CASE NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

CHEROSCO BREWER, Petitioner,

vs.

UNITED STATES OF AMERICA, Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. For an otherwise lawful traffic stop for a routine traffic violation, does the stop fail the duration test of *Rodriguez v. United States*, 575 U.S. 348 (2015), and is it unconstitutionally prolonged in violation of the Fourth Amendment, even if that prolongation is of short duration, when the local police promptly summoned a drug dog to the scene without reasonable suspicion of a drug crime, failed to exercise diligence in performing mission tasks and slow-walked their completion, and, while waiting for the dog, diverted from the stop's stated traffic mission in multiple and time-consuming ways including by ordering the passenger out of the car, patting her down, and questioning her for identification information and whether she has outstanding warrants or court cases?

2. The Court in *Terry v. Ohio* held that the degree of intrusion of a search or seizure must be "reasonably related in scope to the circumstances that justified the interference in the first place." 392 U.S. 1, 20 (1968). The Court has recognized that the "scope" principles from *Terry* also apply to traffic stops, *Rodriguez*, 575 U.S. at 354, and the scope inquiry is not only confined to duration but also includes the manner and means by which the stop is conducted. Even aside from the duration of a routine traffic stop, does the scope of a stop exceed that which is permissible under the Fourth Amendment when the manner and means used by local police in conducting that routine traffic stop—in this case, for example, by amassing eleven armed white officers and a drug dog, forcing the two Black occupants out of the vehicle, and subjecting them to pat downs and their vehicle to a drug-dog-sniff, with no reasonable suspicion for doing so—are unreasonably intrusive for purposes of the stop's stated traffic mission, here, too much window tint?

3. The Fourth Amendment and this Court's case law require that police must have "reasonable suspicion" to extend a traffic stop to conduct a drug-dog sniff for possible drug crimes. In circumstances such as Petitioner's November 11 stop, where the subject roadside encounter was

between, on the one hand, eleven armed white police officers and a drug dog, and, on the other, a stopped driver and his sole passenger who were both Black, is it clearly erroneous and contrary to law for such "reasonable suspicion" to be satisfied, in whole or in part, by alleged police-declared "nervousness" of the stopped vehicle's driver and/or passenger, and when the police body-cam videos of the encounter contradict such alleged "nervousness"?

DIRECTLY RELATED CASES

1. *United States v. Brewer*, Case No. 20-5943, U.S. Court of Appeals, Sixth Circuit, opinion and judgment entered June 7, 2021.

2. *United States v. Brewer*, Case No. 3:17-cr-37-DJH, W.D. Ky., denying motion to suppress on January 29, 2018, and entering judgment of conviction and sentence on August 4, 2020.

3. *Brewer v. Holland, et al.*, 3:16-cv-00014, W.D. Ky., pro se civil rights action against LMPD officers, pending.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Cherosco Brewer ("Petitioner") respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit, dated June 7, 2021, in *United States v. Brewer*, No. 20-5943, 2021 U.S. App. LEXIS 17130 (6th Cir. June 7, 2021).

OPINIONS BELOW

The opinion of the U.S. Court of Appeals for the Sixth Circuit for which Petitioner seeks a writ of certiorari is reported at *United States v. Brewer*, No. 20-5943, 2021 U.S. App. LEXIS 17130 (6th Cir. June 7, 2021) (*Appx*-001).

The opinion of the U.S. District Court for the Western District of Kentucky, which denied the motion to suppress, is reported at *United States v. Brewer*, No. 3:17-cr-37-DJH, 2018 U.S. Dist. LEXIS 13873 (W.D. Ky. Jan. 29, 2018) (*Appx*-008). The opinion and order of that same court dated October 26, 2018, which denied Petitioner's motion to reconsider on the suppression issue, is unreported. (*Appx*-020).

The judgment of conviction and sentence in Petitioner's criminal case, as entered in the Western District of Kentucky on August 4, 2020, is unreported. (*Appx-029*).

JURISDICTION

The Sixth Circuit issued its opinion and judgment on June 7, 2021. (*Appx*-001.) This Court has jurisdiction over this cause under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment, which 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

A. Introduction.

Petitioner's case involves unconstitutional vehicle searches by the Louisville Metropolitan Police Department's ("LMPD") Ninth Mobile Unit; the searches were facilitated by the unit's overzealous use of pretextual routine traffic stops whose real purpose was to search citizens and their vehicles for guns and drugs. In this case, after Petitioner's vehicle was pulled over on November 11, 2015 for excessive window tint, ten armed LMPD officers promptly amassed at the routine traffic stop; an *eleventh* officer and his drug dog were summoned to join them. A football team of force, for window tint! Once the drug dog arrived some 9 to 10 minutes into the stop, the dog "alerted" to a drug in the vehicle, which turned out to be a tiny amount of marijuana. In the resulting vehicle search, LMPD found a handgun and golf-ball size quantity of marijuana secured tightly under the car's steering column. LMPD stopped Petitioner again the next night, also for window tint, and this time the dog sniff resulted in the discovery of a small amount of cocaine.[1]

B. District Court Proceedings.

After Petitioner was charged in federal court with felony counts of possession with intent to distribute marijuana (on November 11) and cocaine (on November 12), possession of the gun on November 11 "in furtherance" of drug distribution, and being a felon in possession of the gun on November 11, he moved to suppress the gun and drugs which LMPD had recovered during the vehicle searches on both November dates. A three-day hearing on the suppression issue was

[1] That second encounter, on November 12, 2015, resulted when LMPD pulled Petitioner over for excessive window tint while he was driving alone in a different vehicle (a Ford Taurus). The same drug handler and his drug dog again arrived at the scene, and this time, after the dog's alert, LMPD found a small amount of cocaine hidden within the vehicle's dashboard. There was no gun that second night.

conducted in the district court. The district court denied the motion (*Appx*-008) and denied reconsideration (*Appx*-020).

After a jury trial in January 2019, Petitioner was found guilty of all four counts. He was sentenced to 240 months imprisonment and five years of supervised release. (*Appx*-029.)

C. The Sixth Circuit Affirmed.

Petitioner appealed to the Sixth Circuit, in which, among other errors, he alleged that the district court committed reversible error, and denied Petitioner's rights under the Fourth Amendment, when it failed to suppress the evidence recovered by LMPD during the traffic stops on November 11 and 12, 2015.

Petitioner argued that the gun and drugs (from November 11) and drugs (from November 12) were required to be suppressed because the scope of each stop—as measured both by their duration *and* by the manner and methods used by LMPD to conduct them—grossly exceeded the stops' original missions of excessive window tint, in violation of Petitioner's Fourth Amendment rights. He also argued that the district court committed legal error in its alternate holding as to the November 11 stop—which the court had made in a footnote (*Appx*-014) and without the issue having been raised by the Government or briefed by either party—that the LMPD officers had "reasonable suspicion" of criminal activity sufficient to justify extending the November 11 stop for the drug-dog sniff.

The Sixth Circuit affirmed in a short opinion. (*Appx*-001.) The panel concluded that the stops did not violate the Fourth Amendment and were not unconstitutionally prolonged. The court also rejected Petitioner's contention that LMPD's manner and means were excessive for routine window tint stops. (*Appx*-003 to -006.)

D. The Facts of the Two Stops.

The questions presented in this Petition concern the facts and circumstances of the

November 11 and 12 stops. Those are summarized below from the record of the suppression hearing including the body-camera videos of officers at the scene. (All videos are on thumb drives which are on file with the Sixth Circuit).

