NO._____

In the Supreme Court of the United States

ERICKSON CAMPBELL,

PETITIONER-APPELLANT,

v.

UNITED STATES OF AMERICA,

RESPONDENT-APPELLEE.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

This case stems from evidence obtained during a traffic investigation of a faulty turn signal and failure to maintain a lane. The officer delayed completing the traffic investigation in order to ask the Petitioner whether he had any counterfeit shoes, purses, shirts, pirated CD's, pirated DVD's, illegal alcohol, marijuana, cocaine, meth, heroin, ecstasy, or dead bodies in his car – questions not justified by reasonable suspicion, and that the officer admitted were irrelevant to the traffic investigation. The Eleventh Circuit found the prolongation of the traffic stop violated *Rodriguez v. United States*, 135 S.Ct. 1609 (2015), but it applied the good faith exception to the exclusionary rule, finding a reasonable officer could have relied on its decision in *United States v. Griffin*, 696 F.3d 1354 (11th Cir. 2012) to authorize the prolongation. The question presented is:

> whether the exclusionary rule should apply when the only precedent the officer could rely on was not directly on point, explicitly rejected a bright-line rule pre-authorizing the seizure in favor of a totality of the circumstances analysis, and was out of step with this Court's prior and subsequent decisions governing the seizure.

PARTIES TO THE PROCEEDING

Petitioner, Erickson Campbell, was the Appellant in the Court of Appeals and the Defendant in the District Court.

Respondent, the United States of America, was the Appellee in the Court of Appeals, and the Plaintiff in the District Court.

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Erickson Campbell, through counsel, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINION BELOW

The opinion of the court of appeals was reported at *United States v. Campbell*, 912 F.3d 1340 (11th Cir. 2019). A copy of the opinion is attached as Appendix A. The district court's ruling is unreported. A copy of the order is attached as Appendix B.

JURISDICTION

Appellant invokes this Court's jurisdiction under 28 U.S.C. § 1254(1) and Part III of the Rules of the Supreme Court of the United States. The district court had original jurisdiction under 18 U.S.C. § 3231. The court of appeals had jurisdiction on direct appeal under 18 U.S.C. § 1291. It entered its decision affirming Mr. Campbell's conviction on January 8, 2019. On April 8, 2019, this Court granted a sixty-day extension of his deadline to file this petition, making his deadline June 7, 2019. He thus timely files this petition based on Supreme Court Rules 13.1.

RELEVANT STATUTORY AND CONSTITUTIONAL PROVISIONS

U.S. CONST., AMEND. IV establishes: "[t]he 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."

Ga. Code Ann. § 40-8-26 (a)(2) provides, in pertinent part: "(a) Any motor vehicle may be equipped and when required under this article shall be equipped with the following signal lights or devices: (1) . . . ; and (2) A light or lights or mechanical signal device capable of clearly indicating any intention to turn either to the right or to the left and which shall be visible from both the front and the rear."

Ga. Code. Ann. § 40-8-26(b) provides: "Every brake light shall be plainly visible and understandable from a distance of 300 feet to the rear both during normal sunlight and at nighttime, and every signal light or lights indicating intention to turn shall be visible and understandable during daytime and nighttime from a distance of 300 feet from both the front and the rear. When a vehicle is equipped with a brake light or other signal lights, such light or lights shall at all times be maintained in good working condition. No break light or signal light shall project a glaring or dazzling light."

Ga. Code. Ann. § 40-8-26(c) provides: "All mechanical signal devices shall be self-illuminated when in use at the times mentioned in Code Section 40-8-20."

Ga. Code Ann. § 40-8-26(d) provides: "All lenses on brake lights and signal devices shall be maintained in good repair and shall meet manufacturers' specifications."

STATEMENT OF THE CASE

On a December 2013 night on a highway in Georgia, a deputy sheriff stopped Erickson Campbell for failing to maintain a lane and because his turn signal was blinking too fast. *United States v. Campbell*, 912 F.3d 1340, 1345 (11th Cir. 2019). The deputy believed the fast blinker might indicate a bulb was about to die. C.A. App.[1] 32 at 14. Before he stopped Mr. Campbell, he initiated a camera mounted on his dashboard, which video-recorded and timed the ensuing encounter. *Id*. at 22-23.

The officer first investigated the turn signal, ran Mr. Campbell's license and registration, questioned him about his route, his driving record, his criminal history, his line of work, how much he had paid for the car, and whether he had firearms. *Campbell*, 912 F.3d at 1347. He then began writing him two warnings. *Id*. Prior to completing the warnings, he stopped writing and asked Mr. Campbell whether he had any counterfeit shoes, purses, shirts, pirated CD's, pirated DVD's, illegal alcohol, marijuana, cocaine, meth, heroin, ecstasy, or dead bodies in his car. *Id*. The deputy repeatedly acknowledged at the suppression hearing that these questions were not relevant to the traffic investigation. C.A. App. 32 at 44.

Immediately after Mr. Campbell denied possessing any of these items, the deputy asked for, and obtained, his consent to search his car. *Campbell*, 912 F.3d at 1347. He had still not finished writing the warnings. *Id*. While he continued working

[1] Petitioner cites to the appendix on appeal to the Eleventh Circuit Court of Appeals, as "C.A. App. [document number] at [page number]," and to the appendix attached to this petition as "App. [appendix letter] at [page number]."

on them, another deputy searched the car. *Id*. About six minutes after he finished the warnings, the other deputy found a firearm. *Id*. at 1348.

A federal grand jury sitting in the Middle District of Georgia indicted Mr. Campbell with possessing a firearm after being convicted of a crime punishable by more than a year. C.A. App. 1. He moved to suppress all evidence obtained as a result of his traffic stop. C.A. App. 26. After an evidentiary hearing, the parties filed supplemental briefs addressing whether the good faith exception to the exclusionary rule should apply based on *Davis v. United States*, 564 U.S. 229 (2011).

Mr. Campbell argued that the Eleventh Circuit had only applied the good faith exclusionary rule to two categories of searches: searches of cars incident to the arrest of an occupant that violated this Court's subsequent decision in *Arizona v. Gant*, 556 U.S. 332 (2009), and the GPS monitoring of cars that violated this Court's subsequent decision in *United States v. Jones*, 565 U.S. 400 (2012). App. C at 3 – 4.[2] He argued that, unlike Eleventh Circuit cases that *Gant* and *Jones* had abrogated, no " 'binding appellate precedent' . . . allowed [the deputy] to illegally prolong the traffic stop longer than necessary to effectuate its purpose." *Id*. at 4. He pointed to Eleventh Circuit precedent indicating " '[t]he stop may not last any longer than necessary to process

[2] The parties filed supplemental briefs before the district court addressing whether the exclusionary rule applies, which were not part of the Appendix before the court of appeals. The court of appeals nonetheless referenced the supplemental briefs in its opinion. *Campbell*, 912 F.3d at 1355. Petitioner therefore attaches his supplemental brief to the district court as Appendix C, and the government's supplemental brief to the district court as Appendix D.

the traffic violation unless there is articulable suspicion of other illegal activity." *Id*. (quoting *United States v. Boyce*, 351 F.3d 1102, 1106 (11th Cir. 2003)).

