No. 20-134

IN THE SUPREME COURT OF THE UNITED STATES

ABILIO HERNANDEZ, LAZARO BETANCOURT,
NORGE RODRIGUEZ, and JOSE PEREZ,
Petitioners,

v.

JASON BOLES and DONNIE CLARK,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION

HERBERT H. SLATERY III
Attorney General and Reporter
of the State of Tennessee

ANDRÉE S. BLUMSTEIN
Solicitor General

CLARK L. HILDABRAND
Assistant Solicitor General

JOSEPH F. WHALEN
Associate Solicitor General
Counsel of Record
P.O. Box 20207
Nashville, TN 37202
(615) 741-3499
joe.whalen@ag.tn.gov

QUESTIONS PRESENTED BY THE PETITION

I. In a civil rights lawsuit, should a federal appellate court grant deference to a jury's conclusions of law about constitutional issues?

II. While waiting for a drug-sniffing dog during a traffic stop, may the police extend the stop by subjecting the driver and passengers to repetitive, back-to-back checks for outstanding warrants, and by interrogating the driver and the passengers about their activities and their backgrounds? Or does such delay violate the Fourth Amendment?

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STATEMENT OF THE CASE

This case involves the stop and subsequent search of petitioners' vehicle on December 17, 2015. The four petitioners were traveling through Tennessee on Interstate 24 on their way to Kentucky. Pet. App. 2a, 30a. Abilio Hernandez was at the wheel, Lazaro Betancourt was in the front passenger seat, and Norge Rodriguez and Jose Perez were in the back seat when respondent Jason Boles, a trooper with the Tennessee Highway Patrol, pulled them over for speeding at 11:52 a.m. *Id.* at 2a-3a, 30a.

Trooper Boles asked for and was given Hernandez's driver's license, Betancourt's driver's license, the registration for the vehicle, which was owned by Betancourt, and proof of insurance. *Id.* at 3a. Trooper Boles noticed that Betancourt, Rodriguez, and Perez avoided eye contact with him. *Id.* at 21a n.2; Trial Tr., DE 85, Page ID # 785. Once he had the requested information, Trooper Boles contacted Dispatch to perform a background check on Hernandez and Betancourt through the National Crime Information Center ("NCIC"). Pet. App. at 3a. At 11:59 a.m., Dispatch informed Trooper Boles that NCIC had no record of warrants for either Hernandez or Betancourt. *Id.* at 3a, 30a.

Trooper Boles then asked Hernandez several standard questions, such as where they were going, who was in the car, and whether Hernandez had ever been in trouble before. *Id.* Hernandez did not know where in Kentucky they were going

nor did he know the names—other than nicknames—of the two men in the rear seats. Pet. App. at 21a n.2; Trial Tr., DE 85, Page ID # 767, 780, 798. And Hernandez mentioned that he had been in trouble in the past for a cocaine-related charge. Pet. App. at 30a.

The questioning lasted only about five minutes. Then, since Hernandez had been unable to provide the names of the rear seat passengers, Trooper Boles asked for their driver's licenses and then asked Dispatch to run a NCIC background check on them. *Id.* at 3a, 31a.

When respondent Donnie Clark, also a trooper with the Tennessee Highway Patrol, arrived as backup, he called for a drug dog and, at around 12:12 p.m., called the Blue Lightning Operations Center ("BLOC") to perform a background check on all four occupants. *Id.* BLOC's criminal-history checks are more detailed and in-depth than NCIC's and have found warrants that NCIC's background checks did not. *Id.* at 3a; Trial Tr., DE 85, Page ID # 777-78.[1]

At 12:13 p.m., Dispatch informed Trooper Boles that the NCIC reports for Perez and Rodriguez were negative. Pet. App. 31a. However, the BLOC check was still pending. *Id.* At 12:19, the drug dog, which had arrived two minutes earlier, alerted on one of the doors of the vehicle. *Id.* at 3a, 31a.

[1] Trooper Clark testified that he regularly uses BLOC. Trial Tr., DE 85, Page ID # 809.

