

20-5967

No. \_\_\_\_\_

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IN THE

SUPREME COURT OF THE UNITED STATES

JOHN ELISHA MAYVILLE — PETITIONER  
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

**UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT**  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Mr. John Elisha Mayville  
(Your Name)

FCI - Coleman Medium P.O. Box 1032  
(Address)

Coleman, FL 33521  
(City, State, Zip Code)

none

(Phone Number)

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## QUESTIONS PRESENTED

1. Whether an officer can spend his time conducting unrelated investigations, such as a dog sniff, while he is waiting for the results of a twelve minute criminal history investigation.
2. Whether the Tenth Circuit's holding, "it is reasonable for officers to run Triple I checks through dispatch as part of a routine traffic stop," is in conflict with the list of "ordinary inquiries incident to the traffic stop" that the Supreme Court authorized.
3. Whether a motorist's out-of-state license plates can give an officer reasonable suspicion to conduct a twelve-minute criminal history investigation during an enforcement project where only out-of-state drivers were stopped.
4. Whether the use of a twelve-minute criminal history check can be justified as a necessary officer safety precaution in the absence of any evidence that the officer was concerned for his safety.

## **LIST OF PARTIES**

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## **RELATED CASES**

- UNITED STATES vs. MAYVILLE, No. 2:16-CR-266 JNP, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH. Judgment entered January 11, 2019.
- United States v. Mayville, No. 19-4008, UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT. Judgment entered April 07, 2020

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the United States district court appears at Appendix B and C to the petition and is

<sup>2018 U.S. DIST. LEXIS 38305,</sup>  
 reported at 2017 U.S. DIST. LEXIS 51329; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was April 7, 2020.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: June 19, 2020, and a copy of the order denying rehearing appears at Appendix D.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A \_\_\_\_\_.

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

For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_. A copy of that decision appears at Appendix \_\_\_\_\_.

A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### THE FOURTH AMENDMENT

The Fourth Amendment to the U.S. Constitution provides that “[t]he right of the people to be secure in their houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” U.S. CONST. amend. IV.

“A warrant check makes it possible to determine whether the apparent traffic violator is wanted for one or more previous traffic offenses.” *Rodriguez*, 135 S. Ct. at 1615, (quoting 4 Wayne R. LaFave, *Search & Seizure: A Treatise on the Fourth Amendment* § 9.3(c), at 516 (5<sup>th</sup> ed. 2012)).

“The check can easily add to the total length of the stop, for often criminal history checks take longer to process than the usual license and warrant requests.” 4 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* § 9.3(c), at 517 (5<sup>th</sup> ed. 2012) (quotations and citations omitted).

“there should be a total prohibition (without regard to whether the check increases the time of detention significantly or at all) on use of criminal history checks incident to traffic stops except when there also exists a reasonable suspicion of more serious criminal conduct.” LaFave, *Search and Seizure* § 9.3(c), at 519.

4 Wayne R. LaFave, *Search & Seizure: A Treatise on the Fourth Amendment* § 9.3(c), at 519 (5<sup>th</sup> ed. 2012) (“Because in this ‘war on drugs’ via traffic stops the criminal history check serves to identify drivers who deserve (at least in the officer’s mind) more intense scrutiny, a prohibition on such checks could contribute in a meaningful way to reducing the number of pretext stops as well as the number of stops in the which the motorist is subjected to excessive scrutiny and detention.”).