The government asserted "in this case, binding appellate precedent specifically authorized the kinds of questions that Deputy McCannon asked during the course of the traffic stop, ..." App. D at 10, 11 (citing *Arizona v. Johnson*, 555 U.S. 323, 333 (2009) and *United States v. Hernandez*, 418 F.3d 1206, 1209 n.3 (11th Cir. 2005)). It argued that in light of these precedents, and because the deputy "did not exhibit a deliberate, reckless, or grossly negligent disregard for Campbell's Fourth Amendment rights," "the deterrence value of the exclusionary rule is weak." *Id*. at 11.

The district court did not reach the exclusionary rule issue. It found that the rapidly blinking light justified the traffic stop. C.A. App. 42 at 10. It found all of the officer's questions prior to the ones about unrelated contraband "were authorized as questions that either addressed the traffic violation or were related to legitimate safety concerns." *Id*. at 17. The questions about Mr. Campbell's destination did not extend the stop because the officer asked them "while [he] was writing the traffic citation." *Id*.

It found the irrelevant questions about contraband "most troubling," but determined they only lasted 35 seconds, which did not "measurably extend" the stop within the meaning of *Rodriguez v. United States,* 135 S.Ct. 1609 (2015). *Id*. at 17-18. Concluding *Rodriguez* had not altered the Eleventh Circuit's overall reasonableness analysis, it held the seizure did not violate the Fourth Amendment because "the entire process" was "reasonable." *Id*. at 20.

Mr. Campbell entered a guilty plea, reserving his right to appeal the court's denial of his motion. C.A. App. 45, 47. The court sentenced him to 28 months' imprisonment. C.A. App. 56 at 2.

This petition stems from the panel's resolution of the *Rodriguez* issue. His central argument was that the district court erred under *Rodriguez* in finding the stop was justified because the " 'entire process' was " 'reasonable[,]' " while disregarding the time that elapsed when the officer was detouring from the traffic investigation. Appellant's C.A. Princ. Br. at 19-23 (quoting C.A. App. 32 at 20). He acknowledged that this Court considered the overall length of the stop in determining whether unrelated " 'inquiries . . . measurably extend[ed]' " its " 'duration[,]' " *Id*. at 17 (quoting *Arizona v. Johnson*, 555 U.S. 323, 333 (2009)), but pointed out that *Rodriguez* focused the constitutional question on "what the officer did and how he did it." *Id*. at 20 (quoting *Rodriguez*, 135 S. Ct. at 1616). Mr. Campbell contended that under *Rodriguez*, the deputy had unconstitutionally prolonged the stop and "the District Court should have suppressed the gun as the fruit of an unlawful seizure." *Id*. at 23.

The government responded "Campbell's argument presents an unreasonable extension of the holding in *Rodriguez*." Gov't C.A. Br. at 17. It noted that *Rodriguez* had not "overruled" and had in fact "reaffirmed" its earlier decisions such as *Johnson*, which permit routine inquiries, safety precautions, and "unrelated investigations during a traffic stop" that did not "unreasonably lengthen" the detention. *Id*. at 17-19. It asserted the district court was correct to conclude that " 'Deputy McCannon's

brief questioning occurred while he 'expeditiously' completed the warning citation; therefore these unrelated inquiries did not unconstitutionally prolong the stop.' " *Id.* at 21 (quoting C.A. App. 42 at 18).

Mr. Campbell replied that the detour to ask about contraband was constitutionally significant. Appellant's C.A. Reply Br. at 1. This thirty-five second interval was not negligible, as *Rodriguez* had explicitly overruled a case upholding a stop that an officer impermissibly prolonged by thirty seconds. *Id.* at 3-5; *see United States v. $404,905.00 in U.S. Currency*, 182 F.3d 643 (8th Cir. 1999). Moreover, the officer was not otherwise diligent, asking questions that "did not strictly further the mission of his traffic stop." *Id.* at 1-2. "While some of his detours may have been individually insignificant, or even justified as an 'ordinary inquir[y] incident to the traffic stop,' in the aggregate they added several minutes to the stop." *Id.* at 7.

At oral argument, Judge Tjoflat responded to a series of questions posed to defense counsel by Judge Murphy, regarding whether *Rodriguez* had abrogated *United States v. Griffin*, 696 F.3d 1354 (11th Cir. 2012). He said "what difference does it make whether it does or not, we're bound by the Supreme Court[,]" "why do we have to reach out and overrule anything?", and "we apply the law to the facts of this case." Eleventh Circuit Oral Argument Recording (Nov. 6, 2017) at 1:41 – 2:04, *available at* http://www.ca11.uscourts.gov/oral-argument-recordings .

The government asserted Mr. Campbell was advocating for a "bright-line no prolongation rule." *Id.* at 26:51 – 27:04. Defense counsel distinguished a bright-line no prolongation rule from an overall reasonableness approach during rebuttal:

> I want to first address the bright-line no prolongation rule, and I would make a distinction where here you have this clear 35-second interval, bracketed by the district court's findings, and a case if – maybe if we were just discussing the officer's diligence and there wasn't a fishing expedition and the officer was just taking too long. In those cases, the totality of the circumstances would be more significant, but when there's this clear interval of time that is not related to the traffic stop, no other circumstance can negate that, can give him that time back.

Id. at 28:10 – 28:51.

The majority held that an officer unlawfully prolongs a traffic stop when they "(1) conduct an unrelated inquiry aimed at investigating other crimes (2) that adds time to the stop (3) without reasonable suspicion." *Campbell*, 912 F.3d at 1353. It thus found that the deputy unlawfully prolonged the stop of Mr. Campbell when he asked about contraband in the car. *Id*. at 1355. "These questions were inquiring about 'crime in general [and] drug trafficking in particular[,]' . . . [t]hey added 25 seconds to the stop[, a]nd the Government does not contend that [the officer] had reasonable suspicion." *Id*. (internal citation omitted.)

It concluded *Rodriguez* had abrogated *Griffin*, 696 F.3d 1354, in two ways. First, *Griffin* held that an officer's overall diligence could negate detours from the mission of the stop, but under *Rodriguez*, "diligence does not provide an officer with cover to slip in a few unrelated questions." *Campbell*, 912 F.3d at 1352-53. Second, *Griffin* held the stop was lawful because, at the time of the officer's detour, he "had not yet completed his investigation[,]" 696 F.3d at 1362, but *Rodriguez* made clear "the 'critical question . . . is not whether the [unrelated inquiry] occurs before or after the officer issues the ticket . . . but whether conducting the [unrelated inquiry]

'prolongs' – *i.e.*, adds time to – 'the stop.' ' " *Campbell*, 912 F.3d at 1353 (quoting *Rodriguez*, 135 S. Ct. at 1616) (ellipses and interlineations added in *Campbell*).

