No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

TOHEED AHMED,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

Respectfully submitted,

VIRGINIA L. GRADY
Federal Public Defender

Meredith Esser
Assistant Federal Public Defender
Meredith.Esser@fd.org
Counsel of Record for Petitioner

633 17th Street, Suite 1000
Denver, Colorado 80202
Tel: (303) 294-7002
Fax: (303) 294-1192

QUESTION PRESENTED

Was the Tenth Circuit correct in affirming the denial of Mr. Ahmed's motion to suppress evidence seized during and derived from an August 26, 2015 traffic stop and dog sniff when that decision was based, in large part, on Mr. Ahmed's presence in a high-crime area at the time of the sniff, even though such a totality-of-the-circumstances factor is widely known to disproportionately impact communities of color?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Toheed Ahmed, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit in this case.

DECISIONS BELOW

The opinion of the court of appeals (App. A) is available at *United States v. Ahmed*, 825 F. App'x 589 (10th Cir. 2020). The order of the district court denying Mr. Ahmed's motion to vacate is unreported and unavailable in electronic databases. It is attached as App. B.

JURISDICTION

The Tenth Circuit entered judgment in this case on September 10, 2020. No petition for rehearing was filed. On March 19, 2020, the Supreme Court extended the deadline to file petitions for writs of certiorari in all cases due on or after the date of that order to 150 days from the date of the lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing. See Rules 13.1 and 13.3. This Petition is being filed within 150 days after the entry of the judgment below, so it is timely under Rule 13.1. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides:

> 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

Toheed Ahmed pleaded guilty to one count of possession with intent to deliver methamphetamine, in violation of 21 U.S.C. § 841(a)(1). R. vol. I at 460-61. His plea was conditional on his ability to appeal a motion to suppress that he filed challenging the validity of a stop and dog-sniff search of his vehicle. R. vol. I at 463.

On August 26, 2015, at around 2:35 a.m., Mr. Ahmed was driving south along the shoulder of State Street towards the Temple City Motel in Salt Lake City. R. vol. I at 120-121. As he was looking for the motel, he drove on the shoulder of the road through an intersection before pulling into the motel parking lot. *Id.* at 121; 196-97. He parked right in front of the entrance to the motel. *Id.*

At the same time, Officer Cody Coggle observed Mr. Ahmed pull into the parking lot. R. vol. I at 116, 214. Mr. Ahmed was driving a 2007 black Infiniti G35. R vol. I at 123. Officer Coggle incorrectly believed that this was the same vehicle he had stopped nine days prior, on August 17, 2015. *Id.* at 123; 203. During that previous traffic stop, the unknown driver had fled before the traffic stop was completed. *Id.* Officer Coggle observed Mr. Ahmed's car from approximately 300 feet away, and it was dark. *Id.* at 120. In order to ascertain the identity of the driver, Officer Coggle performed a U-turn and followed Mr. Ahmed into the lot. *Id.* at 122. Officer Coggle then activated his lights and parked directly behind Mr. Ahmed's vehicle. *Id.* at 123. The video of the stop shows that Mr. Ahmed was parked in front of the entrance to the motel for at least 10-15 seconds before Officer Coggle's patrol car pulled up be-

hind it. (Suppression Hearing, Ex. 1-A, 2:35:52-2:36:04 a.m.) Mr. Ahmed was traveling with two female passengers, one in the front passenger seat and one in the back seat of the car. R. vol. I at 131. Just before Officer Coggle's vehicle came to a stop, the backseat passenger tried to get out of the car and enter the motel. R. vol. I at 131-32. Officer Coggle told to stay in the car and she complied. R. vol. I at 132. Officer Coggle ran the vehicle's license plate through the police database and it came up as not stolen. Id. at 188.