## STATEMENT OF THE CASE

### *Relevant Facts of the Case*

“Around 1:45 a.m. on May 6, 2016, Utah Highway Patrol Trooper Jason Tripodi was working an enforcement project when he stopped a red Audi for traveling 71 m.p.h. in a 60-m.p.h. zone, in violation of state law. After the Audi came to a stop, Trooper Tripodi observed the driver hunched over in the vehicle as if he was “trying to stash something or hide something.”” *United States v. Mayville*, (10<sup>th</sup> Cir. 2020) Appendix A. Although Trooper Tripodi did later testify to having this concern, during the stop he never once voiced this concern to Mayville or the K-9 officer. (Tripodi dash cam video). “Trooper Tripodi approached the Audi and spoke with Defendant...about his speeding.” *Id.*

“This initial interaction...lasted about six minutes.” *Id.* “Trooper Tripodi asked for Defendant’s license, registration, and proof of insurance. While Defendant searched for these documents, Trooper Tripodi noticed Defendant had trouble finding the requested paperwork.” *Id.* “According to Trooper Tripodi, Defendant “seemed confused” and “wasn’t able to multitask like a normal individual would be able to” during this initial interaction. Trooper Tripodi also observed that Defendant seemed like he “was drowsy, or something was wrong, something was up.” Based on these observations, Trooper Tripodi asked Defendant if he “was ok” multiple times. *Id.* “After several minutes, Defendant provided his out-of-state driver’s license” and proof of insurance “to Trooper Tripodi.” *Id.* Trooper Tripodi did not wait for registration paperwork. Trooper Tripodi testified that “[Mayville] was

still searching for a registration at that point. I just told him at that point don't worry about it, I'll see what I can come up with, more or less." At Transcript Doc. 38 at 29. Trooper Tripodi is not on record ever saying this concerned him, because he returned to his patrol car and retrieved the registration information very quickly by running the license plate on his onboard computer.

The court in *Mayville*, (10<sup>th</sup> Cir. 2020) Appendix A, recognized that most of the ordinary inquiries were completed very fast. "[I]t took less than a minute for Trooper Tripodi's onboard computer to return information that showed Defendant had a valid license, his car was insured, and the car was registered[.]" *Id.* Then a second records check, that took twelve minutes, was conducted. "Trooper Tripodi asked dispatch to run Defendant's license and check for warrants" and he also "requested Defendant's criminal history through the Interstate Identification Index, commonly referred to as a Triple I check. After radioing for the records, but before the dispatch returned the results, Trooper Tripodi requested a narcotic detector dog." *Id.*

The government questioned Trooper Tripodi, see Doc. 38 at 14:

Q – Why did you request a K-9?

A – Well, I was believing that he, you know, had some impairment issues.

And then the fact that it looked like he was stashing something out of sight made me think, you know, there's something a little bit more that I wanted to look into, possibly drug related. So I felt a K-9 would be the best opportunity for that.

Defense counsel questioned Trooper Tripodi, see Doc. 38 at 43:

Q – He was drowsy?

A – Correct.

Q – And you saw him apparently lean over into the passenger side, but his head never disappears?

A – That is correct. And the drowsy, I wanted to investigate that and make sure it wasn't just being drowsy.

Q – That would be what you had observed, which would justify bringing in a K-9 unit and doing this Triple-I request at that point. Is that a fair statement?

A – That's a fair statement.

Q – Anything else? That's it?

A – I mean, his behavior drew my attention and made me suspect something else was going on.

“At approximately 1:59 a.m., Trooper Scott Mackelprang arrived at the scene with his narcotic detector dog, Hasso.” *Mayville*, Appendix A. The two troopers had a very brief exchange, see dash cam at 2:00:09-2:00:18:

Tripodi – “I don't know if he's just super out of it or.”

Mackelprang – “K, I'll get him out and run it real quick.”

It is fair to note the fact that Trooper Tripodi did not articulate any drug trafficking suspicions or officer safety concerns to the other trooper. Trooper Mackelprang testified about this interaction, see Doc. 38 at 59: “When I arrived on the scene, I

made contact with Trooper Tripodi. He made some statements to me, if I recall correctly. Said something was off with the guy, just his mannerisms. He made some statements, I can't remember exactly what those were, but he made some statements to me about his behavior.

Trooper Mackelprang approached the vehicle by himself and began ordering Mayville out of the vehicle. (See Mackelprang video). Right here, at the fifteen minute mark of the stop, the court paused the video to question Trooper Tripodi, see Doc. 38 at 31:

Q – Had you made a decision at that point whether to issue a citation versus a warning?

