

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

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# IN THE SUPREME COURT OF THE UNITED STATES

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**UNITED STATES OF AMERICA,**  
*Respondent,*

-v-

**Mayra Reyes**  
*Petitioner.*

On petition for writ of certiorari to the  
United States Court of Appeals for the Fifth Circuit

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## **PETITION FOR WRIT OF CERTIORARI**

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## **QUESTION PRESENTED FOR REVIEW**

Whether Reyes' 4<sup>th</sup> Amendment Rights were violated by Officer Windham by extending his detention of Reyes for over 20 minutes to allow for a canine to come do an open air sniff of her vehicle without reasonable suspicion to suspect Reyes of a drug related offense.

## **PARTIES TO THE PROCEEDINGS BELOW**

This petition stems from a direct appeal to the Fifth Circuit Court of Appeals from a criminal prosecution in the Northern District of Texas. Mayra Reyes was the defendant/appellant. The United States of America was the plaintiff/prosecutor in the district court, and the plaintiff/appellee in the Fifth Circuit.

## **RULE 29.6 STATEMENT**

Petitioner is not a corporate entity.

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Petitioner Mayra Reyes asks this Court to issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

**OPINION BELOW**

The July 1 2020 opinion of the U.S. Court of Appeals for the Fifth Circuit appears in Appendix A. *United States v. Reyes*, 963 F.3d 482 (5th Cir. 2020)

**JURISDICTION**

The Fifth Circuit Court of Appeals rendered and filed its decision July 1, 2020. This petition was timely filed as it is filed on or before September 30, 2020, which is 90-days from July 1, 2020 counting the first day of this period as July 2, 2020. Fed. R. App. P. 26. The Supreme Court has certiorari jurisdiction under 28 U.S.C. § 1254(1). The Court of Appeals possessed jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3771(d)(3).

## **STATUTORY PROVISIONS INVOLVED**

The 4<sup>th</sup> Amendment to the Constitution of the United States of America 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.

## **STATEMENT OF THE CASE**

### **A. Statement of Facts**

The facts in this case are mostly undisputed and were all presented to the District Court at a Motion to Suppress hearing. Thanks to multiple law enforcement camera, video evidence shows all relevant interactions.

On February 6, 2018, Reyes was traveling West on Interstate 20 in a white Chevy pickup at approximately 7:30 am at a rate of speed of approximately 84 miles per hour. ROA 65, 104. Officer Will Windham (Officer Windham) was situated in the area of Reyes and initiated a traffic stop. ROA 104-105. Officer Windham's vehicle was equipped with video cameras on the day of the stop and filmed his interactions with Reyes and those videos were admitted to evidence in this case at the hearing on Reyes' Motion to Suppress. ROA 105.

At 2:42 in the video Officer Windham approaches Reyes' driver side window introduces himself, tells Reyes he noticed her traveling at a high rate of speed, asks

for her license and insurance, and asks her where she's headed. GOVT. EX. 1. Reyes tells Officer Windham that she is coming from Grand Prairie and she is trying to get her kids to school. ROA 106-07. Officer Windham asks Reyes where her kids are, and she tells him they are in Abilene. ROA 107.

At 3:30 in the video Officer Windham appears to glance at Reyes' license and insurance, and then states "Tell ya what, lets just wait and go have a seat in my car [inaudible] kinda cold out here." Reyes response was "No. It's alright." Indicating that she did not want to get out of the vehicle. ROA 128. Officer Windham then gives a verbal command "Come on out of the car" as he gestures behind him. Reyes refused Officer Windham's requests at least two times, and though the audio on the video is unclear it can be inferred that at one-point Reyes asked "Why" because Officer Windham can be clearly heard responding "... I am asking you to." Finally, Officer Windham opens the door to make sure that Reyes is compliant. Officer Windham testified he was not taking no for an answer that morning. ROA 129.

Reyes and Officer Windham then walk over to Officer Windham's vehicle. The following is a transcript of the interactions of Officer Windham, Reyes, an unknown officer who arrives, and Officer Barnett, the officer who brings the canine:

OFFICER WINDHAM: So, where are you heading? (4:28)

REYES: I am heading to this address.

OFFICER WINDHAM: I thought you said . . . is your pickup in reverse? Oh, you just locked it didn't you.

REYES: Yeah but I left the hazard lights on.

OFFICER WINDHAM: I thought you said you were taking your kids to school?

REYES: Yeah, not my kids, my kids are in Grand Prairie. I'm helping my friend take her kids to school. She doesn't have a car or anything yet, so I ...hmmmm.

OFFICER WINDHAM: Hit start. Hit your start on your GPS wherever you're going to.

REYES: Its ugh. It's morning. (Inaudible)

OFFICER WINDHAM: So are you coming from Grand Prairie this morning . . .  
[interrupted by REYES]

REYES: Mmmhmm. (affirmative)

OFFICER WINDHAM: What time did you leave?

REYES: Three hours ago or so. I pulled over at the gas station, I was there for a minute, and then got some coffee.

OFFICER WINDHAM: Where at? At Loves.

REYES: At Loves.

OFFICER WINDHAM: Oh, ok. So whose truck is it? **(5:30)**

REYES: This is my ex-husband's truck. He just got it.

OFFICER WINDHAM: Your ex-husband's truck?

REYES: Mmhmm (affirmative)

OFFICER WINDHAM: You ever been arrested before?

REYES: Yes.

OFFICER WINDHAM: What for?

REYES: Ummm DWI a while back.

OFFICER WINDHAM: DWI. You haven't been drinking this morning, have you?

REYES: No. . . [inaudible]

OFFICER WINDHAM: Your drinking coffee . . .

REYES: I haven't even tasted it, actually.

OFFICER WINDHAM: Oh.

REYES: I just like got it like right now. Yeah . . . paperwork . . . dealership [inaudible]

OFFICER WINDHAM: Boyfriend?

REYES: Ex-husband. Yeah. We still have the same last name [chuckle].

OFFICER WINDHAM: You don't have anything illegal in this truck, do you?

REYES: No....Noth....No. There shouldn't be, I mean it's brand new. Except ugh being dirty.

OFFICER WINDHAM: You don't have anything illegal in that truck?

REYES: No. There shouldn't be.

OFFICER WINDHAM: Shouldn't be?

REYES: No. There's no way. **(6:29)**

OFFICER WINDHAM: No way.

REYES: No sir [inaudible]. I mean like I said I'm just going over there to drop her off and take her kids to school.

OFFICER WINDHAM: Who are you dropping off? I mean there aint nobody with you. You're by yourself.

REYES: No. I mean I'm going to go pick her up. Go take her kids to school, drop her off, and then...

OFFICER WINDHAM: So you drove all the way from Dallas, or Grand Prairie, to take these kids to school for this lady? That's awful nice?

REYES: Not – Not just for that. I need to see her.

OFFICER WINDHAM: You need to see her? What do you need to see her for?

REYES: We had a relationship before.

OFFICER WINDHAM: You had a relationship before?

REYES: Yeah

OFFICER WINDHAM: Ok.

REYES: ... and her husbands going to be gone at work, so....

OFFICER WINDHAM: Oh.

REYES: Yeah [chuckling]

OFFICER WINDHAM: You're not going to make it to take those kids to school on time. It's already 7:40.

REYES: I guess, I mean it's just to see her to be honest. (7:22)

OFFICER WINDHAM: So is the truck registered out of Oklahoma?

REYES: Mmhmm (affirmative)

OFFICER WINDHAM: Do you have a CHL?

REYES: I used to. [long pause] It's the only time I could see her.

OFFICER WINDHAM: It's the only time you could see her? (8:03)

REYES: Yeah. [chuckling, inaudible]

OFFICER WINDHAM: Does he not work everyday?

REYES: Yeah but I'm not here everyday either. [chuckling]

OFFICER WINDHAM: Where do you live at?

REYES: I live in Grand Prairie.

OFFICER WINDHAM: Do you work?

REYES: Um. No not at the moment, I mean I'm . . . uh . . . not at the moment. I'm [inaudible] having to stay home.

OFFICER WINDHAM: Have you worked?

REYES: Yes.

OFFICER WINDHAM: What kind of work?