1. November 11 stop.

At the relevant time in November 2015, LMPD's Ninth Mobile unit operated as a strike force unto itself in Louisville's poorest neighborhoods, those with supposedly the highest incidence of violent crime, with the explicit mission of catching people with guns and drugs. (Suppression Hearing Trans. Vol. 1 ("ST1") at 8-9, 18, 39-40, 45-46; ST2 at 5-8, 36-37 (PageID 168-69, 178, 199-200, 205-06, 269-72, 300-01).)

The pretextual traffic stop—a stop where the stated reason is a sham—was their practiced *modus operandi*. As supervisor Sgt. James Adams testified: "Traffic stops are kind of what we do." (ST2 at 8 (PageID 272); *see also* ST1 at 39-40 (PageID 199-200).) And, Ninth Mobile does their traffic stops with a massive show of force, exposing their pretext. "As soon as a car calls off on a stop, then usually whoever's in the area, most likely everyone, if you're not on a stop, everybody just shows up." (ST1 at 9 (PageID 169); see also ST2 at 14 (PageID 278).)

Everybody plus a drug-sniffing dog. (ST1 at 40, ST2 at 30-31, ST3 at 23-24 (PageID 200-01, 294-95, 363-64).)

At shortly before 1:00 a.m. in the early hours of November 11, Petitioner was driving a Dodge Charger in the area of Wilson and Olive, in Louisville, Kentucky. (ST1 at 10 (PageID 170).) He had been renting that car from Enterprise—under his own name, with no effort at concealing that fact—since July 2015. (Trial Transcript, Vol. 2 ("T2") at 60-61, 66-67 (PageID 1718-19, 1724-25).) He was accompanied by one passenger, Regina Northington.

At this same time, Ninth Mobile's Robert Holland was driving his unmarked police vehicle, with fellow officer Holly Hogan in the passenger seat and their boss, Sgt. Adams, in the back.

(ST1 at 61, 75 (PageID 221, 235).) The speed of Petitioner's Charger is supposedly what first caught Holland's attention. (ST1 at 61, 75.) But Holland admitted he did not know whether the speed was over the limit, and the Ninth Mobile does not have radar. (*Id.* at 75-76.) Nonetheless, Holland turned around to follow the Charger. (*Id.* at 75-76.)

Holland claims that is when he noticed the Charger's heavy window tint. (*Id.* at 77 (PageID 237).) Hogan testified she noticed that too. (*Id.* at 12-13 (PageID 172-73).) The Ninth Mobile does not provide officers with tint meters. (*Id.* at 35-36, 38, ST2 at 58 (PageID 195-96, 198, 322).) Nonetheless, the officers pulled the Charger over for excess window tint. (ST1 at 61-62, 77 (PageID 221-22, 237).) That was the stated reason for the stop. (ST1 at 35-36, 51, 56, 62, ST2 at 31 (PageID 195-96, 211, 216, 222, 295).) The real reason, consistent with LMPD's routines, was to promptly amass overwhelming force, and a drug dog, against the stopped citizens to investigate whether any were involved with drugs, guns, or other criminal activity.

Petitioner stopped and pulled over immediately. (ST1 at 77 (PageID 237).) The forces of LMPD's Ninth Mobile promptly amassed to the scene of the window tint violation. They did not need to call for more troops because this military-like force has its own "private channel," which the forces monitor in real time, and they are trained to quickly amass at any traffic stop. (ST1 at 19, 78, ST2 at 7-8 (PageID 179, 238, 271-72).)

Within three minutes, there were 7 officers at the scene. A minute or so later, there were 10, as Sgt. Adams' video confirms. (Govt. Supp. Hearing Exh. 3 ("GX3"), Adams Video-1 2:42-4:35; ST1 at 37-38, 78-82 (PageID 197-98, 238-42).)

All the officers are white (on November 12 too); Petitioner and his passenger are Black.

The dog and his handler (Det. Anthony James) were also promptly summoned by Sgt. Adams (ST2 at 35; GX3, Adams Video-1 3:00), because "[t]ypically our K-9 dog usually shows

up to every single one of our stops." (ST1 at 81-83 (PageID 241-42); *see also* ST2 at 30-31, ST3 at 23-24 (PageID 294-95, 363-64).)

With the forces en route or already there, Holland eventually approached the Charger's driver side, and Hogan (with Adams shadowing) the passenger side. (ST1 at 13, 17, 36-37, 62-63 (PageID 173, 177, 196-97, 222-23).) Holland failed to activate his camera until "pretty late" into the stop, *13 minutes late*, a failure which violated LMPD's policies. (ST1 at 65-66, 70-75, 88 (PageID 225-26, 230-35, 248).) Hogan, by contrast, began recording a minute or two after she exited the police vehicle, with Holland already at the Charger's driver window speaking with Petitioner. (ST1 at 14-15, 41-42 (PageID 174-75, 201-02).)

Before he approached the window, Holland testified that he shouted at Petitioner—with Holland still back at his own car—to roll down the window. Petitioner complied. (ST1 at 62-63 (PageID 222-23).) With the windows down, Holland approached the driver side with a flashlight. (None of this, at least a minute or more, is on the videos because no officer had started recording).

A couple minutes later, Hogan approached the passenger side. Indeed, LMPD waited at least some *two to three minutes* into the stop before they first approached Northington on the passenger side. This is confirmed by Adams' video which shows him standing on the passenger side, off to the side and behind the Charger, with his camera recording and providing unmistakable proof that nothing was happening there. They were all slow-walking the window-tint mission, wasting time, waiting for the dog.

The officers testified that, when they looked into the Charger through the rolled-down windows on their respective sides of the car, they each noticed that the tint-darkening effect of the window tinting was also being achieved—belt and suspenders—because there was a little white bathroom towel across the dashboard lights. (ST1 at 15, 63 (PageID 175, 223).) But the officers (and their body cams) could easily see inside the car now anyway, with the widows down and

flashlights pointed, so Petitioner's *means* of achieving privacy—window tint and/or towel—was unimportant. Indeed, that little towel later ended up tossed on top of the car, an afterthought, only to be conveniently resurrected by officers during the suppression hearing in a contrived after-the-fact effort, along with equally false allegations of "nervousness," to try to justify forcing the two Black citizens out of their car and patting them down for weapons, when there was absolutely no legitimate reason for doing so that was apparent in the videos or the circumstances of the stop.

A short time after approaching the driver, within two minutes, Holland ordered Petitioner out of the vehicle, hands on the car, and he patted him down, finding nothing. (ST1 at 63-65, 81, 84 (PageID 223-25, 241, 244); GX3, Adams Video-1 2:00-2:15.) He then ordered Petitioner to stand by the Charger's rear bumper, wasting more time. Holland claimed, ludicrously, that he ordered Petitioner out because "a carotid artery in [Petitioner's] neck was actually pulsating pretty fast. So I knew that he was nervous about something." (ST1 at 63-64 (PageID 223-24).) Holland testified that Petitioner was "detained at that point for the excessive window tint citation that I was actually starting to fill out before the K-9 got there." (*Id.* at 86-87 (PageID 246-47).) But *Hogan's* testimony and *her* video on this point flatly contradicted Holland (who failed to turn on his own video for *13 minutes*); Hogan's video proves that Holland did *not* obtain a blank ticket form and did *not* begin to write up the window-tint violation until two minutes *after the dog alerted*, and some 12-13 minutes into the stop. (GX3, Hogan Video-1 11:00 to 11:15; ST1 at 48-49 (PageID 208-09).)