A – I don't believe I had at that point. I think I—well, I was still trying to investigate the stop. I guess it depended on how it all played out with the impairment side as well.

While waiting for twelve minutes for the criminal history investigation, Trooper Tripodi did not complete the citation, or investigate impairment. "Trooper Tripodi can be heard on his dash cam asking a voice-activated google device about Lake Havasu, Arizona." *Mayville*, (10<sup>th</sup> Cir. 2020). Then "Trooper Mackelprang requested Trooper Tripodi's assistance." *Id.* "Trooper Tripodi patted [Mayville] down for weapons. Trooper Tripodi then stood with Defendant on the side of the road while Trooper Mackelprang had Hasso conduct a free-air sniff around the car." *Id.* Neither of the two officers were diligently working to complete the traffic mission during the suspicionless dog sniff.

“Approximately twelve minutes passed between the time Trooper Tripodi returned to his patrol car after his initial interaction with Defendant and when Hasso alerted to the odor of narcotics in the vehicle.” *Id.* “And less than thirty seconds later, dispatch responded to Trooper Tripodi’s records request with information indicating Defendant had a criminal record. The entirety of the traffic stop, from Trooper Tripodi’s initial contact with Defendant to Hasso’s alert, lasted approximately nineteen minutes.” *Id.* Mayville was never given any explanation from either officer as to why his ordinary stop for speeding turned into him being ordered out of his vehicle by two officers so they could conduct an unrelated dog sniff investigation on his car. (See both Tripodi and Mackelprang dash cam videos)

Trooper Tripodi did a probable cause search of the vehicle based on the positive dog alert. He found paraphernalia under the driver’s seat, two guns and an unattached silencer in the engine compartment, and methamphetamine and heroin in the trunk area.

#### *Procedural History*

Mr. Mayville was charged with one count of possessing methamphetamine with intent to distribute, a violation of 21 U.S.C. § 841(a)(1); one count of possessing heroin with intent to distribute, in violation of the same statute; and one count of being a felon in possession of a firearm, a violation of 18 U.S.C. § 922(g)(1). Dkt. No. 1. Over a year later, the government filed a superseding indictment, adding a

charge of possessing an unregistered firearm silencer in violation of 26 U.S.C. § 5861(d). Dkt. No. 48.

Mr. Mayville filed two motions to suppress. In the first, he argued that Trooper Tripodi unreasonably prolonged the stop with the suspicionless dog sniff. Dkt. No. 41. The district court denied the motion. Dkt. No. 46. Mr. Mayville made a second motion to suppress based on the Fourth Amendment, the Utah Government Records Access and Management Act, and the Equal Protection and Privileges and Immunities Clauses of the Fourteenth Amendment. The district court denied the motion as well. Dkt. No. 134.

Mr. Mayville entered into a conditional guilty plea under Federal Rule of Criminal Procedure 11(c)(1)(C). Dkt. Nos. 184, 198. Mr. Mayville was sentenced to 126 months of imprisonment, to be followed by five years of supervised release. Dkt. No. 198.

Mr. Mayville timely filed a notice of appeal. The United States court of appeals for the Tenth Circuit affirmed the district court's denial of motion to suppress. Mr. Mayville's Petition for rehearing en banc was denied. Mr. Mayville is now timely filing a Petition for a Writ of Certiorari.

## REASONS FOR GRANTING THE PETITION

- I. *When an officer puts the traffic mission on hold to stand on the side of the road during a suspicionless dog sniff, an official lack of diligence has occurred.*

The sum total of reasonable suspicion Trooper Tripodi ever articulated under oath for why he requested a K-9 to the scene consisted of two hunches: 1) An unverified suspicion of possible impairment based on Mayville's drowsy behavior. 2) A thought, that he never shared with anybody during the stop, that Mayville had stashed something under the seat. (at transcript Doc. 38 at 14)

There was not enough reasonable suspicion for a "dog sniff" to become "fairly characterized as part of the officer's traffic mission." *Rodriguez v. United States*, 135 S. Ct. (2015). Therefore, Trooper Tripodi was not allowed to put the traffic mission on hold to help the other officer conduct the dog sniff.