Nonetheless, the majority found the good faith exception to the exclusionary rule applied, since the officer followed binding Circuit precedent. *Id*. at 1356. *See Davis*, 564 U.S. 229. It acknowledged that the Government had waived this argument on appeal, but noted "both parties submitted briefs on whether the good faith exception applied to the District Court." *Id*. at 1355. It reasoned "[a]t the time of Campbell's arrest, *Griffin* was our last word on the issue and the closest precedent on point." *Id*. Moreover, "[t]he facts here fit squarely within *Griffin*'s parameters." *Id*. Believing "the applicability of the exception to this case is plain," it found no deterrent value would be served by "punishing law enforcement for following the law at the time." *Id*. at 1356.

Judge Martin dissented. She agreed with the majority on the merits of the *Rodriguez* issue, but disagreed with its "reach[ing] out to decide Mr. Campbell's fate on a ground abandoned by the government." *Id*. at 1356-57 (Martin, J., dissenting.) She pointed out "the application of the good faith exception to this case" was not " 'plain' " to her. *Id*. at 1357.

REASONS FOR GRANTING THE WRIT

I. COURTS HAVE NOT ALWAYS LIMITED THE GOOD FAITH EXCEPTION TO THE EXCLUSIONARY RULE UNDER *DAVIS* TO BINDING PRECEDENT THAT "SPECIFICALLY AUTHORIZED" THE SEARCH OR SEIZURE AT ISSUE, LEADING TO AN INTRA-CIRCUIT AND AN INTER-CIRCUIT SPLIT.

This Court has recognized that suppressing evidence does not deter unconstitutional searches or seizures when the officer was acting in good faith reliance on facially valid authority or information. Accordingly, when an officer relies on a facially valid warrant, *United States v. Leon*, 468 U.S. 897 (1984), a presumptively constitutional statute, *Illinois v. Krull*, 480 U.S. 340 (1987), or a database that is ordinarily accurate, *Arizona v. Evans*, 514 U.S. 1 (1995); *Herring v. United States*, 555 U.S. 135 (2009), but the source turns out to be invalid or inaccurate, exclusion does not "pay its way." *Illinois v. Gates*, 462 U.S. 213, 258 (1983) (White, J., concurring). In *Davis v. United States*, 564 U.S. 229, 241 (2011), the Court extended the good faith exception to reliance on case law that "specifically authorized" the search or seizure in question, and was binding at the time, but was subsequently abrogated or overruled.

When officers rely on warrants, statutes, and court or police databases, whether to apply the good faith exception is clear enough. These are specific, reliable sources that unambiguously pre-authorize a particular act, such as the search of a particular place, or the arrest of a particular person. Reliance on precedent, however, is more open-ended, given the complexities, uncertainties, and fact-specific analyses often involved in Fourth Amendment jurisprudence. Courts have unsurprisingly

taken different views on what kind of precedent inoculates from the exclusionary rule evidence obtained in violation of the Fourth Amendment.

Some decisions have strictly interpreted *Davis* to hold that officers must rely on "binding appellate precedent [that] *specifically authorize*[*d* the] particular police practice" at issue. *Davis,* 564 U.S. at 241 (italics in original); *see, e.g., United States v. Sparks*, 711 F.3d 58, 62 (1st Cir. 2013); *United States v. Burston*, 806 F.3d 1123, 1129 (8th Cir. 2015); *United States v. Lara*, 815 F.3d 605 (9th Cir. 2016); *United States v. Smith*, 741 F.3d 1211 (11th Cir. 2013). Others applied the *Davis* good faith exception to save evidence obtained in reliance on the rationale underlying a decision with distinguishable facts, *United States v. Katzin*, 769 F.3d 163, 173 (3d Cir. 2014), or based on the weight of non-binding, or unsettled authority. *See United States v. Holley,* 831 F.3d 322, 327 (5th Cir. 2016).

Further, some precedents are more capable of guiding police than others. Courts have most often applied the *Davis* good faith exception when officers relied on precedents stating a bright-line rule that left them with little discretion. *See, e.g., Smith*, 741 F.3d 1211. In these circumstances, applying the good faith exception made sense, because an officer relying on such a clear directive from the judiciary, like an officer relying on a warrant, would have no reason to anticipate that exclusion is possible. But some decisions have applied the good faith exception based on more nebulous precedents, like the one the Eleventh Circuit relied upon below. *See Griffin*, 696 F.3d 1354. Unlike bright-line rules, these types of precedents do not induce an officer into performing an unconstitutional act. Hence, the possibility of exclusion can

still ensure that a "reasonably well trained" officer is careful not to cross the constitutional line. *Leon*, 468 U.S. at 922, n. 23.

Throughout its development of the good faith exception and culminating with *Davis*, 564 U.S. 229, this Court has carefully and gradually recalibrated the balance between the need to deter unconstitutional intrusions by government actors and the need to admit reliable evidence. An expansive interpretation of *Davis* to apply even in the absence of clear precedent that specifically authorized the search or seizure in question would radically alter that balance. Courts are thus in critical need of further guidance.

A. *Davis* and its antecedents emphasized that the good faith exception applies only to reliance on clear and settled precedents.

Davis involved the search of a car incident to the arrest of one of its occupants. At the time of the search, the Eleventh Circuit, like many other courts, had interpreted *New York v. Belton*, 453 U.S. 454, 458-59 (1981) to establish a bright-line rule authorizing an officer to search the car, regardless of whether an actual exigency or safety concern justified the search. *See United States v. Gonzalez*, 71 F.3d 819, 825-27 (11th Cir. 1996). But while Davis's appeal was pending, this Court decided *Arizona v. Gant*, 556 U.S. 332 (2009), holding that an officer can only search the passenger compartment incident to arrest " 'when the arrestee is unsecured and within reaching distance . . . .' " *Davis*, 564 U.S. at 236 (quoting *Gant*, 556 U.S. at 343).

The question in *Davis* was "whether to apply the exclusionary rule when the police conduct a search in objectively reasonable reliance on binding judicial

precedent." *Id*. at 239. This Court held it should not apply, lest "the exclusionary rule is to become a strict-liability regime, ..." *Id*. at 240. It reasoned the "rule's sole purpose, . . ., is to deter future Fourth Amendment violations." *Id*. at 236-237. It does not serve this purpose "[w]hen the police act with an objectively 'reasonable good-faith belief' that their conduct is lawful, ..." *Id*. at 238 (quoting *Leon*, 468 U.S. at 909).

The bright-line nature of the *Belton* rule was important to the *Davis* rationale. The Court noted that "binding appellate precedent specifically *authorize[d]* a particular police practice[.]" *Davis*, 564 U.S. at 241 (italics in original.) It stressed that the unconstitutional search "followed the Eleventh Circuit's *Gonzalez* precedent *to the letter*[,]" and that "the officers' conduct was *in strict compliance* with then-binding Circuit law[.]" *Id*. at 239 (italics added.)