Holland claimed he had no knowledge of Petitioner before this stop. (ST1 at 69.) Nonetheless, Holland later taunted Petitioner, called him a "thug," and accused him of giving them "an attitude" (although the alleged "attitude" is also contradicted by video); Holland even told Petitioner he hopes Petitioner goes back to prison. (ST at 85-86 (PageID 245-46); GX3, Holland Video-1 1:40-3:30.)

As Holland worked the driver side, Hogan interrogated the passenger, Ms. Northington. Hogan demanded her name, address, date of birth, and social security number, all of which were provided compliantly, as Hogan stood at the passenger window slowly writing it down. Hogan then ordered Northington out of the car, told her she was going to pat her down for weapons, and then did so for 12-16 seconds. (GX3, Hogan Video-1 3:24-3:38.) Then, like Holland had done with Petitioner, Hogan ordered Northington to stand to the back of the vehicle, where some 9 officers had assembled (not counting Hogan). (GX3 Hogan Video-1 1:00-4:00, Adams Video-1 3:30-3:50; ST1 at 15-16.) Hogan testified her "reasonable suspicion" for the pat-down was the window-tint and towel and that Northington was "fairly nervous." (ST1 at 43-45 (PageID 203-05).)

Hogan then explained to this befuddled citizen, thereby confirming the sham of the "window tint" pretext: **"We have a bunch of homicides. We're out here trying to get guns off the streets. That's all we're out here doing."** (ST1 at 45-46 (PageID 205-06); T3 at 73, 104 (PageID 1933, 1964); GX3, Hogan Video-1 3:45-3:50.)

By the time the passenger was ordered to stand behind the car, there were at least ten LMPD officers at the scene. (GX3, Adams Video-1 2:40-4:50, Hogan Video-1 3:30-3:45; ST1 at 37-38 (PageID 197-98).) As Hogan put it, there were "tons of officers back there." (T3 at 99 (PageID 1959).) (***Remember, this was a window tint stop!***) Most of the officers were standing around exhibiting force, chit-chatting, and gawking at the two citizens who had been forced to stand in 38° cold weather. (GX3, Adams Video-1 2:40-4:00, Hogan Video-1 2:00-2:05.) At least two officers were peering in the Charger's two open windows, with hands and flashlights into the vehicle, searching for contraband, none of which was found in that manner. (GX3, Hogan Video-1 4:00-7:30; ST1 at 53-55 (PageID 213-15).) **None were working on completing the mission of the window tint violation.** No one had yet to start writing the window-tint ticket; that mission-

task did not occur until *after* the dog had already alerted, as proved by Hogan's video and contrary to Holland's misremembering, or lie, about that point.

Hogan testified that she was able to address on contact with the passenger, and viewing into the car, the issue of excessive window tint, all with the naked eye and no instruments (which LMPD's officers did not have in any event). To her, that violation was apparent on contact. "So, if you're asking me was the window tint issue addressed, yes, I addressed that on contact." (ST1 at 37 (PageID 197); *id.* at 55-57.) ***Yet, no one wrote the ticket. Instead, they diverted to non-mission tasks, slow-walked their completion, and waited for the dog***.

Their diversions for other crimes came up empty: No drugs, guns, or any other contraband were observable, even with flashlights probed into open windows. And none were recovered from the pat-downs. The officers never asked about the reason for driving with the tint or towel, and never mentioned the window-tint issue to the two citizen who were standing in the cold. (ST1 at 26, 33-34, 46 (PageID 186, 193-94, 206).) It was all a pretext to search for guns and drugs and to run a drug dog around the car: **"We have a bunch of homicides. We're out here trying to get guns off the streets. That's all we're out here doing."**

With Petitioner and Northington standing behind the Charger, officers supposedly began a process of checking their backgrounds and for any warrants. (ST1 at 17-18, 66-67 (PageID 177-78, 226-27).) But that too was slow-walked or not done at all until long after the dog had alerted and Petitioner had been arrested. Six or so minutes into the stop (starting at 4:20 of Hogan's video), Hogan asked Northington if she had any warrants and explained that she would be running Northington's name on the radio and computer for that purpose. (ST1 at 17-18.) Hogan did not do that though. Instead, she handed her notebook off to *another officer* at the 5:32 mark (7 or more minutes into the stop) so that *he* could run Northington's name. Hogan then (at 6:15 of her video) used her walkie-talkie to call in the vehicle's license plate "to make sure it wasn't stolen" (thereby

investigating still another unrelated crime (ST1 at 19)), while at least two other officers continued to circle the Charger with hands and flashlights probing into the interior, and one of them taunted Petitioner about whether they were violating his rights. (ST1 at 19-21, 47-48, 54-55 (PageID 179-81, 207-08, 214-15); GX3, Hogan Video-1 4:15-7:20.)

Having been summoned promptly by Sgt. Adams (ST1 at 46-47, 58, ST2 at 5-6; GX3, Adams Video-1 3:00), the dog and his handler (Det. James) arrived at about the 8:00 minute mark of Hogan's video, which is about 9-10 minutes into the stop. That made the size of LMPD's forces at the window-tint stop at least eleven officers plus a dog. (ST1 at 20-21; GX3, Hogan Video-1 9:00-10:00, 12:20-16:50, Adams Video-3 2:30-3:00, Holland Video-1 00:00-2:50.)

The dog—named Diesel—supposedly "alerted" to the outside of the driver door at about the 9:00 minute mark of Hogan's video (approximately 10-11 minutes into the stop); the alert allegedly meant that Diesel had sniffed a drug. (ST1 at 21, 58, 67, ST3 at 5-6 (PageID 181, 218, 227, 345-46).) Upon opening the driver door to that alert, Diesel made another alert to a "little nugget" of supposed marijuana located by the driver's armrest. (T2 at 145 (PageID 1803); GX3, Adams Video-2 00:30-00:50.)

At about this same time, Hogan learned that the officer ("Jordan"), whom she had asked to run the passenger's information, had failed to do so. Like most every other LMPD officer, Jordan had been standing around, avoiding mission tasks, chuckling with the other officers, and waiting for the dog. It took Hogan another minute or so to relocate her notebook. (GX3, Hogan Video-1 8:40-10:20.)

As for *Petitioner's* record, none of that mission-pertinent work had been started either, before the dog arrived; indeed, Holland's video shows that that task was not even begun until some *57 minutes into the stop*, which was 45 minutes or so after the dog had alerted, after the drugs and gun had been found, and after Petitioner had been placed under arrest. Even then, Holland had to

ask Hogan to tell him Petitioner's *name* before he could begin that task, confirming the lie that Holland had supposedly started that task earlier. (GX3, Hogan Video-2 25:10, Holland Video-2 12:00-12:50.) Any testimony by Holland to different "facts" is contradicted by the videos, including by video of events which occurred before Holland finally activated his video after some 13 minutes into the stop; any reliance on Holland's contrary testimony is clearly erroneous.

Upon the dog's "alert," two officers immediately took control of Petitioner and handcuffed him (*id.* at 9:07), supposedly to detain him further. (ST1 at 48 (PageID 208).) Yet, all that had been "alerted" at that point was a candy container with maybe one blunt-worth of supposed marijuana. (T3 at 52, 151 (PageID 1912, 2011); GX3, Adams Video-2 00:30-00:50.) Petitioner was still not under arrest. (ST1 at 67-68, 87.)

Believing the dog's alert was "probable cause," Holland, Hogan, Adams, and others began to search the interior of the vehicle. Holland said he stopped working on the citation, which he falsely claimed he had started and had passed off to Hogan. (ST1 at 69, 74, 86-87.) In fact, Holland did not even begin that task until after the dog alerted and some 12-13 minutes into the stop, as demonstrated by Hogan's video at 11:00-11:05. Also, after the alert and after Holland's alleged "pass off," Hogan was not doing that task either because she was helping search the vehicle. The dog was now inside the vehicle, on the driver seat, and showed interest in the area beneath the steering column. (GX3, Hogan Video-1 11:45-12:15; ST1 at 21, ST3 at 9-11 (PageID 181, 349-51).)