According to Trooper Tripodi's testimony, the sole reason he assisted Trooper Mackelprang to remove Mayville from the vehicle was "so [Trooper Mackelprang] could perform a sniff on the vehicle with his K-9." (at transcript Doc. 38 at 16). The court in *United States v. Mayville*, (10<sup>th</sup> Cir. 2020) approves of how "Trooper Tripodi then stood with Defendant on the side of the road while Trooper Mackelprang had Hasso conduct a free-air sniff around the car." *Id.* The Tenth Circuit concluded that "Based on the record before us, none of the trooper's individual actions suggest a lack of diligence in pursuing the mission of the stop." *Id.*

Because the dog sniff was in fact an unrelated investigation, Trooper Tripodi prolonged the stop by assisting the K-9 officer. The Eleventh Circuit provides a clear explanation based on Supreme Court precedent for how unrelated investigations can be done without extending the stop:

In *Illinois v. Caballes*, an officer making a stop radioed dispatch to report it. 543 U.S. 405, 406, 125 S. Ct. 834, 836 (2005). A second officer “overheard the transmission and immediately headed for the scene with his narcotics-detection dog.” *Id.* The second officer conducted the dog sniff while the first officer “was in the process of writing a warning ticket[.]” *Id.* Thus, because there were multiple officers, one of them was able to conduct an unrelated inquiry without adding time to the stop.

Similarly, in *Johnson*, three officers pulled over a car with three passengers. 555 U.S. at 327, 129 S. Ct. at 784. While one officer made the ordinary inquiries into the driver’s license and registration, another officer questioned the passenger, Johnson. *Id.* at 327-28. This officer made unrelated inquiries into whether Johnson was affiliated with a gang, *id.* at 328, but because the first officer simultaneously followed up on the purpose of the stop, it did not add any time.

*United States v. Campbell*, 912 F.3d 1340 (11<sup>th</sup> Cir. 2019). *See Rodriguez v. United States*, 135 S. Ct. at 1614 (“Our decisions in *Caballes* and *Johnson* heed these constraints. In both cases, we concluded that the Fourth Amendment tolerated

certain unrelated investigations *that did not lengthen the roadside detention.”*  
(emphasis added))

*United States v. Mayville*, (10<sup>th</sup> Cir. 2020) is distinguished from *Caballes* and *Johnson*. In *Mayville*, the troopers actions had to unconstitutionally prolong the stop because neither trooper was working to further the traffic mission during the unrelated dog sniff. Supreme Court precedent says unrelated investigations cannot be done in such a way.

Simply because the officer was waiting for the results of a twelve minute criminal history investigation does not mean he can spend the extra time neglecting the traffic mission to pursue an unrelated dog sniff. *Rodriguez* does not allow an officer to “earn bonus time to pursue [ ] unrelated investigation[s],” even if he “complete[s] all traffic based tasks expeditiously.” 135 S. Ct. at 1616. The same should ring true whether the officer completes his tasks expeditiously or if he chooses a more time consuming means of performing the same tasks.

The district court held that “the troopers could properly complete the records check pursuant to the traffic stop before investigating their suspicions about *Mayville’s impairment.*” *United States v. Mayville*, 2018 U.S. Dist. LEXIS 38305. But the district court allowed the troopers to team up and squeeze in a suspicionless dog sniff during the twelve minute window the Triple I provided. The district court concluded: “Thus, even if the troopers had slightly prolonged the traffic stop, they did so based on their reasonable concern that *Mayville* was driving while impaired. Because the troopers had reasonable suspicions that permitted them to further

detain Mayville, the drug dog indication and subsequent search of his car did not violate his Fourth Amendment rights.” *Id.*

Trooper Mackelprang’s subjective observations of Mayville possibly being impaired came well after Trooper Tripodi’s focus for the stop had shifted to a dog sniff. Trooper Tripodi testified to having impairment suspicions during the stop. But what Trooper Tripodi did in real life had nothing to do with impairment. Trooper Tripodi did not even ask Mayville if he was impaired. What Trooper Tripodi did do was remove Mayville from his car for a dog sniff. “The reasonableness of a seizure, however, depends on what the police in fact do.” *Rodriguez*, 135 S. Ct. (2015).

