No._____

IN THE SUPREME COURT OF THE UNITED STATES

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RICARDO RENTERIA,

Petitioner,

-v-

UNITED STATES OF AMERICA,

Respondent.

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PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

Whether reasonable suspicion to support a traffic stop under the Fourth Amendment requires a showing of specific facts that the suspect violated the relevant statute.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

IN THE SUPREME COURT OF THE UNITED STATES

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- v -

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Petitioner Ricardo Renteria respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINION BELOW

In an unpublished memorandum, the Ninth Circuit affirmed Petitioner's convictions for possession of methamphetamine with intent to distribute (21 U.S.C. 841(a)(1)), felon in possession of a firearm (18 U.S.C. 922(g)(1)), and possession of a firearm in furtherance of a drug trafficking crime (18 U.S.C. 924(c)(1)(A)(I)), finding, *inter alia*, that the district court did not err in denying Petitioner's motion to suppress evidence resulting from the search of his car. *See United States v. Renteria*, 839 Fed. Appx. 123 (9th Cir. 2020) (attached as appendix A).

JURISDICTION

On December 23, 2020, the Ninth Circuit affirmed petitioner's convictions via memorandum disposition. *See* Appendix A. This Court has jurisdiction under 28 U.S.C. § 1254(1) and the Court's March 19, 2020 Order extending filing deadlines for petitions for a writ of certiorari to 150 days from the date of the lower court judgment.

RELEVANT PROVISION

The Fourth Amendment 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…"

STATEMENT OF THE CASE

I. Background.

This case began with a traffic stop. In the early evening hours of February 3, 2018, Petitioner drove his Chevrolet Tahoe down Bixel Street in Los Angeles. Los Angeles Police Department officers Ruben Mejia and David Reynoso were patrolling the area, allegedly to "monitor, gather intelligence, and suppress the criminal activities of the Diamond Street criminal gang." CR 33-1 at 2, ER 494.[1] According to Mejia, while driving on Bixel Street, they "first saw defendant in a white Chevrolet Tahoe driving ahead of us northbound…" *Id*. The Tahoe "was the only car we saw on the road." The Tahoe "then made a right turn without signaling onto an alley that connected Bixel Street to Firmin Street." *Id*.

As the Tahoe made the turn, Mejia "observed that it had heavily tinted windows." *Id*. As they drove toward the alley, Mejia "heard a loud screeching noise, like the sound of a car peeling out." *Id*. He "believed the sound was coming from the alley" but "could not see the car that made the noise" because they "had not yet turned onto the alley." *Id*.

1 "CR" refers to the District Court's docket. "ER" refers to the Excerpts of Record filed with the appeal before the Ninth Circuit.

Once the officers turned into the alley, Mejia "could not see any car in the alley at that time either," but "heard a second screeching noise coming from a little further off." *Id*. The officers reached the end of the alley and still "could not see any cars," but Mejia saw "what appeared to be fresh dark skid marks going in the direction of Temple Street." *Id*. The officers turned left onto Firmin Street in the direction of Temple and "did not see any cars when we were on Firmin Street." ER 495.

Upon arriving at the intersection of Temple and Firmin, Mejia "again saw another set of dark skid marks, this time indicating that a car had turned left onto Temple Street." *Id*. They "turned left onto Temple Street, and when we got near the Bixel and Temple Street intersection, I saw the Tahoe up ahead, making a right onto Edgeware Road." *Id*. The officers followed the Tahoe and "likewise turned right onto Edgeware Road, and saw the Tahoe turn right onto Boston Street." *Id*. They followed the Tahoe and "by the time we caught up to the vehicle, it was in the process of parking on Boston Street." *Id*.

As Mejia later admitted, at no time during this pursuit had the officers "turned on either our lights or sirens" or alerted Renteria in any way that he was being stopped for committing alleged traffic violations. *See* ER 496, *see also* ER 396 (Q: Did you institute your overhead lights to stop Mr. Renteria? A: We did

not. Q: Did you turn on your siren— A: No, we did not. Q: --to stop Mr. Renteria? A: No we did not.) The officers also did not activate their dash camera at any time during the pursuit. ER 395 (emphasis provided).

