

APPENDIX

APPENDIX A:	Judgment of the United States District Court for the Northern District of Iowa, 1:18-cr-00082-001 June 21, 2019.....	2
APPENDIX B:	Opinion of the Eighth Circuit Court of Appeals, 19-2405 January 12, 2021	9
APPENDIX C:	Judgment of the Eighth Circuit Court of Appeals, 19-2405 January 12, 2021	20

UNITED STATES DISTRICT COURT

Northern District of Iowa

UNITED STATES OF AMERICA

v.

DEANDRE JOSEPH WARREN

) JUDGMENT IN A CRIMINAL CASE

)

) Case Number: **0862 1:18CR00082-001**

)

) USM Number: **17676-029**

)

☒ ORIGINAL JUDGMENT☐ AMENDED JUDGMENT

Date of Most Recent Judgment:

Reason for Amendment:

Samuel Owen Cross

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment filed on August 22, 2018☐ pleaded nolo contendere to count(s) _____

which was accepted by the court.

☐ was found guilty on count(s) _____

after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. §§ 841(a)(1), 841(b)(1)(C), and 860	Possession With Intent to Distribute Heroin Within 1,000 Feet of a School	08/04/2018	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____☐ Count(s) _____ is/are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

C.J. Williams
United States District Court Judge

Name and Title of Judge

June 20, 2019

Date of Imposition of Judgment



Signature of Judge

June 21, 2019

Date

DEFENDANT: **DEANDRE JOSEPH WARREN**
CASE NUMBER: **0862 1:18CR00082-001**

PROBATION

☐ The defendant is hereby sentenced to probation for a term of:

IMPRISONMENT

☒ The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
188 months on Count 1 of the Indictment.

☒ The court makes the following recommendations to the Federal Bureau of Prisons:
It is recommended that the defendant participate in the Bureau of Prisons' 500-Hour Comprehensive Residential Drug Abuse Treatment Program or an alternate substance abuse treatment program.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant must surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant must surrender for service of sentence at the institution designated by the Federal Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the United States Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: **DEANDRE JOSEPH WARREN**
CASE NUMBER: **0862 1:18CR00082-001**

SUPERVISED RELEASE

- ☒ Upon release from imprisonment, the defendant will be on supervised release for a term of:
6 years on Count 1 of the Indictment.

MANDATORY CONDITIONS OF SUPERVISION

- 1) The defendant must not commit another federal, state, or local crime.
- 2) The defendant must not unlawfully possess a controlled substance.
- 3) The defendant must refrain from any unlawful use of a controlled substance.
The defendant must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future controlled substance abuse. *(Check, if applicable.)*
- 4) ☒ The defendant must cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- 5) ☐ The defendant must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where the defendant resides, works, and/or is a student, and/or was convicted of a qualifying offense. *(Check, if applicable.)*
- 6) ☐ The defendant must participate in an approved program for domestic violence. *(Check, if applicable.)*

The defendant must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: **DEANDRE JOSEPH WARREN**
CASE NUMBER: **0862 1:18CR00082-001**

STANDARD CONDITIONS OF SUPERVISION

As part of the defendant's supervision, the defendant must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for the defendant's behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in the defendant's conduct and condition.

- 1) The defendant must report to the probation office in the federal judicial district where the defendant is authorized to reside within 72 hours of the time the defendant was sentenced and/or released from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.
- 2) After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when the defendant must report to the probation officer, and the defendant must report to the probation officer as instructed. The defendant must also appear in court as required.
- 3) The defendant must not knowingly leave the federal judicial district where the defendant is authorized to reside without first getting permission from the court or the probation officer.
- 4) The defendant must answer truthfully the questions asked by the defendant's probation officer.
- 5) The defendant must live at a place approved by the probation officer. If the defendant plans to change where the defendant lives or anything about the defendant's living arrangements (such as the people the defendant lives with), the defendant must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, the defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 6) The defendant must allow the probation officer to visit the defendant at any time at the defendant's home or elsewhere, and the defendant must permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that he or she observes in plain view.
- 7) The defendant must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment, the defendant must try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about the defendant's work (such as the defendant's position or the defendant's job responsibilities), the defendant must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, the defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 8) The defendant must not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
- 9) If the defendant is arrested or questioned by a law enforcement officer, the defendant must notify the probation officer within 72 hours.
- 10) The defendant must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
- 11) The defendant must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
- 12) As directed by the probation officer, the defendant must notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and must permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 13) The defendant must follow the instructions of the probation officer related to the conditions of supervision.