Appellant’s Opening Brief for the Tenth Circuit asked “Whether running an extensive and time-consuming criminal history background check creates “free time” during which police can neglect the business of the traffic stop to pursue investigations unrelated to it.” The first lack of diligence was that Trooper Tripodi did not even decide on whether to issue a citation versus a warning for the entire stop. Then Trooper Tripodi is heard doing an unrelated google investigation into Mayville’s travel plans. Then Trooper Tripodi gets out of his car and spends his time helping to facilitate a suspicionless dog sniff. The Tenth Circuit court of appeals does not see any of this as “a lack of diligence in pursuing the mission of the stop.” *Mayville*, Appendix A. Somehow the dog sniff is being approved as part of the officers traffic mission. There has not yet been an attempt by the government to justify the dog sniff with reasonable suspicion of criminal activity or drugtrafficking in particular. But without the dog alert there would have been no probable cause to

search Mayville's vehicle. The dog sniff has been treated as no big deal either because the Triple-I was running or because of a possible impairment suspicion.

The Tenth Circuit's conclusion in *Mayville*, Appendix A, states "Because Trooper Tripodi did not unconstitutionally extend the traffic stop by conducting the Triple I check through dispatch, we need not consider whether the troopers possessed reasonable suspicion to prolong the stop to investigate Defendant's potential impairment." *Id.* Whether the officers had a reasonable suspicion of impairment does not need to be considered because no such investigation took place. What needs to be considered is what the police in fact did. A dog sniff conducted based on an officer's suspicion of impairment has not been approved by any court previously. Nor has any other court approved of officers conducting unrelated investigations as long as they have a twelve minute records check pending. The Triple-I yields no information in connection with documenting the stop. The government has used one unrelated investigation to justify doing another unrelated investigation.

Mayville was not ordered out of his vehicle and made to stand on the side of the Interstate Freeway for officer safety reasons. It is not a meritless argument for a driver to expect not to be pulled out of his car for the sole purpose of a suspicionless dog sniff during an ordinary traffic stop. People traveling around the United States should never even have to imagine this happen to them.

*II. The Triple-I is not one of the routine inquiries an officer may conduct during a routine traffic stop and it prolongs the stop.*

See 4 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* § 9.3(c), at 517 (5<sup>th</sup> ed. 2012)(quotations and citations omitted) (“The check can easily add to the total length of the stop, for often criminal history checks take longer to process than the usual license and warrant requests.”)

*Rodriguez v. United States* has delineated “ordinary inquiries incident to the traffic stop. Typically such inquiries include checking the driver’s license, determining whether there are outstanding warrants against the driver, and inspecting the automobile’s registration and proof of insurance.” 135 S. Ct. at 1615. *Rodriguez* also cites a treatise explicitly for the proposition that the purpose of a warrants check is narrowly drawn: “A warrant check makes it possible to determine whether the apparent traffic violator is wanted for one or more previous traffic offenses.” *Id.*, (quoting 4 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* § 9.3(c), at 516(5<sup>th</sup> ed. 2012)). And this very same section of the treatise maintains that “there should be a total prohibition (without regard to whether the check increases the time of detention significantly or at all) on use of criminal history checks incident to traffic stops except when there also exists a reasonable suspicion of more serious criminal conduct.” LaFave, *Search and Seizure* § 9.3(c), at 519.