Officers ultimately stopped Petitioner and searched the car. The search revealed a bag containing packages with six kilograms of methamphetamine. Petitioner was arrested and eventually indicted on three felony counts: possession of methamphetamine with intent to distribute, felon in possession of a firearm, and carry and possession of a firearm in relation to and in furtherance of a drug trafficking crime. ER 519-21.

II. Petitioner's motion to suppress evidence from the search of the car.

Petitioner moved to suppress the evidence seized during the traffic stop. *See* CR 30, ER 507-18. He argued, *inter alia*, that the government lacked reasonable suspicion to conduct a traffic stop and had no authority to conduct a warrantless search of the Tahoe. ER 514. In the declaration in support of the motion, Petitioner stated that he "did not feel free to leave" after being stopped by the officers, that he "did not recall committing any traffic violations," that he did not "recall the LAPD police officers' car turning on their overhead lights or sirens," that he "did not consent to the officer searching my truck for my registration" and did not "feel that

I had the option to say no," and that he "acquiesced" to the officers' authority. ER 517.

The government opposed the motion. *See* CR 33, ER 471-506. It claimed that the officers had reasonable suspicion to conduct a traffic stop because Petitioner had allegedly conducted a right turn without signaling, was allegedly driving with overly-tinted windows, and had allegedly exhibited excessive speed by "peeling out" of the alley toward a nearby street. ER 476-77. The government also claimed that the search of the truck was lawful because Petitioner gave consent during his interrogation by the officers. ER 477-78.

The matter proceeded to an evidentiary hearing. *See* ER 376-428. Mejia testified that the officers had stopped Petitioner for making a right-hand turn without signaling, driving with heavily tinted windows, and excessive exhibition of speed. ER 395. But he acknowledged that they never turned on their overhead lights or siren before the stop. ER 396. Mejia also testified that Petitioner's car was the only one on the road at the time it made the right-hand turn, and did not testify that the turn had affected the movement of their car in any way. ER 397. Further, Mejia acknowledged that he had no evidence that the tint on Petitioner's car was anything other than factory-installed, legally-tinted safety glass. ER 398. Finally,

Mejia admitted that he never actually saw Petitioner exhibit excessive speed or "peel" out at any time while the officers were trailing him. *Id*.

The district court denied Petitioner's motion to suppress. *See* CR 55, ER 33-44. It first found that Mejia and Reynoso had reasonable suspicion to conduct a traffic stop because they "were driving behind Defendant when he made a right-hand turn without signaling." ER 38. According to the trial court, "a signal is required when any other vehicle may be affected, which 'even applies to a patrol car, irrespective of the lack of any other traffic.'" *Id*., *quoting People v. Logsdon*, 164 Cal. App. 4th 741, 744 (2008). But the Court made no findings or discussed any evidence showing that the movement of the officers' patrol car had been affected by Petitioner's turn. *See* ER 37-38. The Court also did not analyze, discuss, or even mention the government's claims that the stop was justified by the alleged tint on Petitioner's windows, or his alleged exhibition of speed.

Petitioner later moved to supplement his motion. *See* CR 61, 62; ER 338-61. As relevant here, he argued that the alleged unsignaled turn into the alley did not affect any other car because he "made a left hand turn into the alley that exits Firmin Street and that when he made the left hand turn into the alley he noticed an LAPD car that appear to be stopped approximately 200 feet to his front." ER 342. But the trial court again denied the motion, finding that "that "Defendant's new

recollection of events is insufficient to disprove the sworn testimony of the officers… Defendant now claims to recall the turn, even though his original declaration stated that he recalled nothing regarding the traffic violations, and even though his counsel argued from the position that he made a right-hand turn at the original hearing." ER 27. Further, the district court observed that "here, Defendant only stated that the police car 'appeared to be stopped,' not that it actually was stopped—the ambiguity would indicate that Defendant should have signaled… Additionally, even if the police car was fully stopped, it would still be affected by Defendant's turn and therefore Defendant was required to signal before turning, whether left or right." ER 27-28.