DEFENDANT: **DEANDRE JOSEPH WARREN**
CASE NUMBER: **0862 1:18CR00082-001**

SPECIAL CONDITIONS OF SUPERVISION

The defendant must comply with the following special conditions as ordered by the Court and implemented by the United States Probation Office:

1. **The defendant must submit the defendant's person, property, house, residence, vehicle, papers, computers [as defined in 18 U.S.C. § 1030(e)(1)], other electronic communications or data storage devices or media, or office, to a search conducted by a United States Probation Officer. Failure to submit to a search may be grounds for revocation of release. The defendant must warn any other occupants that the premises may be subject to searches pursuant to this condition. The United States Probation Office may conduct a search under this condition only when reasonable suspicion exists that the defendant has violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.**
2. **The defendant must participate in a mental health evaluation. The defendant must complete any recommended treatment program, and follow the rules and regulations of the treatment program. The defendant must take all medications prescribed to the defendant by a licensed medical provider.**
3. **The defendant must participate in an evaluation for anger management and/or domestic violence. The defendant must complete any recommended treatment program, and follow the rules and regulations of the treatment program.**
4. **The defendant must participate in a substance abuse evaluation. The defendant must complete any recommended treatment program, which may include a cognitive behavioral group, and follow the rules and regulations of the treatment program. The defendant must participate in a program of testing for substance abuse. The defendant must not attempt to obstruct or tamper with the testing methods.**
5. **The defendant must not use or possess alcohol. The defendant is prohibited from entering any establishment that holds itself out to the public to be a bar or tavern without the prior permission of the United States Probation Office.**
6. **The defendant must participate in the Remote Alcohol Testing Program during any period of the defendant's supervision. The defendant must abide by all rules and regulations of the Remote Alcohol Testing Program. The defendant will be responsible for the cost of participation in the Remote Alcohol Testing Program.**
7. **If not employed at a lawful type of employment as deemed appropriate by the United States Probation Office, the defendant must participate in employment workshops and report, as directed, to the United States Probation Office to provide verification of daily job search results or other employment related activities. In the event the defendant fails to secure employment, participate in the employment workshops, or provide verification of daily job search results, the defendant may be required to perform up to 20 hours of community service per week until employed.**

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them. Upon a finding of a violation of supervision, I understand the Court may: (1) revoke supervision; (2) extend the term of supervision; and/or (3) modify the condition of supervision.

Defendant

Date

United States Probation Officer/Designated Witness

Date

DEFENDANT: **DEANDRE JOSEPH WARREN**
CASE NUMBER: **0862 1:18CR00082-001**

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>JVTA Assessment¹</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100	\$ 0	\$ 0	\$ 0

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss²</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	-------------------------------	----------------------------	-------------------------------

TOTALS \$ _____ \$ _____

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

¹Justice for Victims of Trafficking Act of 2015, 18 U.S.C. § 3014.

²Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: **DEANDRE JOSEPH WARREN**
CASE NUMBER: **0862 1:18CR00082-001**

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 100 due immediately, balance due
- ☐ not later than _____, or
- ☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant must pay the cost of prosecution.
- ☐ The defendant must pay the following court cost(s):
- ☐ The defendant must forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTa assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

United States Court of Appeals
For The Eighth Circuit
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329
St. Louis, Missouri 63102

Michael E. Gans
Clerk of Court

VOICE (314) 244-2400
FAX (314) 244-2780
www.ca8.uscourts.gov

January 12, 2021

Mr. Samuel Owen Cross
FEDERAL PUBLIC DEFENDER'S OFFICE
Northern District of Iowa
Suite 290
222 Third Avenue, S.E.
Cedar Rapids, IA 52401-1542

RE: 19-2405 United States v. Deandre Warren

Dear Counsel:

The court has issued an opinion in this case. Judgment has been entered in accordance with the opinion. The opinion will be released to the public at 10:00 a.m. today. Please hold the opinion in confidence until that time.