Searching there, Hogan felt some fabric down in the column. Adams, on hands and knees, saw what he thought was a gun down there too. (ST1 at 67-68, ST2 at 9; GX3, Hogan Video-1 12:15-14:00.) After struggling for a few minutes, on his knees and working beneath the steering column, Adams was able to pry a handgun out from where it had been stuck. (GX3, Hogan Video-1 14:00-16:45, Adams Video-3 1:45-5:30.) A few minutes later, another officer pulled out a plastic

bag from that area. (GX3, Hogan Video 19:00-20:45.) Inside was a small cylinder which contained one baggie, slightly larger than a golf ball, which held some 9 teeny bindles of supposed marijuana. (*Id.*; Holland Video-1 9:40-10:15; ST1 at 21 (PageID 181); T3 at 52, 87-89 (PageID 1912, 1947-49).)

Petitioner was found to have $920 that night, which was seized. (T3 at 59 (PageID 1919).) The LMPD officers also located 7 cell phones in the Charger, only two of which were operable, and not one of which was ever linked to Petitioner's alleged drug trafficking in any way whatsoever. (T3 at 59, 91-92, 145, 164-65 (PageID 1919, 1951-52, 2005, 2024-25).)

2. November 12 stop

Petitioner was bonded out from his November 11 arrest. Later, on the night of November 12, after 11:00 p.m., he was driving alone in a Ford Taurus near the area of 2600 Broadway. (ST2 at 38-40 (PageID 302-04).) The Taurus belonged to his fiancé. According to her trial testimony, this was the first time Petitioner had driven that vehicle. (T4 at 20, 25 (PageID 2079, 2084).)

At that same time on November 12, LMPD's Chad Stewart was patrolling that area as part of Ninth Mobile's tactic of "flooding the area" with armed police forces hunting for pretextual traffic stops. (ST2 at 37 (PageID 301).) Stewart claims he observed the Taurus driving slowly and remaining behind Stewart's car. Stewart also noticed excess window tint. (ST2 at 38-39 (PageID 302-03).)

Stewart pulled the Taurus over for perceived erratic driving and excess window tint. (ST2 at 39-40, 54 (PageID 303-04, 318).) The traffic citation Stewart later issued was for window tint. (ST2 at 54-55 (PageID 318-19).) Stewart's body camera was activated at the beginning of the stop. (ST2 at 37, 40 (PageID 301, 304); GX3, Stewart Videos; Govt. Trial Exh. 18A).)

After ordering Petitioner to roll down his back passenger window, Stewart approached the driver door. Petitioner handed his license to the officer. (ST2 at 40-41, 59-60 (PageID 304-05,

323-24).) Seeing Petitioner's name, Stewart testified he then realized it was Petitioner because Stewart had stopped him before. (ST2 at 41 (PageID 305).) Stewart testified he was then also aware that Petitioner had been pulled over the previous night by others from Ninth Mobile. (ST2 at 41-42, 59-62 (PageID 305-06, 323-26).)

Stewart ordered Petitioner out of the car. By this time, one minute into the stop, another officer had arrived, Joel Casse. (ST2 at 42-43, 59-63 (PageID 305-06, 323-27).) Immediately across the street (and apparent in Stewart's video), the Ninth Mobile had another traffic stop in progress. (ST2 at 44, 58 (PageID 308, 322).) Det. James immediately came over from that stop for a brief time, and then walked back to get Diesel, proceeding then directly with his dog to the Taurus's driver door. This was about 3-4 minutes into the stop, while Stewart was in his vehicle running data-base checks. (ST2 at 43-44, 63 (PageID 307-08, 327); T2 at 77 (PageID 1735).) Many other officers amassed at the scene, as per the unit's practice.

The dog "alerted" to the outside of the driver door, at which point Casse placed Petitioner in handcuffs. (ST2 at 63-66 (PageID 327-30).) The dog then went into the vehicle and indicated on the lower part of the dashboard. (T2 at 80 (PageID 1738); ST2 at 63-66).) It took officers several minutes to pry off part of the Taurus's dashboard; only then did LMPD find a black bag which was later found to contain 15 little corner baggies, some with white powder. (ST2 at 63-67, ST3 at 12 (PageID 327-31, 352); T2 at 78-80, 106-09, T3 at 130-31, 136-37 (PageID 1736-38, 1764-67, 1990-97).)

The officers also collected three cell phones and $885. (T2 at 80-81, 84 (PageID 1738-39, 1742).) It was stipulated at trial that the powder contained cocaine, and that the weight of the powder was 8.106 grams. (T3 at 174 (PageID 2034).)

REASONS FOR GRANTING THE WRIT

The constitutional violations apparent in this case happen far too often, especially against Black citizens. The Fourth Amendment is supposed to protect against unconstitutional searches and seizures, but it does that far too infrequently these days, with some courts seemingly content, as here, to permit an ends-justify-the-means view of the Fourth Amendment, draining it of any real protection against ubiquitous overzealous policing. Such as the "policing" practiced on November 11-12, 2015, by LMPD.

The abuses of LMPD's November 11 stop are shocking. Eleven armed white police officers and a drug dog for a piddling window tint violation on a brisk autumn night in Louisville, Kentucky. The two Black citizens seized in this encounter were polite and compliant; yet they were both forced out of their car, they were both subjected to intrusive pat-downs without reasonable suspicion, they were both ordered to stand in the street, and they were gawked at—and in Petitioner's case, taunted—by some of the LMPD officers. A drug dog and his handler were promptly summoned by Sgt. Adams! Why? Because the window tint justification was a sham: **"We have a bunch of homicides. We're out here trying to get guns off the streets. That's all we're out here doing."** Thus, the police slow-walked or disregarded the necessary mission tasks of their sham window-tint mission. They diverted into non-mission tasks almost immediately, looking for other crimes without reasonable suspicion for doing so, and thereby extended the stop by at least 7-8 minutes before the dog's alert at 10-11 minutes. This included interrogating *the passenger* when absolutely no justification exists for doing so during a routine traffic stop for *a driver's* window-tint infraction.

The dog alerted well beyond the point at which mission completion should have reasonably occurred with a diligent team, especially with so many of them—*there were 11 officers at the scene!*—available to assist; and, in any event, LMPD unquestionably *prolonged* the stop with

numerous suspicion-less diversions. LMPD did so by as many as 8 minutes; but even *25 seconds* is too long after *Rodriguez*. There is not a *de minimis* exception.

The criminal case against Petitioner for the gun and marijuana offenses was exclusively dependent on LMPD's illegal search of his car on November 11; and the cocaine offense was exclusively dependent on LMPD's illegal search of a different car the next night on November 12. To avoid suppression of the evidence which LMPD seized from the non-consensual canine sniffs during these stops, the government was required to prove that the stops satisfied both prongs of the scope test of *Terry v. Ohio*, to wit: (1) duration of the detention, and (2) the manner in which the seizure was conducted.

The November 11 stop violated *both* prongs, and all evidence should have been suppressed. The stop was unconstitutionally extended, and failed the duration test, as measured by Fourth Amendment duration standards for routine traffic stops set forth in *Rodriguez* and *Illinois v. Caballes*, 543 U.S. 405 (2005). To the extent the lower federal courts held otherwise in Petitioner's case, they misapplied *Rodriguez* and disregarded well-reasoned post-*Rodriguez* case law from other federal courts, and from state courts too applying *Rodriguez* and the Fourth Amendment, which required or upheld suppression on facts like those in Petitioner's case.

