NO. _____

In The
Supreme Court of the United States

AMANUEL ATSEMET,
Petitioner,

V.

STATE OF TEXAS,
Respondent.

On Petition for Writ of Certiorari to the
Texas Eleventh Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

When applying the "totality of the circumstances" test for reasonable suspicion in a state that has criminalized marijuana, does the consideration of an out-of-state license plate from a jurisdiction that has legalized marijuana violate the constitutional right to travel?

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PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the Court of Appeals for the Eleventh District of Texas, unpublished, *Atsemet v. State*, No. 11-18-00053-CR, 2020 Tex. App. LEXIS 3734 (Tex. App. – Eastland 2018, pet. ref'd), appears at page 1 of the appendix hereto. The Texas Court of Criminal Appeals' refusal of Amanuel Atsemet's Petition for Discretionary Review, *Atsemet v. State*, PD-0604-20, (Tex. Crim. App. 2020), appears at page 28 of the appendix hereto. The order of the Eleventh Court of Appeals granting a stay from the issuance of the mandate appears at page 29 of the appendix hereto.

JURISDICTION

The date on which the Texas Court of Criminal Appeals refused the Petitioner's case was October 21, 2020. A copy of the court's refusal of discretionary review appears at page 28 of the appendix hereto. The Jurisdiction of this Court is invoked under 28 U.S.C. 1257(a). This Petition is filed pursuant to this Court's March 19, 2020 COVID-19 order extending the filing deadlines for all petitions for writs of certiorari due on or after the date of that directive.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be

> violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
>
> The Fourteenth Amendment, Section 1, states:
>
> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This Petition arises out of the 385th District Court of Texas' denial of Amanuel Atsemet's motion to suppress evidence, which was urged on the basis that his roadside detention violated the Fourth Amendment, as applied to the State of Texas through the Fourteenth Amendment and in contravention of the principles set out by this Court in *Terry v. Ohio,* 392 U.S. 1 (1968). Petitioner does not contest the propriety of the stop in the first instance. Instead, he maintains that after the officer completed his routine records check, all reasonable suspicion of criminal activity was dispelled, and his continued detention violated the Fourth Amendment. There were no explicit findings of fact made by the trial court. The Eleventh Court of Appeals in Eastland, Texas affirmed the trial court's ruling on the motion to suppress, holding that the totality of the circumstances justified the prolongment of Atsemet's roadside detention. The Texas Court of Criminal Appeals refused discretionary review. The

Eastland Court of Appeals has ordered a stay of the mandate's issuance pending this Petition for Certiorari.

On February 27, 2017, a citizen informant named Jason Sharp called his brother, Sergeant Sean Sharp – a Midland Police narcotics detective – to call in a tip. He advised his brother that he'd just driven past three men traveling down Highway 80 in a Chrysler 300 with Colorado license plates, and it appeared the men were smoking a marijuana cigarette. [Appendix at 16]. The call peaked Sergeant Sharp's interest because it involved a "vehicle with Colorado license plates." [RR Vol. 6 at 10]; [Opinion of the Eastland Court of Appeals, Appendix at 2]. After locating the vehicle himself in his unmarked police car, Sergeant Sharp contacted a uniformed patrol officer to conduct a traffic stop. [RR Vol. 6 at 10]. Shortly thereafter, Sergeant Ed Marker located the subject vehicle, confirmed that it had Colorado plates, and – after observing the Chrysler fail to signal within 100 feet of a lane change – initiated a traffic detention. [RR Vol. 6 at 17].

Despite receiving information that the occupants of the Chrysler had been seen smoking marijuana inside the vehicle, Sergeant Marker found no evidence to support this tip. He did not smell the odor of burnt or raw marijuana. [RR Vol 6. at 26]. There is no evidence he observed any cigarette butts (roaches), pipes, or other drug paraphernalia in plain view – a fact bolstered by the results of the subsequent search of the passenger compartment. [RR Vol. 6 at 34 ("[The car interior] was clean, neat, not messy."). The audio/video footage received into evidence at the suppression hearing shows Sergeant Marker interacting with three black men inside the Chrysler

– Amanuel Atstemet is in the rear passenger's seat. There is no testimony or evidence to suggest the men were intoxicated. [States Exhibit 1A].

