmed his conviction and sentence by way of an unpublished opinion on July 29, 2015. *State v. Alston*, 2015-UP-381 (S.C. Ct. App. *filed* July 29, 2015). Alston then filed a petition for rehearing on August 13, 2015. On September 15, 2015, the Court of Appeals denied the petition.

Alston then filed a petition for writ of certiorari with the South Carolina Supreme Court. The Court granted certiorari, and afterwards rendered its opinion at issue in this case. App. 1a.

B. Suppression Hearing

Alston's counsel moved pretrial to suppress the cocaine seized from his car as a violation of the Fourth Amendment. The State called the arresting officer, Sergeant Donnie Gilbert of the Spartanburg County Sheriff's Office, as its witness. Gilbert had, prior to these events, been a member of an Aggressive Criminal Enforcement Team.

Gilbert testified that on Monday, March 28, 2011, he was monitoring the traffic on Interstate 85 as a member of the Interstate Criminal Enforcement Team. The purpose of that team was to "eliminate criminal activity from any roadway" that he patrolled. On this day, he observed a Hyundai Santa Fe pass his location and fail to maintain its lane of travel. The car "drifted" in its lane. Gilbert activated his blue lights and pulled Alston over. When he approached

the car, he touched it so that he could transfer his fingerprints to the car in case investigators needed to "check and make sure that's the vehicle that I did stop, they can fingerprint it and prove that it is."

Gilbert testified that he noticed there was luggage in the back of the car, covered up by a blanket. He also noticed the driver was a black male. Alston, he said, immediately asked him why he was being stopped. Gilbert testified that it is "not consistent with the innocent motoring public" to ask why one is stopped. When Alston gave him his license, he realized Alston was from Rome, Georgia. Gilbert asked Alston where Rome, Georgia was to see if he would tell him what he believed to be correct, which is that Rome, Georgia is south of Atlanta. The fact Alston was from Atlanta caused concern for Gilbert since it is a major hub for criminal activity in the southeast. The fact this was I-85 also caused Gilbert concern because it is a "major criminal activity corridor" connecting Atlanta to many other highways.

Alston produced the rental contract for the car he was driving for Gilbert. Alston's car was rented in the Atlanta area. He could tell it was rented on March 26, 2011. He saw the car was rented by Tomeka Harris, who was not in the car with Alston. It raised Gilbert's suspicion that it was a third-party vehicle without a third party present in the car. In his training and experience, "that is very common when it comes to criminal activity." It also "[threw] a red flag" with him that it was rented by a female. Criminals will do that because they realize law enforcement is not "threatened by [a] woman. They

don't recognize criminal activity with a female. At least that's what the drug trafficking organizations think."

The rental agreement noted the car was authorized to operate in Georgia, Tennessee, Kentucky, Virginia and West Virginia. South Carolina was not noted on the agreement. Gilbert then asked Alston about the no smoking and no pet hair conditions of the rental agreement. He asked these gratuitous questions because he did not want to "tip" Alston off that he had concerns.

Gilbert also noted there was a rental key in the ignition that also had two house keys on it. He found that "very odd." He thought Alston was trying to "personalize the vehicle."

Gilbert also noticed an air freshener in the car. He thought that was strange because "you just don't see people go straight to a store and buy an air freshener and put it in a rental vehicle if it's not yours." He thought Alston could be using it to mask the odor of drugs or something else he was trying to hide. Gilbert learned that in his training.

Gilbert asked Alston where he was going. He told him he was going to New Jersey to pick up his mother. That raised Gilbert's suspicions because New Jersey was not listed on the rental agreement. Also, it raised a "big red flag" with Gilbert that Alston had the states of Georgia, Tennessee, Kentucky, West Virginia, and Virginia on the agreement. He thought it appeared that Alston was trying to avoid Interstate 85.

It raised another red flag with Gilbert that Alston said he was going to see his mother in New Jersey, and then bring her home for Mother's Day when Mother's Day was nearly a month and a half away. It was also "a little odd" that Alston told him he was going to New Jersey and it was already the third day of the rental, and he told Gilbert that he was going to stay for a week or so. That would have exceeded the length of the contract.