REYES: I worked at Walgreens. I was the assistant manager. Ugh.. well actually I had my own business [inaudible] but I guess my original . . . my official job was working at Walgreens.

OFFICER WINDHAM: There's nothing . . . you didn't take anything illegal from Grand Prairie, taking it to Abilene, are you? **(8:54)**

REYES: No, sir.

OFFICER WINDHAM: Nothing illegal in that truck

REYES: No. I drove here to see my girlfriend.

OFFICER WINDHAM: Well, I mean, you started lying to me first, and that starts raising red flags and suspicion . . .

REYES: I just didn't want to say that I was going to see a girl that's married and I'm married, well not married, but . . . basically. So...you know I mean, her kid, I mean my kid [inaudible] thirteen.

OFFICER WINDHAM: Alright. Well, listen, part of my job for the Texas Highway Patrol is criminal drug interdiction. Make sure you're not trekking any type of illegal drugs, narcotics, guns, knives, weapons, nothing like that. You don't have anything like that in that pickup, do you? **(9:49)**

REYES: No sir.

OFFICER WINDHAM: Ok. There's no marijuana in there?

REYES: No, sir. It would smell like marijuana

OFFICER WINDHAM: Cocaine?

REYES: No sir.

OFFICER WINDHAM: Heroine?

REYES: No, sir.

OFFICER WINDHAM: Methamphetamine?

REYES: No, sir.

OFFICER WINDHAM: Nothing like that?

REYES: Nothing like that.

OFFICER WINDHAM: No stolen property? Nothing like that?

REYES: No sir.

OFFICER WINDHAM: Are you sure?

REYES: Yeah.

OFFICER WINDHAM: Will you let me search that truck? **(10:18)**

REYES: That's not my truck.

OFFICER WINDHAM: I didn't ask that.

REYES: I can't let you search it because it's not my truck.

OFFICER WINDHAM: You can. You can let me search it. Let me, let me explain something to you: who else is in that pickup?

REYES: Nobody.

OFFICER WINDHAM: you have care custody and control of that vehicle, ok, so you get what I'm saying?

REYES: I get that . . . [Inaudible]

OFFICER WINDHAM: It's yes or no, can I search that vehicle?

REYES: Ugh no sir. If you can give him a call and [inaudible]

OFFICER WINDHAM: No. It doesn't work that way. I don't know who this guy is. I don't know if he is actually the owner, but you are the one that has care custody and control of that vehicle right now. **(10:54)**

REYES: You have that paper right there.

OFFICER WINDHAM: I do have [inaudible] . . . so hold on to that.

[paper shuffling]

OFFICER WINDHAM: Here's what's going to happen [REYES interrupts inaudible] . . . here's what's gunna happen I'm about to call a canine to come to our location if there's one available. If the dog runs on the vehicle, it does an open air sniff, if the dog alerts to the odor of a narcotic it does give me probably cause to search that truck, ok? So . . .

OFFICER WINDHAM: 5624 . . . [calls in a canine] **(11:30)**

OFFICER WINDHAM: I'm going to check the VIN on that truck real quick, I'll do that from the windshield though . . . make sure it matches. . . .not going to get returned. **(12:00)**

[inaudible dialog, papers shuffling]

Radio Voice: He's going to be in route to you shortly.

OFFICER WINDHAM: 10-4. Appreciate it. [paper shuffling] **(13:00)**

OFFICER WINDHAM: You got any weapons on you? You got a lot of stuff in that shirt there . . . jacket. Wallet. Cigarettes. Anything else? [inaudible dialog]

REYES: It's just puffy.

OFFICER WINDHAM: Your good.

REYES: Can I have a cigarette? No?

OFFICER WINDHAM: Now? You can't smoke in my car.

REYES: Can I open the door and smoke in your car? (chuckling)

OFFICER WINDHAM: Can you open the door and smoke in my car? That don't make no sense to me.

REYES: Well not in your car but, puff it out?

OFFICER WINDHAM: Puff it out?

REYES: [laughing]

OFFICER WINDHAM: You can stand outside and smoke one, I'm gunna grab that VIN on that truck. Don't take off running on me, I don't want to run this morning.

**(13:44)**

OFFICER WINDHAM: You gunna smoke?

REYES: Huh?

OFFICER WINDHAM: You gunna smoke?

REYES: No lighter. [chuckling]

OFFICER WINDHAM: You need a lighter?

REYES: huh?

OFFICER WINDHAM: Got one in the truck?

REYES: I don't even know. . .[inaudible]

OFFICER WINDHAM: Alright. Step outside real quick while I grab that VIN.

**(14:52)**

OFFICER WINDHAM: Alright. You can have your seat back **(16:14)**

OFFICER WINDHAM: It's cold out there.

REYES: The VIN matches, right?

OFFICER WINDHAM: I'm looking . . .

[Unknown Officer Approaches]

OFFICER WINDHAM: Morning. **(16:57)**

UNKNOWN OFFICER: Morning. How are you?

OFFICER WINDHAM: Oh pretty good, how are ya?

UNKNOWN OFFICER: Trying to stay warm.

OFFICER WINDHAM: It's cold. Who's coming

UNKNOWN OFFICER: Barnett. He's got the most reliable dog. **(17:15)**

OFFICER WINDHAM: Yeah. That's good.

OFFICER WINDHAM: Yall been busy?

UNKNOWN OFFICER: [inaudible]

OFFICER WINDHAM: Yeah Yeah

UNKNOWN OFFICER: No not yet. I'm starting my day. Bout to have to go to Intermediate and talk to some kids. **(17:30)**

UNKNOWN OFFICER: He say how long it would take him to get here? Not Long? He lives here in town, don't he?

OFFICER WINDHAM: Yeah.

UNKNOWN OFFICER: Ok, yeah.

UNKNOWN OFFICER: Is he good about responding quick? **(18:04)**

OFFICER WINDHAM: Yeah

OFFICER WINDHAM: What else you been arrested for? **(18:42)**

REYES: Umm, tickets, warrants, and warrants on tickets stuff like that.

OFFICER WINDHAM: Warrants. Tickets, and warrants, DWI's. What about narcotics?

REYES: DWI. Yeah it was umm my ex-girlfriend's vehicle

OFFICER WINDHAM: Your ex-girlfriend's vehicle? What was it?

REYES: What was it?

OFFICER WINDHAM: Yeah. What did you get arrested for?

REYES: Umm, they gave me possession of...

OFFICER WINDHAM: Possession of what?

REYES: I think it was a pill, I don't remember to be honest.

UNKNOWN OFFICER: Pharmacy was broken into last night. For the second time.

OFFICER WINDHAM: They get a bunch? **(19:33)**

UNKNOWN OFFICER: Uh, from what they could tell it just maybe one shelf, they just took out a trash can. Wearing a pretty distinctive jacket, it's a black, black jacket with a big ol' skull on the back, looks like it has wings on it. Might have to post through the media or something and see if we can get any information.

OFFICER WINDHAM: So you think it was some type of pills? **(20:05)**

REYES: Oh, what?

OFFICER WINDHAM: What you got arrested for?

REYES: Uh, I believe it was methamphetamine.

OFFICER WINDHAM: Methamphetamine? When was that?

REYES: Two thousand...11 maybe? I don't remember to be honest.

OFFICER WINDHAM: 2015 sound better? Sound better. So did you go to TDC for that? **(20:38)**

REYES: Mmhmm.

OFFICER WINDHAM: Are you on parole right now?

REYES: No, no I didn't go to TDC. I just did plain state

OFFICER WINDHAM: Yeah.

REYES: That's your radar? **(21:42)**

OFFICER WINDHAM: Right there. That's how fast you were going. 84, too fast. Gets you stopped every time.

REYES: I was nearly just getting back on the freeway from there.

OFFICER WINDHAM: You were on the freeway for like 4 miles. From last where I was sitting it's almost 4 miles. You just got carried away, you were ready to get to Abilene. You were on the downhill stretch, huh.

REYES: (laughs) Guess so.

UNKNOWN OFFICER: Supposed to rain today. **(22:53)**

OFFICER WINDHAM: I know it. I knew we had a chance.

UNKNOWN OFFICER: Huh?