Seeing that the men were using a GPS device, the Sergeant offered the men directions. The driver explained that the men were not from the area, and they were looking for an address located on South and Cottonwood. When the prosecution asked if this answer made sense to the officer, he testified "Cottonwood and South Street are not close to each other, nor do they intersect." [RR Vol. 6 at 22]. The driver also explained that they were visiting Midland for the Kodak Black concert, which Sergeant Marker appears to be familiar with on the video. [State's Exhibit 1A at 3:42]. Despite the video footage and audio recording, the Officer testified to the existence of "discrepancies in their stories" when questioned about the concert. [RR Vol. 6 at 24]. His testimony offered no further elaboration about what the discrepancy was.

The Sergeant then gathered drivers' licenses from the two men seated in the front seats. Amanuel Atsemet advised that he did not have his identification, but was a Colorado resident with a Colorado driver's license. He provided his full name and date of birth, and stated that the vehicle was rented to him through Enterprise Rent-A-Car. [RR Vol. 6 at 22].

Sergeant Marker returned to his patrol car to run a routine records check. This process took twenty-minutes to complete because dispatch told him to "stand by." [RR Vol. 6 at 24]. Ultimately, the records check confirmed the men had valid licenses and no warrants; it further confirmed that the Chrysler was an Enterprise rental car. [RR Vol. 6 at 26]; [Appendix at 4]. Despite everything checking out, Sgt. Marker ordered

Amanuel out of the car and patted him down, discovering $3,000.00 cash in his front pocket. [RR Vol. 6 at 27] ("[I pulled him out of the vehicle] [j]ust to talk to him at the back of the car and I guess for officer safety reasons"). Amanuel told the officer that the money was payment to be the opening act for the Kodak Black concert. [State's Exhibit 1A at 22:54]. Roughly a minute later, Sergeant Marker requested consent to search the car. When Amanuel refused, Marker radioed for a drug dog to make the scene.

Inter alia, Amanuel argued at his motion to suppress that once the records check was completed, Sergeant Marker was not equipped with sufficient reasonable suspicion to prolong his detention. Critical to this petition, the Court of Appeals disagreed, believing that the Sergeant had sufficient reasonable suspicion to detain Amanuel so as to order him out of the vehicle and pat him down for weapons, and that there was reasonable suspicion to further detain the occupants of the Chrysler while a drug dog arrived. In the context of the record, the presence of Colorado license plates proves central to the Eastland court's conclusion. As the result of the dog sniff, the police found 4.88 pounds of marijuana and a pistol inside the trunk of the Chrysler locked in Pelican brand cases.

Following the denial of his Motion to Suppress, a jury convicted Amanuel of Possession of Marijuana – four ounces to five pounds – a State Jail Felony. Punishment was assessed at two years confinement in the State Jail Facility.[1] Petitioner now seeks Certiorari from this Honorable Court.

[1] Under Texas law, state jail offenses are not eligible for parole. TEX. GOV'T CODE § 508.141(a)(1).

REASONS FOR GRANTING THE PETITION

I. Current formulations of the reasonable suspicion standard have left little room for reviewing courts to protect complimentary constitutional rights.

The Eastland Court of Appeals' decision pits the constitutional right to travel against the standard for reasonable suspicion under the Fourth Amendment. At its core, the Court of Appeals' analysis rises or falls with the question of how much weight can be reasonably applied to the presence of Colorado license plates at a Texas traffic stop. This is not to invite a divide-and-conquer analysis of reasonable suspicion, but rather to harmonize the current divisions among the circuit courts as to whether it is ever appropriate to incorporate out-of-state vehicle registration as a factor.