Petitioner proceeded to a bench trial, and the district court convicted him on all counts. The district court ultimately sentenced Petitioner to 180 months in custody, consisting of 120 months on Counts 1 and 2, to be served concurrently, and 60 months on Count 3, to be served consecutively. *See* CR 110, ER 46.

III. Ninth Circuit appeal.

On appeal, Petitioner argued, *inter alia*, that the district court erred in denying his motions to suppress because the government failed to prove that Mejia and Reynoso had reasonable suspicion to conduct a traffic stop under the circumstances. Petitioner reasoned that the government did not show that Mejia

and Reynoso's patrol car was "affected by the movement" of the Tahoe to support reasonable suspicion for a violation of Cal. Veh. Code § 22107. Petitioner argued that without that evidence the district court had no foundation to conclude that the officers had reasonable suspicion to stop him for his alleged failure to signal.

But the Ninth Circuit affirmed Petitioner's convictions. It found that "[r]easonable suspicion is substantially less than probable cause and "falls considerably short of satisfying a preponderance of the evidence standard," but does require more than a mere hunch. And under California Vehicle Code § 22107, any car turning right or left must 'giv[e] an appropriate signal . . . in the event any other vehicle may be affected by the movement.' Because Renteria did not signal before turning into an alleyway, the officers had reasonable suspicion that Renteria violated § 22107." *Renteria*, 839 Fed. Appx. at 125 (internal citations omitted.)

This petition follows.

REASON FOR GRANTING THE PETITION

THIS COURT SHOULD GRANT THE PETITION TO CONFIRM THAT REASONABLE SUSPICION TO CONDUCT A TRAFFIC STOP REQUIRES A SHOWING OF SPECIFIC FACTS THAT THE SUSPECT VIOLATED THE LAW.

The Fourth Amendment's prohibition against unreasonable searches and seizures applies to investigatory traffic stops. *United States v. Arvizu*, 534 U.S. 266, 273 (2002); *United States v. Sigmond–Ballesteros*, 285 F.3d 1117, 1121 (9th

Cir. 2002). To justify an investigative stop, a police officer must have reasonable suspicion that a suspect is involved in criminal activity. *United States v. Lopez–Soto*, 205 F.3d, 1101, 1104–05 (9th Cir. 2000). Reasonable suspicion is formed by "specific articulable facts which, together with objective and reasonable inferences, form the basis for suspecting that the particular person detained is engaged in criminal activity." *Id*. at 1105 (internal quotation marks and citations omitted); *United States v. Twilley*, 222 F.3d 1092, 1095 (9th Cir. 2000). An officer's inferences must "be grounded in objective facts and be capable of rational explanation." *Lopez–Soto*, 205 F.3d at 1105 (internal quotation marks and citations omitted); *see also Twilley*, 222 F.3d at 1095. Reasonable suspicion "arises from the combination of an officer's understanding of the facts and his understanding of the relevant law." *Heien v. North Carolina*, 574 U.S. 54, 61 (2014). In reviewing the district court's determination of reasonable suspicion, courts must look at the "totality of the circumstances" to see whether the officer had a "particularized and objective basis" for suspecting criminal activity. *Arvizu*, 534 U.S. at 273 (internal quotation marks and citations omitted); *see also United States v. Diaz–Juarez*, 299 F.3d 1138, 1141–42 (9th Cir. 2002).