OFFICER WINDHAM: I knew there was a chance. I'm, we need it but I hope it don't. (laughs) Unless it waits till after like 4 or 5 and then it can rain all it wants.

UNKNOWN OFFICER: (laughs) That's exactly how I feel.

OFFICER WINDHAM: So why does your ex-husband let you have this truck?  
**(23:32)**

REYES: He doesn't let me have it.

OFFICER WINDHAM: That registration looks expired on that truck. I just now seen that.

REYES: What do you mean it's expired.

OFFICER WINDHAM: Look 1-22 of 18.

REYES: That's when he got it isn't it?

OFFICER WINDHAM: Oh is it?

REYES: Yeah, that's when he got it.

OFFICER WINDHAM: Oh, ok.

REYES: Why you lying?

OFFICER WINDHAM: I'm not lying. In Texas that's usually when they expire.

REYES: It's from Oklahoma, not a Texas truck

OFFICER WINDHAM: I know it said Oklahoma.

REYES: You scared me there, I was like what do you mean it's expired, no.

OFFICER WINDHAM: Why's he letting you drive it?

REYES: For our kid, to take her to school and all that.

OFFICER WINDHAM: These kids to take to school too.

REYES: No.

OFFICER WINDHAM: Huh

REYES: No.

OFFICER WINDHAM: Where's he at right now? **(24:18)**

REYES: Oklahoma.

OFFICER WINDHAM: He's in Oklahoma?

REYES: Mmhmm. He's supposed to come back and get that truck.

OFFICER WINDHAM: When?

REYES: Either today or tomorrow, whenever he's off work.

REYES: He's supposed to get me a smaller car. (24:38)

OFFICER WINDHAM: He's supposed to get you a smaller car?

REYES: Yeah, like a used car, he does mechanic shop.

OFFICER WINDHAM: Oh.

OFFICER WINDHAM: When did you pick up this car? Or when did he bring it to you? (25:31)

REYES: Umm, probably like not last night, the night before that.

OFFICER WINDHAM: The night before last?

REYES: The night before last.

REYES: He doesn't even know that I took it.

OFFICER WINDHAM: Huh?

REYES: He doesn't even know that I brought it over here.

OFFICER WINDHAM: He doesn't know you brought it? (25:57)

REYES: Not over here!

OFFICER WINDHAM: Oh goodness

REYES: Cause he told me not to get in trouble.

OFFICER WINDHAM: Is he gonna be mad?

REYES: I don't know.

OFFICER WINDHAM: Huh?

REYES: I don't know.

OFFICER WINDHAM: You don't know?

REYES: We're not together, so.

OFFICER WINDHAM: Have you ever smoked any type of marijuana or narcotics in that pickup? **(26:15)**

REYES: No.

OFFICER WINDHAM: Does he use drugs?

REYES: Not that I know of

OFFICER WINDHAM: Not that you know of?

REYES: No, like I said, we are not together.

UNKNOWN OFFICER: Just so you know, when Barnett gets here, I'll move.

**(26:31)**

OFFICER WINDHAM: (laughs) You got it, I appreciate it. Did the other ones stop?

UNKNOWN OFFICER: Yes, that's Lemon's, he just moved around over there,

OFFICER WINDHAM: Oh.

OFFICER WINDHAM: Yeah, he's just posting up over there.

UNKNOWN OFFICER: How do you know this girl? **(27:10)**

REYES: I know her from uh, back when we uh, were locked up together.

OFFICER WINDHAM: In prison together?

REYES: She was my girlfriend in prison.

OFFICER WINDHAM: She was your girlfriend; she was your girlfriend in prison?

REYES: Yes.

OFFICER WINDHAM: (laughs) You see why, you know, when I first stop you, you were so nervous, as soon as I stop you I'm taking my kids to school that's what you tell me. And I look in the backseat, well I look in the backseat and I don't see no kids in there. Then you say you're from Grand Prairie, so I mean, you see where I'm coming from, your nervousness, you're throwing a bunch of red **(27:28)**

REYES: I wasn't nervous, it's just the fact that I just don't need my kids find out anything, or her kids find out anything. But other than that.

OFFICER WINDHAM: But you see where I'm coming from, why we're doing all of this. Then you're lying to me, then you finally start trying to tell me the truth, now do I know if that's the truth or not because you've been lying to me this whole time.

REYES: I haven't lied to you.

OFFICER WINDHAM: You taking your kids to school?

REYES: Yeah, I'm taking him to school, yeah.

OFFICER WINDHAM: Those ain't your kids, those are her kids.

REYES: Ok.

OFFICER WINDHAM: So, you drove from Grand Prairie to Abilene to take...

REYES: There was mainly, it was mainly for her, not to see, not to see the kids and give them a ride, but mainly to see her and to see the kids.

OFFICER WINDHAM: You ever eat over there? **(28:43)**

UNKNOWN OFFICER: Yeah man, they got some good food.

OFFICER WINDHAM: It is good.

UNKNOWN OFFICER: Yeah, I usually get their menudo or their street tacos.

OFFICER WINDHAM: I heard their street tacos are real good.

UNKNOWN OFFICER: Yeah, they are. They give you, they typically give you four, sometimes I end up ordering two extra.

OFFICER WINDHAM: Yeah.

UNKNOWN OFFICER: They're pretty good. You like menudo?

OFFICER WINDHAM: I do.

UNKNOWN OFFICER: Yeah, it's pretty good too.

OFFICER WINDHAM: I appreciate you stopping. **(29:18)**

UNKNOWN OFFICER: Uh huh.

OFFICER WINDHAM: I'm not getting her out with this guys dog, he's got a mean one. Sit in the car.

OFFICER WINDHAM: Morning. **(29:54)**

(muffled run down of traffic stop)

OFFICER WINDHAM: Hey go ahead and step out of the car.

OFFICER BARNETT: Hey, how you doing? I'm Officer Barnett with Clyde Police Department. Anything in the car I need to know about?

REYES: No.

OFFICER BARNETT: No drugs?

REYES: No.

OFFICER BARNETT: Large amounts of currency?

REYES: No.

OFFICER BARNETT: Cocaine, Marijuana, Methamphetamine, Heroine?

REYES: No.

OFFICER BARNETT: Ok. **(30:40)**

(Searches car with canine)

**(END VIDEO) (31:50)**

Officer Barnett's canine gave an alert signaling the presence of narcotics in Reyes' truck. ROA 121-122. A search was done of the vehicle and a Tupperware container with 5 ounces of methamphetamine was located in the vehicle.

Of note, the evidence shows Officer Windham cited nervousness of Reyes, her unusual story, that her story changed, that Reyes asked "What about the truck?", that Reyes resisted exiting the truck and locked the door to the truck after he removed her from it, and that the truck did not belong to Reyes as the facts which gave rise to reasonable suspicion. ROA 110-15. These are all observations Officer Windham

observed before calling of the canine. After the canine has already been called for Officer Windham learns of the following: 1) Reyes' criminal history, that she was previously arrested for and convicted of a narcotics related offense, 2) Reyes changing her mind about whether she wants to smoke a cigarette, and that she wouldn't go to the truck to get a lighter, as facts which give him additional support for his finding of reasonable suspicion authorizing his delay of Reyes for the drug dog to arrive.. ROA 13:00-20:00.

## **B. Procedural History**

### **1. Indictment**

On August 8, 2018, Reyes was charged in a four count indictment with the following offenses: 1) Conspiracy to distribute and possess with intent to distribute 50 grams or more of methamphetamine in violation of 21 U.S.C. §846; 2) Possession with intent to distribute 50 grams or more of methamphetamine in violation of 21 U.S.C. §841(a)(1), §841(b)(1)(B)(viii); 3) Possession of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. §924(c); 4) Convicted felon in possession of a firearm and ammunition in violation of 18 U.S.C. §§922(g)(1), 924(a)(2).

## **2. Motion to Suppress**

Reyes filed a Motion to Suppress on September 11, 2018. A hearing was held on September 20, 2018 where Officer Windham was the only witness. The District Court issued the following ruling from the bench:

The Court, having heard the testimony and argument of counsel, finds that the traffic stop and subsequent search did not violate the defendant's Fourth Amendment rights. The Court finds that Trooper Windham had a reasonable suspicion to extend the traffic stop until a narcotics detection k-9 unit could arrive.