After the dog sniff, Trooper Clark received the report he had requested from BLOC. *Id.* at 4a. It revealed that the petitioners had "an extensive background—meth." *Id.* Based on the dog's alert to the outside of the vehicle, Troopers Boles and Clark searched the vehicle.[2] The search produced a bag containing a large number of gift cards rubber-banded together and a bag with a small amount of an unknown substance. *Id.* at 2a, 4a. Suspecting criminal activity involving the gift cards, the troopers scanned the cards and found that they had been re-encoded with credit-card numbers. *Id.* at 4a. They arrested petitioners for possession of 370 re-encoded gift cards and 15 grams of what was believed to be methamphetamine. *Id.*

The charges were eventually dismissed, and petitioners filed suit against Troopers Boles and Clark under 42 U.S.C. § 1983, alleging unreasonable search and seizure in violation of the Fourth Amendment. *Id.* at 2a, 17a, 30a. Both sides moved for summary judgment. The District Court denied petitioners' motion; it granted respondents' motion in part but ruled that there was a genuine issue *of material fact* on petitioners' claim that the troopers unreasonably prolonged the traffic stop. *Id.* at 4a. So that claim proceeded to trial. *Id.*

At the close of proof, both sides moved for judgment as a matter of law under Fed. R. Civ. P. 50(a). *Id.* at 17a. The District Court denied both motions and

[2] Because the dog was distracted by food, it did not complete a full sweep of the inside of the vehicle and thus did not alert on the inside. *Id.* at 3a.

submitted the case to a jury. *Id.* at 4a. The jury found in favor of respondents. *Id.* Petitioners filed a renewed Rule 50 Motion for Judgment as a Matter of Law, which the District Court again denied. *Id.* at 4a-5a. The District Court held that "a reasonable jury could have found that Defendants did not unreasonably prolong the traffic stop given the totality of the circumstances" and, accordingly, ruled that petitioners were "not entitled to judgment as a matter of law." *Id.* at 21a-22a.

Petitioners appealed. The Sixth Circuit reviewed the District Court's decision *de novo* and unanimously affirmed the denial of petitioners' Rule 50(b) motion. *Id.* at 5a-8a. Consistent with its longstanding precedent, the Sixth Circuit reasoned that whether the troopers had prolonged the stop "beyond the duration of the tasks incident to the initial stop or past the time reasonably required" for the purposes of the stop "is the type of circumstance-specific Fourth Amendment inquiry that, in the civil context, is generally reserved to the jury, as it was here." *Id.* at 6a (citing *Gardenshire v. Schubert*, 205 F.3d 303, 315-18 (6th Cir. 2000)). The jury could have found either way on this disputed issue; there is "no bright-line rule that officers are limited to checking one database for warrants during a traffic stop." *Id.* at 8a. Therefore, the Sixth Circuit concluded that there was "no authority mandating" a determination in petitioners' favor "as a matter of law." *Id.*

The Sixth Circuit denied petitioners' petition for rehearing en banc on March 6, 2020. *Id.* at 15a. Petitioners timely filed their petition for a writ of certiorari.

REASONS FOR DENYING REVIEW

I. The Sixth Circuit Correctly Decided This Case; There Was No Fourth Amendment Violation.

Petitioners contend that the Court should grant certiorari on Question 1 of the Petition "because the Sixth Circuit departed from the rule of *Muehler v. Mena*, 544 U.S. 93, 98 n.1 (2005)." Pet. 9. In *Muehler*, this Court held that a plaintiff's detention during the execution of a search warrant was "plainly permissible" under standing precedent; in so holding, the Court noted that it "do[es] not defer to the jury's legal conclusion that [the] facts violate the Constitution." 544 U.S. at 98 & n.1 (citing *Ornelas v. United States*, 517 U.S. 690, 697-99 (1996)). Petitioners' contention that the Sixth Circuit departed from *Muehler* is not a reason to grant review. Regardless of whether the determination that the troopers here did not unreasonably prolong the traffic stop was properly made by the jury or should have instead been made by the court, the determination was correct—there was no Fourth Amendment violation. Accordingly, this Court's review is not warranted on either Question 1 or Question 2.

First, the troopers did not violate the Fourth Amendment by checking passengers of the vehicle for warrants. Petitioners ignore that a traffic stop's mission is both "to address the traffic violation that warranted the stop" *and* "attend to related safety concerns." *Rodriguez v. United States*, 575 U.S. 348, 354 (2015). "[A]n officer's mission includes 'ordinary inquiries incident to [the traffic] stop,'" such as

"checking the driver's license, *determining whether there are outstanding warrants* against the driver, and inspecting the automobile's registration and proof of insurance." *Id.* at 355 (emphasis added) (citations omitted). While *Rodriguez* explicitly approves warrant checks of drivers without opining on warrant checks of passengers, the sole petitioner in that case was the driver, and this Court did not criticize the law enforcement officer in *Rodriguez* for "complet[ing] a records check on" a passenger. *Id.* at 351; *see State v. Allen*, 779 S.E.2d 248, 256-57, 259 (Ga. 2015) (agreeing with this reading of *Rodriguez* and ruling that "because the dog sniff was conducted while Officer Jackson was waiting for the return of the computer records check on [the passenger's] identification, which was an ordinary officer safety measure related to the mission of the traffic stop, the dog sniff did not prolong the stop *at all*").