At 5 minutes and 41 seconds into the video, it appears that Gilbert started to write the warning for the traffic violation.

Gilbert asked Alston twice if he had any problems with his license. Alston told him it had been suspended several years earlier. That was different than when he first asked him if he had any problems with his license and he said, "no."

Gilbert then called for Deputy Carraway, a teammate on the Ice Team with Gilbert. He called Carraway at 11 minutes, 11 seconds into the video. Carraway had to go by his home to pick up his K-9. Gilbert switched to a radio channel to see if there were any other closer deputies.

Alston and Gilbert continued speaking. Gilbert asked him if anyone else had access to the rental car. Alston said he did not know. That raised a red flag with Gilbert because if he (Gilbert) and his girlfriend were going to rent a car, they would make sure nobody else had access to it. Gilbert then asked him again if anyone had access to the car. Alston said "nah, you don't let anybody use those cars nowadays." Gilbert

thought that was odd because he realized that Alston knew why he was asking that question. It gave Alston a chance to "distance himself from the vehicle."

Gilbert then asked him about his kids, and what he did for a living. Alston told him he had a clothing store in Rome, and that he had six kids to feed. Then Gilbert asked him the ages of his kids, and he gave him the ages for seven kids. Gilbert could tell then that Alston could not keep up with the stress of the situation—"He's not even able to keep up with how old the kids are and how many he's got."

At about 16 minutes into the stop, Gilbert and Alston spoke again of Alston's mother. Alston told Gilbert he was going to see his mother to check on her for around a week. Gilbert asked if she was in poor health. According to Gilbert, Alston said he was not sure what was wrong with her, but that he figured he would go up there and see what was going on.

Gilbert admitted that he was waiting for backup to respond to the scene. He testified he's been shot doing this for a living. He was not going to ask for consent to search the car until there was someone else there. He testified that often things get a bit tense "and people start figuring out what's actually going on when you start asking for consent to search."

Gilbert then asked to search Alston's car. Alston wanted to know why Gilbert wanted to search it. Gilbert explained to him that he was not going to answer that question until "everything's done." At the time of this request for consent, Gilbert had not

returned Alston's driver's license or the rental agreement.

Gilbert then searched the car. Captain Hollifield and Deputy Carraway, who had by then arrived at the scene, assisted him. Cocaine was found in the steering column.

As the South Carolina Supreme Court noted, approximately 14 minutes into the traffic stop Gilbert received confirmation from the Spartanburg County dispatch that Alston's license and vehicle's registration were valid. At approximately 15 minutes into the stop, Gilbert completed the warning, even though he did not present Alston with the warning, and did not return his license or vehicle registration. Instead, he continued to ask Alston questions prior to asking for consent.

C. Appellate Proceedings

In upholding the prolonged detention in this case, the South Carolina Court of Appeals cited to Gilbert's testimony where he described the various factors he observed that allegedly raised his suspicion that criminal activity was afoot including (1) Alston's luggage was covered by a blanket; (2) Alston asked why he was being stopped as soon as Gilbert approached his car; (3) Alston was from Rome, Georgia, near Atlanta, which is a "major hub for criminal activity in the southeast;" (4) Alston was driving on Interstate 85, which is "a major criminal activity corridor;" (5) the car was rented in the name of a third party who was not present; (6) the car was rented in a woman's name; (7) the car was being

driven in South Carolina, a state not permitted under the rental contract; (8) there was an air freshener in the car; (9) Alston put his house keys on the key ring for the rental car which Gilbert said indicated he was trying to personalize the vehicle; (10) Alston's travel plans did not comply with the rental agreement because he was not permitted to drive in New Jersey and would not able to return the car on time; (11) Alston said he was going to pick up his mother for Mother's Day, which was a month and a half away; and (12) Alston said he had six children but listed the ages of seven children. *State v. Alston*, 2015-UP-381 (S.C. Ct. App. *filed* July 29, 2015).