The Court further finds that the defendant's statements will not be suppressed, because the Miranda case does not apply. The defendant was not in custody for purposes of that case. The sixth Amendment right to counsel does not apply, because no adversarial judicial proceedings had been instituted at the time in question. The Motion to Suppress will be denied.

ROA 153.

## **3. Re-arraignment Pursuant to Written Plea Agreement**

### **a. Re-arraignment**

Reyes was re-arraigned on November 1, 2018, where she pleaded "guilty" pursuant to a written, conditional, plea agreement before Magistrate Judge Frost. ROA.155.

## **4. PSR**

The PSR issued on January 9, 2019. ROA.182.

## **5. Objections**

No objections to the PSR were made by the Government or Defense.

## **6. Sentencing**

Sentencing was held on March 8, 2019. ROA 203. The Court adopted the PSR in its entirety. Neither the Government nor the defense presented any evidence or made any argument at sentencing.

The Court sentenced Reyes in accordance with the guideline range by sentencing Reyes to 121 months confinement, along with 5 years of supervised release and the mandatory special assessment of \$100. ROA 169-70.

### **ARGUMENTS & AUTHORITIES** **ON REYES QUESTIONS FOR REVIEW**

#### **I. THIS COURT SHOULD GRANT THE WRIT TO SHARPEN THE STANDARDS ARTICULATED IN *RODRIGUEZ V. UNITED STATES*, 575 US 348 (2015) TO PREVENT OFFICERS SEARCHING BASED ON A HUNCH.**

##### ***a. Rodriguez Extends Protections of Drivers From Unreasonable Searches***

In 2015 The United States Supreme Court issued a landmark decision *Rodriguez v. United States*, 575 US 348 (2015) which established the legal analysis for interpreting the legality of law enforcement's actions during roadside detentions. In terms of usefulness to the typical American citizen *Rodriguez* is one of the most practical Supreme Court cases. Data from the Stanford Open Policing Project found that approximately 50,000 roadside detentions are made everyday and 20 million motorists are stopped by law enforcement every year. *Rodriguez* is implicated by

every one of those stops making it one of the most influential Supreme Court Cases in modern times. Its purpose is to keep people free from the unlawful detention and search of Americans by law enforcement, both state and federal, as they travel the country's roadways.

The *Rodriguez* case concerns Dennys Rodriguez a man who was stopped just after midnight on Nebraska State Highway 275 for veering slowly onto the shoulder for one or two seconds and then coming back into the lane. The officer conducting the stop, Struble, asked standard questions related to the purpose of the stop, wrote Rodriguez a warning, and then after he had all the reasons of the stop out of the way asked to allow his dog to walk around the vehicle. When Rodriguez denied this request, Struble instructed him to exit the vehicle. The District Court that heard the motion to suppress determined Rodriguez was held 7-10 minutes while a dog was retrieved. The dog alerted to the presence of narcotics, and a search of the vehicle revealed the presence of a bag of methamphetamine.

Relying on then existing 8<sup>th</sup> circuit precedent, the District Court determined that Stuble had violated Rodriguez's 4<sup>th</sup> amendment right to be free from unreasonable searches and seizures because there was no basis for reasonable suspicion except from the dog's alert, but the violation of Rodriguez's rights by prolonging the detention was only a *de minimis* one, and was therefore permissible. On appeal the denial of the motion to suppress was upheld. The Supreme Court,

however, broke from existing norms and reversed the case, finding that *there is no de minimus exception* that permits law enforcement to encroach on a person's 4<sup>th</sup> amendment freedom.

In *Rodriguez*, decision was articulated deftly by the late Justice Ginsburg giving heed to previous Supreme Court decisions. Justice Ginsburg writes:

Like a *Terry* stop, the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's "mission"—to address the traffic violation that warranted the stop, *Caballes*, 543 U.S., at 407, 125 S.Ct. 834 and attend to related safety concerns, *infra*, at 1619 – 1620. See also *United States v. Sharpe*, 470 U.S. 675, 685, 105 S.Ct. 1568, 84 L.Ed.2d 605 (1985); *Florida v. Royer*, 460 U.S. 491, 500, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983) (plurality opinion) ("The scope of the detention must be carefully tailored to its underlying justification."). Because addressing the infraction is the purpose of the stop, it may "last no longer than is necessary to effectuate th[at] purpose." *Ibid.* See also *Caballes*, 543 U.S., at 407, 125 S.Ct. 834. Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed. *See Sharpe*, 470 U.S., at 686, 105 S.Ct. 1568 (in determining the reasonable duration of a stop, "it [is] appropriate to examine whether the police diligently pursued [the] investigation").

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. *Johnson*, 555 U.S., at 327–328, 129 S.Ct. 781 (questioning); *Caballes*, 543 U.S., at 406, 408, 125 S.Ct. 834 (dog sniff). In *Caballes*, however, we cautioned that a traffic stop "can become unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission" of issuing a warning ticket. 543 U.S., at 407, 125 S.Ct. 834. And we repeated that admonition in *Johnson* : The seizure remains lawful only "so long as [unrelated] inquiries do not measurably extend the duration of the stop." 555 U.S., at 333, 129 S.Ct. 781. *See also Muehler v. Mena*, 544 U.S. 93, 101, 125 S.Ct. 1465, 161 L.Ed.2d 299 (2005) (because unrelated

inquiries did not “exten[d] the time [petitioner] was detained[,] ... no additional Fourth Amendment justification ... was required”). An officer, in other words, may conduct certain unrelated checks during an otherwise lawful traffic stop. But contrary to Justice ALITO’s suggestion, post, at 1625, n. 2, he may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual.

*Rodriguez* at 354-55.

This analysis should completely foreclose an officer’s ability to perform searches based only on a hunch or extend stops without some good justification – reasonable suspicion. The *de minimis* exception that allowed law enforcement to encroach on a motorist’s freedoms as long as it didn’t appear egregious is no more. If an officer makes a person wait for a drug dog to arrive, they must have the same level of evidence needed to detain someone in a public place which requires specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. *Terry v. Ohio*, 392 U.S. 1 (1967).

In its application, *Rodriguez* requires Judges to look for the following in roadside detention cases:

- 1) What was the motivation the officer had to pull the driver over?**  
Whatever the reason for the stop, the officer must investigate that matter and not extend the stop by searching for information about an unrelated matter.
- 2) Did the information the officer sought during the stop concern the officer’s reason for pulling over the driver?** An officer may conduct certain unrelated checks, but not if it adds “measurable time” to the detention.

- 3) Did the officer's search for unrelated information measurably extend the time of the stop past the time reasonably necessary to accomplish the mission of the stop?** If so, the officer must have reasonable suspicion that the driver is in the act of committing or about to commit a crime.
- 4) Did the officer detain the driver longer than necessary to accomplish the stops mission?** Same as 3) above. There must be reasonable suspicion.
- 5) What did the officer observe that gave him reasonable suspicion to detain the driver longer than necessary to accomplish to mission of the stop?** Whatever facts the officer relies on, must be observable at or before the time the stop becomes measurably delayed. The officer cannot rely on information he obtained after he should have already released the driver.
- 6) Are the inferences the officer made rationally related to the observable facts, and do those warrant/merit the intrusion on the driver's freedom?** The officer may be ready to infer that a crime is afoot, but we don't judge his inference based on whether he truly believed it (good faith), rather we look to see if there is an objective basis between the observed facts and the officers suspicion. See *Prado Navarette v. California*, 572 U. S., 373 at 396 (2014). Reasonable suspicion is determined by looking at "the whole picture," Id., at 397, taking into account "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act," *Ornelas v. United States*, 517 U. S. 690, 695 (1996) (internal quotation marks omitted).

In sum, *Rodriguez*, a 6-3 decision, extends what *Terry v. Ohio* established regarding the right to be left alone by law enforcement when in the public arena. They can only intrude when the circumstances demonstrate that a reasonable officer would think criminal activity is afoot.