Heien is instructive. There, the Court held that a police officer's reasonable mistake about the applicable traffic law did not render the ensuing stop unlawful

under the Fourth Amendment. *Id*. at 57. But the Court made clear that "[t]he Fourth Amendment tolerates only reasonable mistakes, and those mistakes—whether of fact or of law—must be objectively reasonable" and that "an officer can gain no Fourth Amendment advantage through a sloppy study of the laws he is duty-bound to enforce." *Id*. at 66-67. Thus, *Heien* confirms that while the Fourth Amendment allows an officer to be reasonably mistaken about the scope of a traffic statute in conducting a stop, it does not allow an officer to conduct a stop when there are no facts to support a violation of the statute in the first place.

A. There is no evidence in the record to support a finding that Renteria's alleged turn affected the officers' movement.

That was the case here. The district court found that Mejia and Reynoso had reasonable suspicion to conduct a traffic stop on Renteria after he turned from Bixel Street into an alley without activating his turn signal. *See* ER 38. According to the trial court, those alleged actions violated Cal. Veh. Code § 22107, which states that "[n]o person shall turn a vehicle from a direct course or move right or left upon a roadway until such movement can be made with reasonable safety and then only after the giving of an appropriate signal in the manner provided in this chapter *in the event any other vehicle may be affected by the movement*."(emphasis provided).

But it is well-established that the government has the burden of establishing the facts and circumstances necessary to support a finding of reasonable suspicion. *See United States v. Job*, 871 F.3d 852, 862 (9th Cir. 2017). And here, there was no evidence presented below that Petitioner's alleged turn "affected the movement" of any vehicle on the road, including the police car driven by Mejia and Reynoso. As Mejia admitted in his sworn declaration, "the Tahoe was the only car we saw on the road." ER 494. With no other cars on the road, Petitioner could only have violated section 22107 if he "affected" the movement of the officers' car. *See People v. Suff*, 58 Cal.4th 1013, 1056 (2014) (recognizing a violation of the statute where the only car affected is the pursuing police officer).

But there was no evidence presented to the district court that Petitioner's failure to signal had any effect on any other car on the road. The trial court found only that "Officers Mejia and Reynoso were driving behind Defendant when he made a right-hand turn without signaling. ER 38. But "driving behind" is not the relevant legal standard. The government had to show—and the trial court had to find—that the officers' vehicle was "affected by the movement" of Renteria's car. No such showing was made here. The sole evidence presented below consisted of one sentence in Mejia's declaration stating that the Tahoe was "driving ahead of us northbound on Bixel Street." ER 494. Mejia's declaration does not provide any

facts to support the conclusion that the officers' car was affected by Renteria's alleged failure to turn. It does not say what the distance was between the two cars. It does not say the speed at which the cars were traveling. It does not state the distance from the officers to the location of the turn. It does not state that the officers were in the same lane as Renteria. And it certainly does not say that the officers' car was affected or impeded in any way by the movement of Renteria's car.[2] To the contrary, Mejia's declaration suggests that the officers were driving a considerable distance away from Renteria, since the officer admits to having lost sight of the Tahoe after it turned into the alley, which would mean that the officers were not following immediately behind or anywhere nearby and would thus not be "affected" by any failure to signal. *See* ER 494 ("I could not see any cars in the alley… As we got to the end of the alley… I could not see any cars…"); *see also* ER 345 (declaration from Renteria stating that, before the turn, he " noticed an LAPD police car approximately 200 feet in front of me…")

At the behest of the government, the trial court relied on the California Supreme Court's decision in *Suff* to find that the circumstances supported a finding

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2 Although Mejia and Reynoso both testified at the evidentiary hearing, neither one testified that Renteria's turn affected the movement of their police car. *See generally* ER 393-418. In fact, Mejia admitted that it would not be a crime for a vehicle to "turn right without signaling when no other vehicles may be affected by the turn." *See* ER 397.

of reasonable suspicion. *See* ER 337 (government's briefing); ER 28-29 (trial court adopting government's arguments). According to the government, "the California Supreme Court has held that a police officer can lawfully stop someone for failure to signal even where a stopped patrol vehicle is the only one 'affected by the movement.'" *Id*. But in *Suff*, the facts showed that the defendant was *stopped at a red light—with the police motorcycle right behind him*—before failing to signal his turn. *See Suff*, 58 Cal.4th at 1051 ("As [the officer] drove behind the van, t*he driver stopped at a red light. The van and [the officer's] motorcycle 'were positioned to go straight in the lane… [a]nd then the van suddenly made a right turn without any kind of signals or without moving over toward the curb*.' [The officer] stopped the van for failing to signal the turn.") (emphasis provided).