The South Carolina Supreme Court affirmed, as modified, the court of appeals decision. In its opinion, the South Carolina Supreme Court identified some of these factors that it held supported the trial court's decision to uphold the search in this case. Much of the opinion explains why it discounted other factors offered by Gilbert. The South Carolina Supreme Court, however, found these following factors sufficient to establish Gilbert had reasonable suspicion to prolong the detention in this case:

- According to the terms of the rental agreement, the car was authorized to be operated only in Georgia, Tennessee, Kentucky, Virginia, and West Virginia.

- Despite these restrictions, Alston was stopped while driving in South Carolina on his way to visit his mother in New Jersey.

- Alston indicated he intended to stay in New Jersey for "about a week," until Monday, April 2, 2011, the date the car was to be returned to a location outside of Atlanta;

- Alston's claim that he intended to bring his mother back with him for Mother's Day, which is in May.

According to the South Carolina Supreme Court, these "unusual travel plans and deviations from the rental agreement provide evidence of reasonable suspicion."

REASONS FOR GRANTING THE WRIT

A. South Carolina is an outlier and does not offer sufficient protections for its citizens.

The Fourth Amendment prohibits "unreasonable searches and seizures" by the Government, and its protections extend to brief investigatory stops of persons or vehicles that fall short of traditional arrest. *Terry v. Ohio*, 392 U.S. 1, 9, 88 S. Ct. 1868 (1968). Because the "balance between the public interest and the individual's right to personal security," *United States v. Brignoni-Ponce*, 422 U.S. 873, 878, 95 S. Ct. 2574 (1975), tilts in favor of a standard less than probable cause in such cases, the Fourth Amendment is satisfied if the officer's action is supported by reasonable suspicion to believe that criminal activity "'may be afoot,'" *United States v. Sokolow*, 490 U.S. 1, 7, 109 S. Ct. 1581 (1989) (quoting *Terry*, *supra*, at 30, 88 S. Ct. 1868). See also

United States v. Cortez, 449 U.S. 411, 417, 101 S. Ct. 690) ("An investigatory stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity"). Reasonable suspicion depends on "'the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'" *Ornelas v. United States*, 517 U.S. 690, 695, 116 S. Ct. 1657 (1996). When discussing how reviewing courts should make reasonable-suspicion determinations, this Court has repeatedly said they must look 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, 273 122 S. Ct. 744, 750 (2002).

South Carolina law regarding reasonable suspicion in the context of prolonged automobile detention allows for unconstitutional encroachment on citizens' liberty interests and is exceedingly out of line with the standards held in other jurisdictions. Alston's case is not the sole case to illustrate this constitutional infirmity. What these following cases have in common with Alston is that the legal analyses used by the South Carolina Supreme Court fail to narrow the universe of presumably innocent travelers who are subject to the government's intrusive actions.

In *State v. Provet*, 405 S.C. 101, 747 S.E.2d 453 (2013), the South Carolina Supreme Court approved the circuit court's finding that the officer-provided litany of innocuous facts supported a finding of reasonable suspicion. In *Provet*, the court relied on the following set of facts: 1) Provet's "extreme

nervousness evidenced by shaking hands and accelerated breathing," 2) Provet's car was registered to a third party, 3) Provet's claims regarding his stay at the Greenville Holiday Inn and subsequent movements appeared to contradict the officer's observations, 4) Provet claimed to be unemployed but appeared able to afford to stay at a hotel and buy large quantities of gas to drive his large car, 5) there were numerous air fresheners in the car, 6) there were numerous fast food bags, receipts, and a cell phone in the car "consistent with the tight schedule maintained by drug traffickers," 7) the officer observed a luggage bag, even though Provet claimed he did not have luggage with him despite having stayed in Greenville for two days, 8) Provet used "delay tactics." The Court then explicitly discounted other factors indicative of innocent travel, such as the address petitioner gave for his girlfriend was a valid address; petitioner did not have a prior arrest record; and no negative information about the petitioner or the car was reported by the dispatcher. The Court concluded that, under its deferential standard of review, it would uphold the trial court's finding of reasonable suspicion. Lacking in its analysis is any discussion of how this application of reasonable suspicion narrows the universe of presumably innocent travelers who could be subject to the government's intrusions, or how any of these "factors" suggest criminality.

