No. 19-6825

IN THE SUPREME COURT OF THE UNITED STATES

JORGE GUERRERO, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the instruction in the Federal Rules of Criminal Procedure that "if the [defendant] shows good cause," "a court may consider" an "untimely" motion to suppress, Fed. R. Crim. P. 12(c)(3), permits appellate review of the merits of such a motion where the defendant cannot show good cause.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-7a) is reported at 921 F.3d 895. The order of the district court (Pet. App. 10a-13a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on April 22, 2019. A petition for rehearing was denied on July 1, 2019 (Pet. App. 8a). On September 13, 2019, Justice Kagan extended the time within which to file a petition for a writ of certiorari to and including November 28, 2019, and the petition was filed on November

27, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a conditional guilty plea in the United States District Court for the Central District of California, petitioner was convicted on one count of possessing a firearm and ammunition as a felon, in violation of 18 U.S.C. 922(g)(1). The district court sentenced petitioner to 32 months of imprisonment, to be followed by two years of supervised release. Judgment 1; Pet. App. 3a. The court of appeals affirmed. Pet. App. 1a-7a.

1. In September 2016, petitioner was a passenger in a black Kia Soul on a main street in West Covina, California. Pet. App. 3a, 10a; Presentence Investigation Report (PSR) ¶ 7; Gov't C.A. Br. 4. Police officers in a marked car directly behind stopped the black car after the driver failed to signal before making a left turn onto a major thoroughfare. Pet. App. 3a, 10a; Gov't Br. 4-7. During the traffic stop, petitioner admitted to the officers that he had a firearm hidden in his waistband. PSR ¶ 9; Gov't C.A. Br. 8. The officers subsequently discovered three rounds of ammunition in petitioner's pocket. PSR ¶ 10; Gov't C.A. Br. 8. Petitioner was indicted in the Central District of California on one count of possessing a firearm and ammunition as a felon, in violation of 18 U.S.C. 922(g)(1). Indictment 1-2.

Petitioner moved to suppress the evidence and statements obtained during the stop, "rais[ing] a single argument in support of his motion: that the officers lacked reasonable suspicion to make the stop because the driver had in fact signaled in advance of her turn." Pet. App. 3a. After a suppression hearing at which petitioner, the driver, and the officers testified, the district court "found the officers' testimony more credible and held that the driver's failure to signal provided a lawful basis for the stop." Ibid.; see id. at 13a.

Petitioner thereafter entered a conditional guilty plea to possessing a firearm and ammunition as a felon, reserving the right to appeal the denial of his suppression motion. Pet. App. 3a. The district court sentenced petitioner to 32 months of imprisonment, to be followed by two years of supervised release. Judgment 1; Pet. App. 3a.

2. On appeal, petitioner "present[ed] a new theory in support of his motion to suppress." Pet. App. 3a. He argued that no signal was required in the first place because California law only requires a turn signal if other cars "may be affected" by an unsignaled turn, Cal. Veh. Code § 22107 (West 2016), and he "assert[ed] that the government introduced insufficient evidence that the driver's alleged failure to signal could have impacted another car on the road." Pet. App. 3a. The court of appeals affirmed in a per curiam opinion. Id. at 1a-7a.

The court of appeals determined that Federal Rule of Criminal Procedure 12(c)(3) foreclosed consideration of the newly raised suppression argument on appeal. Pet. App. 6a-7a. Rule 12(c)(3) states that, "if a party does not meet the deadline for making" a motion listed in Rule 12(b)(3) -- which includes a motion to suppress evidence, Fed. R. Crim. P. 12(b)(3)(C) -- "the motion is untimely." Fed. R. Crim. P. 12(c)(3). The Rule further provides that "a court may consider the defense, objection, or request if the party shows good cause." Ibid. Because petitioner did not demonstrate "good cause" for his failure to raise his new theory of suppression prior to trial, the court of appeals found that Rule 12(c) barred consideration of that new theory. Pet. App. 6a-7a.

The court of appeals explained that it had previously "construed Rule 12's good-cause standard as displacing the plain-error standard under Federal Rule of Criminal Procedure 52(b), which ordinarily applies when a party presents an issue for the first time on appeal." Pet. App. 4a. It noted that, in the wake of certain amendments to the Rule in 2014, some of its sister circuits had "reached conflicting conclusions" on the applicable standard of review. Id. at 5a. And it stated that, if it were "writing on a blank slate," it "might have been inclined" to apply the plain error standard to "untimely defenses, objections, and requests" governed by Rule 12. Ibid. The court explained,

however, that its prior precedent was binding unless it was not "clearly irreconcilable with the amended version of Rule 12," and it found no such conflict. Id. at 6a.