Under the present state of the law, virtually nothing is off limits in the mind of the arresting officer as he teases out specific and articulable facts to support the decision to detain. That latitude is not without its uses, as this Court has long recognized. *See United States v. Arvizu,* 534 U.S. 266, 274 (2002) ("Our cases have recognized that the concept of reasonable suspicion is somewhat abstract . . . But we have deliberately avoided reducing it to 'a neat set of legal rules'" (quoting *Ornelas v. United States,* 517 U.S. 690, 695-96 (1996)) (internal citations omitted)). But by giving the police access to the full panoply of observable data attendant to the scene of a *Terry* stop, we have also given them the flexibility to describe a piano by first resort to its black keys or its white ones, depending on which characterization best justifies a finding of reasonable suspicion. This Court has roundly embraced the

ambiguities attendant to the standard, leaving it to the lower courts to determine when and if unreasonable thinking – or unconscionable thinking such as racial profiling – has bored its way into the proffered justifications for the stop under the guise of a specific and articulable fact:

> *Terry* approved of the stop and frisk procedure notwithstanding 'the wholesale harassment by certain elements of the police community, of which minority groups . . . frequently complain. But in this passage, *Terry* simply held that such concerns would not preclude the use of the stop and frisk procedure altogether. Nowhere did *Terry* suggest that such concerns cannot inform a court's assessment of whether reasonable suspicion sufficient to justify a particular stop existed.

Illinois v. Warlow, 528 U.S. 119, 134 n. 11 (2000) (citing *Terry v. Ohio,* 392 U.S. 1, 14 (1968)); *see also Whren v. United States,* 517 U.S. 806, 814 (1996) ("[T]he Fourth Amendment's concern with 'reasonableness' allows certain actions to be taken in certain circumstances, whatever the subjective intent [of the officer].").

The mass legalization of marijuana among the states generates friction as courts grapple with how to apply the reasonable suspicion standard while honoring the right of citizens to interstate travel.

Preserving the integrity of the reasonable suspicion standard in the modern world will increasingly require the Court to address situations where the objective basis for prolonging a detention is incongruent with other fundamental rights guaranteed by the Constitution. This petition highlights precisely such a difficulty. If an out-of-state license plate originating from a jurisdiction diametrically opposed to the arresting state on the legal status of marijuana can form part of the legal justification to detain that person on the roadside, far more than the viability of the totality of the circumstances standard is at stake.

Today it is simpler to list the number of jurisdictions where marijuana remains illegal than it is to list the number of states that have legalized the substance for recreational or medical use: only sixteen states have failed to implement either a complete recreational or medical legalization regime.[2] Of these jurisdictions, only a handful fail to allow for any percentage of tetrahydrocannabinol in non-psychoactive cannabis-derived products such as CBD.[3]

That some rational nexus exists between license plates from a state that has legalized marijuana and drug trafficking goes without saying. It is highly likely that a car driving down Texas roads with out-of-state license plates came from a jurisdiction where some form of cannabis can be legally bought and sold. But is it constitutionally permissible to prolong a *Terry* detention on such a basis? Petitioner Atsemet respectfully submits that it is not. The circuit courts of appeals cannot agree on how much weight, if any, such a circumstance deserves when reviewing a detention for reasonable suspicion, and this division of authority needs to be decisively rectified not simply to protect the integrity of reasonableness inquiries under the Fourth Amendment, but also to protect the right to travel guaranteed to all citizens.

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[2] ALA. CODE. § 20-2-23(2019); Ga. Code Ann. § 16-13-25 (2019); Idaho Code § 37-2705(d)(22)(2020); IN. CODE ANN. § 35-48-2-1(2020); Iowa Code § 124.204(4)(m)(2020); KAN. STAT. ANN. § 21-5706(2019); Ky. Rev. Stat. § 218A. 1422 (2011); LA. STAT. ANN. §40:966(2020); NEB. REV. STAT. 28-416(2017); N.C. GEN STAT. §90-94 (2017); S.C. Code § 44-53-370 (2016); TENN. CODE ANN. § 39-17-415 (2019); Tex. Health & Safety Code 481.121 (2019); WIS. STAT. §961.14 (2019); WYO. STAT. ANN. § 35-7-1031(2014).