In *State v. Moore*, 415 S.C. 245, 781 S.E.2d 897 (2016), the South Carolina Supreme Court approved the following factors found by the lower court: 1) a large sum of money found in Moore's pocket, because it was unusual and therefore suspicious for an

unemployed person to carry such a large amount of cash, 2) Moore's "unusual itinerary" because the rental agreement stated Moore's car was rented to a third-party in Morganton, NC the day before the traffic stop, yet when police stopped Moore, he claimed to be travelling from Lawrenceville, Georgia, to visit his grandmother in Marion, North Carolina, less than 12 hours after the car was rented, 3) Moore exhibited "excessive nervousness" in the judgment of the officer, and 4) the trial court's reliance on the deputy's extensive experience, especially in the area of drug interdiction. The Court noted that, while each factor standing alone would be insufficient to support a finding of reasonable suspicion, the totality of factors was sufficient to support the trial court's findings in light of its deferential standard of review. Again, the South Carolina Supreme Court did not address how its approval of the circuit court's analysis protects the universe of presumably innocent travelers from government intrusion, nor does it explain how any of these factors, either individually or cumulatively, give rise to an inference of criminality.

In *State v. Wallace*, 392 S.C. 47, 707 S.E.2d 451 (Ct. App. 2011), the South Carolina Supreme Court allowed to stand, by dismissing as improvidently granted its initial grant of certiorari, the South Carolina Court of Appeals decision that upheld a finding of reasonable suspicion where 1) the arresting officer was experienced, 2) the officer found it suspicious that Wallace "hit his brakes, then he let off his brakes and got right at the exit ramp… and then hit his brakes again…, 3) Wallace "fumbled around" while taking approximately 2 minutes to collect his

documents, 4) the car passenger looked straight ahead, not assisting Wallace and not acknowledging the officer's presence, 5) Wallace being unable to tell the officer how many days he spent in Atlanta ("He told me one, then he told me two, then two days and one night."), 6) Wallace's gradually getting more nervous, 7) Wallace's excessive "nervous chitter" as he explained a prior alcohol related violation, 8) a black BMW pulled up behind the officer and Wallace for 2 minutes and then drove away, 9) Wallace's cell phone rang, 10) the passenger "hardly look[ed]" at the officer and was sweating, 11) the passenger said he was coming from a baby shower in Atlanta, but Wallace had not mentioned the baby shower, and 12) Wallace told him he was not actually travelling from Atlanta, but was coming from "Lavonia or Lithonia" 13) Wallace looked out the window. From this, the Court of Appeals found that, while none of the items independently amounted to reasonable suspicion, "blending each of these "tiles" into the "entire mosaic" of the totality of circumstances" the trial court was correct to find the officer had reasonable suspicion. *Id.*, 392 S.C. at 55, 707 S.E.2d at 455.

As these cases illustrate, South Carolina Supreme Court's analysis fails to sufficiently narrow the class of innocent travelers who may be subject to the government's intrusive seizures based on no more than an "inchoate and unparticularized suspicion or hunch." *Terry v. Ohio*, 392 U.S. 1, 27 (1968). Officers in South Carolina are certainly aware that, if they provide a sufficient litany of innocuous facts to the court, the trial court will uphold the constitutionality of these searches, and the South Carolina Supreme Court will defer to those decisions. The South

Carolina Supreme Court's analysis fails to insist on narrowing reasonable suspicion to exclude "a very large category of presumably innocent travelers." *Reid v. Georgia*, 448 U.S. 438 (1980). Courts in other jurisdictions insist on much higher levels of protection for their citizens.

As the Fourth Circuit opined in *United States v. Foster*, 634 F.3d 243 (2011):

> We…note our concern about the inclination of the Government toward using whatever facts are present, no matter how innocent, as indicia of suspicious activity. We recognize that we must look to the totality of the circumstances when evaluating the reasonableness of a stop… However, an officer and the Government must do more than simply label a behavior as "suspicious" to make it so. The Government must also be able to either articulate why a particular behavior is suspicious or logically demonstrate, given the surrounding circumstances, that the behavior is likely to be indicative of some more sinister activity than may appear at first glance.