In those circumstances, the Supreme Court of California found that the officer had reasonable suspicion to stop the defendant for violating section 22107 because "[the officer] was clearly in a position to be affected by defendant's turn; had [the officer] decided to proceed to the right of defendant's van to make a right turn, he would have done so without knowing that defendant was planning to turn right into the same path." *Id*. at 1056. *See also People v. Logsdon*, 164 Cal.App.4th 741, 744 (2008) (finding violation of section 22107 where officer "was directly behind [the defendant], in the same lane, and within 100 feet of him.")

As detailed above, the government did not establish, nor does the record support the existence of, any similar circumstances here. There was no evidence presented below that could have allowed the district court to conclude that the officers' car was "affected" by Renteria's alleged failure to signal his turn. Without that evidence, the trial court could not properly conclude that Renteria's alleged failure to signal amounted to a violation of § 22107 creating reasonable suspicion for a traffic stop. *See Lopez-Soto*, 205 F.3d at 1106 (reversing denial of suppression motion where officer conducted traffic stop in violation of governing law). The district court erred in finding to the contrary. Reversal should result accordingly.

B. The government failed to prove that Renteria's alleged failure to signal had any impact—actual or potential—on the officers' movement.

As detailed above, the government presented no evidence that Petitioner's alleged failure to signal had any actual impact on the officers' car or any other vehicle on the road. In response, the government argued to the Ninth Circuit that "potential impact" sufficed to establish a violation of the statute. But there was no evidence of "potential impact" either. The government did not cite a single case or authority to support the claim that merely "driving behind" a car that fails to signal a turn provides reasonable suspicion to conduct a traffic stop under California Vehicle Code § 22107. *People v. Logsdon*, 164 Cal.App.4th 741, 744-45 (2008),

the case the government relied upon, actually supports Renteria's position. There, the evidence showed that the officer's vehicle was "following the [defendant's car] in the same lane" and that "after about 100 feet, the [defendant's car] moved from the middle lane to the far right lane without signaling." *Id*. at 743. In those circumstances, the Court of Appeals found that the officer's car "was affected by the lane change…He was directly behind [the defendant], in the same lane and within 100 feet of him." *Id*. at 744. Relying on those facts, the Court rejected the defendant's claim that the officer was too far away to be affected by the lane change. The Court observed: "Actual impact is not required by the statute; potential effect triggers the signal requirement. *The trial court found that a vehicle within 100 feet of [the defendant]'s car, traveling in the same lane and at the same speed, was affected by the lane change*." *Id*. at 745 (emphasis provided and internal citations omitted).

But here the government failed to prove any facts that could support a finding of even potential impact, and the district court did not mention any facts that could support any such finding. *See United States v. Prieto-Villa*, 910 F.2d 601, 607 (9th Cir. 1990) ("[F]actual findings by the district court are mandatory.") The district court's sole finding was the following: "Officers Mejia and Reynoso were driving behind Defendant when he made a right-hand turn without signaling."

ER 38. *See also* ER 34 ("Officers Ruben Mejia and David Reynoso were on patrol in a marked police car driving behind Defendant's car when they observed him make a right-hand turn without signaling.") The district court did not find—nor did the government prove—the distance between Renteria's car and the officers. The district court did not find—nor did the government prove—that the two cars were driving in the same lane. The district court did not find—nor did the government prove—the speed of each vehicle. Thus, the district court did not find—nor did the government prove—that Renteria's alleged failure to signal actually or even potentially affected the officers' vehicle in any way. As stated in *Logsdon*, VC § 22107 required a showing of actual or potential impact, and there is no such evidence of in this case. "Driving behind" a vehicle, without more, is insufficient to support a violation of the statute, and *Logsdon* does not hold to the contrary.