The court of appeals observed that although the post-2014 version of Rule 12 "no longer labels untimely defenses, objections, and requests as 'waived,'" the "2014 amendments to Rule 12 did not eliminate the good-cause standard" and did not adopt Rule 52(b)'s plain-error standard. Pet. App. 6a. And the court interpreted the "rulemaking history" as indicating that "the Advisory Committee chose not to take a position on which of the two standards should apply, leaving that matter for the circuit courts to decide." Ibid.

The court of appeals thus determined that "Rule 12(c)(3)'s good-cause standard continues to apply when, as in this case, the defendant attempts to raise new theories on appeal in support of a motion to suppress." Pet. App. 6a. Because petitioner had "not shown good cause for failing to present in his pre-trial motion the new theory for suppression he raise[d] in []his appeal," the court of appeals affirmed the district court's suppression ruling. Id. at 6a-7a.

ARGUMENT

Petitioner contends (Pet. 9-28) that the court of appeals should have considered his untimely suppression claim notwithstanding his failure to show good cause for the

untimeliness. The decision below was correct, and circuit disagreement on the application of Federal Rule of Criminal Procedure 12(c)(3) does not warrant this Court's review, particularly in light of the recency of the Rule's amendment, the limited number of circuit decisions that have considered the issue in any depth, and the lack of clarity as to the issue's practical significance. In any event, this case is not a suitable vehicle for resolving the question presented because petitioner would not be entitled to relief even if his claim were reviewed on the merits -- particularly under the plain-error standard that he acknowledges would apply to any such review. The petition for a writ of certiorari should be denied.[1]

1. The court of appeals correctly construed Rule 12(c)(3) as precluding appellate review of an untimely suppression claim without a showing of good cause.

a. Rule 12 provides that certain "defenses, objections, and requests must be raised by pretrial motion if the basis for the motion is then reasonably available and the motion can be determined without a trial on the merits." Fed. R. Crim. P. 12(b)(3). The Rule covers, inter alia, claims of "suppression of evidence," as well as claims of "defect[s] in the indictment or

[1] A similar question is presented in the petition for a writ of certiorari in Bowline v. United States, No. 19-5563 (filed Aug. 7, 2019).

information," "selective or vindictive prosecution," severance, and discovery. Fed. R. Crim. P. 12(b)(3)(A)-(E). Rule 12(c)(1) states that the deadline for filing pretrial motions is the date set by the court during pretrial proceedings or, if "the court does not set [a deadline], the deadline is the start of trial." Fed. R. Crim. P. 12(c)(1). And Rule 12(c)(3) establishes the "consequences of not making a timely motion under Rule 12(b)(3)." Fed. R. Crim. P. 12(c)(3) (capitalization omitted). Specifically, Rule 12(c)(3) provides that "[i]f a party does not meet the deadline for making a Rule 12(b)(3) motion, the motion is untimely. But a court may consider the defense, objection, or request if the party shows good cause." Ibid.

Rule 12(c)(3), by its plain terms, forecloses consideration of an untimely claim without a showing of good cause. Petitioner accordingly does not appear to dispute that a district court must find the good-cause standard satisfied before considering the merits of an untimely Rule 12 claim. But he contends that Rule 12 "does not clearly speak to the issue of appellate review," Pet. 23, and that appellate courts may consider claims in the first instance that the district court was barred from considering. Nothing in the text of Rule 12, however, limits the Rule's good-cause standard to the trial court. Instead, the Rule establishes generally when "a court may consider" an untimely assertion of a defense, objection, or request within Rule 12's ambit. Fed. R.

Crim. P. 12(c)(3). Rule 12(c)(3) is therefore best read to "refer[] to an appellate court (or perhaps a court hearing a postconviction challenge) as well as the trial court." United States v. Bowline, 917 F.3d 1227, 1230 (10th Cir. 2019), petition for cert. pending, No. 19-5563 (filed Aug. 7, 2019).