Id. at 248 (internal citations omitted).

South Carolina's application of the reasonable suspicion standard is out of step with the large majority of jurisdictions who have addressed this issue.

In *United States v. Rodriguez-Escalera*, 884 F.3d 661 (7th Cir. 2018), the court agreed with the district court's conclusion that the officer there did not provide reasonable suspicion sufficient to prolong the detention in that case. Officer Patterson testified to the factors that triggered his suspicion: 1) when he first approached Moran's front passenger window, he smelled a "very pungent" scent of air fresheners and noticed "several" air vent clip-in air fresheners which he had been trained to associate with narcotics traffickers, 2) the couple's origin city was Los Angeles which, he explained is known as a major distribution center for narcotics trafficking, 3) Rodriguez did not initially look up at him but was distracted by a video game on his phone, 4) Moran seemed nervous when he asked her questions in his squad car, 5) Moran and Rodriguez's conflicting travel plans made him think they were not making "just an ordinary trip." *Id.* at 666. Acknowledging that it was a "close case," and citing *Reid v. Georgia* twice in its opinion, the court found no clear error in the district court's findings or analysis.

In *United States v. Townsend*, 305 F.3d 537 (6th Cir. 2002), the court of appeals agreed with the district court's conclusion that the officers lacked reasonable suspicion. The court identified the following factors relied on by the officers: 1) Officers claimed that Townsend was unusually cooperative when the car was initially stopped. He had his license, registration and proof of insurance ready when the officer approached the car, 2) Townsend volunteered that he was speeding, and drivers "typically lie" about their speed or do not confess to a higher speed, 3) Officers claimed the defendants produced dubious

travel plans. Townsend and Green claimed they were travelling from Chicago to Columbus to visit Townsend's sister. According to the officer, that would have put them in Columbus around 4:00-5:00am. Also, Townsend did not know his sister's address, but claimed he would call her when he reached Columbus, 4) The officers claimed they were concerned because Chicago is a source city for narcotics, and Columbus is a destination city for narcotics, 5) the officers claimed the presence of three cellular phones in the passenger compartment was typical of drug couriers, 6) The officers claimed the presence of a Bible in the car was suspicious because drug couriers often display religious symbols to deflect suspicion of illegal activity, 7) The officers, while frisking the defendants, felt what appeared to be rolls of money in each of their pockets, 8) The officers testified they learned that Townsend had been previously arrested on a weapons charge, 9) The officers claimed the defendants appeared nervous, repeatedly looking back at the patrol car while the officers were preparing paperwork for the citation, 10) the officers claimed that the interior of the car was cluttered with food wrappers and clothing, indicating the defendants had been reluctant to leave the car and their suspected load of cocaine, 11) the officers claimed they were concerned because the driver was not the registered owner of the car. The court found each of these factors "relatively minor" and "subject to significant qualification." *Id*. at 545.

In *United States v. Jenson*, 462 F.3d 399 (5th Cir. 2006), the government offered three reasons why there was reasonable suspicion to extend the traffic stop beyond the time that the defendant's license

cleared: 1) it took an unusually long time for Jenson's van to pull over, 2) Jenson's excessive talkativeness indicated nervousness, and 3) Jenson and Cotton appeared to give inconsistent answers. It appears that the inconsistent answers related to employment. The court noted that the officer easily could have dispelled his suspicions by asking a follow-up question such as "Do you work with your nephew?," but that he apparently did not do so. *Id*. at 404. The court here noted that the government did not present adequate evidence of a nexus between Jenson's allegedly suspicious behavior and any criminal activity. The officer testified that, while pulling over the car, he though the passengers might be trying to conceal something or get their explanations straight before stopping. The court noted these statements by the officer did not amount to "articulable suspicion that a person has or is about to commit a crime" as opposed to a mere hunch. *Jenson*, 426 F.3d at 405 (quoting *Florida v. Royer,* 460 U.S. 491, 498 (1983)).