#### ***b. The Precedent in Reyes Will Frustrate The Purpose of Rodriguez***

Since its publication, *Rodriguez* has protected many people from law enforcement overstepping its bounds on public thoroughfares. However, there has been a growing trend in the 5<sup>th</sup> Circuit and elsewhere to limit Rodriguez's protections

by decreasing the standard for reasonable suspicion so that an officer gets reasonable suspicion regarding any motorist during a stop no matter how benign the circumstances are.

The latest in the trend to diminish freedoms protected by *Rodriguez* is this case, *United States v. Reyes*, 963 F.3d 482 (2020). The facts of Reyes are mostly undisputed because video evidence captures all relevant conduct. Reyes was pulled over for speeding (84 in a 75) while heading west towards Abilene on Interstate 20 just outside of Baird, Texas at 7:30 am February 6, 2018. In finding reasonable suspicion to detain Reyes over 30 minutes before a drug dog arrived, the Court relied on 1) officers 3 years of general drug interdiction experience, 2) Reyes drove a truck registered in someone else's name, 3) Reyes refused to exit the truck and then locked it after exiting, 4) Reyes' explanation changed – she added details, 4) Reyes had a conviction for possession of meth – [this was learned after calling for the drug dog] 5) Reyes didn't answer "yes" or "no" when asked if there were drugs in the vehicle, rather she stated "There shouldn't be. It's brand new." *Reyes* at 10-11. While Reyes argues these factors are specifically disclaimed by prior cases, the Court found the totality of the circumstances showed that they created reasonable suspicion.

The cases the 5<sup>th</sup> Circuit sites to in Reyes are similar in that they allow the testifying officer to name several benign observations that total reasonable suspicion: *United States v. Smith*, 952 F.3d 642 (5<sup>th</sup> Cir. 2020) (reasonable suspicion

where driver had implausible story about ice-maker, and traveling on I-55 a drug trafficking corridor); *United States v. Glenn*, 931 F. 3d 424 (5<sup>th</sup> Cir. 2019)(rental vehicle plus tinted license plate cover plus location on major highway equals reasonable suspicion). *United States v. Pack*, 612 F.3d 341 (5<sup>th</sup> Cir. 2010)(officers experience, extreme nervousness, inconsistent stories, location on I-30).

***c. Reyes Breaks From Previous Circuit Precedent***

The above cited cases that were relied on in *Reyes* break from previous established, well-reasoned, precedent. The 5<sup>th</sup> Circuit in *United States v. Cavitt*, 550 F.3d 430 (5th Cir. 2008) and *United States v. Santiago*, 310 F.3d 336 (5th Cir. 2002) articulated certain behaviors and circumstances that when observed in isolation, *or even together*, do not give rise to reasonable suspicion.

The defendant in *Cavitt* was pulled over for speeding in a construction zone and failing to signal before changing lanes. *Cavitt* at 433 The officer noted that Cavitt did not match his drivers license photo and questioned Cavitt on his itinerary. *Id.* at 434. Cavitt told the officer he was heading back to Illinois from Lancaster, Texas where he was visiting his daughter. *Id.* The mini-van Cavitt was driving was rented, and when asked Cavitt produced documents evidencing such. *Id.* It was raining hard during the stop. *Id.* The officer noticed some bags in the mini-van and asked if Cavitt was moving to which Cavitt explained he had recently gone shopping. *Id.* The officer then went to his patrol car and said he would return shortly. *Id.* The officer

went back to his vehicle and discussed with his ride-along how he “sure wish he could search this guy” and that he didn’t believe the stories offered up. *Id.* Both officers were given pause at the time and date the rental were due back in Illinois as well – it was for just 2 days. *Id.* The officers then hatched a plan to prolong the stop by asking if Cavitt would follow them to a nearby covering to continue the stop. *Id.* Cavitt was questioned more at the covering about his itinerary and about drug use history. *Id.* Cavitt was asked and denied having drugs in the vehicle. *Id* at 435. An officer noticed black trashbags and asked to search the vehicle. *Id* Cavitt responded “yea, sure” and a few seconds later attempted to flee. *Id* The officers subdued Cavitt, searched the van and found drugs. *Id*

The 5<sup>th</sup> Circuit in finding no reasonable suspicion noted there must be something “more than the officer’s sense that the detainee has something to hide.” Or even that he is in the act of hiding it as Cavitt clearly was doing. *Id.* at 437.

In Cavitt the Court heavily relied on its reasonings in *Santiago*. In *United States v. Santiago*, 310 F.3d 336 (5th Cir.2002), the defendant, who was questioned at a commercial truck check point, appeared to be lying and/or withholding information from the officers. *Santiago* at 338. He appeared to not remember the name of his passenger, though he had told the officers she was his wife. *Id.* The officers asked who “Justina Orochco” was and defendant appeared to be hit over the head with a sledgehammer and told the officers “That is my other wife.” *Id.* at 339 The troopers

investigating Santiago found him to be nervous and his answers very suspicious and believed Santiago was concealing something. *Id.* However, based on the registration, the vehicle did not appear to be stolen and the children with Santiago did not appear to be abducted. *Id.* The officers released Santiago but soon after obtained his consent to search for drugs, and they found drugs. *Id.*

The Court in *Santiago* found the original justification for the stop ended when the computer check was completed because at that point there was no reasonable or articulable suspicion that Santiago was trafficking in drugs because all they had were unusual and seemingly false answers to questions and nervousness in the driver. The Court cited to *United States v. Dorch*, 199 F.3d 193 (5th Cir. 1999) (holding that conflicting stories from the driver and passenger about from where they traveled and the fact that neither were listed as authorized drivers on the rental agreement and the driver's nervousness did not give rise to reasonable suspicion) and *United States v. Valadez*, 267 F.3d 395 (5th Cir. 2001)(holding that once the officer determined that the registration sticker and window tint were valid, which were the reasons for the stop, there was no reasonable suspicion to further detain the driver, even to run a computer check for criminal history).

***d. Circuit Precedent Now Allows Law Enforcement To Search Based on A Hunch***

*Cavitt* and *Santiago* are cited in this brief as “well-reasoned” above because they impose the standard articulated by *Rodriguez* and its predecessor, *Terry*, that law enforcement does not have reasonable suspicion when it merely demonstrates facts giving an “unparticularized suspicion or a hunch.” *Terry* at 27.

The way previous cases allow a hunch to rule the day is by allowing consideration of facts that are too generalized, or that apply to too many drivers on the road. The law requires “specific articulable facts”, but the courts have at times shirked the requirement of the nexus tying those facts to a conclusion that is reasonable, and over time have relied on their previous decisions that yield too much ground to law enforcement. See *Cavitt* at 438 (the Government must establish some nexus between a specific criminal activity and [officers observed circumstances]) quoting *United States v. Jenson*, 462 F.3d 399 (5th Cir. 2006).

Consideration of the location of a driver in a “known drug trafficking corridor” could be instructive, but the location commonly cited is merely on an interstate without particularization: *Reyes* at 10 (Interstate 20 over 100 miles from Dallas a known “source city”); *Pack* at 361 (Interstate 30); *Smith* at 649-50 (Interstate 55 in Hernando Mississippi); *Glenn* at 429 (Interstate 10 in Louisiana). Interstates are notoriously the most heavily traveled roads in the United States. No doubt drugs are transported on interstates, but so is everything else so making a nexus between that

factor and suspicion of criminal activity should be impossible. Allowing that factor makes every person on an interstate, or within 100 miles of Dallas Texas (according to Reyes) subject to search.

Cases also commonly cite nervousness or anxiety in the defendant: *Pack* at 362 (carotid artery visibly pulsing), *Glenn* at 429 (Glenn was anxious to remove license plate cover; *Reyes* at 11 (dramatic facial expression change when asked if contraband present in truck). It used to be that the courts were right skeptical of an officer who cited nervousness as a basis for authorizing a search. See *United States v. Perkins*, 348 F.3d 965, 970 (11th Cir. 2003) (nervousness and “inconsistent statements” about who defendants were going to visit insufficient, noting that a traffic stop is itself is an “unsettling show of authority that may create substantial anxiety”); *United States v. Townsend*, 305 F.3d 537, 543 (6th Cir. 2002) (failure to satisfy officer’s curiosity about one’s purpose for late night travel and nervousness are insufficient); *United States v. Jones*, 269 F.3d 919, 928–29 (8th Cir. 2001) (nervousness and inconsistent statements about one’s prior criminal history insufficient); *United States v. Salzano*, 158 F.3d 1107, 1112-14 (10th Cir. 1998) (defendant’s failure to satisfy officer’s curiosity about his travel itinerary and nervousness insufficient). Court’s today, however, appear willing to give the officer the benefit of the doubt based on training and experience.