The concurrence and dissent highlighted the distinction between the *Belton* rule and other types of precedent. Justice Sotomayor noted "[t]his case does not present the markedly different question whether the exclusionary rule applies when the law governing the constitutionality of a particular search is *unsettled*." *Id*. at 250 (italics added) (Sotomayor, J., concurring). Justice Breyer, anticipating the current confusion, questioned how the good faith exception would apply to "an officer's conduct [that] is consistent with the language of a Fourth Amendment rule that a court of appeals announced in a case with clearly distinguishable facts[,]" or to a precedent that "did not announce any general rule but involved highly analogous facts." *Id*. at 255 (Breyer, J., dissenting).

Likewise, the decisions that anticipated the *Davis* rule stressed that the precedent relied upon had to be clear to warrant applying the good faith exception. The court of appeals in *Davis* required "that our precedent on a given point must be *unequivocal* before we will suspend the exclusionary rule's operation." *United States v. Davis*, 598 F.3d 1259, 1266 (11th Cir. 2010) (italics added), *aff'd*, *Davis*, 564 U.S. 229. It reasoned "[t]he *clarity* of the *Belton* rule we followed before *Gant* is thus crucial to our decision today." *Id.* at 1267 (italics added). Noting that most courts of appeals treated "the broader, permissive reading of *Belton* as *well-settled*," it concluded:

> [i]t is precisely in situations like this, when the permissibility of a search was *clear* under precedent that has since been overturned, that applying the good-faith exception makes sense. When the police conduct a search in reliance on a *bright-line judicial rule*, the courts have already effectively determined the search's constitutionality and applying the exclusionary rule on the basis of a judicial error cannot deter police misconduct.

Id. (italics added); *see also United States v. McCane*, 573 F.3d 1037, 1044-45 (10th Cir. 2009) (three times characterizing the type of case law that an officer can rely on in good faith as "the settled case law of a United States Court of Appeals."); *State v. Baker*, 229 P.3d 650, 663 (Utah 2010) (applying the good faith exception to reliance on "settled judicial precedent" and noting "this is not a case where police interpreted an ambiguous law in their own favor."); *State v. Dearborn*, 786 N.W.2d 97, 107 (Wisc. 2010) ("the officers were following the clear and settled precedent of this court.")

B. Following *Davis*, many decisions have continued to insist that, for the good faith exception to apply, the precedent relied upon must have been clear.

Since *Davis*, numerous decisions have emphasized the clarity of the precedent that officers could rely on, consistent with the language of the *Davis* holding. In *Sparks*, 711 F.3d at 65, for example, the First Circuit applied the good faith exception to evidence obtained as a result of GPS monitoring of a car in violation of *United States v. Jones*, 565 U.S. 400 (2012). It declined to apply the exclusionary rule because the officers relied in good faith on its decision in *United States v. Moore*, 562 F.2d 106, 111 (1st Cir. 1977) (installing a beeper on the underbelly of a car was not a trespassory search), and on *United States v. Knotts*, 460 U.S. 276, 281 (1983) (using beeper to monitor location of container in automobile did not implicate reasonable expectation of privacy). *Id.*

Jones, 565 U.S. 400, abrogated both of these holdings. The lead opinion held that installing a GPS device under a car was a trespassory search. *Id.* at 404-10. Four concurring justices believed that long-term GPS monitoring of a person's vehicle violated their reasonable expectation of privacy. *Id.* at 427-31 (Alito, J., Ginsburg, J., Breyer, J., and Kagan, J., concurring). Justice Sotomayor agreed the practice violated the Fourth Amendment under both theories. *Id.* at 414-18 (Sotomayor, J., concurring).

In applying the good faith exception, the First Circuit asked "what universe of cases can the police rely on? And how clearly must those cases govern the current case for that reliance to be objectively reasonable?" *Id.* at 63. It stressed "the apparent

clarity of the pre-*Jones Knotts* rule is 'critical to our decision.' " *Sparks*, 711 F.3d at 67 (quoting *Davis*, 598 F.3d at 1267). "This emphasis" was "consistent with *Davis*'s focus on deterrence[ ]" because "where judicial precedent does not clearly authorize a particular practice, suppression has deterrent value because it creates an 'incentive to err on the side of constitutional behavior.' " *Id.* at 64 (quoting *Davis*, 598 F.3d at 1266-67); *see also United States v. Bain*, 874 F.3d 1 (1st Cir. 2017) ("This court has clarified that 'the [*Davis*] exception is available only where the police rely on precedent that is 'clear and well-settled.' ") (quoting *Sparks*, 711 F.3d at 64.)

In *Smith*, 741 F.3d 1211, the Eleventh Circuit also applied the good faith exception to evidence obtained by means of electronic tracking in violation of *Jones*, 561 U.S. 400. It held an officer reasonably relied on *United States v. Michael*, 645 F.2d 252, 254 (5th Cir. 1981) (*en banc*)[3], which "authorized officers to install 'an electronic tracking device' on a suspect's vehicle upon a showing of reasonable suspicion." *Id.* at 1220. It reasoned "[j]ust as in *Davis*, the issue here was not 'unsettled' in this Circuit." *Id.* at 1224 (quoting *Davis*, 131 S.Ct. at 2435 (Sotomayor, J., concurring in the judgment)). Rather, "*Michael* specifically authorized officers to install an electronic tracking device once they developed reasonable suspicion[.]" *Id.* at 1225; *see also United States v. Fisher*, 745 F.3d 200, 204-05 (6th Cir. 2014) (precedent was "unequivocal" and "clearly indicated that the warrantless use of electronic tracking devices was permissible."); *United States v. Buford*, 632 F.3d 264,

[3] This opinion was binding on the Eleventh Circuit based on *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981).

276 n.9 (6th Cir. 2011) ("Like the Eleventh Circuit, we also 'stress, however, that our precedent on a given point must be unequivocal before we will suspend the exclusionary rule's operation.' ") (quoting *Davis*, 598 F.3d at 1266); *accord United States v. Curtis*, 635 F.3d 704, 714 n. 28 (5th Cir. 2011).

C. Other decisions have expanded the good faith exception to unlawful searches or seizures conducted in reliance on Circuit precedents that were not squarely on point, or on the weight of non-binding authority.

Katzin, 769 F.3d 163, another case involving officers attaching a GPS tracker to a car, presents perhaps the most expansive interpretation of *Davis*. Unlike many Circuits, "no binding Third Circuit precedent specifically authorized" attaching the tracking device to the car. *Id*. at 173. Nonetheless, the Third Circuit relied on *Knotts*, 460 U.S. 276, and *United States v. Karo*, 468 U.S. 705 (1984), both of which authorized placing a beeper into a container that was then transferred to the defendant's vehicle. *Id*. at 174-75. It found the factual distinctions between these cases and the search of Mr. Katzin was not dispositive, stating "the question is not answered simply by mechanically comparing the facts of cases and tallying their similarities and differences." *Id*. at 176. Rather, "*Davis'* inquiry involves a holistic examination of whether a reasonable officer would believe in good faith that binding appellate precedent authorized certain conduct, ..." *Id*.