Please review [Federal Rules of Appellate Procedure](#) and the [Eighth Circuit Rules](#) on post-submission procedure to ensure that any contemplated filing is timely and in compliance with the rules. Note particularly that petitions for rehearing and petitions for rehearing en banc must be received in the clerk's office within 14 days of the date of the entry of judgment. Counsel-filed petitions must be filed electronically in CM/ECF. Paper copies are not required. No grace period for mailing is allowed, and the date of the postmark is irrelevant for pro-se-filed petitions. Any petition for rehearing or petition for rehearing en banc which is not received within the 14 day period for filing permitted by FRAP 40 may be denied as untimely.

Michael E. Gans
Clerk of Court

HAG

Enclosure(s)

cc: Mr. Clerk, U.S. District Court, Northern Iowa
Ms. Elizabeth Dupuich
Ms. Emily K. Nydle
Mr. Deandre Joseph Warren

District Court/Agency Case Number(s): 1:18-cr-00082-CJW-1

United States Court of Appeals
For The Eighth Circuit
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329
St. Louis, Missouri 63102

Michael E. Gans
Clerk of Court

VOICE (314) 244-2400
FAX (314) 244-2780
www.ca8.uscourts.gov

January 12, 2021

West Publishing
Opinions Clerk
610 Opperman Drive
Building D D4-40
Eagan, MN 55123-0000

RE: 19-2405 United States v. Deandre Warren

Dear Sirs:

A published opinion was filed today in the above case.

Counsel who presented argument on behalf of the appellant and appeared on the brief was Samuel Owen Cross, AFD, of Cedar Rapids, IA.

Counsel who presented argument on behalf of the appellee and appeared on the brief was Elizabeth Dupuich, AUSA, of Cedar Rapids, IA.

The judge who heard the case in the district court was Honorable Charles J. Williams and Honorable Mark A. Roberts, Magistrate Judge. The judgment of the district court was entered on June 21, 2019.

If you have any questions concerning this case, please call this office.

Michael E. Gans
Clerk of Court

HAG

Enclosure(s)

cc: MO Lawyers Weekly

District Court/Agency Case Number(s): 1:18-cr-00082-CJW-1

United States Court of Appeals
For the Eighth Circuit

No. 19-2405

United States of America

Plaintiff - Appellee

v.

Deandre Joseph Warren

Defendant - Appellant

Appeal from United States District Court
for the Northern District of Iowa - Cedar Rapids

Submitted: September 25, 2020

Filed: January 12, 2021

Before LOKEN, SHEPHERD, and ERICKSON, Circuit Judges.

LOKEN, Circuit Judge.

Deandre Warren pleaded guilty to possession with intent to deliver heroin within 1,000 feet of a school, reserving his right to appeal the district court Order denying his motion to suppress.¹ The court then determined that Warren is a career

¹The Honorable C.J. Williams, United States District Judge for the Northern District of Iowa, adopting in part and modifying in part the Report and

offender and sentenced him to 188 months imprisonment. On appeal, Warren argues the court erred in not suppressing controlled substances found at the time of his arrest as fruits of an unlawful seizure, and in determining he is a career offender. Reviewing factual findings for clear error and questions of law *de novo*, we affirm. See United States v. Gordon, 741 F.3d 872, 875 (8th Cir. 2013) (standard of review).

I. Fourth Amendment Seizure Issues

At 8:43 p.m. on August 4, 2018, Cedar Rapids Police Officers Ryan Harrelson and Alexander Haas responded to a noise complaint regarding a house where Haas knew there had been frequent calls of disturbances and drug activity. Parking in front of the residence, the officers heard no noise as they exited their squad car. Harrelson walked to the front of the house to ask its occupants about the complained-of noise. Haas scouted nearby to determine other possible sources of the noise, standard protocol in investigating noise complaints that have no apparent source.

Behind the house, Officer Haas saw a parked car with its headlights on in an unlit alley facing the yard of the home, with a pair of hands sticking out the front driver's side window. Haas cautiously approached and explained to the driver he was investigating a noise complaint. Cedric Jenkins was in the driver's seat, Warren was in the front passenger seat, and two women were in the back seat. Haas asked the driver for identification. Jenkins replied they had just arrived, he had driven to the house, and he did not have a driver's license. Haas asked Jenkins to step out of the vehicle while he verified Jenkins's identity and investigated the traffic violation of driving without a license. See Iowa Code § 321.174. At this point, Warren began to exit the car. Officer Haas said, "Sir, can you just stay in there for me, please?" Warren complied. Jenkins stepped out and spoke with Officer Haas.