Indeed, three recent decisions of Kentucky's highest court, applying *Rodriguez* and the Fourth Amendment,[2] compel suppression in Petitioner's case. But the lower federals courts totally disregarded those three well-reasoned Kentucky decisions, and failed to cite them, even though they are binding on Kentucky police officers like LMPD when enforcing Kentucky traffic laws; those decisions, indeed, would have been *controlling and dispositive*—as opposed to being, in

[2] *Moberly v. Commonwealth*, 551 S.W.3d 26 (Ky. 2018); *Commonwealth v. Smith*, 542 S.W.3d 276, 282 (Ky. 2018); *Davis v. Commonwealth*, 484 S.W.3d 288, 294 (Ky. 2016).

federal court, entitled to the "great weight" that is to be afforded to "the considered conclusions of a coequal state judiciary"[3]—had Petitioner been prosecuted in a Kentucky state court. Yet they were ignored here by the lower federal courts. The Court should grant certiorari and clarify the *Rodriguez* duration standards so that those standards and the Fourth Amendment are consistently applied to routine traffic stops in both federal and state courts.

Aside from violating the duration standards on November 11, both stops violated the *Terry* requirement that the manner/methods used by police in a traffic stop should be the least intrusive means reasonably available. LMPD grossly violated these requirements too, including because it amassed more than 10 armed police officers plus a drug dog, at each of these window-tint traffic stops, and then proceeded to further escalate the stops using manner and means which were greatly intrusive and excessively intense, to the point of being shocking and unjustifiable for a window-tint stop. The Court should grant certiorari and clarify that, separate from duration, a traffic stop violates the Fourth Amendment when the manner and means used by local police in conducting that routine traffic stop are unreasonably intrusive for purposes of the stop's stated traffic mission, here, too much window tint.

Finally, to the extent the LMPD eleven were found by the district court to have "reasonable suspicion" to extend the November 11 stop for a drug-dog-sniff based in part on the officers' alleged perceptions that Petitioner and his passenger were supposedly "nervous," the Court should grant certiorari to address when, if ever, the alleged police-perceived "nervousness" of a person stopped by police for a routine traffic violation is properly considered in meeting the officer's requirement of "reasonable suspicion." When, as here, the subject roadside encounter was between, on the one hand, eleven armed white police officers and a drug dog, and, on the other, a

[3] *Miller v. Fenton*, 474 U.S. 104, 112 (1985).

stopped driver and his sole passenger who were both Black, the Court should hold that it is clearly erroneous and contrary to law for such "reasonable suspicion" to be satisfied, in whole or in part, by alleged police-declared "nervousness" of the stopped vehicle's driver and/or passenger, and especially so when the police body-cam videos of the encounter flatly contradict such alleged "nervousness."

I. The lower federal courts misapplied the governing Fourth Amendment principles of this Court's cases. Suppression was required, for the November 11 stop, because LMPD violated the duration standards of *Rodriguez* and *Caballes*, including as those standards have been properly applied by other federal courts and by state courts, including Kentucky's highest court; suppression was likewise required, for both stops, because the manner and means employed by LMPD were unreasonably intrusive for the purported window-tint purpose of these two routine traffic stops.

A. General principles applicable to traffic stops

The principles of *Terry v. Ohio*, 392 U.S. 1 (1968), apply to traffic stops. *Rodriguez v. United States*, 575 U.S. at 354; *United States v. Lott*, 954 F.3d 919, 923 (6th Cir. 2020).

The Fourth Amendment inquiry includes two parts: **(1)** whether there was a proper basis for the stop; and **(2)** whether the degree of intrusion was "reasonably related in scope to the circumstances that justified the interference in the first place." *Terry*, 392 U.S. at 20; *Lott* at 922-23. Like a *Terry* stop, "the scope of the stop 'must be carefully tailored to its underlying justification.'" *United States v. Campbell*, 970 F.3d 1342, 1352 (11th Cir. 2020), *opinion vacated for en banc review on alternate grounds*, 981 F.3d 1014 (11th Cir. Dec. 2, 2020).

The "scope" prong of *Terry*, relevant here, has two parts: (1) duration of the detention, and (2) the manner in which the seizure was conducted. *See, e.g.*, *Lott*, 954 F.3d at 923; *United States v. Morales*, 961 F.3d 1086, 1090-91 (10th Cir. 2020). The government bears the burden that the officers' conduct satisfied *Terry* as to both duration and manner/methods. *Florida v. Royer*, 460 U.S. 491, 500 (1983).

Justice Ginsburg, who authored the Court's opinion in *Rodriguez*, made note of this two-part *Terry* scope inquiry in her dissent in *Caballes*: "In applying *Terry*, the Court has several times indicated that the limitation on 'scope' is not confined to the duration of the seizure; ***it also encompasses the manner in which the seizure is conducted***." *Illinois v. Caballes*, 543 U.S. 405, 419-20 (2005) (Ginsburg, J., dissenting) (citing cases). *See also Rodriguez*, 575 U.S. at 357 ("The reasonableness of a seizure . . . depends on what the police in fact do.").

Consistent with *Terry*, and as noted by Justice Ginsburg in *Caballes*, the lower federal and state courts have applied manner/means as a separate inquiry in addressing suppression issues that arise from routine traffic stops. *See, e.g.*, *Lott*, 954 F.3d at 923; *Morales*, 961 F.3d at 1090-91; *Perozzo v. State*, 2021 Alas. App. LEXIS 87, at *6 (July 9, 2021).

1. Duration.

Rodriguez was a "duration" case because the issue presented was whether a drug-dog sniff conducted *after* the completion of the traffic stop violated the Fourth Amendment. The Court said it did: "A police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures." *Id.* at 350-51.

The Court concluded that the "tolerable ***duration***" of police inquires 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." *Id.* at 351. That mission, for duration purposes, includes whether to issue a traffic ticket and "ordinary inquiries incident to [the traffic] stop," which pertain to roadway and vehicle safety. Officers are also permitted to take "certain negligibly burdensome precautions in order to complete [the] mission safely." *Id.*

Because it lacks the same close connection to roadway safety as the ordinary inquiries, "a dog sniff is not fairly characterized as part of the officer's traffic mission," but is, instead, a measure aimed at detecting evidence of ordinary criminal wrongdoing. *Id.* at 355. Nonetheless, the

Court said that the Fourth Amendment will tolerate an officer's performance of "certain unrelated investigations," such as on-scene investigations into other crimes and safety precautions taken in order to facilitate them; but, from the "duration" perspective, the officers "may not do so in a way that prolongs the stop," absent reasonable suspicion. *Id.* For duration purposes, "[i]f an officer can complete traffic-based inquiries expeditiously, then that is the amount of 'time reasonably required to complete [the stop's] mission.'" *Id.* at 357 (quoting *Caballes*, 543 U. S. at 407). "Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed." *Id.* at 354.