It acknowledged "certain language in *Davis* invites a narrow reading, but we are not persuaded this interpretation is true to *Davis*' holding." *Id*. It reasoned:

> if binding appellate precedent specifically authorizes the precise conduct under consideration, then it will likely be binding appellate precedent upon which police can

> reasonably rely under *Davis*. However, this does not make the reverse syllogism true, namely, that if a case is binding appellate precedent under *Davis*, then it must specifically authorize the precise conduct under consideration.

Id; *cf. United States v. Aguiar*, 737 F.3d 251 (2d Cir. 2013) (applying good faith exception based on *Knotts* and *Karo*); *Holley,* 831 F.3d at 327 ("[e]ven if not binding or conclusive, this uniform case law demonstrates that the dog sniffs were 'close enough to the line of validity' that an objectively reasonable officer would not have realized that the . . . warrants were tainted.")

The Fourth Circuit was also skeptical of a narrow reading of the *Davis* holding, albeit in dicta. *United States v. Stephens*, 764 F.3d 327 (4th Cir. 2014). It had "serious doubts about" Mr. Stephens's argument that precedent must be binding to warrant applying the good faith exception *Id*. It viewed *Davis* as just one application of the broader good-faith inquiry, which it might also apply to "the slightly different context where an officer reasonably relied on nonbinding precedent, ..." *Id*.

In contrast, the Seventh Circuit "reject[ed] the government's invitation to allow police officers to rely on a diffuse notion of the weight of authority around the country, especially where that amorphous opinion turns out to be incorrect in the Supreme Court's eyes." *United States v. Martin*, 712 F.3d 1080, 1082 (7th Cir. 2013). In applying the good faith exception to a car search in violation of *Gant*, the Tenth Circuit stressed that its precedent authorizing the search was "settled," so "there was no risk that law enforcement officers would engage in the type of complex legal research and analysis better left to the judiciary and members of the bar." *McCane*, 573 F.3d at 1045 n.6.

Several district courts have agreed. In *United States v. Lee*, 862 F.Supp.2d 560, 570 (E.D. Ky 2012), Judge Thapar commented on the inapplicability of the *Davis* exception in the absence of a binding precedent governing the GPS tracker at issue. He reasoned "[i]f a police officer conducts a search based on a non-binding judicial decision . . . he is guessing at what the law might be, rather than relying on what a binding legal authority tells him it is." *Id*. at 569. *See also United States v. Ortiz*, 878 F.Supp.2d 525, 539-43 (E.D. Pa. 2012) ("*Davis* does not refer to persuasive or well-reasoned precedent, permit reliance on a growing trend in decisions, or purport to apply to situations in which a plurality, majority, or even overwhelming majority of circuits agree."); *United States v. Robinson*, 903 F.Supp.2d 766, 783-84 (E.D. Mo. 2012), *aff'd*, 781 F.3d 453 (8th Cir. 2015) ("I do not believe, however, that in *Davis* the Supreme Court announced a good faith exception that invites courts to engage in a free-ranging balancing test in the absence of controlling Supreme Court or Circuit authority.")

D. Courts have most often applied the good faith exception when officers relied upon a precedent that stated a bright-line rule, since exclusion would not deter unconstitutional searches or seizures that officers conducted in reliance on such a rule.

Courts have typically applied the good faith exception when a decision of this Court – like *Gant*, 556 U.S. 332, *Riley v. California*, 573 U.S. 373 (2014), *Jones*, 565 U.S. 400, and *Florida v. Jardines*, 569 U.S. 1, 9 (2013) – undermined a precedent that established a bright-line rule. Much like a warrant, bright-line rules "*specifically* authorize[]" the search or seizure in question. *Davis*, 564 U.S. at 233, 241 (italics added).

Indeed, *Davis*, 564 U.S. 229, applied the good faith exception based on a textbook example of a categorical, bright-line precedent. This Court found an officer was entitled to rely upon *Gonzalez*, 71 F.3d at 822, 824-27, a case in which the Eleventh Circuit interpreted *New York v. Belton*, 453 U.S. 454 (1981) to always permit officers to search the passenger compartment of a car incident to the arrest of a recent occupant. *See* also *McCane*, 573 F.3d at 1041 (applying good faith exception to search of car incident to arrest based on *United States v. Humphrey*, 208 F.3d 1190 (10th Cir. 2000)); *United States v. Wilks*, 647 F.3d 520, 522, 524 (4th Cir. 2011) ("there is no dispute that Officer O'Cain's search of Wilks' car [incident to his arrest] was in compliance with binding Fourth Circuit precedent . . . .") (citing *United States v. Milton*, 52 F.3d 78, 80 (4th Cir. 1995)).

Similarly, *Riley*, 573 U.S. at 386, created a new exception to what was a "categorical rule" authorizing searches of a person incident to arrest. Before *Riley*, in *Robinson*, 414 U.S. at 235, this Court rejected a "case-by-case adjudication" of whether an officer could search the person of an arrestee. It explained "[a] custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; [and] that intrusion being lawful, a search incident to arrest requires no additional justification." *Id*.

Given the categorical nature of the former *Robinson* rule, the Ninth Circuit applied the good faith exception to a cell phone search incident to arrest that pre-dated *Riley*. *Lustig*, 830 F.3d 1075. It rejected an argument that "the law governing warrantless searches of cell phones was unsettled at the time of the search[.]" *Id*. at

1082. It concluded "*Robinson*, by its terms, 'specifically authorize[d] the search incident to arrest of an object found on the arrestee's person, so the evidence obtained from the phone was admissible. *Id*. at 1084 (quoting *Davis*, 131 S. Ct. at 2429).

As well, *Jones*, 565 U.S. 400, and *Jardines*, 569 U.S. 1, marked a watershed change in Fourth Amendment jurisprudence, by reviving the long dormant trespassory Fourth Amendment standing. As demonstrated by *Sparks*, 711 F.3d at 67, and *Smith*, 741 F.3d at 1225, *Jones* upset a number of Circuit precedents that categorically defined electronic tracking of a car's movement as not a Fourth Amendment "search." *See also United States v. Martin*, 807 F.3d 842, 846 (7th Cir. 2015) (applying good faith exception to GPS search based on *United States v. Garcia*, 474 F.3d 994, 996-97 (7th Cir. 2007)); *United States v. Taylor*, 776 F.3d 513, 518 (7th Cir. 2015) (same); *United States v. Rainone*, 816 F.3d 490, 496 (7th Cir. 2016) (same); *Fisher*, 745 F.3d at 204-05 (same).