Recommendation of the Honorable Mark A. Roberts, United States Magistrate Judge for the Northern District of Iowa.

Haas radioed that he was behind the house with four persons and requested backup. Officer Harrelson ended his conversation with the occupants and went behind the house to assist Officer Haas. As Harrelson approached the passenger side of the vehicle, he smelled marijuana emanating from the vehicle, covered by cigarette smoke. Officer Otis also responded to the call for backup, arriving two minutes later. As he approached the passenger side, Otis smelled cigarette smoke but not marijuana. He talked with Warren, who was cooperative but nervous. Otis allowed Warren to reach in the glove compartment for a cigarette. When Warren appeared to reach under his left leg, Otis shined his flashlight down inside the front passenger door and saw a baggie of marijuana tucked between the passenger seat and the door. Otis removed Warren from the vehicle, handcuffed him, and put him in the back seat of Haas's squad car, which was now in the alley. Otis searched the rest of the parked car, finding an additional bag of marijuana and a small bag of heroin.

In the squad car, Warren complained he was hot and claustrophobic. Haas let him sit in the back with the door open or stand up. Officer Shuman arrived and parked next to Haas's squad car. Officers Shuman and Otis saw Warren stand up, lean against the squad car, reach into his underwear, and make a "strange shaking motion." A baggie containing nine smaller baggies of marijuana and twenty two baggies of heroin fell to the ground and was seized.

Warren moved to suppress all controlled substances seized on August 4, 2018. The only issue on appeal is whether the drugs were fruits of an unlawful seizure when Officer Haas instructed Warren to remain in the car without probable cause, reasonable suspicion, or other sufficient basis. After a hearing, the magistrate judge issued a lengthy Report and Recommendation that the motion to suppress be denied. The district court adopted the report with modifications, concluding in a lengthy Order that Warren was not seized when Officer Haas asked him to remain in the car. Alternatively, even if the request was a directive constituting a seizure under United States v. Mendenhall, 446 U.S. 544, 554-55 (1980), the court concluded that Officer

Haas was engaged in a permissible investigative stop of driver Jenkins's traffic violation, and legitimate officer safety concerns justified asking Warren to remain in the car to preserve the status quo.

Warren argues that he was subject to an unlawful seizure when Officer Haas asked him to "just stay in there for me, please." As the district court recognized, a person is seized within the meaning of the Fourth Amendment "when the officer, by means of physical force or show of authority, terminates or restrains [the person's] freedom of movement." Brendlin v. California, 551 U.S. 249, 254 (2007) (quotation omitted). Seizure is an issue of law we review *de novo*. A seizure occurs "if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." INS v. Delgado, 466 U.S. 210, 215 (1984). Not every direction by an officer constitutes a seizure. See, e.g., United States v. Valle Cruz, 452 F.3d 698, 706 (8th Cir. 2006) (officer telling vehicle driver to "sit tight" did not effect a seizure). There is "a constitutionally significant distinction between an official command and a request that may be refused." United States v. Vera, 457 F.3d 831, 835 (8th Cir. 2006), cert. denied, 549 U.S. 1230 (2007). Here, the district court concluded that Haas's statement, "Sir, can you just stay in there for me, please," was a request, not a command. Haas spoke to Warren with respect in a voice that was polite, calm, and normal in volume and tone. When Warren complied, Haas thanked him. Warren's compliance did not convert the request into a command. We agree.