[3] Tetrahydrocannabinol (THC) is the psychoactive compound in marijuana.

II. The Circuit Courts of Appeals are Split on the Issue of Whether Out-of-State License Plates can be Considered in Reasonable Suspicion Analysis.

There is a lack of unanimity among the circuits concerning the appropriate weight, if any, that an out-of-state license plate should receive in a reasonable suspicion analysis. In 2016, the Fifth Circuit Court of Appeals, after enunciating its internal struggles with ascribing significance to this feature, assumed without deciding that an out-of-state license plate could be a factor :

> [W]e have noted that 'an out-of-state driver's license and license plates . . . may not suffice to create reasonable suspicion of criminal activity.' *United States v. Davis,* 620 Fed App'x 295, 2015 WL 4931408, at *3 (5th Cir. 2015) On one hand, we have found a reasonable suspicion of drug crime where, inter alia, a tractor-trailer with out-of-state license plates exited a main road to an area without a gas station or truck stop. *United States v. Chasten,* 223 Fed. App'x 418, 420 (5th Cir. 2007). On the other hand, other circuits have found a vehicle with out-of-state license plates, even on a highway known to be used for drug trafficking or even when exiting a highway at an unlikely place for cross-country travelers, does not give rise to reasonable suspicion of drug crime.

United States v. Spears, 636 Fed. App'x 893, 900 (5th Cir. 2016) ("Even assuming traveling with an out-of-state license plate can be a factor supporting reasonable suspicion, we find that [appellant's] travel with an out-of-state license plate in this case does not give rise to a reasonable suspicion of criminal activity."). The Second Circuit holds that an out-of-state plate may be considered, and that such a circumstance takes on additional meaning in the presence of other, weightier, considerations:

> This weighty factor [men loading duffle bags into a vehicle and quickly disassociating themselves from the car] makes the case before us easy. In its presence, the sometimes innocuous factors such as the time of day and [the appellant's] out-of-state license plates take on added

> significance. When joined to the furtive loading of the car, they strengthen the likelihood of a drug transaction.

United States v. Bayless, 201 F.3d 116, 134 (2nd Cir. 2000). *Cf. United States v. Burgos-Coronado,* 970 F.3d 613, 620 (5th Cir. 2020) ("[W]e recognize that each of the articulated facts is consistent with an innocent explanation. That, though, is not enough to rule out reasonable suspicion." (citing *Arvizu,* 534 U.S. at 274-75)). These cases represent an approach to the license plate issue that attempts to divide such cases into two categories: bare factual cases where the plate is one of the only factors, and cases where the plate has greater meaning in the context of the totality of the circumstances.

The Seventh and Eighth Circuits have declined to place much significance, if any, on out-of-state license plates as a relevant factor in the reasonable suspicion calculus because a rule to the contrary would allow for dragnet policing. *See Huff v. Reichert,* 744 F.3d 999, 1004-05 (7th Cir. 2014) ("[Plaintiffs] were simply driving with out-of-state plates on a particular stretch of highway where [the officer] says that much drug trafficking occurs. These sorts of general statements do not amount to reasonable suspicion."); *United States v. Yousif,* 308 F.3d 820, 828 (8th Cir. 2002) (No reasonable suspicion where suspect had out-of-state license plates, traveled on a known drug trafficking corridor, and pulled off the road to avoid a police checkpoint). These cases, while also attempting to avoid "divide and conquer" analysis, appear to more consistently disregard the weight of an out-of-state license plate.