As soon as he got to the window of the vehicle and saw Mr. Ahmed, Officer Coggle knew that it wasn't the same vehicle that had fled the previous week. R. vol. I at 197. Officer Coggle testified that Mr. Ahmed rolled up his window and was talking with the passengers in the car. *Id.* at 133. At that point, Officer Coggle drew his firearm. R. vol. I at 195. Mr. Ahmed rolled down the window and Officer Coggle smelled cologne in the car. *Id.* at 134. He testified that he had also observed one of the back passengers spraying cologne. *Id.* at 131.

Officer Coggle asked Mr. Ahmed who owned the car. *Id.* at 134. Mr. Ahmed responded that he owned the car but had just bought it, and that it was not registered in his name yet. *Id.* Officer Coggle took Mr. Ahmed's driver's license and returned to his patrol car. *Id.* He ran Mr. Ahmed's name through his computer database and checked on the car's registration. Officer Coggle determined that there were no new warrants but that a new registration had not been started for the vehicle, so Officer Coggle walked back to the car asked Mr. Ahmed for the bill of sale. *Id.* at 135-36. Up until this point, Officer Coggle had not explained to Mr. Ahmed the reason for the

stop, and had not indicated to Mr. Ahmed that he was being cited for any traffic violations. *Id.* at 194-95. After obtaining the bill of sale, but before returning to his patrol car, Officer Coggle began to question the passengers of the car. The front female passenger was not wearing a seatbelt. *Id.* at 136. Neither was the back passenger, but she had tried to get out of the car so it made sense that she was not wearing one. *Id.* at 194. Officer Coggle asked the front passenger for her name, and she gave Officer Coggle a false name at first: Amber Salona. *Id.* at 136. She was later identified as Nicole Toledo. R. vol. I at 380.

Ms. Toledo and the backseat passenger asked Office Coggle why he had pulled them over. The officer explained that their car was the same type of car that had fled when he had pulled it over days before and they had been driving illegally on the shoulder of the road. (Suppression Hearing, Ex. 1-A, 2:39:31-2:40:00 a.m.). After realizing that Ms. Toledo had provided false information, Officer Coggle placed her under arrest. (Suppression Hearing, Ex. 1-A, 2:45:47 a.m.).

Officer Coggle testified that this motel is actually more like a long-term housing complex, and that he often encounters the same people there. R. vol. I at 203. Mr. Ahmed's car was parked in front of the motel, and the video shows that the backseat passenger actually lived at the motel, in Unit No. 9. (Suppression Hearing, Ex. 1-A, 2:39:00 a.m.). Officer Coggle appeared to recognize the backseat passenger as someone he had seen in the motel complex before. (Suppression Hearing, Ex. 1-A, 2:39:30 a.m.). During the encounter, a drug dog named River was deployed to sniff around the perimeter of the car. River alerted to the scent of narcotics. A subsequent search

of the vehicle uncovered various items including methamphetamine and cocaine. *Id.* at 148.

Mr. Ahmed moved to suppress the evidence seized from his car. At the suppression hearing, Officers Coggle and Manzano testified, and the government introduced a dash-cam video from Officer Coggle's patrol car. Based on the testimony of the officers and the video evidence, the court denied the motion to suppress in a written order, explaining that the dog sniff was justified under the totality of the circumstances.

The Tenth Circuit affirmed the decision on appeal, and based its decision only on the justifications given for the dog sniff. The appellate court declined to consider Mr. Ahmed's alternative argument that the police encounter should have ended after Mr. Ahmed had returned his paperwork to Officer Coggle and before Officer Coggle began to question the other passengers.