Other portions of the Federal Rules of Criminal Procedure that suggest that the word "court" can refer to an appellate court as well. See Fed. R. Crim. P. 1(a)(1) ("These rules govern the procedure in all criminal proceedings in the United States district courts, the United States courts of appeals, and the Supreme Court of the United States."); Fed. R. Crim. P. 1(b)(2) (defining "court" as "a federal judge performing functions authorized by law"); Fed. R. Crim. P. 1(b)(3)(A) (defining "federal judge" by reference to 28 U.S.C. 451, which states that the term includes "judges of the courts of appeals [and] district courts").[2] Petitioner contends that amended Rule 12(c)(3)'s reference to "a court" should not be construed to apply to appellate courts because prior versions of Rule 12 used the phrase "the court" and "[t]here is no indication that this change was substantive." Pet. 24. But prior versions of Rule 12 were also construed to require a showing of good cause

[2] Petitioner suggests (Pet. 23) that the 2002 Advisory Committee note indicates that court of appeals judges are excluded. In context, however, the passage he cites merely explains that the term "court" includes not only district judges, "but also" magistrate judges when acting as the "court." See Fed. R. Crim. P. 1 advisory committee's note (2002 Amendments).

for untimely motions throughout the criminal proceedings, including in the appellate court. See Davis v. United States, 411 U.S. 233, 239 (1973); United States v. Wright, 215 F.3d 1020, 1026 (9th Cir. 2000).

The Rule's application to both district and appellate courts reflects sound practical considerations regarding timely presentation of claims and judicial economy. Appellate courts are not well-situated to consider claims, such as suppression claims, that have not been the subject of a hearing (possibly including prosecution evidence) and decision below. And as this Court explained in interpreting the original version of Rule 12, "[i]f [these] time limits are followed, inquiry into an alleged defect may be concluded and, if necessary, cured before the court, the witnesses, and the parties have gone to the burden and expense of trial." Davis, 411 U.S. at 241. But "[i]f defendants were allowed to flout [the] time limitations, * * * there would be little incentive to comply with [their terms] when a successful attack might simply result in a new indictment prior to trial." Ibid. Indeed, "[s]trong tactical considerations would militate in favor of delaying the raising of the claim in hopes of an acquittal, with the thought that if those hopes did not materialize, the claim could be used to upset an otherwise valid conviction at a time when reprosecution might well be difficult." Ibid.

b. Petitioner's interpretation of the Rule to require first-instance appellate consideration of untimely claims rests on the elimination of the term "waiver" from Rule 12 in 2014. Before the amendments, Rule 12 provided that "[a] party waives" any objection or defense within the ambit of the Rule by failing to raise the claim before trial, but the court "[f]or good cause * * * may grant relief from the waiver." Fed. R. Crim. P. 12(b)(3)(B) and (e) (2012). In 2014, the Advisory Committee removed all variations on the term "waiver" from the Rule. Petitioner argues (Pet. 19-22) that the absence of an explicit reference to an untimely claim as "waive[d]" necessarily means that on appeal such a claim is reviewable for plain error under Rule 52(b) in the same manner generally applicable to forfeited claims not subject to Rule 12, rather than under the good-cause standard provided by Rule 12 itself. The court of appeals correctly declined to accept that argument.

As the Tenth Circuit recently explained in its extensive analysis of Rule 12(c)(3), the "general" framework of "waiver" as "the 'intentional relinquishment or abandonment of a known right'" and "forfeiture" as other failures to raise a claim -- described in United States v. Olano, 507 U.S. 725, 733 (1993) (citation omitted) -- does not itself describe all of the legal rules that may apply in all circumstances. Bowline, 917 F.3d at 1232. Instead, "there are common circumstances in which appellate review

of an issue is precluded even when a party's failure to raise the issue was not an intentional relinquishment of a known right" -- for example, a defendant's failure to raise an issue in his opening brief relieves the court of appeals from considering the issue (under plain error or otherwise) regardless of the defendant's intentions. Id. at 1231. And a statute of limitations may bar a cause of action or claim for post-conviction relief regardless of whether the delay in seeking such relief was intentional or negligent. Id. at 1232. This Court's decision in Davis v. United States, supra, makes clear that Rule 12 operates in a similar manner.

In Davis, this Court interpreted the original 1944 version of Rule 12, which provided in part that "[f]ailure to present any * * * defense or objection" covered by the Rule (with specified exceptions) "constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver." Fed. R. Crim. P. 12(b)(2) (1944). The defendant in Davis, who sought to attack the composition of the grand jury for the first time in a post-conviction proceeding under 28 U.S.C. 2255, argued that he was entitled to raise his claim because he had not "deliberately bypassed or understandingly and knowingly waived his claim." 411 U.S. at 236 (internal quotation marks omitted). In other words, "[t]he meaning the defendant sought to give waiver matched that later set forth in Olano." Bowline, 917 F.3d at 1232. Relying on

the plain language of the Rule, this Court rejected Davis's argument, reasoning that, "when a rule 'promulgated by this Court and . . . adopted by Congress, governs by its terms the manner in which the claims of defects in the institution of criminal proceedings may be waived,' the standard specified in the rule controls." Id. at 1233 (quoting Davis, 411 U.S. at 241). The Court thus determined that "the necessary effect of the congressional adoption of [the Rule was] to provide that a claim once waived pursuant to that Rule [could] not later be resurrected, either in the criminal proceedings or in federal habeas, in the absence of the showing of 'cause' which that Rule requires." Davis, 411 U.S. at 242.