Most significantly, the Tenth Circuit has stringently rejected the use of out-of-state license plates as a factor, despite it being but one of many objective circumstances cited by the detaining officer as justification for the detention:

> Though we analyze these facts under the totality of the circumstances, we first note which factors have less weight in our analysis. We start with the most troubling justification: Vasquez's status as a resident of Colorado. . . [T]he Officer's reasoning would justify the search and seizure of the citizens of more than half of the states in our country. It is wholly improper to assume that an individual is more likely to be engaged in criminal conduct because of his state of residence, and thus any fact that would inculpate every resident of a state cannot support reasonable suspicion. Accordingly, it is time to abandon the pretense that state citizenship is a permissible basis upon which to justify the detention and search of out-of-state motorists, and time to stop the practice of detention of motorists for nothing more than an out-of-state license plate.

Vasquez v. Lewis, 834 F.3d 1132, 1138 (10th Cir. 2016) (internal citations omitted). As in Petitioner Atsemet's case, the Colorado registration of the automobile was the glue holding together the totality of the circumstances supporting *Vasquez's* detention. *Id* at 1135 (detailing the officer's observations). Despite the factual similarities, the Eastland Court of Appeals explicitly rejected *Vasquez's* reasoning in Atsemet's case, choosing to adopt the approach used by the Fifth and Second Circuits:

> To the extent that the court in *Vasquez* would hold that an out-of-state registration from a 'legalized' marihuana state could never be of value in a reasonable-suspicion analysis in a state in which marihuana has not been legalized, we cannot agree . . . [U]nder the facts of this case, the Colorado registration of the rented Chrysler 300 is a legitimate component of the totality of the circumstances to be objectively considered in a determination of reasonable suspicion.

[Appendix at 18]. The Eastland Court attempts to imply that its decision is not a wholehearted departure from the Tenth Circuit's thinking, stating that it does not

endorse "willy-nilly" detentions of motorists simply because they have a Colorado license plate. [Appendix at 18]. But this attempt to distinguish itself misses the mark. If out-of-state license plates – especially from marijuana legal jurisdictions – are entitled to *any* weight at all, that fact rapidly becomes a self-sustaining justification. Other observable facts gain greater significance from the fact that the vehicle came from a legal marijuana state, and those other facts, in turn, make the knowledge that the car comes from a legal marijuana state more significant. The out-of-state registration becomes the serpent that eats its own tail.

The rationale set out in *Vasquez* not only illustrates the wide divisions between courts of appeals across the nation on this question, it also telegraphs the broader constitutional implications of the continued use of this factor in American policing. Choosing to weigh the provenance of the automobile as a factor for reasonable suspicion puts a traveler's Fourth Amendment protections at odds with his right to travel.

III. Continuing to Give Weight to Out-of-State License Plates as a Relevant Factor for Reasonable Suspicion Analysis Forces Citizens to Sacrifice Their Fourth Amendment Protections Each Time they Exercise Their Right to Travel.

This Court has repeatedly held that a forced choice between two constitutional guarantees is untenable. *See Simmons v. United States*, 390 U.S. 377, 394 (1968) ("[W]e find it intolerable that one constitutional right should have to be surrendered in order to assert another."). The lower court's decision in this case puts millions of citizens in this exact dilemma. Those hailing from a jurisdiction with legal marijuana – irrespective of their personal opinions about these laws – must choose whether to

forego their right to interstate travel, or to subject themselves to lessened Fourth Amendment protections when visiting states that continue to criminalize marijuana.

The Right to Travel.

The Court has historically experienced some difficulty in determining the roots of the right to travel, but its significance as a fundamental right guaranteed by the Constitution has never been in doubt:

> Although there have been recurring differences in emphasis within the Court as to the source of the constitutional right of interstate travel, there is no need here to canvass those differences further. All have agreed that the right exists.