A traffic stop that is "prolonged beyond" that point is "unlawful." It does not matter *when* unrelated tasks (such as a dog sniff) happened during a stop. The "critical question" is whether they "prolong[ed]"—i.e., added time to—"the stop." Even *de minimis* prolongation fails the duration part of the scope inquiry. *Id.* at 357. *See also Hernandez v. Boles*, 949 F.3d 251, 265 (6th Cir. 2020); *United States v. Clark*, 902 F.3d 404, 410 n.4 (2018) ("The Government's argument that the brevity (20 seconds) of the criminal history questioning does not support it being off-mission . . . fails given the Supreme Court's explicit rejection of a *de minimis* exception in *Rodriguez*."); *United States v. Hill*, 852 F.3d 377, 381 (4th Cir. 2017); *Davis v. Commonwealth*, 484 S.W.3d 288, 294 (Ky. 2016); *Commonwealth v. Smith*, 542 S.W.3d 276, 282 (Ky. 2018); *United States v. McCowan*, 2021 U.S. Dist. LEXIS 126194, at *12 (D. Nev. July 7, 2021) ("[T]he High Court in *Rodriguez* specifically rejected a *de minimis* exception when reversing the lower courts' ruling that 'the extension' of the stop was 'permissible because of its brevity.'").

2. Manner and methods.

Separate and apart from duration of the stop, the second aspect of *Terry*'s scope inquiry is the manner in which the stop was conducted. "In scope, the investigative methods police officers employ 'should be the least intrusive means reasonably available to verify or dispel the officer's

suspicion in a short period of time.'" *Lott*, 954 F.3d at 923 (quoting *Royer*). *See also Morales*, 961 F.3d at 1091. As *Terry* emphasized, "the manner in which the seizure and search were conducted is, of course, as vital a part of the inquiry as whether they were warranted at all." *Terry*, 392 U.S. at 28.

It is incorrect to view *Caballes* and *Rodriguez* as holding, in the traffic stop context, "that the scope prong of *Terry* means duration and nothing more." *See* Tracey Maclin, *Anthony Amsterdam's Perspectives on the Fourth Amendment, and What it Teaches About the Good and Bad in Rodriguez v. United States*, 100 MINN. L. REV. 1939, 1965 (2016). "That view not only requires ignoring four decades' worth of cases relying on the two-prong *Terry* test, but also requires ignoring the text of [*Caballes*, where the Court] plainly states that a valid traffic stop 'can violate the Fourth Amendment if the manner of execution unreasonably infringes interests protected by the Constitution.'" *Id.* That language reaffirms that courts should "examine the scope and intrusiveness of the police conduct," and not just the duration. *Id.*

*Caballes'*s treatment of the dog sniff is "confined to the narrow proposition that a dog sniff is not a 'search' within the meaning of the Fourth Amendment"; but *Caballes* says nothing about whether such police action transcends *Terry*'s manner/methods prong. *Id.* at 1966-67. Nor does *Rodriguez* because the issue of *Terry*'s manner/methods prong was not presented in that duration-only case. Justice Ginsburg's dissent in *Caballes* aptly demonstrated that dog sniffs themselves generally cannot be reconciled with *Terry'*s manner/methods test. *Caballes*, 543 U.S. at 421 (Ginsburg, J., dissenting). Using the dog, without individualized suspicion of criminality, broadens the incident "from a routine traffic stop to a drug investigation." *Id.*

In the analogous roadblock context of *City of Indianapolis v. Edmonds*, 531 U.S. 32 (2000), relied upon by Petitioner in support of his motion to suppress (R. 57 (PageID 421-22)), manner/methods principles as in *Terry*, distinct from duration, were dispositive to the Court's

holding that the city's drug checkpoint violated the stopped motorists' Fourth Amendment rights. As part of the checkpoint, a drug-detection dog was walked around the outside of each stopped vehicle. Although acknowledging as in *Caballes* that the dog sniff was not a *search*, the Court held that the checkpoint was nonetheless unconstitutional because "its primary purpose was to detect evidence of ordinary criminal wrongdoing" without any justification by "some quantum of individualized suspicion." *Id.* at 41-42, 47 & n.2.

Terry's two separate scope prongs of duration *and* manner/methods must not be conflated. Manner/methods are equally important as duration. The Fourth Amendment, after all, is "quintessentially a regulation of the police – [] in enforcing the Fourth Amendment, courts must police the police." Anthony G. Amsterdam, *Perspectives on the Fourth Amendment*, 58 U. MINN. L. REV. 349, 371 (1974).

B. The November 11 stop failed the duration test and was unconstitutionally extended.

The November 11 seizure was unconstitutionally extended. By the time the dog's alert occurred—approximately 10-11 minutes into the stop—any reasonably diligent traffic officers would and should have completed the mission-pertinent tasks associated with a window tint violation. And here, by the 4:00 minute point, there were some ***ten*** officers at the stop (GX3, Adams Video-1 2:40-3:50, Holland Video-1 3:30-3:55), with more on the way, which means that the time reasonably needed to complete those tasks was *much less* than with only one or two officers. But that did not happen; diligence was disdained.

1. Most of the LMPD officers did nothing to advance the stop's mission and, for those who did, they slow-walked mission tasks and diverted to non-mission tasks.

Most of LMPD's officers failed to do *anything* pertinent to the stop's mission; those purportedly attending to traffic-stop tasks slow-walked their completion and/or went outside the

range of permissible tasks in non-negligible ways, while everyone waited for the dog. Reasonable diligence was completely absent, indeed disdained. Contrary to the lower courts' conclusions, the November 11 stop was unconstitutionally extended by at least 7-8 minutes before the dog's first alert at 10-11 minutes into the stop.

The tasks for a properly-confined window-tint "mission" are minimal and would or should take little time—much less than 11 minutes—if pursued with reasonable diligence, especially with so many officers available to assist the first three. Both Hogan and Holland testified that the window tint violation was obvious and was able to be determined on contact. (ST1 at 12-13, 35-36, 64 (PageID 172-73, 195-96, 222).) Hogan acknowledged that she confirmed the violation when she made contact with the passenger at about 3 minutes into the stop (at the 1:10 mark of her video). (ST1 at 55-56 (PageID 215-16).) Holland would have confirmed the violation in that same manner, but even *earlier* than Hogan, because he made contact with Petitioner at about 1-2 minutes into the stop and is seen looking into the vehicle with his flashlight. (GX3, Hogan Video-1 00:15-00:50; ST1 at 63-64 (PageID 223-24).) The only task that legitimately remained, for such a trivial violation, was to issue a citation or a warning.

Instead, the stop was dominated throughout by rampant diversions and time-expenditures on non-mission tasks, searching for other crimes. Adams, for example, did nothing to pursue the traffic mission. For the first full minute of Adams' video (2-3 minutes into the stop), Adams stood back from the Charger, off to the side, as his video recorded the passenger side, showing that *nothing was happening there*. (GX3, Adams Video-1 00:00-01:00.) ***If*** it was even *necessary* to interrogate the *passenger* for a driver's window tint violation, Adams' team wasted almost **three minutes** right off the bat. Adams finally asked Hogan to "take her information." But Adams could and should have immediately done that task himself. This traffic stop was not a training exercise for LMPD's officers; it was an intrusion on the civil liberties of the stopped persons and was

required to be conducted with due diligence.

Adams also further diverted from the mission, into other crimes, when he called for the dog at no later than 3:00 of his video. (GX3, Adams Video-1 3:00; ST2 at 5-6, 35 (PageID 269-70, 399).) There was no reasonable suspicion justifying that request; it was exclusively intended to look for other crimes.

2. The pat-down searches were needless diversions and lacked reasonable suspicion.

Holland and Hogan also immediately diverted into searches for other crimes. Both Holland and Hogan ordered their respective interrogees out of the vehicle. Plus, they conducted pat-down frisks of these citizens for weapons (consuming at least 25-30 seconds), all as Adams stood by watching and "tons of officers" were arriving or already in place behind the Charger. (GX3, Adams Video-1 2:42-4:20, Hogan Video-1 3:30-4:50; T3 at 99 (PageID 1959).)