In *United States v. Macias*, 658 F.3d 509 (5th Cir. 2011), the court of appeals reversed and vacated the judgment of conviction after finding the highway trooper unconstitutionally prolonged Macias's detention by asking irrelevant and unrelated questions without reasonable suspicion of criminal activity. The court rejected the government's claim that the officer had reasonable suspicion to prolong the detention based on Macias's "extreme signs of nervousness" that were manifested through his avoidance of eye contact and failure to place his truck in park. *Id*. at 519.

The Fourth Circuit Court of Appeals, in *United States v. Williams*, 808 F.3d 238 (2015), vacated and remanded the defendant's conviction and sentence, finding the officer did not have reasonable suspicion to prolong the automobile detention. In this case, the government relied on the following factors to support its claim that the officer was acting lawfully: 1) the defendants were traveling "in a rental car," 2) the defendants were traveling "on a known drug corridor at 12:37a.m.," 3) Williams stated travel plans were inconsistent with, and would likely exceed, the due date for return of the rental car," 4) Williams was unable to provide a permanent home address in New York even though he claimed to live there at least part-time and had a New York driver's license;" and 5) Williams stated that he was traveling with the car ahead of him, yet that car's driver denied any association with Williams. *Id.* at 243. At a reconsideration hearing, one of the officers testified that his earlier testimony as to factor 5 was "wrong" and that he had "made a mistake." *Id.* at 244. The court then upheld the search finding the first 4 factors were sufficient for a showing of reasonable suspicion. In rejecting the government's claims, the court opined that, "[p]ut simply, our precedent requires that the authorities articulate or logically demonstrate a connection between the relevant facts and criminal activity." *Id.* at 253. The record here, it found, failed to show how the four factors—separately or cumulatively—reasonably pointed to criminal activity. *Id.*

The Fourth Circuit Court of Appeals similarly reversed a conviction finding the absence of reasonable suspicion sufficient to prolong an

automobile detention in *United States v. Bowman*, 884 F.3d 200 (2018). Finding it necessary to assess factors both individually and cumulatively, the court rejected the following factors as being sufficient to support the search: 1) Bowman and Alvarez's apparent nervousness, 2) the presence of a suitcase, clothes, food and an energy drink inside of the Lexus, 3) Bowman's inability to supply the officer with the name and address of Alvarez's girlfriend, 4) Bowman's statements that he had been laid off recently and that he had recently purchased the Lexus via Craigslist, 5) Bowman's statement that he "he bought cheap cars off of Craigslist which the officer indicated was in accord with the "known practice of drug traffickers . . . [of using] multiple, different vehicles to transport narcotics. *Id*. at 208. The court of appeals found that these factors did not eliminate a substantial portion of innocent travelers. *Id*. at 218.

The cases detailed above require the standard of reasonable suspicion to serve a narrowing function, by either insisting that the analysis exclude a substantial portion of innocent travelers, or by insisting on a requirement that there be a nexus between the factors and criminality. However it is articulated, the result is the same—that application of the reasonable suspicion standard limits the universe of persons who may be subjected to intrusive government interference while on the roadways of this country. South Carolina's jurisprudence on this issue lacks that narrowing function, resulting in South Carolina citizens receiving less protections than those living in other jurisdictions, or those being prosecuted in South Carolina federal court.

B. This is the proper vehicle for resolution of this issue

This case is a suitable vehicle for resolving this issue. Unencumbered by claims of ineffective assistance of counsel, or the obligation to follow the highly deferential standard of the Antiterrorism and Death Penalty Act (AEDPA), this case offers an opportunity to clarify the standard of reasonable suspicion in the context of prolonged automobile detentions. Without this Court's intervention, citizens in South Carolina will continue to be vulnerable to the inquisitions of aggressive drug interdiction officers who know they need do little more than offer a trial court a litany of innocuous facts to support the searches that do uncover illegal materials. They know, too, that the South Carolina Supreme Court will overlook their transgressions, evading meaningful appellate review by the Court's willingness to hide behind its deferential standard of review. Without this Court's instruction regarding the narrowing function of the standard, an unnecessarily large category of presumably innocent travelers will continue to have their rights violated by the state of South Carolina.

CONCLUSION

This Court should grant the writ.

Respectfully submitted,

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