In *Rodriguez*, the Supreme Court did not authorize a twelve minute criminal history check, such as a Triple I ran through dispatch, as one of the “ordinary inquiries” incident to every traffic stop. 135 S. Ct. 1609, 1615(2015). The court in *United States v. Palmer* emphasized that “the Supreme Court omitted criminal

background checks” in general from its authorized list of ordinary inquiries. 820 F.3d 651 (4<sup>th</sup> Cir. 2016).

In the order denying motion to suppress, the district court held: “the Tenth Circuit has decided that criminal background checks, such as the triple-I, are part of the routine records checks that are incident to a routine traffic stop. Such records checks do not unconstitutionally extend the scope of the stop.” *United States v. Mayville*, 2018 U.S. Dist. LEXIS 38305. The Tenth Circuit affirmed the district court’s decision, holding that “it is reasonable for officers to run Triple I checks through dispatch as part of a routine traffic stop.” *United States v. Mayville*, (10<sup>th</sup> Cir. 2020) The *Mayville* court also held that “an officer may run a background check on a motorist to check for warrants or criminal history even though the purpose of the stop had nothing to do with the motorist’s history,” *id.*, and “in the context of a twenty-minute stop, officers reasonably may search an additional database for criminal history even though it “can be a lengthy process.”” *Id.*

The searching of an additional database for criminal information has been defined by the Ninth Circuit as a non-routine record check. Using Supreme Court precedent, the Ninth Circuit explains that these kinds of inquiries are unreasonable and unrelated:

Non-routine record checks and dog sniffs are paradigm examples of “unrelated investigations” that may not be performed if they prolong a roadside detention absent independent reasonable suspicion. These inquiries “[l]ack[] the same close connection to roadway safety as the ordinary inquiries.” *Rodriguez*,

135 S. Ct. at 1615. We have held that prolonging a traffic stop to perform an ex-felon registration check or a dog sniff is unlawful because these tasks are “aimed at detecting evidence of ordinary criminal wrongdoing” and are not “ordinary inquir[ies] incident to the traffic stop.”

*United States v. Gorman*, 859 F.3d 706 (9<sup>th</sup> Cir. 2017).

“A seizure for a traffic violation justifies a police investigation of that violation.” *Rodriguez*. The Tenth Circuit has expanded the routine traffic stop to include a twelve minute criminal history investigation of the driver. What motorists once expected to be “a relatively brief encounter,” *id.*, can instead last much longer. Making a Triple-I routine only serves to inject unnecessary bias, thus the possibility of unwarranted tension and discrimination, into routine traffic stop situations. If permitted in the absence of reasonable suspicion, Triple-I checks would proliferate racial, and other forms of constitutionally prohibited biases, because it would be yet another tool in the officer’s arsenal which he or she can choose to employ to extend a detention, or to probe for criminal activity outside the scope of the traffic stop. Innocent drivers should not expect to have their entire criminal history be investigated if they commit a traffic violation.

The Tenth Circuit’s authorization of the Triple-I as a reasonable routine inquiry is in conflict with the relevant decisions of the Supreme Court.

*III. Out-of-state motorists should not be subject to a more intrusive traffic stop routine than similarly situated drivers from that state.*

Trooper Tripodi under oath: “So if we run a driver’s license—it depends on the state—it can give us if its valid or not. That’s about it out of that, if its out-of-state.” transcript Doc. 38 at 38.

It does not need to be adjudicated that “criminal history information is readily available to law enforcement agencies and officers through the National Crime Information Center and is said to be instantly available nationally.” LaFave, Search and Seizure § 9.3(c), at 517 (quotation and citation omitted). For important officer safety reasons Highway Patrol car computers are well equipped to very quickly access outstanding warrant and criminal history information from the NCIC database where out-of-state criminal information is shared nationally.