Mimms permits the officers, during a traffic stop, to order the driver and passenger out of the car. *Pennsylvania v. Mimms*, 434 U.S. 106 (1977). But the weapon-frisks are a horse of another color and were improper in the circumstances of a window-tint violation.

A pat-down search, even though brief, is a "serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly." *Terry*, 392 U.S. at 17-18. The officers must have reasonable suspicion, and more than a hunch, that the person subjected to the frisk is armed and dangerous. *Arizona v. Johnson*, 555 U.S. 323, 332 (2009).

There were no particular facts, when these two pat-downs were made, which would allow any officer, acting in good faith, to reasonably infer that Petitioner or his passenger were armed and dangerous; and they certainly did not "consent" to be searched, not in that custodial atmosphere and coercive environment. *United States v. Noble*, 762 F.3d 509, 521-25 (6th Cir.

2014). The Sixth Circuit panel found the pat-downs to be okay because of the purported nervousness, window tint, and little towel. (*Appx*-004.) But nervous behavior—even if accurately perceived—is alone legally insufficient. *See, e.g.*, Lott, 954 F.3d at 923; *United States v. Brown*, 448 F.3d 239, 251 (3d Cir. 2006); *Frazier v. Commonweal*th, 406 S.W.3d 448, 454 (Ky. 2013). And the alleged *purpose* of this traffic stop was to address *a window tint violation*, which, by definition, is an effort to prevent others from seeing inside the vehicle. The towel was belt-and-suspenders to the extent it served that *exact same purpose*. Thus, once the officers were staring into the vehicle's open windows with flashlights and speaking freely with the occupants, as the videos confirm both officers were doing shortly after they approached the driver and passenger windows, there was no longer any "concealment" whatsoever and, therefore, that alleged justification could no longer, if it ever did, provide reasonable suspicion for escalating the stop to ordering the cooperative driver and passenger out of the vehicle and patting them down for weapons.

Moreover, the lower courts' approach is emblematic of an ends-justify-the-means view of Fourth Amendment freedoms, which places courts in the role of enabling and/or justifying police misconduct rather than in their proper role of "polic[ing] the police." Amsterdam, *Perspectives on the Fourth Amendment*, 58 U. MINN. L. REV. at 371. Because, unless all the millions of persons on America's roads and highways with too much tint in their windows are now, presto, allowed to be forced from their vehicles and patted-down for guns, these facts are grossly insufficient to establish that police had "reasonable suspicion," and more than a hunch, that Petitioner and/or Northington were armed and dangerous. There are no such facts. There were some ten officers with guns a few feet from the calm and compliant, but supposedly "nervous," Northington, when she was ordered out of the car and patted down, for being in a car with too much tint. She wasn't a danger to anyone; any reasonable person, who watches the video, knows that to be true, and also knows that any

argument to the contrary is clearly erroneous. Same thing with Petitioner, on the driver side.

The pat-downs were nothing but diversions by the overzealous LMPD whose scam window-tint mission was never engaged, after the stop, because the entire purpose and focus of the encounter was to search for other crimes, from the moment Holland made his very first approach to Petitioner with his camera turned off, in defiance of LMPD policy, until the dog arrived 10-11 minutes later. Courts compliantly indulge police lies about the purpose of a traffic stop; but—fair enough—their lie defines the mission. LMPD never even began that "window tint" mission.

3. The interrogation of the passenger was a needless diversion, and there were other needless diversions as well, all in an effort by LMPD to find other crimes besides the excessive window tint.

What occurred on the *passenger* side, in addition to the 3-minute delay and quick escalation with Adams' call for the dog, was particularly egregious and diverted greatly into non-mission tasks. *Rodriguez*, a case where the facts involved *both* a driver and passenger, explains that the mission of a routine traffic stop "typically" includes "checking the ***driver's*** license, determining whether there are outstanding warrants ***against the driver***, and inspecting the automobile's registration and proof of insurance." *Rodriguez*, 575 U.S. at 355 (emphasis supplied).

But looking for warrants and other checks against a ***passenger***? For a *driver's* window-tint violation? That is outrageous, and, after *Rodriguez*, should be recognized as improper absent some reasonable suspicion against the passenger, which was utterly lacking here.

A number of courts, indeed, after *Rodriguez*, have correctly held that police attention to the passenger during a routine traffic stop for a driver's traffic violation is a needless diversion from mission tasks. *See, e.g.*, *United States v. Landeros*, 913 F.3d 862, 868 (9th Cir. 2019) ("A demand for a passenger's identification is not part of the mission of a traffic stop."); *Clark*, 902

F.3d at 406 ("[After addressing driver's minor traffic offense], [t]o then turn to the passenger—Clark—for questioning that sought suspicion for criminal activity went beyond 'ordinary inquiries incident to [the traffic] stop.'"); *United States v. McCowan*, 2021 U.S. Dist. LEXIS 126194, at *1-2 (D. Nev. July 7, 2021) (granting suppression because "[t]he officer here took a 40-second detour from his investigation of the driver['s routine traffic violation] to ask the passengers for identification—which they lacked—and then for their names and birthdates, purportedly for officer safety, before running the driver's information and discovering that he had violated sex-offender registration laws"); *State v. Kerns*, 2020 N.J. Super. Unpub. LEXIS 2567, at *13 (Super. Ct. App. Div. Dec. 30, 2020) ("[W]e conclude, as did the courts in *Landeros* and *Clark*, that the police inquiries of [the passenger] prolonged the stop; were unrelated to the traffic-related mission of the initial stop [for broken headlight and excess speed]; and were not independently supported by reasonable and articulable suspicion of other wrongdoing."); *see also Perozzo v. State*, 2021 Alas. App. LEXIS 87 at *1 ("This appeal presents the question of whether a law enforcement officer conducting a routine traffic stop may request identification from a passenger in the vehicle and then use that identification to run a warrants check on the passenger, absent any case-specific justification for doing so. Because we conclude that this conduct violates the Alaska Constitution, we reverse the trial court's denial of [the] motion to suppress."). *But see Hernandez*, 949 F.3d at 256 (citing ***pre-****Rodriguez* case of *United States v. Smith*, 601 F.3d 530, 542 (6th Cir. 2010)).

This approach is consistent with, if not compelled by, *Rodriguez* itself. That case involved both a driver and passenger. Nonetheless, the Court did not list inquiries to the *passenger* and about his/her record as among the topics typically permissible during a stop because they help ensure that vehicles are "operated safely and responsibly." *Rodriguez*, 575 U.S. at 355. LMPD's diversions with the passenger here had nothing to do with enforcement of the traffic code. *Id.* at 355. Instead, they were totally unnecessary for a window tint violation. Hogan's detour into those

tasks was a time-consuming diversion *from* the mission *to* impermissible searches for crimes committed by Petitioner's passenger.

So too was Hogan's effort to see if the car was "stolen." How was that necessary? What's more, given that Hogan chose to *remove* the passenger from the car *and* to frisk her for weapons (at 3:24-3:38), there was no longer any justification—even *if* there ever might have been, for "safety" or any other reason—to then spend any time with that passenger to obtain highly personal information as her SSN, to speak with her about whether she has any warrants and that a search for them was going to be made, and to arrange for that search by another officer, all as Hogan did, thereby consuming nearly 4 minutes in these needless and unfairly intrusive diversions. (GX3, Hogan Video-1 1:45-5:35.) *See, e.g.*, *Landeros*, 913 F.3d at 867-69; *Hill*, 852 F.3d at 385 ("[The passenger] had no obligation to identify himself to Officer Taylor. [T]he proper timeline for the sole 'mission' of the traffic stop in this case was to identify [the driver] and issue . . . warnings or violation notices.") (Davis, S.J., dissenting).