Recognizing the lack of evidence in the record, the government relied on speculation about the alleged speed of the vehicles and distances involved to argue that the "un-signaled turn supported a traffic-based detention." But the government cannot rely on guesswork or speculation to support a finding of reasonable suspicion in response to a motion to suppress. The law is clear that the government has the burden of production of coming forward with "specific and articulable facts" to support reasonable suspicion. *Terry v. Ohio*, 392 U.S. 1, 21 (1968);

United States v. Willis, 431 F.3d 709, 715 n.5 (9th Cir. 2005) (on motion to suppress evidence based on traffic stop, stating that the government has the burden of production to come forward with specific and articulable facts to support reasonable suspicion).

The record here contains no such "specific and articulable facts." The government could have presented evidence before the district court about the distance, speed, and location of Renteria's car to show that the alleged failure to signal actually or potentially affected the officers' vehicle. It did not do so. Indeed, the officers could have simply turned on their body or dash-mounted cameras to record all those details and eliminate the need for speculation about whether "the defendant's un-signaled turn might have impacted the patrol car…" Instead, the government offered one sentence in Mejia's declaration to support the challenged traffic stop: "I first saw defendant in a while Chevrolet Tahoe driving ahead of us northbound on Bixel Street." ER 494. That was insufficient under the circumstances, for all the reasons discussed here. The Ninth Circuit erred in finding to the contrary. Certiorari should be granted accordingly.

CONCLUSION

For all these reasons, the Court should grant the petition for a writ of certiorari.

Respectfully submitted,

Dated: May 20, 2021

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APPENDIX

A

NOT FOR PUBLICATION

FILED

DEC 23 2020

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. RICARDO RENTERIA, AKA Flaco, Defendant-Appellant.	No. 19-50228 D.C. No. 2:18-cr-00119-VAP-1 MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Virginia A. Phillips, Chief District Judge, Presiding

Argued and Submitted December 8, 2020
Pasadena, California

Before: KELLY,** GOULD, and R. NELSON, Circuit Judges.

Ricardo Renteria ("Renteria") appeals his convictions for possession of methamphetamine with intent to distribute, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(A)(viii); felon in possession of a firearm and ammunition, in violation of 18 U.S.C. § 922(g)(1); and possession of a firearm in furtherance of a drug trafficking

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Paul J. Kelly, Jr., United States Circuit Judge for the U.S. Court of Appeals for the Tenth Circuit, sitting by designation.

crime, in violation of 18 U.S.C. § 924(c)(1)(A)(I). We have jurisdiction under 28 U.S.C. § 1291. We affirm.

First, Renteria asserts that the district court erred in denying his motions to suppress the fruits of the search of his car. He argues: (1) that the initial traffic stop was an unconstitutional search, and (2) that he did not give the officers voluntary consent to search his car. We review a denial of a motion to suppress *de novo*. *United States v. Tan Duc Nguyen*, 673 F.3d 1259, 1263 (9th Cir. 2012). We review the district court's determination of reasonable suspicion *de novo*. *United States v. Colin*, 314 F.3d 439, 442 (9th Cir. 2002). A district court's factual finding that a person voluntarily consented to a search is reviewed for clear error. *See United States v. Patayan Soriano*, 361 F.3d 494, 501 (9th Cir. 2004).

The district court correctly denied Renteria's motions to suppress with respect to the traffic stop because the stop was supported by reasonable suspicion. Reasonable suspicion is substantially less than probable cause and "falls considerably short of satisfying a preponderance of the evidence standard," but does require more than a mere hunch. *See United States v. Arvizu*, 534 U.S. 266, 273 (2002) (citing *United States v. Sokolow*, 490 U.S. 1, 7 (1989)). And under California Vehicle Code § 22107, any car turning right or left must "giv[e] an appropriate signal . . . in the event any other vehicle may be affected by the movement." Cal. Veh. Code § 22107. Because Renteria did not signal before

turning into an alleyway, the officers had reasonable suspicion that Renteria violated § 22107. *See People v. Logsdon*, 79 Cal. Rptr. 3d 379, 382 (Ct. App. 2008) ("Actual impact is not required by the statute; potential effect triggers the signal requirement.").