Before *Jardines*, dog sniffs categorically did not qualify as a "search." *See United States v. Place*, 462 U.S. 696 (1983). Hence, in *United States v. Thomas*, 726 F.3d 1086, 1088, 1092 (9th Cir. 2013), the Ninth Circuit applied the good faith exception to what turned out to be an unconstitutional dog sniff of a vehicle. The defendant argued that the dog sniff turned into a trespassory search when the dog "jumped up and placed his paws on the vehicle and pressed his nose against [his] toolbox." *Id*. at 1088. The Ninth Circuit found it was "beyond dispute" that Supreme Court precedent permit dog sniffs of cars at the time. *Id*. at 1095. It concluded "the absence of a previously expressed limit along the lines of *Jones*/*Jardines* [to the

categorical rule defining dog sniffs as not a Fourth Amendment search] matters because there can be no exclusion 'when binding appellate precedent specifically authorizes a particular police practice.' " *Id*. (quoting *Davis*, 564 U.S. at 241).

Conversely, several courts have refused to apply the good faith exception when a bright-line precedent did not specifically authorize the officer's action. The Eighth Circuit's jurisprudence is instructive. It applied the good faith exception to unconstitutional searches specifically authorized by binding Circuit precedents, and declined to apply the exception in a case where the same precedents were not directly on point.

Initially, in *United States v. Scott*, 610 F. 3d 1009 (8th Cir. 2010), it held that a dog sniff of an apartment door from a "common hallway" did not violate the Fourth Amendment. In *United States v. Brooks*, 645 F.3d 971 (8th Cir. 2011), it held that an officer permissibly obtained evidence discovered after he chased a defendant into the common stairway of an apartment complex. *Id*. at 1128. Then, in *Jardines*, 569 U.S. at 9, this Court held that a dog sniff from the curtilage of a house was a trespassory search that required a warrant. Subsequently, the Eighth Circuit decided a slew of cases involving officer searches that occurred after it had decided *Scott* and *Brooks*, but before this Court decided *Jardines*.

In *United States v. Burston*, 806 F.3d 1123, 1125 (8th Cir. 2015), the officer conducted a dog sniff from directly outside of the defendant's window. *Id*. at 1125. The court concluded "[n]either *Scott* nor *Brooks* specifically authorize a dog sniff six to ten inches from a suspect's window, present similar facts, or provide a rationale to

justify Officer Fear's search." *Id.* at 1129. In contrast, in four other cases where officers conducted the dog sniff from a common area of a multi-unit housing complex, the court found they had reasonably relied on *Scott* and *Brooks*, and applied the good faith exception. *See United States v. Hunter*, 770 F.3d 740, 743 (8th Cir. 2014); *United States v. Davis*, 760 F.3d 901, 904-05 (8th Cir. 2014); *United States v. Mathews*, 784 F.3d 1232, 1235 (8th Cir. 2015); *United States v. Givens*, 763 F.3d 987 (8th Cir. 2014).

In the absence of a bright-line rule specifically authorizing the search, the Ninth Circuit has also declined to apply the *Davis* good faith exception. In *Lara*, 815 F.3d at 613, it excluded evidence obtained from the search of a probationer's cell phone that violated this Court's decision in *Riley*, 573 U.S. 373. In arguing the good faith exception applied, the government "cite[d] only cases from which it could have plausibly argued that the searches were permissible." *Lara*, 815 F.3d at 613. The court "declined to expand the rule in *Davis* to cases in which the appellant precedent, rather than being binding is (at best) unclear." *Id.* at 614.

> E. Here, the court of appeals applied the good faith exception based on *United States v. Griffin,* 696 F.3d 1354 (11th Cir. 2012), which explicitly rejected a bright-line rule in favor of an overall reasonableness analysis.

Unlike the marked changes wrought by cases like *Gant*, 556 U.S. 332, *Riley*, 573 U.S. 373, *Jones*, 565 U.S. 400, and *Jardines*, 569 U.S. 1, the decision in *Rodriguez*, 135 S.Ct. 1609, did not upset a bright-line, categorical rule. Rather, in rejecting the Eighth Circuit's *de minimis* rule that permit officers to briefly prolong a traffic stop for reasons unrelated to its mission, this Court reaffirmed the bright line it had drawn

between unjustified investigations that "measurably extend" a stop, and those that do not. *See Arizona v. Johnson*, 555 U.S. 332, 333 (2009).

In *Illinois v. Caballes*, 543 U.S. 405, 407 (2005), the Court held that a traffic stop may "last no longer than is necessary to effectuate the purpose" of the stop. Similarly, in *Johnson*, 555 U.S. at 333, it held "[a]n officer's inquiries into matters unrelated to justification for the traffic stop . . . do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop." In *Rodriguez*, 135 S. Ct. at 1616, it held: "If an officer can complete traffic-based inquiries expeditiously, then that is the amount of 'time reasonably required to complete [the stop's] mission.' As we said in *Caballes* and reiterate today, a traffic stop 'prolonged beyond' that point is 'unlawful.' " (citation omitted) (quoting *Caballes*, 543 U.S. at 107) (emphasis added.)

Nor did the Eleventh Circuit provide a bright-line directive to police officers when it decided *Griffin*, 696 F.3d 1354. *Griffin* did not pre-authorize suspicionless prolongations of traffic stops, in the way that *Gonzalez*, 71 F.3d 819, pre-authorized car searches incident to an arrest of an occupant, or *Robinson*, 414 U.S. at 235, pre-authorized searches of a person incident to their arrest. Rather, *Griffin* explicitly rejected a " 'bright-line 'no prolongation' rule' " governing the scope of a stop, and instead undertook "a fact-bound, context-dependent analysis of all of the circumstances concerning the stop and the unrelated questions." 696 F.3d at 1362 (quoting *United States v. Everett*, 601 F.3d 484, 492 (6th Cir. 2010)).

When such a flexible standard governs the issue, the exclusionary rule still has an important role to play. A reasonably well trained officer would at least know that under some circumstances the search or seizure they contemplate is unconstitutional. They should not believe that, regardless of the circumstances, any evidence obtained will still be admitted in court. Without the possibility of exclusion, the overall reasonableness standard provides "little incentive to err on the side of constitutional behavior." *Davis*, 564 U.S. at 250 (Sotomayor, J., concurring); *see Sparks*, 711 F.3d at 64 ("where judicial precedent does not clearly authorize a particular practice, suppression has deterrent value because it creates an 'incentive to err on the side of constitutional behavior.' "); *United States v. Cornejo*, 196 F.Supp.3d 1137, 1158 (E.D. Ca. 2016) ("[s]uppressing the challenged evidence serves the exclusionary rule's deterrent purpose, because it will have the effect of discouraging officers from delaying a traffic stop to fish for evidence of criminal activity based on a hunch or a broadly generalized profile[.]")