Warren argues that a fair paraphrasing of Haas's politely worded request when Warren attempted to get out of the car was, "Don't get out of the car," as evidenced by Haas's testimony at the suppression hearing, "If he walked away, I would have told him to stop." But this post-hoc rephrasing of a request into the words of a command disregards the fact that Haas's statement and actions did not manifest an intent to compel compliance. Haas's subjective intent to stop Warren if he attempted to walk away "is irrelevant except insofar as that may have been conveyed to

[Warren].” Mendenhall, 446 U.S. at 554 n.6. Haas’s words and manner left Warren the choice whether to leave or stay. “There was no application of force, no intimidating movement, no overwhelming show of force, no brandishing of weapons, no blocking of exits, no threat, no command, not even an authoritative tone of voice.” United States v. Drayton, 536 U.S. 194, 204 (2002). Warren chose to comply with the request, presumably for an obvious reason having nothing to do with whether he interpreted it as a request or a command: the most likely way to avoid discovery of the baggies of heroin and marijuana on his person was to cooperate with an officer while the officer completed a routine traffic investigation of driver Jenkins. It is pure speculation how Haas would have responded if Warren, instead of complying, had continued to exit the car or asked Haas whether he was free to leave. In these circumstances, the words Haas used and his tone and manner in making a request to cooperate are controlling. Thus, there was no seizure until Officer Otis discovered controlled substances in the car and ordered Warren out of the car.

Alternatively, even if Officer Haas’s request is construed as a command that passenger Warren remain in the parked vehicle, we agree with the district court that officer safety concerns made this brief seizure objectively reasonable. Warren does not dispute that Officer Haas had reasonable suspicion of a traffic violation that gave him authority to detain and investigate driver Jenkins. See Terry v. Ohio, 392 U.S. 1, 21 (1968). But he argues Haas had no authority to detain passenger Warren.

During a lawful traffic stop, officers can take actions that are “reasonably necessary to protect their personal safety and to maintain the status quo during the course of the stop.” United States v. Hensley, 469 U.S. 221, 235 (1985). In Maryland v. Wilson, 519 U.S. 408, 415 (1997), the Supreme Court held that an officer may order passengers out of the car pending his investigation of the traffic stop. “Danger to an officer from a traffic stop is likely to be greater when there are passengers in addition to the driver in the stopped car.” Id. at 414. Likening this situation to the detention of the occupants of a home during a warrant search, the

Court explained that “[t]he risk of harm is minimized if the officers routinely exercise unquestioned command of the situation.” Id., quoting Michigan v. Summers, 452 U.S. 692 (1981). In Brendlin, the Court further noted it is “reasonable for passengers to expect that a police officer at the scene of a crime, arrest, or investigation will not let people move around in ways that could jeopardize his safety.” 551 U.S. at 258. In United States v. Sanders, we held that an officer making a traffic stop may “reinstate[] the status quo” by asking a passenger who left the vehicle to reenter. 510 F.3d 788, 791 (8th Cir. 2007), cert. denied, 553 U.S. 1013 (2008); cf. United States v. Holt, 264 F.3d 1215, 1223 (10th Cir. 2001) (en banc) (asking passenger to remain in vehicle); Rogala v. District of Columbia, 161 F.3d 44, 45 (D.C. Cir. 1998) (same); United States v. Moorefield, 111 F.3d 10, 11 (3d Cir. 1997) (same).

Warren argues the situation at issue is not controlled by these cases because the vehicle was already stopped when Haas began his traffic investigation and therefore Warren had a heightened liberty interest in leaving the vehicle that outweighed the government interest in securing the scene. As always, the Fourth Amendment issue is whether, viewing the totality of the circumstances, Officer Haas was objectively reasonable in asking Warren to remain in the car while Haas investigated the traffic violation. See Arizona v. Johnson, 555 U.S. 323, 332 (2009). Viewed in this light, we do not agree that the analysis is different because the vehicle was already parked.

Haas was investigating a noise complaint behind a house known for frequent disturbances and drug-related activity. He encountered four persons in a parked car with its lights on in an unlit alley. He approached cautiously and asked what they were doing. When driver Jenkins admitted driving there without a license, Haas had reasonable suspicion to detain Jenkins while he investigated a traffic violation that would preclude Jenkins from driving away. Warren’s attempt to exit the car presented a real risk to officer safety. It was dark and Haas was alone, outnumbered four to one. If there was contraband in the car or other criminal activity afoot, he faced a risk of violent encounter. See Johnson, 555 U.S. at 331; Maryland v. Pringle,