The Supreme Court has instructed that deference to officer experience is important – “We give due weight to the officer’s factual inferences [to draw on] their experience and specialized training” *Smith* at 649 (quoting *United States v. Arvizu*, 534 U.S. 266 (2002) – but how much is enough experience to trust, and what is the nature of trustworthy experience or specialized training? Is it good enough to just be a law enforcement officer for a few years, or do those years need to be working in a certain area, such as roadside detentions? – it appears the circuits don’t really care most of the time as long as “experience” is noted in the testimony. In *Reyes*, the officer cited three years of unparticularized experience. *Reyes* at 3. In *Smith* the Court cited to the officers unparticularized experience “that when drivers are dishonest, it usually indicates they are hiding contraband.” *Smith* at 649. In *Smith* the court was not concerned with citing how much experience. The court in *Pack* seemed to carve out an exception for the officer in that case, stating that *his suspicion* was entitled to considerable weight given his 17-years of experience. *Pack* at 361. However, it seems future cases seem less concerned with the amount of experience, only that the officer has some.

Inconsistent or implausible stories are another oft cited indicator of criminal activity. The 5<sup>th</sup> Circuit once had a strong analysis for lies, it said “As to [a] purported lie, the question is whether it was reasonable for someone in [the officer’s] shoes to view the answers as suspicious, not whether they are convincing proof that

[the defendant] was lying.” *United States v. Spears*, 636 Fed.Appx. 893, 902 (5th Cir. 2016, citing *United States v. Pena-Gonzalez*, 618 Fed.Appx. 195, 200 (5th Cir. 2015). Furthermore, “minor, insignificant, illusory, or reconcilable inconsistencies in a defendant’s story are not probative of criminal activity. *Id.* quoting *United States v. Davis*, 620 Fed.Appx. 295, 298 (5th Cir.2015); *Pack*, 612 F.3d at 359–60’

The *Reyes* case adds an additional strange fact that the Court has considered in favor of a finding of reasonable suspicion: protectiveness of the vehicle. *Reyes* was hesitant to leave the vehicle when asked to step out, and initially refused. Once out, *Reyes* locked the vehicle remotely with her key fob. These behaviors were cited by the officer, and approved by the court as leading to reasonable suspicion. However, does a person not have a privacy interest in their vehicle? Of course we do, and the courts, even the 5<sup>th</sup> Circuit, have enforced that interest by enforcing a person right to not consent to a search. The mere refusal of a request to search a vehicle cannot create reasonable suspicion to search a vehicle for “it would make a mockery of the reasonable suspicion and probable cause requirements.” *United States v. Machuca-Barrera*, 261 F.3d 425, 433 (5th Cir.2001) citing *United States v. Hunnicutt*, 135 F.3d 1345, 1350–51 (10th Cir.1998). Therefore, it makes no sense, and is bad precedent to allow an officer to cite “protectiveness of the vehicle” as a factor leading to reasonable suspicion because that is basically the same thing as denial of the search.

## **CONCLUSION**

The *Reyes* opinion which concerns reasonable suspicion in the context of a prolonged roadside detention allows for unconstitutional encroachment on citizen's liberty interests by exposing them to searches that the Supreme Court sought to protect the public from. *Reyes* is out of line with the standards held by this Court in *Rodriguez* and a significant amount of precedent in the 5<sup>th</sup> Circuit and elsewhere. The *Reyes* opinion opens the door for presumably innocent travelers to be subject to the government's intrusive actions. The *Reyes* opinion gives police the freedom to prolong stops based not on specific articulable facts with a reasonable nexus to suspected wrong doing, but rather allows their subjective, self-serving, guilt-assuming impressions to rule the day.

For the foregoing reasons, *Reyes* requests this Court grant certiorari review of her question and find that the case-law interpreting reasonable suspicion in light of *Rodriguez* must be clarified to weed out some of the poorly reasoned factors commonly relied upon.

Respectfully submitted,

By: /s/ 

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Petitioner, Mayra Reyes

**CERTIFICATE OF MAILING**

I certify that the Petition for Certiorari Review was filed with the Court by mailing the petition via United States Mail - first class mail, postage pre-paid and depositing the same into a United States mail receptacle on September 30, 2020.

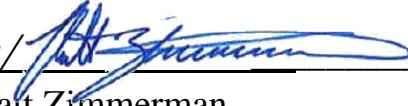
/s/   
Matt Zimmerman

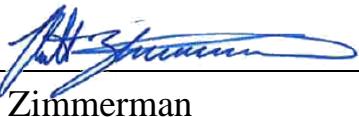
## **CERTIFICATE OF SERVICE**

I hereby certify that, on or before September 30, 2020, a true and correct copy of this petition was mailed by first-class U.S. mail to:

Solicitor General of the United States  
Department of Justice  
950 Pennsylvania Ave., N.W.; Room 5616  
Washington, DC 20530-0001

Mayra Reyes #57582-177  
FMC CARSWELL  
FEDERAL MEDICAL CENTER  
SATELLITE CAMP  
P.O. BOX 27137  
FORT WORTH, TX 76127

/s/   
Matt Zimmerman

/s/   
Matt Zimmerman

# APPENDIX A

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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No. 19-10291

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United States Court of Appeals  
Fifth Circuit

**FILED**

July 1, 2020

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MAYRA YURIVIA REYES, also known as Mayra Bautista-Hernandez,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas

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**ON PETITION FOR REHEARING EN BANC**

(Opinion June 5, 2020, 960 F.3d 697)

Before SMITH, GRAVES, and HO, Circuit Judges.

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing, the petition for panel rehearing is DENIED. No judge in regular active service having requested that the court be polled on rehearing en banc

No. 19-10291

(FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.

The opinion is WITHDRAWN, and the following opinion is SUBSTITUTED:

\* \* \* \* \*

Before SMITH, GRAVES, and HO, Circuit Judges.

JERRY E. SMITH, Circuit Judge:

Mayra Reyes pleaded guilty of conspiracy to distribute and possess with intent to distribute 50 grams or more of methamphetamine (“meth”) in violation of 21 U.S.C. § 846. Her plea agreement reserved the right to appeal her motion to suppress. Because the officer who pulled Reyes over had reasonable suspicion to extend the stop for a canine sniff, and because Reyes was not entitled to *Miranda* safeguards during the routine traffic stop, we affirm.

I.

Officer Will Windham stopped Reyes, approached her car, informed her that she was speeding, and requested her driver’s license and registration. Reyes volunteered that she was trying to get her kids to school. Windham found that odd because there were no passengers. He asked where the kids were, and Reyes responded that they were in Abilene—fifteen miles ahead.

Windham asked Reyes to accompany him to his patrol car while he looked up her information. According to Windham, she was “extremely hesitant” to leave the truck. After she refused, he explained that he completes traffic stops in his patrol car for safety purposes—to avoid being hit by passing vehicles and because he doesn’t know what may be inside the driver’s vehicle. Additionally, it was very cold. Windham found Reyes’s persistent reluctance

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to exit her truck unusual.<sup>1</sup>

As she pondered exiting her vehicle, Reyes asked, “What about the truck”? Windham answered that it could stay parked where it was. As Reyes sat down in the passenger seat of the patrol car, she locked her truck. Windham—who had never seen anyone lock his or her vehicle during a traffic stop—suspected that Reyes was trying to hide something illegal.

Windham asked Reyes where she was heading, and she mumbled, “this address,” as she scrolled through her phone to find it. He inquired, “I thought you said you were taking the kids to school.” She responded, “Yeah. Not my kids. My kids [are] in Grand Prairie. I’m helping a friend take her kids to school. She doesn’t have a car or anything.” Confirming that Reyes started her trip in Grand Prairie, Windham asked, in a surprised tone, “What time did you leave?” She replied, “About, what, three hours ago, or so?” Windham, shocked that she purported to travel three hours to take kids to school, “could tell something was not right.”