Permitting officers to rely on a precedent stating a general standard like "overall reasonableness," *Campbell*, 912 F.3d at 1354 – with no risk of exclusion should they cross the line – would only encourage them to push the Fourth Amendment envelope. Most any intrusion might seem "reasonable" to a zealous officer focused on detecting crime, unless they are faced with circumstances identical to a search that failed the "context-dependent analysis" in *Griffin,* 696 F.3d at 1362.

And the circumstances surrounding the stop of Mr. Campbell were not identical to the *Terry* stop at issue in *Griffin*, 696 F.3d 1354. Rather, as the Eleventh

Circuit put it, "[a]t the time of Campbell's arrest, *Griffin* was our last word on the issue and the *closest precedent on point*." *Campbell*, 912 F.3d at 1355 (italics added). It continued "the applicability of the exception to this case is plain – *Griffin* is on all fours with the case – and ignoring it would be a miscarriage of justice." *Id.* at 1355-56.

Griffin might have been the "closest precedent on point," but it was not "on all fours with this case." *Id.* It involved the extension of a *Terry* stop of a suspected shoplifter of clothing to question him about C-cell batteries in his pocket. *Griffin*, 696 F.3d at 1357. A reasonably well trained officer would understand it to apply to traditional *Terry* stops, but not necessarily to traffic stops.

More importantly, *Griffin* did not "specifically authorize" police officers to briefly prolong traffic stops in order to pursue suspicionless criminal investigations. *Davis*, 564 U.S. at 241. Instead, the court found that some prolongations, although unauthorized, were constitutionally negligible under the totality of the circumstances. Hence, the *Griffin* holding was a far cry from a warrant or a bright-line precedent that categorically and unequivocally authorized a search or seizure.

Not only did *Griffin* not authorize suspicionless detours from the mission of a traffic stop, but its holding did not purport to guide police officers. It was about "the appropriate standard to decide prolongation cases." *Campbell*, 912 F.3d at 1352. As a matter of judicial review, the approach in *Griffin* was understandable. *Griffin* conscientiously sought to clarify the proper mode of analyzing the "rubric of police conduct" involved in a prolonged traffic stop. *Terry v. Ohio*, 392 U.S. 1, 20 (1968). But

these finer points of judicial methodology were not directed to police and did not "*specifically* authorize" a questionable seizure. *Davis*, 564 U.S. at 241 (italics added).

Rather than seeking cover from an open-ended case like *Griffin*, a responsible police officer should be expected to err on the side of constitutional conduct, in light of bedrock principles. From the time this Court authorized limited warrantless searches and seizures on less than probable cause in *Terry,* 392 U.S. 1, two such principles have not changed: first, "inarticulate hunches" do not justify **any** Fourth Amendment intrusions. *Id* at 22. An officer must at least have "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant th[e] intrusion." *Id*. at 21. And second, the "scope" of a search or seizure "must be 'strictly tied to and justified by' the circumstances which rendered its initiation permissible." *Id*. at 19 (quoting *Warden v. Hayden*, 387 U.S. 294, 310 (1967) (Fortas, J., concurring). These tenets of Fourth Amendment law set the floor of what any "reasonably well trained" officer should know about the lawful duration of a warrantless seizure based on less than probable cause. *Leon*, 468 U.S. at 922, n. 23. And these principles would have counseled the officer here against prolonging his seizure of Mr. Campbell in order to pursue a classic fishing expedition that he admitted had nothing to do with his traffic investigation.

F. The inconsistent application of the *Davis* good faith exception has resulted in an intra-Circuit split and an inter-Circuit split.

As demonstrated above, in the wake of *Davis*, an implicit intra-Circuit split has developed in the Eleventh Circuit as to the necessary clarity of the precedent relied upon to justify the good faith exception. The Eleventh Circuit had initially

insisted that only precedents that were "unequivocal" and "clear," justified applying the good faith exception, and stressed that a precedent stating a "bright-line judicial rule, . . . already effectively determined the search's constitutionality . . . ." *Davis*, 598 F.3d 1259. In *Smith*, 741 F.3d at 1224, 1225, it noted that the precedent relied upon by the officer was "not 'unsettled,' " and "specifically authorized" the unconstitutional search. However, in the opinion below, the Eleventh Circuit relied on *Griffin* because it was the "closest precedent on point." *Campbell*, 912 F.3d at 1355. It stated that *Griffin* was "on all fours with the case," although *Griffin* was factually distinguishable. Moreover, unlike the precedents relied upon in *Davis* and *Smith*, *Griffin* was not a "bright-line rule" that pre-determined the constitutionality of the search, *Davis*, 598 F.3d at 1267, and it did not "specifically authorize" the search. *Smith*, 741 F.3d at 1224.

Davis has also spawned an inter-Circuit split on this issue. In addition to the decision below, the Third Circuit and the Fifth Circuit have read *Davis* broadly. The Third Circuit would permit officers to rely on cases with distinguishable facts. *Katzin*, 769 F.3d at 176. The Fifth Circuit would permit them to rely on the weight of non-binding authority. *Holley*, 831 F.3d at 327. The Fourth Circuit agreed with the Fifth Circuit in dicta. *Stephens*, 764 F.3d at 337.

On the contrary, the First, Sixth, Eighth, Ninth, and Tenth Circuits have only applied the good faith exception in light of unequivocal precedent that authorized the search. *Sparks*, 711 F.3d at 67 ("clarity" of prior precedent was "critical" to applying good faith exception); *Fisher*, 745 F.3d at 205 (applying good faith exception in

reliance on "unequivocal" precedent); *Burston*, 806 F.3d at 1125 (declining to apply good faith exception to search with distinguishable facts); *Lara*, 815 F.3d at 614 ("declin[ing] to expand the rule in *Davis* to cases in which the appellant precedent, rather than being binding is (at best) unclear."); *McCane*, 573 F.3d at 1045 n. 6 (precedent relied upon "was settled.") This Court should take this opportunity to resolve these splits by clarifying the scope of the good faith exception under *Davis*.

> G. This Court should ultimately hold that the *Davis* good faith exception only applies when binding precedent that establishes a bright-line rule or involves factually indistinguishable circumstances, specifically authorized the unconstitutional search or seizure.

This petition presents an occasion to clarify the *Davis* good faith exception in two ways. First, the Court should reaffirm that to trigger the good faith exception, binding precedent should be clear, well-settled, and should have "specifically authorized" the Fourth Amendment violation at issue. *Davis*, 564 U.S. at 241. This conception of "binding precedent" adheres to the types of unambiguous sources that have previously justified applying the good faith exception, such as warrants, clear statutes, and reliable database entries indicating the presence of a warrant.