In particular, the appellate court found that "several factors here gave the officer reasonable suspicion to prolong the stop of Ahmed's vehicle and conduct the dog-sniff." *United States v. Ahmed*, 825 F. App'x 589, 592 (10th Cir. 2020). In coming to its decision, the appellate court placed the most weight on two factors: the group's presence in a high crime area, and so-called "defiant behavior" of Mr. Ahmed and the other passengers, including the backseat passenger attempting to exit the vehicle after the car stopped in front of the motel. *Id.* As shown below, this Court should grant Mr. Ahmed's petition for two reasons. First, the decision conflicts with this Court's mandate that the totality of the circumstances include the entire picture of

the police encounter. And second, the petition should be granted because the court of appeals decision based in large part upon an antiquated and racist view that individuals in high-crime areas and neighborhoods are automatically more suspicious than individuals who are encountered by police in other contexts.

REASONS FOR GRANTING THE PETITION

It is time for this Court to dispense with the "high crime area" rationale for searches and dog sniffs as part of the "totality of the circumstances" test justifying certain Fourth Amendment intrusions. Such a consideration is both racist and antiquated, as many scholars and even some courts have begun to recognize.

In this case, the district court erroneously denied Mr. Ahmed's motion to suppress the evidence discovered during and derived from the August 26, 2015, traffic stop, and the Tenth Circuit should not have affirmed this decision. Officer Coggle expanded the scope of the stop beyond that which was lawful based on his stated reasoning for the stop. Officer Coggle further unreasonably prolonged the stop of Mr. Ahmed in order to conduct a dog sniff that was not otherwise supported by reasonable suspicion. The Tenth Circuit held that the dog sniff was justified based on a "totality of the circumstances," but based its decision, in large part, on the fact that Mr. Ahmed was present in a high crime area and that he and the passengers in the vehicle exhibited so-called "defiant behavior." This Court should grant review because the Tenth Circuit expanded this Court's decision in *Rodriguez* to include situations in which "defiant behavior" in a "high crime area" are the primary justifications to prolong a traffic stop and permit a dog sniff, and because the Tenth Circuit declined to

consider other reasons that would have balanced the totality of the circumstances in favor of Mr. Ahmed.

I. The Tenth Circuit's ruling conflicts with this Court's precedents.

As a general matter, searches without a warrant violate the Fourth Amendment. *Katz v. United States*, 389 U.S. 347, 357 (1967). But the general rule that police must get a warrant to conduct a search yields "to a few specifically established and well-delineated exceptions." *Id.*. For example, traffic stops are permissible when officers suspect that a person has violated traffic laws, but must be limited in scope and duration. 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, and attend to related safety concerns." *Rodriguez v. United States*, 135 S. Ct. 1609, 1614 (2015). "Authority for the seizure thus ends . . . when tasks tied to the traffic infraction are—or reasonably should have been—completed." *Id.*

Determining the reasonableness of a stop under *Terry* also requires that an officer's actions be "reasonably related in scope to the circumstances which justified the interference in the first place." *Terry v. Ohio*, 392 U.S. 1, 20 (1968). That scope goes "[b]eyond determining whether to issue a traffic ticket," and includes "ordinary inquiries" incident to the traffic stop. *Rodriguez*, 125 S. Ct. at 1611 (citation omitted). Typically, such inquiries involve "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 1615. *See also Delaware v. Prouse*, 440 U.S. 648, 658–660 (1979). *See also* 4 W. LaFave, Search and Seizure § 9.3(c), pp. 507–

517 (5th ed. 2012). These checks serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly. See *Prouse*, 440 U.S., at 658–659.

In this case, the duration and scope of the stop became unreasonable when Officer Coggle ceased his investigation into Mr. Ahmed's traffic violations and instead turned his attention to the passengers in the vehicle, specifically the front seat passenger, Ms. Toledo. At the time that Officer Coggle began to question Ms. Toledo, he had already determined that Mr. Ahmed was not the driver who had fled from him nine days prior. Moreover, Officer Coggle had not indicated that he intended to cite Mr. Ahmed for any traffic violations, and had not explained to Mr. Ahmed why he had been pulled over. R. vol. I at 194-95. Officer Coggle had already determined that Mr. Ahmed had no outstanding warrants, and had already spent considerable efforts on investigating the ownership of the vehicle including running Mr. Ahmed's license and registration. When Officer Coggle inspected the bill of sale, he was able to determine that Mr. Ahmed had purchased the vehicle lawfully. R. vol. I at 193. He also handed Mr. Ahmed back the other documents that he had inspected. (Suppression Hearing, Ex. 1-A, 2:38:29 a.m.) At that point, the two stated purposes of the stop—to determine the identity of the driver and investigate traffic violations against Mr. Ahmed—had been completed. "Authority for the seizure ends when tasks tied to the traffic infraction are—or reasonably should have been—completed." *Rodriguez*, 135 S. Ct. at 1611. Any further detention of Mr. Ahmed was therefore unlawful under *Rodriguez*.