Windham asked Reyes who owned the truck, which had a temporary Oklahoma tag. She replied that it was her ex-husband’s. Based on his training, education, and experience, Windham surmised that narcotics couriers often use vehicles registered to others to avoid forfeiture.

As Reyes showed Windham the truck’s documents, he asked whether she had ever been arrested. She stated that she had an arrest for DWI. Soon after, and while continuing to examine the truck’s documents, Windham asked whether there was anything illegal in the truck. Reyes’s facial expressions changed dramatically, and her eyes shifted from Windham to the front

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<sup>1</sup> He testified: “I’ve stopped a lot of cars, and over—get everybody out—usually everybody out of the vehicle, and I’ve never had nobody refuse to come out of the vehicle like the way she did not want to come out.”

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windshield as she shook her head and said, “No, no, no. There shouldn’t be. I mean, it’s brand new. It’s brand new.”

Sounding skeptical, Windham asked again, “So you drove all the way from Dallas, or Grand Prairie, to take these kids to school for this lady?” Reyes then added, “Not just for that. I wanted to see her.” She then explained that she previously had a relationship with the woman in prison and that the woman’s husband “was going to be at work.” Windham told Reyes that she wasn’t going to make it in time to take the kids to school. She then changed her story yet again, claiming that she was going to Abilene “just to see her, to be honest.”

After typing into the computer some more, Windham asked for consent to search the truck. Reyes responded that she could not give consent because it was not her truck. He explained that she could grant consent because she had control of the truck. She refused.

At that point—roughly eight-and-a-half minutes into the stop—Windham informed Reyes that he was going to call a canine unit to perform a free-air sniff. He said that if the dog detected drugs, he would have probable cause to search inside. He requested a canine unit, then told Reyes that he was going to check the truck’s vehicle identification number (“VIN”) to see whether it matched the paperwork, because he was “not getting a good return” on the license plate.

Windham noted that Reyes had several items on her and asked whether she had any weapons. She emptied her pockets, which contained only a wallet and a pack of cigarettes. She asked whether she could have a cigarette, and Windham agreed to let her “stand outside and smoke” while he got the VIN. Reyes got out of the car for about thirty seconds, without smoking. After re-entering the car, she told Windham that she didn’t have her lighter on her. He

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asked if she had one in the truck, and she responded that she did not know and mumbled that she had “probably dropped it.” Windham found it odd that Reyes declined to retrieve her lighter. He testified that he had never had a smoker turn down his offer to let him or her smoke.

After Windham received Reyes’s criminal background check, he asked her whether she had any other prior arrests. She said that, in addition to the DWI, she had been arrested for warrants related to tickets. Windham prodded further, and Reyes conceded that she had been arrested for a pill that was found in her ex-girlfriend’s vehicle. That story evolved, however, and Reyes admitted that she was arrested for a meth offense. She said that she went to jail for that offense and later explained—her story shifting yet again—that the woman she was going to visit was her girlfriend in prison.

Within a few minutes, a canine unit arrived and conducted the sniff. The dog alerted officers that there was a controlled substance in the truck. Windham searched inside and found 127.5 grams of meth and a loaded handgun.

A grand jury indicted Reyes on various counts. She moved to suppress evidence from the stop. She contended, first, that Windham did not have reasonable suspicion to extend the stop for the canine sniff. And, second, she contended that she was entitled to *Miranda* warnings when Windham directed her into his patrol car.

After a hearing, the court held that “Windham had a reasonable suspicion to extend the traffic stop until a narcotics detection K-9 unit could arrive.” Additionally, the court ruled that Reyes was not in custody for *Miranda* purposes, so her statements were not suppressed.

Reyes pleaded guilty of conspiracy to distribute and possess with intent to distribute 50 grams or more of meth in violation of 21 U.S.C. § 846 but

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reserved her right to appeal the denial of the motion to suppress. She was sentenced and appeals the denial of her motion to suppress.

## II.

“On appeal of the denial of a motion to suppress, this court reviews the district court’s fact findings for clear error and its legal conclusions *de novo*.” *United States v. Rounds*, 749 F.3d 326, 337 (5th Cir. 2014). “[W]e review the evidence in the light most favorable to the government as the prevailing party.” *Id.* at 338. The ruling “should be upheld if there is any reasonable view of the evidence to support it.” *United States v. Massi*, 761 F.3d 512, 520 (5th Cir. 2014) (quotation marks omitted).

## III.

Reyes makes two assertions concerning whether Windham unlawfully extended the stop. First, she contends that “Windham lacked reasonable suspicion to detain her beyond the time reasonably necessary to conduct an investigation of the traffic violation, which was the purpose for the stop.” Second, she avers that “even if Officer Windham did eventually gain reasonable suspicion to afford him the ability to prolong the stop, he did not gain reasonable suspicion until after he had already detained Reyes beyond the time reasonably necessary to conduct the traffic stop.” Because Windham had reasonable suspicion to extend the stop before he called for a canine sniff, both of Reyes’s theories fail.

### A.

The protection of the Fourth Amendment “extends to vehicle stops and temporary detainment of a vehicle’s occupants.” *United States v. Andres*, 703 F.3d 828, 832 (5th Cir. 2013). After lawfully stopping a driver for a traffic violation, an officer’s actions must be “reasonably related in scope to the

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circumstances that justified the stop of the vehicle in the first place.” *Id.* The stop may last no longer than necessary to address the traffic violation, and constitutional authority for the seizure “ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.” *Rodriguez v. United States*, 575 U.S. 348, 354 (2015). Those tasks 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.” *Id.* at 355.

Officers may ask questions unrelated to the purpose of the stop while waiting for computer checks to process. *United States v. Pack*, 612 F.3d 341, 350 (5th Cir.), *modified on other grounds*, 622 F.3d 383 (5th Cir. 2010). But officers must diligently pursue the investigation of the traffic violation. *Rodriguez*, 575 U.S. at 354. The Fourth Amendment tolerates additional investigation unrelated to the safe and responsible operation of the vehicle only if that investigation does not lengthen the driver’s detention or is supported by reasonable suspicion of additional criminal activity. *Id.* at 354–55. If the officer develops reasonable suspicion of such activity “in the course of the stop and before the initial purpose of the stop has been fulfilled, then the detention may continue until the new reasonable suspicion has been dispelled or confirmed.” *United States v. Banuelos-Romero*, 597 F.3d 763, 767 (5th Cir. 2010).

“[A] mere ‘hunch’ does not create reasonable suspicion.” *Kansas v. Glover*, 140 S. Ct. 1183, 1187 (2020). The “officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Terry v. Ohio*, 392 U.S. 1, 21 (1968). We look at “the totality of the circumstances” in determining whether an officer had a particularized and objective basis for suspecting criminal activity. *Glover*, 140 S. Ct. at 1191. That analysis “is necessarily fact-

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specific, and factors which by themselves may appear innocent, may in the aggregate rise to the level of reasonable suspicion.” *United States v. Ibarra-Sanchez*, 199 F.3d 753, 759 (5th Cir. 1999). “Of principal relevance in the totality of circumstances that an officer is to consider will be the events which occurred leading up to the . . . search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion.” *United States v. Glenn*, 931 F.3d 424, 429 (5th Cir.) (quotation marks omitted), *cert. denied*, 140 S. Ct. 563 (2019).

B.

Reyes advances two arguments regarding whether Windham unlawfully extended the traffic stop. First, she contends that the facts on which Windham relied do not amount to reasonable suspicion. Second, she avers that even if Windham gained reasonable suspicion to prolong the stop, he did not do so within the time reasonably necessary to conduct the stop.<sup>2</sup> The earliest time that Reyes says the stop should have been completed was when Windham called for the canine unit. Because Windham had reasonable suspicion to extend the stop by then, Reyes’s arguments can be consolidated.