Permitting officers to justify Fourth Amendment violations based on unclear, unsettled, nonbinding, or factually distinguishable precedents would encourage, rather than deter, constitutionally reckless conduct. Broadly construing the types of precedent that trigger the *Davis* good faith exception would in some circumstances implicate the separation of powers, by empowering police officers to perform the constitutional calculus for themselves, without any real checks or pre-authorization

from the judiciary. It may lead to a drastic miscalibration of the costs and benefits of exclusion, far afield from the policies that justified *Davis*, 564 U.S. 229, *Leon*, 468 U.S. 897, *Krull,* 480 U.S. 340, *Herring,* 555 U.S. 135, and *Evans*, 514 U.S. 1. And it would devalue important interests protected by the Fourth Amendment, with serious consequences for the daily interactions between police and the general public.

Second, this Court should limit the *Davis* exception to the types of precedents that can realistically guide police. Although *Davis* requires an objective standard, the standard should not be simply whether an officer would believe the search or seizure was "reasonable" under the circumstances. Rather, the good faith exception should only apply under *Davis* when an officer reasonably believed the seizure was authorized by a clear, bright-line rule.

Permitting a precedent turning on a "fact-bound, context-dependent analysis," 696 F.3d at 1362, to serve as a basis for applying the good faith exception would not comport with the reality that such precedents cannot effectively regulate police conduct. *See, e.g., Michigan v. Summers*, 452 U.S. 692, 705 n.19 (1981) ("if police are to have workable rules, the balancing of the competing interests . . . 'must in large part be done on a categorical basis – not in an *ad hoc*, case-by-case fashion by individual police officers.' ") (quoting *Dunaway v. New York*, 442 U.S. 200, 219-20 (1979) (White, J., concurring)); *Riley*, 573 U.S. at 407 ("Law enforcement officers need clear rules . . . .") (Alito, J., concurring); *cf.* Wayne L. LaFave, *"Case-by-Case Adjudication" Versus "Standardized Procedures": The Robinson Dilemma*, 1974 Sup. Ct. Rev. 307 (1982). Applying the good faith exception based on such precedents

would mean "reliance is actually out of the picture." Wayne L. LaFave, *Search and Seizure: A Treatise On the Fourth Amendment*, § 1.3(h) (5th ed., Oct. 2018 update).

Hence, this Court should ultimately find that the officer could not take refuge in *Griffin*'s overall reasonableness analysis, to excuse the suspicionless prolongation of his seizure of Mr. Campbell – conduct that this Court has consistently disapproved for over fifty years. *Terry*, 392 U.S. 1.

Because *Davis* has generated inconsistencies in the lower courts, this Court should take this opportunity to clarify the scope of the *Davis* good faith exception. And because *Griffin* did not "specifically authorize" the prolongation, and is not the sort of precedent from which an officer can obtain meaningful guidance, it should ultimately find the good faith exception does not apply.

II. THIS CASE PRESENTS AN IDEAL OCCASION TO DELINEATE THE SCOPE OF THE GOOD FAITH EXCEPTION BECAUSE THE FACTUAL RECORD IS WELL-DEVELOPED, THE PARTIES BRIEFED THE ISSUE TO THE DISTRICT COURT, THE COURT OF APPEALS AND THE DISTRICT COURT BOTH ISSUED THOUGHTFUL OPINIONS, AND THE PRECEDENT RELIED UPON BELOW SHARPLY CONTRASTS WITH THE BRIGHT-LINE PRECEDENT THAT JUSTIFIED APPLYING THE GOOD FAITH EXCEPTION IN *DAVIS*.

This case presents an exceptional vehicle to resolve the question presented. The factual record is unusually well-developed. The timed video of the traffic stop is in the record on direct appeal, and both the district court and the court of appeals made detailed findings regarding the sequence and duration of various parts of the stop. Both courts bracketed an obvious detour from the traffic stop, during which the officer asked questions that clearly had nothing to do with the reason for the stop.

The Eleventh Circuit's ruling is thoughtful and thorough. Although the government did not raise the good faith exception on direct appeal, the parties briefed the issue to the district court, and the court of appeals referenced these briefs in resolving the issue.

The nature of the precedent that the court of appeals relied upon sharply contrasts with the one relied upon in *Davis* This gives this Court broad latitude to delineate limiting principles, rather than requiring it to engage in tedious, subtle line-drawing.

The decision implicates the wide disagreement as to the scope of the good faith exception under *Davis*, and the answer to the question presented is dispositive of Mr. Campbell's conviction. Given the inconsistent applications of the *Davis* exception, the issue is ripe for resolution now. Further percolation would only deepen the confusion and leave the important balance between efficacious law enforcement and compliance with the Fourth Amendment unclear.

III. THE SCOPE OF THE GOOD FAITH EXCEPTION UNDER *DAVIS* IS AN IMPORTANT, RECURRING ISSUE.

The exclusionary rule is the only realistic remedy available to a defendant whose Fourth Amendment rights were violated. Other theoretical remedies are notoriously ineffective. *See*, *e.g.*, *Mapp v. Ohio*, 367 U.S. 643 (1961) (recognizing "[t]he obvious futility of relegating the Fourth Amendment of the protection of other remedies . . . ."); *Irvine v. People of State of California*, 347 U.S. 128, 137 (1954) (explaining the "other remedies for official lawlessness" are often "of no practical avail[ ]" since "police are unlikely to inform on themselves" and the victim of a search

that "turns up nothing incriminating . . . usually does not care to take steps which will air the fact that he has been under suspicion.") The exclusionary rule thus remains essential to regulating official government intrusions, and a vital intermediary between police power and the individual. As the only real means of enforcing the Fourth Amendment, the contours of the exclusionary rule – and not just the contours of the Fourth Amendment itself – profoundly shape the daily, nationwide interactions between police and laypersons. Because those contours are presently indeterminate, this Court should address this critical issue.

CONCLUSION

For the reasons above, Petitioner Campbell respectfully requests this Court grant his petition for writ of certiorari.

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IN THE
SUPREME COURT OF THE UNITED STATES
NO. _____

ERICKSON CAMPBELL,
Petitioner-Appellant

v.

UNITED STATES OF AMERICA,
Respondent-Appellee.

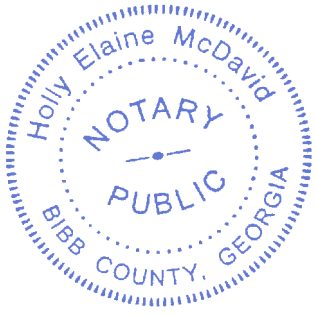
PROOF OF SERVICE

I, Jonathan R. Dodson, do swear or declare that on this 7th day of June, 2019; pursuant to Supreme Court Rules 29.3 and 29.4, that I have served the attached *Motion for Leave to Proceed in Forma Pauperis* and *Petition for a Writ of Certiorari* on each party in the above-captioned proceeding, or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States, properly addressed to each, with first-class postage prepaid.

The name and address of those served are as follows:

The Honorable Noel Francisco, Solicitor General of the United States
Room 5616, Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001

Subscribed and sworn to
before me this 7th day of
June, 2019.



JONATHAN R. DODSON- Affiant

Holly McDavid
NOTARY PUBLIC – STATE OF GEORGIA