Checking all occupants of a stopped vehicle for warrants ensures the safety of the officers conducting the traffic stop and others on the road as well. *See United States v. Purcell*, 236 F.3d 1274, 1278 (11th Cir. 2001) ("Many courts have recognized that knowledge of the criminal histories of a vehicle's occupants will often be relevant to that safety."). "[T]he same weighty interest in officer safety is present regardless of whether the occupant of the stopped car is a driver or passenger." *Maryland v. Wilson*, 519 U.S. 408, 413 (1997); *see also United States v. Rice*, 483 F.3d 1079, 1084 (10th Cir. 2007) ("[B]ecause passengers present a risk

to officer safety equal to the risk presented by the driver, an officer may ask for identification from passengers and run background checks on them as well." (citations omitted)). If anything, "the fact that there is more than one occupant of the vehicle increases the possible sources of harm to the officer." *Wilson*, 519 U.S. at 413. "[T]he passengers are already stopped by virtue of the stop of the vehicle," and checking the passengers for warrants is even more "minimal" of an "intrusion on the passenger" than ordering them out of the vehicle, which this Court already allows officers to do if they determine such an action would contribute to their safety. *Id.* at 414-15. Understandably, Trooper Boles most immediately focused on checking the driver and owner of the vehicle for warrants and checked on outstanding warrants for the rear passengers as soon as he was able to ascertain their names from their driver's licenses.

Second, the Sixth Circuit correctly ruled that there is "no bright-line rule that officers are limited to checking one database for warrants during a traffic stop." Pet. App. 8a. Running additional, more thorough background checks than a simple NCIC search is not uncommon. *See, e.g.*, *United States v. Hill*, 852 F.3d 377, 383 (4th Cir. 2017) ("Although Officer Taylor could have executed the stop without using PISTOL, and instead have relied exclusively on the DMV and NCIC databases, his decision to search this additional database did not violate Hill's rights under the Fourth Amendment."). The troopers here were still carrying out the

mission of the traffic stop by conducting the BLOC checks, and the drug dog alerted on the vehicle while the BLOC results were still pending.

Third, "the Fourth Amendment tolerate[s] certain unrelated investigations that d[o] not lengthen the roadside detention." *Rodriguez*, 575 U.S. at 354. This Court has previously allowed officers to question even passengers about "matter[s] unrelated to the traffic stop" such as "gang affiliation." *Arizona v. Johnson*, 555 U.S. 323, 332-34 (2009). Trooper Boles's brief questioning of Hernandez and his even briefer requests for the passengers' identifications did not violate the Fourth Amendment. The troopers needed to know with whom they were interacting during the traffic stop, and the brief, standard questions as to the petitioners' identity, their destination in Kentucky, and the driver's previous problems with the law did not unreasonably prolong the stop.

II. The Decision Below Does Not Conflict with Decisions of Other Circuits.

Petitioners contend that there is a "three-way circuit split" among the Ninth, Fourth, and Sixth Circuits with respect to Question 2 of the Petition, i.e., whether respondents "unreasonably extended the traffic stop in violation of the Fourth Amendment" by conducting "back-to-back warrants checks" and "roadside interrogation[s]" of the driver and passengers of petitioners' vehicle. Pet. 14; *see* Pet. i. But there is no circuit split.

In affirming the denial of petitioners' motion for judgment as a matter of law, the Sixth Circuit cited its own precedent holding that "checking passengers for warrants and brief questioning are permissible as part of a traffic stop." Pet. 5a-6a (citing *United States v. Smith*, 601 F.3d 530, 542 (6th Cir. 2010)). And as noted above, the court held that there was no bright-line Fourth Amendment requirement "that officers are limited to checking one database for warrants during a traffic stop," leaving the jury free to determine that the troopers did not impermissibly prolong the stop of petitioners' vehicle. Pet. 8a. This decision and result do not conflict with decisions of the Ninth Circuit and are consistent with decisions of the Fourth Circuit.

A. Decisions of the Ninth Circuit do not conflict with the decision here.

Petitioners first assert, citing *United States v. Landeros*, 913 F.3d 862 (9th Cir. 2019), that the Ninth Circuit "condemn[s] any delay of a traffic stop in order to check the warrant status of *passengers*, as opposed to the driver." Pet. 18 (emphasis in original). But *Landeros* does not support that broad proposition; it is also distinguishable from this case.