“Trooper Tripodi...testified that he conducted the Triple I check through dispatch because the computer in his patrol car provides limited information, especially with respect to out-of-state drivers. The record plainly shows Defendant provided an out-of-state license and was driving an out-of-state vehicle.” *United States v. Mayville*, (10<sup>th</sup> Cir. 2020) Based on out-of-state residency, Trooper Tripodi wanted a more extensive criminal history investigation than the national database in his patrol car routinely provides. Utah Highway Patrol officers do not always use the Triple-I on out-of-state drivers. But, during the enforcement project, the Triple-I was only used on out-of-state drivers. On record at Doc. 109-I, 109-2, are the dispatch logs from the project. These factual records from The Utah Department of Public Safety show ten troopers making 140 out of 140 traffic stops on out-of-state license plates. Trooper Tripodi pulled over thirteen of these out-of-state travelers.

Not one Utah plate was recorded during the four day project, and not one Triple-I was ran on a Utah resident. Under oath, Agent Barnett inadvertently indicated that Utah drivers received a special pass during the enforcement project, stating: “[If] they provided a Utah driver’s license, they provided registration, and there wasn’t anything hinky, and they (the troopers) just say, okay, I’ll give you a warning and you’re on your way kind of thing, there’s a possibility it wasn’t called into dispatch.” transcript Doc. 103 at 44. The dispatch logs show that 106 of the 140 stops were done much faster without requesting records checks through dispatch. The onboard computerized records checks must have worked for those out-of-state stops.

The Tenth Circuit does not see a problem with how Trooper Tripodi began a twelve-minute unrelated criminal history investigation based on out-of-state residency. In contrast, “other courts have held that out-of-state plates are consistent with innocent behavior and not probative of reasonable suspicion.” *Karnes v. Skrutski*, 62 F.3d 485 (3d Cir. 1995); *United States v. Spears*, 636 Fed. Appx. 893 (5<sup>th</sup> Cir. 2016) (“an out-of-state driver’s license and license plates may not suffice to create reasonable suspicion of criminal activity.”); *United States v. Rodriguez-Arreola*, 270 F.3d 611 (8<sup>th</sup> Cir. 2001) (“the presence of out-of-state plates...are insufficient to support reasonable suspicion.”); *United States v. Wright*, 512 F.3d 466 (8<sup>th</sup> Cir. 2007) (“General profiles that fit large numbers of innocent people do not establish reasonable suspicion.”); *Also see Reid v. Georgia*, 448 U.S. 438, 441, 100 S. Ct. 2752, 65 L.Ed.2d 890 (1980) (holding that circumstances that “describe a

very large category of presumably innocent travelers” are insufficient to support reasonable suspicion.)

The case *United States v. Esteban*, 283 F. Supp. 3d 1115, 1131 (D. Utah 2017) involves the same Trooper Tripodi, and the court made these judicial findings that are relevant to the question presenting in the case at bar: 1) “Trooper Tripodi’s logs for the week before and after this stop (October 8-22, 2016) showed that 35 out of 37 warning citations issued in that period were to vehicles with out-of-state license plates.” *Id.* 2) “[Trooper Tripodi] also acknowledged that he is focused on out-of-state vehicles not because of any particular driving behavior, but because of his criminal interdiction work.” *Id.* 3) “The Triple-I check generally takes longer than the license and warrants checks, and Trooper Tripodi admitted that it was not related to documenting the stop, but that it was for “officer safety issues and also for other means as well.”” *Id.* 4) “Trooper Tripodi estimated that it takes him an average of five to seven minutes to complete a citation report.” *Id.* The *Esteban* case was attached to a supplemental brief by the government in the case at bar, so to be on record for the district court to consider during Mayville’s proceedings.