More important here, however, was the unreasonable dog sniff that occurred, and which was not justified under the totality of the circumstances. Continued detention, including for the purpose of conducting a dog sniff, is lawful only if (1) during the initial lawful traffic stop the officer develops a reasonable suspicion that the detained person is engaged in criminal activity, or (2) the encounter becomes consensual. *Rodriguez*, 135 S. Ct. at 1614. A dog sniff, as occurred here, is instead aimed at "detect[ing] evidence of ordinary criminal wrongdoing." *Indianapolis v. Edmond*, 531 U.S. 32, 40–41 (2000).

The Tenth Circuit pointed to several circumstances justifying the sniff: the fact that Mr. Ahmed rolled up the window as the officer approached, the fact that the scent of cologne was present in the car, and the so-called "defiant behavior" on the part of the backseat passenger who tried to exit the vehicle. But, in coming to its decision, the appellate court refused to consider factors that weighed in Mr. Ahmed's favor. For example, the backseat passenger obviously lived in the motel where the car stopped and that the officer recognized her as someone who frequented that location. *Ahmed*, 825 F. App'x at 592-93. The court of appeals also placed great weight on "the fact that the traffic-stop occurred in front of a motel known as a high crime location further contributed to the officer's reasonable suspicion." *Ahmed*, 825 F. App'x at 593. The over-weighting of some factors and the refusal to consider other factors in this case contradicts this Court's insistence that the reasonable suspicion standard "takes into account 'the totality of the circumstances—the whole picture.'" *Navarette v. California*, 572 U.S. 393, 397 (2014) (quoting *United States v. Cortez*, 449 U.S. 411, 417

(1981)); *see also United States v. Arvizu*, 534 U.S. 266, 273 (2002) ("When discussing how reviewing courts should make reasonable-suspicion determinations, we have said repeatedly that they must look at the 'totality of the circumstances' of each case . . . .") (quoting *Cortez*, 449 U.S. at 417–18).

Here, the Tenth Circuit did not examine the totality of the circumstances; it considered the factors supporting reasonable suspicion in isolation from circumstances that weighed against reasonable suspicion and effectively treated the latter as categorically irrelevant. Moreover, it placed great weight on two factors—presence in a high-crime area and so-called "defiant behavior" as justifying what was essentially an unreasonable and unsupported search for drugs. In these respects, the Tenth Circuit's analysis cannot be reconciled with this Court's precedent.

II. The Tenth Circuit's reliance on "defiant behavior" in a "high crime area" to justify the dog sniff conflicts with the dicta of other circuits, and is based on a racist and baseless conception of policing and community safety.

Just because Mr. Ahmed was present in a high-crime neighborhood before he was arrested doesn't mean that he was involved in any illegality. The Tenth Circuit relied heavily on this factor in affirming the district court's decision, and this reliance is out of step with current thinking on the racist origins of the "high-crime area" factor for the totality of the circumstances test. As one Circuit judge has explained, "[i]ndividuals who happen to live in high crime areas are not second-class citizens." *United States v. Curry*, 965 F.3d 313, 338 (4th Cir. 2020) (WYNN, Circuit Judge, concurring). "[T]he demographics of those who reside in high crime neighborhoods often consist of

racial minorities and individuals disadvantaged by their social and economic circumstances" but activity in a high crime area cannot contribute to an "implicit assertion that Fourth Amendment protections are reserved only for a certain race or class of people." *Curry*, 965 F.3d at 331 (citation omitted); *see also United States v. Black*, 707 F.3d 531, 542 (4th Cir. 2013) (lamenting "the slow systematic erosion of Fourth Amendment protections for a certain demographic").