The government provides several specific and articulable facts to support Windham’s suspicion:

- Windham knew that I-20—where Reyes was pulled over—is a known drug-trafficking corridor, and Dallas/Fort Worth—whence she came—is a known source for narcotics.<sup>3</sup>

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<sup>2</sup> Reyes’s second argument contains two sub-arguments, based on whether the stop should have been completed when Windham called for the canine, or two minutes later, when he completed the VIN check.

<sup>3</sup> See *United States v. Smith*, 952 F.3d 642, 650 (5th Cir. 2020) (“[T]o the extent Smith argues we cannot consider his presence on I-55, he is incorrect. Smith’s travel on I-55 supports reasonable suspicion on these facts.”); *Glenn*, 931 F.3d at 429 (considering that the defendants “were driving on I-10, which is known for drug-trafficking,” as a factor contribut-

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- Reyes drove a truck registered in someone else's name, with a temporary plate for a different state. In Windham's experience, couriers often drive vehicles registered to other people to avoid forfeiture.<sup>4</sup>
- Reyes was unusually protective of the truck and initially refused to exit it.
- Reyes offered inconsistent and implausible stories about the purpose of her travel—for instance, stating that she had driven three hours to take kids to school, even though there were no passengers.<sup>5</sup>
- Reyes had a conviction for possession of meth.<sup>6</sup>
- When Windham asked Reyes whether there was anything illegal in the truck—a “yes or no” question—her facial expressions changed dramatically, and she said, “There shouldn't be. It's brand new. It's brand new.”

Additionally, Windham drew on his training, education, and experience in narcotics interdiction, and his familiarity with the area, to surmise from those facts his suspicion that Reyes was participating in a crime.<sup>7</sup> Those articulable

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ing to reasonable suspicion); *Pack*, 612 F.3d at 361 (stating that the defendant and his girl-friend “were traveling along a drug trafficking corridor”—I-10—was a factor supporting reasonable suspicion); *United States v. Castelo*, 415 F.3d 407, 412 (5th Cir. 2005) (stating that the defendant had stopped in El Paso, “a known ‘source city’ for illegal drugs,” contributed to probable cause).

<sup>4</sup> See *United States v. Vazquez*, 555 F.3d 923, 929 (10th Cir. 2009) (noting that the registration contributed to reasonable suspicion because it was not in the defendant's name).

<sup>5</sup> See *United States v. Berry*, 664 F. App'x 413, 419 (5th Cir. 2016) (per curiam) (“This Court has previously determined that inconsistent and untruthful statements can be a factor in developing reasonable suspicion during a traffic stop . . .”).

<sup>6</sup> See *Pack*, 612 F.3d at 361 (noting that the defendant's admission to prior arrests for theft and fighting as contributing to reasonable suspicion); *United States v. Gonzalez*, 328 F.3d 755, 758 (5th Cir. 2003) (listing prior arrest for drug trafficking as a factor supporting reasonable suspicion).

<sup>7</sup> See *Glover*, 140 S. Ct. at 1190 (recognizing “the significant role that specialized training and experience routinely play in law enforcement investigations”); *United States v. Brigham*, 382 F.3d 500, 507 (5th Cir. 2004) (en banc) (noting that the Supreme Court “has emphasized that courts must allow law enforcement ‘officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person’” (quoting *Arvizu*, 534 U.S.

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facts—and, in particular, Reyes’s implausible stories—combine to establish reasonable suspicion.

Reyes avers that “[e]very one of the observations of Officer Windham are either specifically disclaimed by caselaw as not rising to the level of reasonable suspicion, or are analogous to other facts the caselaw disclaims.” Reyes’s divide-and-conquer approach, however, ignores “the Supreme Court’s admonition not to treat each factor in isolation, but rather to give due regard to the totality of the circumstances.” *United States v. Lopez-Moreno*, 420 F.3d 420, 433 (5th Cir. 2005). Although Reyes may have an innocent explanation for each of her actions—and some of them, such as that she came from the Dallas/Fort Worth area, provide little support for reasonable suspicion—they together gave Windham much more than a mere “hunch” of illegal activity.

Reyes contends that two cases—*United States v. Hill*, 752 F.3d 1029, 1033 (5th Cir. 2014), and *United States v. Spears*, 636 F. App’x 893, 901 (5th Cir. 2016)—support her argument that Windham unreasonably prolonged the stop. Neither does.

In *Hill*, 752 F.3d at 1038, this court ruled that officers lacked reasonable suspicion to order the defendant out of his car and frisk him. The defendant disputed the legality of the seizure from its inception. *Id.* at 1033. Reyes, by contrast, contends that Windham lacked reasonable suspicion to *extend* an otherwise lawful seizure. Additionally, in *Hill*, the government could offer only a few generalized facts to support the officers’ suspicion.<sup>8</sup> Unlike the situation

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at 273 (quotation marks omitted))).

<sup>8</sup> See *Hill*, 752 F.3d at 1033–34 (stating that officers based their purported suspicion on (1) the defendant’s sitting in a parked car at an apartment complex known for drug activity, (2) a female passenger’s exiting the car and walking toward the complex when a patrol car parked nearby, (3) the defendant’s not having a driver’s license on him, and (4) the complex’s location in a county with a high crime rate).

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in that case, Windham had an extended, lawful interaction with Reyes and several articulable facts supporting his suspicion.

In *Spears*, 636 F. App'x at 895–96, officers conducting surveillance at the house of a suspected drug dealer saw Spears arrive and back into the driveway. After Spears left, he was pulled over for a traffic violation. *Id.* at 896. As the officer approached Spears's truck, the officer saw him rummaging in the center console. *Id.* Spears was nervous, evasive, and non-compliant. *Id.* Spears also stated that he was coming from visiting a relative, which the officer did not believe. *Id.* Spears refused the officer's request to exit the truck and be patted down. *Id.* A second officer arrived and asked Spears again. *Id.* He eventually relented. *Id.* After the pat-down, the officers instructed Spears to wait in the back of the patrol car for a canine unit to arrive. *Id.* He protested again before complying. *Id.* While trying to find an available canine unit, the officers learned that the suspected drug dealer had been detained and possessed a large bag of money. *Id.* at 896–97. They then decided that they had probable cause to search Spears's truck, where they found a gun, a laundry bag that smelled of marihuana, and \$59,800. *Id.* at 897. On those facts—and although it was “a close call,” *id.* at 904 (Costa, J., concurring)—the court held that the officers lacked reasonable suspicion to detain Spears after the investigation of his traffic violation was complete. *Id.* at 901–02 (majority op.).

In addition to being unpublished and therefore non-precedential, *Spears* is different in several crucial ways. The court discounted Spears's purported lie—that he was coming from visiting a relative—because the officers didn't know the truth. *Id.* at 902. Here, Reyes admitted that she lied to Windham about taking kids to school. Additionally, in *Spears*, the government offered only four generalized facts to support reasonable suspicion: The defendant allegedly lied about visiting a relative; he appeared nervous; he was evasive,

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non-compliant, and argumentative; and there was a backpack inside his vehicle (although that was not discovered until after the traffic stop had already been extended). *Id.* at 902–04. Here, by contrast, the government offers several specific facts in support of reasonable suspicion, as discussed above.

#### IV.

Reyes contends that she was entitled to *Miranda* warnings because “the circumstances and interactions of Reyes and Officer Windham would have [led] a reasonable person to believe they were under arrest.” That argument falls flat, because a person detained in a routine traffic stop is not “in custody” for *Miranda* purposes.<sup>9</sup> *Miranda* applies only once “a suspect’s freedom of action is curtailed to a degree associated with formal arrest.” *Berkemer*, 468 U.S. at 440 (quotation marks omitted).

Reyes offers no persuasive reason why *Miranda* demands the suppression of her statements during a routine traffic stop. Windham directed her to his car in a friendly manner. He even encouraged her to bring her coffee with her and sit in the front seat. She was not patted down or restrained, and Windham allowed her to leave the car to smoke a cigarette. Because the traffic stop did not have the quality of a formal arrest, *Miranda* does not apply.

AFFIRMED.

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<sup>9</sup> *Berkemer v. McCarty*, 468 U.S. 420, 440 (1984); see also *United States v. Coleman*, 610 F. App’x 347, 353 (5th Cir. 2015) (per curiam) (holding that *Miranda* does not apply to statements made during a routine traffic stop).