United States v. Guest, 383 U.S. 745, 759 (1965). In more recent times, the right to interstate travel has found shelter under the heading of the Fourteenth Amendment's Equal Protection Clause. *See Memorial Hospital v. Maricopa County,* 415 U.S. 250, 254-55 (1974) ("The right of interstate travel has repeatedly been recognized as a basic constitutional freedom"). Congruent with this understanding, the Court has most recently discussed travel rights in the context of the "unconstitutional conditions doctrine" – an effort to prevent the government from coercing people to waive or accept the diminution of their constitutionally protected liberties. *Cf. Koontz v. St. Johns River Water Mgmt. Dist.,* 570 U.S. 595, 604 (2013) ("[T]he unconstitutional conditions doctrine . . . vindicates the Constitution's enumerated rights by preventing the government from coercing people into giving them up."); *Wilkie v. Robbins,* 551 U.S. 537 (2007) (Ginsburg, J. dissenting) ("The Court has held

that the Government may not unnecessarily penalize the exercise of constitutional rights.").

As the issue is contended with on Equal Protection grounds, any effort to classify citizens so as to penalize their exercise of the right to travel must be rejected, absent a showing that there is a compelling-state-interest to justify the violation. *Maricopa County,* 415 U.S. at 258 (quoting *Dunn v. Blumstein,* 405 U.S. 330, 339-40 (1972)); *see also Shapiro v. Thompson,* 394 U.S. 618 (1969); *Oregon v. Mitchell,* 400 U.S. 112, 238 (1970) (separate opinion of Brennan, White, and Marshall, JJ.).

The judicial consideration of out-of-state license plates creates an insidious classification between citizens and penalizes them for exercising a constitutional right.

By permitting the consideration of out-of-state license plates in an officer's totality of the circumstances analysis for reasonable suspicion, just such a classification is perpetuated. This holds especially true in this nation's present circumstances, where past uniformities in the states' drug laws have unraveled and are now in considerable disarray. While Texas' decision to criminalize marijuana is within its prerogative as a sovereign state, the type-casting of its occupants into visiting and resident automobiles, and further into visiting automobiles from a legal marijuana jurisdiction is not. The right to travel secures not simply the freedom of movement itself; for it to have any meaning at all, the right must ensure that travelers from any of the fifty states enjoy their full constitutional protection against government invasions of privacy in any of the states they choose to visit. If the mere feature of their citizenship in a certain state can help form the basis for suspicion

against them, the government can punish those citizen's decision to travel by diminishing their constitutional expectations of privacy under the Fourth Amendment. It is this feature of case at hand that necessitates a national adoption of the view taken by the Tenth Circuit to "abandon the pretense that state citizenship is a permissible basis upon which to justify the detention and search of out-of-state motorists." *Vasquez,* 834 F.3d at 1138 (10th Cir. 2016).

The continued use of this factor in totality of the circumstances analysis cannot be justified by any compelling state interest.

There is little in the way of practical justification for the continued use of this factor in reasonable suspicion analysis. Excising the consideration of out-of-state registration leaves the overwhelming majority of the traditional scope and deference afforded under *Terry* and *Arvizu* intact. Police will still be able to describe the scene of a detention largely by whatever terms their training, experience, and occupational intuition dictate. Factors like the timing of a trip, indications that it's a one-way journey from a particular destination where the suspect does not reside, and a myriad of other "trafficking profile" factors will remain available for the police to consider. Any further reason why state citizenship should be considered as a factor in the totality of the circumstances is simply too overbroad to accomplish the legitimate inferential objectives of law enforcement. *Maricopa County,* 415 U.S. at 267 ("Besides not being factually defensible, this test is certainly overbroad to accomplish its avowed purpose.").

IV. The Eastland Court of Appeals' Decision is Clearly Erroneous.

Standard of Review

The standard of review applicable to the reasonable suspicion analysis in this case is *de novo. Ornelas,* 517 U.S. 690, 699 (1996). As Justice Scalia noted in his concurrence in *Arvizu,* however, it is difficult to conceive of how *de novo* review should be conducted in the absence of express findings of fact – the situation presented by this Petition. *Arvizu,* 534 U.S. at 278 ("I do not see how deferring to the district court's factual inferences (as opposed to its findings of fact) is compatible with *de novo* review." (citing *Ornelas* 517 U.S. at 705)). This is important factually to the decision in this case because one factor relied upon by the Court of Appeals can be disregarded entirely: the tip reporting the use of marijuana.