In addition, the district court did not commit clear error in finding that Renteria voluntarily consented to the search of his car. A search conducted pursuant to valid consent is constitutionally permissible. *See Schneckloth v. Bustamonte*, 412 U.S. 218, 222 (1973). Here, although Renteria was handcuffed, and the officers had not yet read him his *Miranda* rights, the officers kept their guns holstered. *See United States v. Castillo*, 866 F.2d 1071, 1082 (9th Cir. 1988) (listing factors to consider in determining whether a defendant voluntarily consented to a search). Moreover, the district court found that throughout the encounter, Renteria "appeared to be relaxed" and was engaging the officers "in casual conversation."

Second, Renteria argues that the district court erred in denying his motion to dismiss based on the Government's failure to preserve his car. "Whether a defendant's due process rights were violated by the government's failure to preserve potentially exculpatory evidence is reviewed de novo." *United States v. Sivilla*, 714 F.3d 1168, 1172 (9th Cir. 2013) (quoting *United States v. Del Toro-Barboza*, 673 F.3d 1136, 1149 (9th Cir. 2012) (quotation marks and internal

citation omitted)).

Renteria's argument fails because he could not show that the Government acted in bad faith. *See id*. Although the Government may have been negligent in allowing Renteria's car to be repossessed, Renteria did not meet his burden to demonstrate that the Government *knew* of the car's potential usefulness at the time when it allowed the car to be repossessed. And given the deference we accord to the district court's finding that the Government did not act in bad faith, we reject Renteria's due process claim. *See id*. ("We review factual findings, such as the absence of bad faith, for clear error.") (quoting *Del Toro-Barboza*, 673 F.3d at 1149 (quotation marks and internal citation omitted)).

Finally, Renteria contends that the district court erred in denying his motion for judgment of acquittal.[1] He argues that the evidence presented at trial was insufficient to support a conviction under 18 U.S.C. § 924(c)(1)(A). We apply a two-step test for preserved sufficiency-of-the-evidence challenges. *United States v. Nevils*, 598 F.3d 1158, 1163–64 (9th Cir. 2010) (*en banc*). First, we consider the evidence "presented at trial in the light most favorable to the prosecution." *Id*. at

[1] We reject Renteria's argument that the district court erred in relying on the elements applicable to the "possession" prong of 18 U.S.C. § 924(c)(1)(A), even though the Government also charged him under the "carry" prong of that provision. It is well established that "[t]he government may charge in the conjunctive and prove in the disjunctive." *United States v. Robertson*, 895 F.3d 1206, 1219 (9th Cir. 2018), *cert. denied*, 139 S. Ct. 472 (2018).

1164. Second, we consider whether, "'after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Id*. at 1163–64 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original)).

Here, the district court did not err in denying Renteria's motion for judgment of acquittal. To convict under 18 U.S.C. § 924(c)(1)(A), the Government had to demonstrate a "nexus" between the gun and the underlying drug offense. *United States v. Lopez*, 477 F.3d 1110, 1115 (9th Cir. 2007). We have previously held that "a sufficient nexus exists if the firearm was 'readily accessible' during the commission of the drug crime." *Id*. Officer Jenkins, who conducted the dog search of Renteria's car, found it "fairly easy" to pry open the panel to the compartment where the gun was hidden, despite suffering from a permanent tremor in his hand. He did not need to use any special tools, and it only took him "a couple of seconds" to remove the panel once he got his fingernails under it. Viewing the evidence in the light most favorable to the prosecution, we conclude that the district court did not commit reversible error in denying Renteria's motion for judgment of acquittal.

AFFIRMED.