The Ninth Circuit held in *Landeros* only that officers had impermissibly prolonged a traffic stop by repeatedly demanding that a passenger identify himself after he refused to do so. *See id.* at 867-68 (referring to "the several minutes of additional questioning to ascertain Landeros's identity"). While the court did state that "the identity of a passenger . . . will ordinarily have no relation to a driver's safe

operation of a vehicle," *id.* at 868, the court acknowledged, and declined to revisit, its own precedent permitting police to "*ask* people [including passengers in cars] who have legitimately been stopped for identification," *id.* at 870 (quoting *United States v. Diaz-Castaneda*, 494 F.3d 1146, 1152 (9th Cir. 2007) (emphasis added in *Landeros*).

Here, none of the passengers in the petitioners' vehicle refused to identify themselves—all provided identification upon request. Pet. App. 3a. So the holding in *Landeros* creates no conflict. *Cf. United States v. Hampton*, 374 F. Supp. 3d 1115, 1121 (D. Kan. 2019) (distinguishing *Landeros* because "Mr. Landeros refused to identify himself whereas Mr. Hampton never refused and, instead, provided the requested information"). And one of the passengers—petitioner Betancourt—was also the owner of the vehicle, further distinguishing this case from *Landeros*. Pet. App. 3a.

Petitioners next assert, citing *United States v. Evans*, 786 F.3d 779 (9th Cir. 2015), and *United States v. Gorman*, 859 F.3d 706 (9th Cir. 2017), that the Ninth Circuit condemns "repeat database checks of a driver." Pet. 19. But those cases do not conflict with the decision here because they involved more than the "back-to-back checks for outstanding warrants" about which petitioners complain in this case. Pet. i.

In *Evans*, the Ninth Circuit held that an officer impermissibly prolonged a traffic stop "by conducting an ex-felon registration check," which was meant not only to inquire into the driver's criminal history but also "to confirm whether [the driver] was registered at the address he provided to [the officer]." 786 F.3d at 786.[3] The court concluded, that "unlike the vehicle records or warrants checks" the officer had already performed, the ex-felon registration check "was wholly unrelated to [the officer's] 'mission,'" and was instead "aimed at 'detecting evidence of ordinary criminal wrongdoing.'" *Id.* (quoting *Rodriguez*, 575 U.S. at 355). *Cf. United States v. Harris*, No. 16-cr-00222-HSG-1, 2017 WL 11454445, at *4 (N.D. Cal. Apr. 18, 2017) (observing that *Rodriguez* "acknowledged the safety justification for officers to run criminal record and outstanding warrants checks" and stating that the defendant "misreads both *Rodriguez* and *Evans* in suggesting that police officers can no longer conduct file checks on both drivers *and* passengers in a car" (emphasis in original)).

In *Gorman*, the Ninth Circuit held that an officer impermissibly prolonged a traffic stop by asking "the El Paso Intelligence Center, a multi-jurisdictional bureau known as EPIC, to compare [a driver's] home address with its database of information related to drug and weapons smuggling, money laundering, and human

[3] The court in *Evans* noted that state law required any "convicted person" within the state for more than 48 hours to register with the county sheriff or chief of police and provided that failure to do so was a misdemeanor offense. 786 F.3d at 783 n.5.

trafficking." 859 F.3d at 711. The court concluded that, unlike the "routine warrant and criminal history checks" the officer had already performed, *id.*, this request to EPIC was a "non-routine investigative inquir[y]" that "fell beyond the scope of the stop's 'mission,'" and was instead "'aimed at detecting evidence of ordinary criminal wrongdoing,'" *id.* at 715 (quoting *Evans*, 786 F.3d at 788).[4]

B. Decisions of the Fourth Circuit comport with the decision here.

Decisions of the Fourth Circuit fully comport with the decision below. Indeed, petitioners admit that "the Fourth Circuit has sided against [their] position." Pet. 19.

In *United States v. Hill*, the Fourth Circuit held that an officer did not impermissibly prolong a traffic stop by searching for information on a driver and a passenger in an "additional database" that "tracks every person who has had prior contacts with [local] police." 852 F.3d at 380, 383. Citing the interest in officer safety, the court concluded that "an officer reasonably may search a computer database during a traffic stop to determine an individual's prior contact with local law enforcement, just as an officer may engage in the indisputably proper action of searching computer databases for an individual's outstanding warrants." *Id.* at 383.