The dispatch call sheet on record, Doc. 98-I at 6, shows that three K-9 officers (Christopher Shelby 407, Michael Terry 528, Scott Mackelprang 480) were dispatched to the stop directly behind Mayville’s ongoing stop. Trooper Tripodi needed more time for a K-9 to become available. Trooper Tripodi’s average citation time is only five to seven minutes. The dog sniff ended twelve minutes after he received all the information needed to complete the citation. Doing the math, the

dog sniff and the Triple-I contemporaneously added between five to seven minutes to Trooper Tripodi's average citation time. "Because addressing the infraction is the purpose of the stop, it may last no longer than is necessary to effectuate that purpose." *Rodriguez*, 135 S. Ct. (2015). "Authority for the seizure ends when the tasks tied to the infraction are-or reasonably should have been-completed." *Id.*

On record, the dispatch logs show many more examples of the troopers using the Triple-I during the enforcement project. Doc. 98-I at 4 shows a detailed call report of another trooper's stop that same night. This officer ran the same combination through the dispatch as Trooper Tripodi. He ran license, warrants and Triple-I (27, 29, III) and the results took fourteen minutes fourty-four seconds. This trooper also requested a K-9 in the meantime.

Having the Triple-I as a discretionary tool to use on out-of-state drivers gives officers more incentive to pull over out-of-state travelers. A motorist's Fourth Amendment rights, as protected by *Rodriguez*, should not be diminished when he or she drives out of his or her home state into another.

*IV. There must be some evidence that the officer was concerned for his safety in order to justify adding a twelve minute 'negligibly burdensome precaution.'*

Trooper Tripodi was not concerned for his safety. Trooper Tripodi did not even testify that he had officer safety concerns when he requested a Triple-I. The government has justified the prolongation of the stop with 'officer safety' without submitting any evidence that officer safety was an issue.

In *United States v. Palmer* the court approved the use of a criminal history check because “the specific circumstances of the stop indicate[d] the officer had at least some legitimate concern for his own safety.” 820 F.3d 640 (4<sup>th</sup> Cir. 2016). The court in *Mayville*, (10<sup>th</sup> Cir. 2020) has accepted the government’s justification for the Triple-I without pointing to a single particularized circumstance during the stop that required ‘negligibly burdensome’ safety precaution. The court determined the “entirety of the traffic stop” was over as soon as the dog alerted. *Id.* The Triple-I no longer meets the definition of *precaution* if the officers don’t wait for the results.

As noted above, Highway Patrol car computers have access to criminal history and warrants through “the National Crime Information Center and is said to be instantly available nationally.” LaFave, Search and Seizure § 9.3(c), at 517. For officer safety reasons, a reasonable officer would use the fastest, most efficient way to obtain this information. A reasonable inference should be made in Petitioner’s favor that the onboard computerized check would have been much faster than Trooper Tripodi calling into dispatch, having them search the Triple-I database, then relay the results back to him twelve minutes later. It was less safe for Trooper Tripodi to choose the more time consuming option and perform a highly intrusive dog sniff without waiting for the results. Trooper Tripodi sent Trooper Mackelprang, by himself, to hurry in and extract Mayville from the vehicle without knowing if Mayville was wanted. Trooper Tripodi was not particularly concerned for his or the other trooper’s safety.

An officer should be allowed to take certain precautions for his safety if the specific circumstances pose a threat. But that just wasn't the case here. There is no evidence to point to that officer safety was an issue during this ordinary stop for speeding.

Even if the twelve minute criminal history investigation can be justified as a "negligibly burdensome safety precaution," *Rodriguez* at 1616, a suspicionless dog sniff being done in the meantime cannot. "Highway and officer safety are interests different in kind from the Government's endeavor to detect crime in general or drug trafficking in particular." *Id.* "On scene investigation into other crimes, however, detours from that mission. So too do safety precautions taken in order to facilitate such detours." *Id.*

If the Triple-I was in fact a legitimate strategy of buying time to have a second officer show up and do a simultaneous sniff, similar to *Caballes*, Trooper Tripodi still violated Mayville's Fourth Amendment rights by abandoning the traffic mission to assist the second officer. The Tenth Circuit sees no issue with Trooper Tripodi devoting his time to an unrelated investigation. There has been no question on whether this was a suspicionless dog sniff. The question is whether a Triple-I running in the background can excuse any actions of the officer that would otherwise be considered a lack of diligence.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

JR. Mayill

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