540 U.S. 366, 373 (2003). So he asked Warren to stay in the car and radioed for backup assistance.

Traffic stops are inherently fraught with danger to police officers, “so an officer may need to take certain negligibly burdensome precautions in order to complete his mission safely.” Rodriguez v. United States, 135 S. Ct. 1609, 1616 (2015). The safety of the officer “is both legitimate and weighty.” Pennsylvania v. Mimms, 434 U.S. 106, 109 (1977). Here, asking Warren to stay in the car was no more burdensome than asking a passenger to exit the vehicle during a traffic stop, the police action upheld in Wilson, 519 U.S. at 415. Reasonable actions at the scene of an investigation to ensure safety and preserve the status quo require no probable cause or reasonable suspicion. See Brendlin, 551 U.S. at 258. Moreover, if driver Jenkins lacked a license and could not drive the vehicle away, it might be to the officers’ and the passengers’ advantage if Warren was licensed and willing to take control of the car so it need not be impounded, leaving its occupants stranded.

For these reasons, the Order denying Warren’s motion to suppress is affirmed.

II. Sentencing Issues

Warren argues the district court erred in determining he is a career offender because his three prior Illinois drug convictions were not “controlled substance offenses” under USSG § 4B1.2(b), and his prior Iowa conviction for Domestic Assault with strangulation was not a “crime of violence” under § 4B1.2(a)(1). Warren concedes that we rejected the first argument in United States v. Merritt, 934 F.3d 809, 811 (8th Cir. 2019), cert. denied, 140 S. Ct. 981 (2020), and the second argument in United States v. Boleyn, 929 F.3d 932 (8th Cir. 2019), cert. denied, 140 S. Ct. 1128 (2020). As a panel, we are bound by these controlling decisions. Accordingly, we need not consider the government’s alternative argument that any error was harmless because the district court stated that if its career offender analysis

was wrong, “I would reach the same sentence under the 3553(a) factors.” See, e.g., United States v. McGee, 890 F.3d 730, 737 (8th Cir. 2018). Warren has preserved these issues for en banc review.

The judgment of the district court is affirmed.

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 19-2405

United States of America

Plaintiff - Appellee

v.

Deandre Joseph Warren

Defendant - Appellant

Appeal from U.S. District Court for the Northern District of Iowa - Cedar Rapids
(1:18-cr-00082-CJW-1)

JUDGMENT

Before LOKEN, SHEPHERD and ERICKSON, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court, briefs of the parties and was argued by counsel.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

January 12, 2021

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Adopted April 15, 2015
Effective August 1, 2015

Revision of Part V of the Eighth Circuit Plan to Implement the Criminal Justice Act of 1964.

V. Duty of Counsel as to Panel Rehearing, Rehearing En Banc, and Certiorari

Where the decision of the court of appeals is adverse to the defendant in whole or in part, the duty of counsel on appeal extends to (1) advising the defendant of the right to file a petition for panel rehearing and a petition for rehearing en banc in the court of appeals and a petition for writ of certiorari in the Supreme Court of the United States, and (2) informing the defendant of counsel's opinion as to the merit and likelihood of the success of those petitions. If the defendant requests that counsel file any of those petitions, counsel must file the petition if counsel determines that there are reasonable grounds to believe that the petition would satisfy the standards of Federal Rule of Appellate Procedure 40, Federal Rule of Appellate Procedure 35(a) or Supreme Court Rule 10, as applicable. *See Austin v. United States*, 513 U.S. 5 (1994) (*per curiam*); 8th Cir. R. 35A.

If counsel declines to file a petition for panel rehearing or rehearing en banc requested by the defendant based upon counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion to withdraw must be filed on or before the due date for a petition for rehearing, must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for rehearing, and must request an extension of time of 28 days within which to file *pro se* a petition for rehearing. The motion also must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

If counsel declines to file a petition for writ of certiorari requested by the defendant based on counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

A motion to withdraw must be accompanied by counsel's certification that a copy of the motion was furnished to the defendant and to the United States.

Where counsel is granted leave to withdraw pursuant to the procedures of *Anders v. California*, 386 U.S. 738 (1967), and *Penson v. Ohio*, 488 U.S. 75 (1988), counsel's duty of representation is completed, and the clerk's letter transmitting the decision of the court will notify the defendant of the procedures for filing *pro se* a timely petition for panel rehearing, a timely petition for rehearing en banc, and a timely petition for writ of certiorari.