[4] Similarities could perhaps be drawn between the El Paso Intelligence Center (EPIC), utilized by the officer in *Gorman*, and the Blue Lightning Operations Center (BLOC), utilized by the tropers in this case. But the purpose for which EPIC was used in *Gorman* was different—the Ninth Circuit's holding was not based on the officer's using EPIC to "double-check[] . . . for outstanding warrants." Pet. 1.

And in *United States v. Palmer*, 820 F.3d 640 (4th Cir. 2016), the Fourth Circuit held that an officer did not unreasonably expand the scope of a stop by accessing "another database" for criminal-record information on the driver. 820 F.3d at 645, 651. Also citing the interest in officer safety, the court stated that "[a] police officer is entitled to inquire into a motorist's criminal record after initiating a traffic stop." *Id.* at 651.

III. In Any Event, This Is a Poor Case for Deciding Either Question Presented for Review.

Even if this Court were seeking an opportunity to pronounce a new rule of constitutional law with regard to the issues presented, this case would not provide a meaningful opportunity for doing so. If the Court were to announce a new rule of law, then respondents would be entitled to qualified immunity for running afoul of that new rule.[5]

[5] Petitioners imply that the troopers have waived their qualified immunity argument on the duration of the stop. *See* Pet. 19 n.1 (stating that "the denial of qualified immunity in the present case was neither appealed nor cross-appealed by the Troopers"). But respondents have not waived that argument. The District Court had denied the troopers' summary judgment motion for qualified immunity on the duration of the stop "because a genuine issue of material fact exists as to whether respondents unreasonably prolonged the stop after receiving the initial NCIC report." *Hernandez v. Boles*, No. 4:17-CV-25, 2018 WL 8458112, at *5 (E.D. Tenn. June 14, 2018). The jury resolved that issue in the troopers' favor under the *Rodriguez* standard. If this Court were to grant review and vacate the judgment on the basis that the District Court, rather than the jury, should have decided whether the troopers had unreasonably prolonged the traffic stop, then respondents would be able to reassert their qualified-immunity argument.

A defendant in a § 1983 suit is entitled to qualified immunity "unless a plaintiff pleads facts showing (1) that the official violated a statutory or constitutional right, and (2) that the right was 'clearly established' at the time of the challenged conduct." *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011) (citation omitted). A right is "clearly established" when existing precedent in that circuit or from the Supreme Court "place[s] the statutory or constitutional question beyond debate." *Id.* at 741. The right must have been clearly established "at the time of the challenged conduct." *Id.*[6]

While *Rodriguez* had established earlier in 2015 that "[a]uthority for the seizure . . . ends when tasks tied to the traffic infraction are—or reasonably should have been—completed," neither this Court nor the Sixth Circuit has clearly established that law enforcement officers cannot, as a matter of law, run BLOC background checks of vehicle occupants or ask the driver simple questions about where he is going, who is with him, and whether he had been in trouble before with the law. 575 U.S. at 354. This Court has "repeatedly told courts . . . not to define

[6] Petitioners point out that the Ninth Circuit decision in *United States v. Evans* was issued "seven months before the incident here." Pet. 19 n.1. As discussed above, though, *Evans* is distinguishable. Moreover, out-of-circuit precedents "are usually irrelevant to the 'clearly established' inquiry." *Ashford v. Raby*, 951 F.3d 798, 804 (6th Cir. 2020). The only exception is one that does not apply here: an "extraordinary" case "where out-of-circuit decisions 'both point *unmistakably* to' a holding and are '*so clearly* foreshadowed by applicable direct authority as to leave *no doubt*' regarding that holding." *Id.* (quoting *Ohio Civil Serv. Emps. Ass'n v. Seiter*, 858 F.2d 1171, 1177 (6th Cir. 1988)) (emphases added in *Ashford*).

clearly established law at a high level of generality." *Ashcroft*, 563 U.S. at 742. At the time of this traffic stop in Coffee County, Tennessee, the law of the Sixth Circuit was that law enforcement officers do not violate the Fourth Amendment by conducting warrant checks of passengers or questioning drivers about their travel plans. *See Smith*, 601 F.3d at 542. That is still the controlling precedent in the Sixth Circuit. Pet. App. 5a-6a (citing *Smith*, 601 F.3d at 542).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

HERBERT H. SLATERY III
Attorney General and Reporter

ANDRÉE S. BLUMSTEIN
Solicitor General

CLARK L. HILDABRAND
Assistant Solicitor General

JOSEPH F. WHALEN
Associate Solicitor General
Counsel of Record
Office of the Attorney General
P.O. Box 20207
Nashville, TN 37202
(615) 741-3499
Joe.Whalen@ag.tn.gov

Counsel for Respondents