Petitioner argues that "Rule 12's then-existing waiver language was crucial to the outcome" in Davis and that, with the removal of the term "waiver" in the 2014 amendments, Rule 12 now "'recognizes the traditional distinction between forfeiture and waiver.'" Pet. 21-22 (quoting United States v. Vasquez, 899 F.3d 363, 372-373 (5th Cir. 2018), cert. denied, 139 S. Ct. 1543 (2019)). But the current version of Rule 12, no less than the pre-2014 version or original version, continues to define for itself the circumstances when a court may consider an untimely claim covered by the Rule. See Fed. R. Crim. P. 12(c)(3) ("[A] court may consider the defense, objection, or request if the party shows good cause."); see pp. 6-9, supra. Particularly because the

term "waiver" in Rule 12 never meant the affirmative relinquishment of a known right, the elimination of that term in the 2014 amendments to Rule 12 does not carry the significance petitioner wishes to attribute to it.

c. Indeed, contrary to petitioner's contention (Pet. 26-27), the Advisory Committee note to the 2014 amendments illustrates that the word "waiver" was removed specifically because it was descriptively imprecise -- and not because any substantive change from Davis was intended.

At the time of the amendments, "the Olano standard had become dominant in the case law in determining when there had been a waiver, rendering the use of that term in Rule 12 idiosyncratic." Bowline, 918 F.3d at 1235. The Advisory Committee note explained:

> Although the term waiver in the context of a criminal case ordinarily refers to the intentional relinquishment of a known right, Rule 12(e) has never required any determination that a party who failed to make a timely motion intended to relinquish a defense, objection, or request that was not raised in a timely fashion. Accordingly, to avoid possible confusion, the Committee decided not to employ the term "waiver" in new paragraph (c)(3).

Fed. R. Crim. P. 12 advisory committee's note (2014 Amendments). In other words, the elimination of the word "waiver" was intended to avoid confusion with the Olano framework, not create it.

As the Advisory Committee note further explained: "New paragraph 12(c)(3) retains the existing standard for untimely claims. The party seeking relief must show 'good cause' for

failure to raise a claim by the deadline, a flexible standard that requires consideration of all interests in the particular case." Fed. R. Crim. P. 12 advisory committee's note (2014 Amendments). Although petitioner suggests (Pet. 23) that the Advisory Committee only intended to retain the good-cause standard for district courts, this Court in Davis had already made clear that Rule 12's good-cause standard applied throughout the criminal proceedings. See 411 U.S. at 242 ("[A] claim once waived pursuant to that Rule may not later be resurrected, either in the criminal proceedings or in federal habeas, in the absence of the showing of 'cause' which that Rule requires."). Had the Advisory Committee intended to depart from this Court's understanding in Davis, it would have said so.

Petitioner is mistaken in relying (Pet. 26-27) on the Advisory Committee's consideration, but ultimate omission, of a provision that would have stated that "Rule 52 does not apply" to review of untimely claims. In its May 2011 Report, the Advisory Committee noted that "[i]t would be odd indeed if the waiver/good cause standard of Rule 12 applied in the district court * * * , but the more generous plain error standard applied in the court of appeals." Advisory Committee Report 387 (May 2011). In later omitting a specific reference to Rule 52, the Advisory Committee did not disavow that view. Rather, it "merely wished to avoid debate that threatened to delay or prevent adoption of the rule

amendments" by "explicitly mandating" that approach. Bowline, 917 F.3d at 1236; see Fed. R. Crim. P. 12 advisory committee's note, Changes Made after Publication and Comment (2014 Amendments) ("the cross reference to Rule 52 was omitted as unnecessarily controversial"). At most, the deletion of that explicit reference left the courts to decide the question presented here. And the rest of the text, structure, and history of the rule all support the court of appeals' decision.