This case demonstrates the pernicious nature of the "high crime area" factor for determining whether reasonable suspicion exists for a stop. For example, here, the backseat passenger of Mr. Ahmed's vehicle was clearly attempting to enter the motel when she exited the vehicle. Officer Coggle testified that this motel is actually more like a long-term housing complex, and that he often encounters the same people there. R. vol. I at 203. Mr. Ahmed's car was parked in front of the motel, and the video shows that the backseat passenger actually lived at the motel, in Unit No. 9. (Suppression Hearing, Ex. 1-A, 2:39:00 a.m.). Officer Coggle appeared to recognize the backseat passenger as someone he had seen in the motel complex before. (Suppression Hearing, Ex. 1-A, 2:39:30 a.m.). The fact that the backseat passenger was trying to enter the motel—where she apparently lived—makes perfect sense in this context, and was not "defiant behavior," as the Tenth Circuit concluded. As scholars have noted, racial minorities are more likely to live in high-crime areas than are Caucasian people. *See, e.g.*, Reshaad Shirazi, It's High Time to Dump the High-Crime Area Factor, 21 BERKELEY J. CRIM. L. 76, 77 (2016) ("[High-crime areas have disproportionately high African American populations."). The backseat passenger—and the entire

party in Mr. Ahmed's vehicle—were subject to a higher level of scrutiny and policing than those in other communities. And the reasonable inferences that should have been made by the officers (that the backseat passenger was attempting to exit the vehicle in order to go home, rather than in defiance of the police) was totally ignored by the appellate court.

The fact that the backseat passenger was trying to enter the motel, that the officer recognized her as someone who lived there, and that the car stopped there to let her out in her home, all show why the "high-crime area" factor unreasonable discriminates against people who live in such neighborhoods. *See, e.g.*, Holt Ortiz Alden, Discovering the Victim: The Enduring Problem with "High-Crime Areas", 16 STAN. J. CIV. RTS. & CIV. LIBERTIES 385, 397 (2020) ("The Supreme Court's 'high-crime area' doctrine derives from a series of criminal procedure cases spanning from the 1970s to the early 2000s, all of which failed to meaningfully analyze the high-crime area factor's racially discriminatory nature."). Moreover, as scholars have explained, the "high-crime area" factor is vague and undefined, and is universally used as a justification in these contexts. *See* Andrew Guthrie Ferguson & Damien Bernache, The "High-Crime Area" Question: Requiring Verifiable and Quantifiable Evidence for Fourth Amendment Reasonable Suspicion Analysis, 57 AM. U. L. REV. 1587, 1590 (2008) ("What exactly is a "high-crime area"? The Supreme Court has never provided a definition. Lower court decisions are equally imprecise. Yet, as practicing criminal

defense lawyers know, the question is highlighted in almost every Fourth Amendment suppression hearing focused on the legitimacy of a police stop."). For all of these reasons, this Court should grant Mr. Ahmed's petition.

CONCLUSION

This Court should grant review because the Tenth Circuit's decision below conflicts with this Court's precedent and reflects an antiquated and racist view of policing that should be re-examined.

Respectfully submitted,

VIRGINIA L. GRADY
Federal Public Defender

/s/ Meredith B. Esser
MEREDITH B. ESSER
Assistant Federal Public Defender
633 17th Street, Suite 1000
Denver, Colorado 80202
(303) 294-7002
meredith.esser@fd.org

Counsel for Appellant, Toheed Ahmed