The Court of Appeals' analysis is deeply flawed and depends on the viability of the Colorado license plate as a factor.

The Eastland Court of Appeals affirmed the trial court's denial of Amanuel Atsemet's Motion to Suppress on the basis that (1) A known tipster claimed to have seen the men in the Chrysler 300 smoking marijuana; (2) the car bore Colorado license plates; (3) the men stated they were searching for an address at Cottonwood and South streets, which do not intersect; (4) there were "discrepancies" concerning the concert the men described as their reason for being in town; and (5) Sergeant Marker found $3,000.00 in U.S. currency inside Amanuel's front trousers pocket. Without the Colorado license plates, these factors in combination are patently insufficient to support a finding of reasonable suspicion, even if they may, in combination, give some indications of criminality. *Cf. United States v. Madrid-*

Mendoza, 2020 U.S. App. LEXIS 28085 at *15 (10th Cir. Sept. 2020) ("[W]e likewise conclude that the accumulated facts . . . remained insufficient to give rise to a reasonable suspicion of illegal activity.").

The tipster's claim that he observed the occupants of the Chrysler 300 smoking marijuana should not play a role in the disposition of this case because all of the first-hand observations of the detaining officer immediately dispelled this suspicion.[4] No officer witnessed anything get thrown out the window of the Chrysler despite following it for two blocks. No officer smelled the odor of marijuana, and no marijuana paraphernalia was found in the passenger compartment of vehicle. Thus, from the moment that Sergeant Marker made physical contact with the Chrysler 300, any suspicion related to the tip call – i.e. suspicion that the men were smoking marijuana – was useless as a fact justifying the continued detention after the routine records check was completed. *Rodriguez v. United States,* 135 S. Ct. 1609, 1614 (2015) ("[A] traffic stop 'prolonged beyond' that point is 'unlawful'" (quoting *Illinois v. Caballes,* 543 U.S. 405, 406 (2005))).

Recognizing then, as we must, that the tipster's claims about smoking marijuana were immediately dispelled by making contact with the vehicle, the remaining factors in this case do not, in their totality, add up to reasonable suspicion.

[4] The Tipster's claim itself is a dubious assertion. Both the tipster's vehicle and the Chrysler 300 were traveling on a highway. It is difficult to conceive of circumstances that would distinguish a marijuana cigarette from a tobacco cigarette at that vantage point. [RR Vol. 6 a 9]. Nothing in the record establishes that the Tipster – Sergeant Sharp's brother – smelled marijuana or even has a basis for knowing what marijuana looks like. The tipster did not testify. While the Eastland Court found that the tip was sufficiently reliable because the call was from a policeman's brother, it fails to discuss how the tip could remain a viable piece of the reasonable suspicion puzzle after Sgt. Marker failed to smell or see any marijuana upon contacting the suspects. [Appendix at 15-16].

Three musicians hailing from Georgia and Colorado traveling with $3,000.00 in cash and uncertain of the geographic layout of Midland, Texas flunks the reasonable suspicion test. These factors merely highlight just how essential the Colorado registration is to the integrity of the Eastland Court's analysis. Once the officer is precluded from holding the Colorado license plate against him, it would be wholly unreasonable to conclude that being lost, discrepancies about a concert in town, and $3,000.00 cash amounts to reasonable suspicion of anything, much less marijuana trafficking. Without any continued reasonable suspicion to detain the Chrysler after the completion of the records check and Atsemet's refusal of consent to search the vehicle, his further prolonged detention was illegal. *Rodriguez*, 135 S. Ct. at 1612. Left undisturbed by this Court, the lessons learned from the lower court's opinion threaten a "very large category of presumably innocent travelers, who would be subject to virtually random seizures were the Court to conclude that as little foundation as there was in this case could justify a seizure." *Reid v. Georgia*, 448 U.S. 438, 441 (1980).

CONCLUSION

Petitioner Amanuel Atsemet prays that the petition for a writ of certiorari should be granted.

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