d. Finally, the canon that "'repeals by implication are disfavored,'" Pet. 24 (quoting Blanchette v. Connecticut Gen. Ins. Corps., 419 U.S. 102, 133 (1974)), is inapposite. The 2014 amendments to Rule 12(c)(3) did not repeal Rule 52(b) or any other existing standard, but instead simply maintained the existing good-cause standard for reviewing untimely claims covered by Rule 12. Cf. Pet. App. 6a. Petitioner contends (Pet. 24-26), however, that "Rule 12 and Rule 52 are capable of coexistence," and that the court of appeals here "erred by not giving effect to them both." But "giving effect" to both Rule 12 and Rule 52 would not entitle a defendant to appellate review of a claim if he can satisfy only one of the two rules; rather, it would require that a defendant satisfy both rules in order to proceed. See United States v. McMillian, 786 F.3d 630, 636 (7th Cir. 2015) ("Although plain error review generally applies to forfeited arguments, Federal Rule of Criminal Procedure 12(c)(3) imposes an antecedent

good-cause requirement when a defendant fails to file a timely motion to suppress.") (emphasis added).

United States v. Vonn, 535 U.S. 55 (2002), is not to the contrary. In Vonn, the Court considered "whether Congress's importation of the harmless-error standard into Rule 11(h) without its companion plain-error rule was meant to eliminate a silent defendant's burden under the Rule 52(b) plain-error review." Id. at 63. Noting, inter alia, that such a construction would undermine "the incentive to think and act early when Rule 11 is at stake," the Court declined to adopt such an interpretation and held that Rule 52(b) applied. Id. at 73. Similar considerations for the timely presentation of claims and judicial economy support the court of appeals' interpretation of Rule 12(c)(3) here. See p. 9, supra. And unlike in Vonn, application of Rule 12(c)(3) in a case like this follows directly from its plain text and does not wholly displace Rule 52(b).

2. Although some disagreement exists among the courts of appeals regarding whether a defendant must satisfy the good-cause standard before an appellate court can review an untimely claim subject to Rule 12, that disagreement does not warrant this Court's review.

Most courts of appeals to have addressed the question have, like the court below, recognized that amended Rule 12 precludes consideration of untimely claims without a showing of good cause.

See Pet. App. 6a; United States v. Galindo-Serrano, 925 F.3d 40, 47, 49 (1st Cir. 2019), petition for cert. pending, No. 19-7112 (filed Dec. 31, 2019); United States v. O'Brien, 926 F.3d 57, 82-84 (2d Cir. 2019); United States v. Fattah, 858 F.3d 801, 807-808 & n.4 (3d Cir. 2017)[3]; McMillian, 786 F.3d at 635-636 & n.3; United States v. Anderson, 783 F.3d 727, 740-741 (8th Cir. 2015); Bowline, 917 F.3d at 1237.

Petitioner identifies (Pet. 13-14) three courts of appeals -- the Fifth, Sixth, and Eleventh Circuits -- that have reviewed untimely claims subject to Rule 12 for plain error, without regard to a showing of good cause. See Vasquez, 899 F.3d at 372-373; United States v. Soto, 794 F.3d 635, 652 (6th Cir. 2015), cert. denied, 136 S. Ct. 2007 (2016); United States v. Sperrazza, 804 F.3d 1113, 1119 (11th Cir. 2015), cert. denied, 136 S. Ct. 2461 (2016). Only one of those decisions (the Sixth Circuit's decision in Soto), however, examined the question in any depth, and none considers the significance of this Court's interpretation of Rule 12 in Davis as to the proper construction. Particularly considering the Tenth Circuit's recent, comprehensive opinion on the issue in Bowline, the issue would, at a minimum, benefit from

[3] As petitioner notes (Pet. 12 n.5), the Third Circuit subsequently stated that the availability of plain-error review of an untimely Rule 12 claim was an open question. See United States v. Ferriero, 866 F.3d 107, 122 n.17 (3d Cir. 2017), cert. denied, 138 S. Ct. 1031 (2018). Ferriero, however, did not cite the Third Circuit's prior decision in Fattah.

further consideration of the question by other courts in light of that analysis.

Moreover, despite petitioner's assertion that the issue of the standard of appellate review of untimely Rule 12 claims "is a question of significant and recurring importance," Pet. 15 (capitalization omitted), it is not clear that, in practice, the disagreement will affect the outcome in any meaningful number of cases. Rule 12 applies only where the defense or objection is one for which "the basis for [a pre-trial] motion is then reasonably available and the motion can be determined without a trial on the merits." Fed. R. Crim. P. 12(b)(3). And Rule 12's good-cause standard is generally understood to require a defendant to show "cause for his untimeliness" in filing such a motion and "prejudice suffered as a result of the error." Bowline, 917 F.3d at 1234; see United States v. Edmond, 815 F.3d 1032, 1044 (6th Cir. 2016), cert. denied, 137 S. Ct. 619 (2017). The plain-error standard similarly requires a showing of prejudice, see Fed. R. Crim. P. 52(b) (requiring a "plain error that affects substantial rights"), meaning that many claims that would be precluded by Rule 12(c)(3) would also fail plain-error review. Furthermore, in cases in which defense counsel fails to timely raise a motion covered by Rule 12(b)(3) without good cause, and the defendant could otherwise demonstrate plain error on appeal, defendants may pursue a remedy in post-conviction proceedings based on a claim of ineffective

assistance of counsel. See Edmond, 815 F.3d at 1044 (suggesting that the availability of such ineffective-assistance claims "narrows the set of affected defendants * * * perhaps * * * to nil").

3. In any event, this case would not be a suitable vehicle for resolving whether an untimely claim covered by Rule 12 may be reviewed for the first-time on appeal, even without a showing of good cause, because petitioner fails to demonstrate that his suppression challenge would prevail even if such review were permitted by Rule 12.

To prevail under the plain-error standard that petitioner would apply here, a defendant must show (1) "'[d]eviation from a legal rule,'" (2) that is "clear or obvious," and (3) that "'affected the outcome of the district court proceedings.'" Puckett v. United States, 556 U.S. 129, 135 (2009) (quoting Olano, 507 U.S. at 733-734) (brackets in original). If the defendant does so, a "court of appeals has the discretion to remedy the error" if it "'seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings.'" Ibid. (quoting Olano, 507 U.S. at 736) (emphasis omitted).

The Fourth Amendment permits "brief investigative stops" -- including a "traffic stop" -- "when a law enforcement officer has 'a particularized and objective basis for suspecting the particular person stopped of criminal activity.'" Navarette v.

California, 572 U.S. 393, 396-397 (2014) (citation omitted). Section 22108 of the California Vehicle Code requires drivers to signal an intention to turn "continuously during the last 100 feet traveled by the vehicle before turning," whenever a signal is required. Cal. Veh. Code § 22108 (West 2019). Section 22107 sets forth the standard for when a motorist is required to signal "in the manner" provided in Section 22108: a motorist must signal before turning "in the event any other vehicle may be affected by the movement." Id. § 22107. "Actual impact is not required by the statute; potential effect triggers the signal requirement." People v. Logsdon, 79 Cal. Rptr. 3d 379, 381-382 (Cal. Ct. App. 2008). The phrase "any other vehicle" includes a law-enforcement officer's patrol car. See People v. Miranda, 21 Cal. Rptr. 2d 785, 792 (Cal. Ct. App. 1993).

Petitioner cannot establish that the district court erred, let alone plainly erred, in finding reasonable suspicion that the driver of the car in which petitioner rode had violated those provisions of the California Vehicle Code. In the district court, petitioner argued that the driver had, in fact, activated her turn signal before making a left turn in front of the officers. See Pet. App. 3a. After the district court found that claim not to be credible, however, petitioner argued on appeal that the driver was not required to activate her turn signal because "the government introduced insufficient evidence" that the failure to signal

"could have impacted another car on the road." Pet. App. 3a; Gov't C.A. Br. 13. But even though petitioner's failure to raise that theory limited the factual development of the record regarding the presence of other vehicles, the existing record refutes the factual premise of petitioner's claim. In testimony that the district court found credible, one of the arresting officers explained that the patrol car was "only 'a few feet away from the Kia Soul' when it failed to use its turn signal." Pet. App. 12a (citation omitted).

That fact alone was sufficient to provide the officers an objectively reasonable basis to conclude that the driver's failure to signal may have affected the other cars around her -- at a minimum, their own patrol car. See Miranda, 21 Cal. Rptr. 2d at 792 ("[T]he primary benefit of the signal requirement is for the vehicles to the rear of the signalling vehicle."); Logsdon, 79 Cal. Rptr. 3d at 382 (accepting trial court's finding that "a vehicle within 100 feet of Logsdon's car, traveling in the same lane and at the same speed, was affected by the [unsignaled] lane change"). Petitioner would therefore not be entitled to relief, even if the Court were to adopt his view of the applicable standard of review for his untimely suppression claim.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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