And, that warrant-search task was delayed even longer because the officer to whom Hogan had given that task, failed to begin it. And no other officer did so either, for either Petitioner or Northington, until long *after* the dog had already arrived and alerted. (GX3, Hogan Video-1 10:10-11:00.) Only then did any of them begin work on diverted mission-pertinent tasks, all of which could and should have already been completed by a diligent team attentive to the Fourth Amendment.

What's more, before the dog arrived, at least two other officers diverted by making visual searches for other crimes when they poked flashlights into the Charger's open windows. (GX3, Hogan Video-1 4:15-7:20.) At least one of them then taunted Petitioner about whether they were violating his rights. (Id., 5:40-5:55.)

4. Contrary to the lower federal courts' conclusions, the November 11 stop was unconstitutionally extended by at least 7-8 minutes before the dog's first alert at 10-11 minutes into the stop. Any contrary conclusion is clearly erroneous and misapplies this Court's case law and the Fourth Amendment.

The trial court determined that when the dog alerted (approximately 10-11 minutes into the stop), Hogan was waiting for the vehicle's registration check, and Holland was filling out the citation for excess window tint. (*Appx*-014 (R. 66, Order at 7 (PageID 514)).) But those findings are clearly erroneous and disregard the many lengthy and unreasonable delays, the diversions, and the lack of reasonable diligence, all of which are evidenced in the videos.

Holland claimed to have started the citation after removing Petitioner from the vehicle. But that was proven false by *Hogan's* body camera. (Holland failed to start *his* body camera until 13 minutes into the stop). Hogan's camera clearly shows that, two minutes *after* the dog alerted, Holland was obtaining a blank citation from the form book and only then was starting to fill it out. (GX3, Hogan Video-1 11:00.) That timing is consistent with Hogan's testimony. (ST1 at 48-49 (PageID 208-09).) And, if Hogan was still waiting for registration information when the dog alerted, that is only because LMPD's team failed to act with any diligence: They wasted nearly 3 minutes before even approaching Northington, plus some 4 minutes with Hogan's diversions with Northington, plus some 30 or more seconds with illegal frisks, and then *not one* of the other assembled eight officers even deigned to conduct the ministerial registration or other checks during the first 10-11 minutes of the stop. Holland's video shows that that task, as to Petitioner's record, was not even *started* until some 57 minutes into the stop, long after the dog alerted and Petitioner was under arrest; and Holland, even then, had to ask Hogan to tell him Petitioner's *name* before he could begin. (GX3, Hogan Video-2 25:10, Holland Video-2 12:00-12:50.)

Adams—the sergeant, whom should have been setting the example of required diligence–

–admitted ***he*** did not do any of those simple tasks. (ST2 at 13 (PageID 277).) But he surely could have immediately done so (or promptly ordered them done). Instead, he stood by the side of the road chit-chatting on his phone, shaking hands and laughing with the numerous arriving officers, and calling for the dog. Adams *never* engaged in, or he abandoned immediately, the stop's mission in order to call for the dog and muster other officers to investigate other crimes far different than the piddling one for which the car had been stopped. With so many colleagues failing to do anything pertinent to the mission, Hogan herself called to obtain registration information, beginning at 6:06 of her video and providing the license plate at 6:34, all some 8 minutes into the stop. (ST1 at 18 (PageID 178).) But that task could and should have been complete 5-6 minutes earlier with so many other officers available.

The trial court cited *United States v. Stepp*, 680 F.3d 651 (6th Cir. 2012), to conclude that LMPD's non-mission tasks—which the court said took less than *half* the 6 minutes found *unreasonable* in *Stepp*—did not "measurably extend" the stop. (*Appx*-026 to -027 (R. 114, Order at 7-8 (PageID 755-56)).) But *Rodriguez* came *after Stepp*, and it rejected the "measurably extend," *de minimis*-is-okay analysis, such as referenced in *Stepp*, by holding that a traffic stop can be unlawfully prolonged even if done expeditiously, even if the prolongation occurs before or after completing the mission, and even if the prolongation is *de minimis*. *Hernandez*, 949 F.3d at 256 (noting that *Rodriguez* rejected the argument that a *de minimis* extension is permissible, and referring to this as a "bright-line rule"); *Campbell*, 970 F.3d at 1354-56. Moreover, the prolongation here was ***not*** only 2-3 minutes, but ***7-8 minutes***, as the videos confirm, more time than was found *unreasonable* even in outdated *Stepp*.

The required reasonable diligence under *Rodriguez* is absent. Any finding to the contrary is clearly erroneous and contrary to law. (*Appx*-013 to -017, *Appx*-026 to -028 (R. 66, Order at 6-8; R. 114, Order at 7-9).) At the time of the dog's alert, the traffic stop had been prolonged beyond

the point reasonably required to complete the stop's mission; the dog alerted well after the point at which mission-completion should have reasonably occurred. The stop was prolonged with non-mission task by at least 7-8 minutes before the dog's alert, including, but not limited to, Adams' 3-minute delay at the beginning, Adams' call for a dog at 3:00 of his video, the impermissible frisks, Hogan's prolonged diversions with Northington, the inquiry to see if the car was "stolen," the flashlight searches into the car's open windows, the taunting of Petitioner, the dog's deployment and sniff without reasonable suspicion, and all the standing-around and inattention to mission tasks by most of the officers.

But it does not matter whether a stop is prolonged by seven minutes, or twenty-five seconds. The length of the prolongation is not determinative; rather, officers must have reasonable suspicion to divert from the mission into activities that prolong the stop ***at all***. There is not a *de minimis* exception, a critical point which both lower federal courts failed to recognize, including by the district court's misapplication of *Stepp* and other pre-*Rodriguez* cases. *See Rodriguez*, 575 U.S. at 350 (delay of seven to eight minutes for a dog sniff is unconstitutional). *See also Campbell*, 970 F.3d at 356 (finding that 25 seconds of unrelated questioning prolonged the stop); *Clark*, 902 F.3d at 410-11 (finding that 20 seconds of unrelated questioning prolonged the stop); *United States v. McCowan*, 2021 U.S. Dist. LEXIS 126194, at *12-13 (D. Nev. July 7, 2021) (stop was unconstitutionally extended by questioning of passenger that lasted forty seconds); *United States v. Beider*, 2019 U.S. Dist. LEXIS 30323, at *14 (D. Colo. Feb. 26,2019) (one minute and ten seconds); *Burley-Carter v. State*, 2021 Md. App. LEXIS 595, at *25-27 (Md. App. July 12, 2021) ("aggregate delay here exceeds the seven to eight minutes at issue in *Rodriguez*"); *United States v. Elias*, 2018 U.S. Dist. LEXIS 20325, at *6-7 (C.D. Cal. Feb. 5, 2018) (four minutes).

LMPD's massive forces did not have any reasonable suspicion justifying their many diversions. The marijuana and gun should have been suppressed. *Campbell*, *supra*; *Clark*, 902 F.3d

at 411; *United States v. Evans*, 786 F.3d 779 (9th Cir. 2015); *United States v. Bowman*, 884 F.3d 200, 210-12 (4th Cir. 2018); *United States v. Valverde*, 2018 U.S. Dist. LEXIS 229315, **15-34 (W.D. Tenn. Sep. 10, 2018); *Burley-Carter*, 2021 Md. App. LEXIS 595, at *25-27; *McCowan*, 2021 U.S. Dist. LEXIS 126194, at *12-13.

5. Well-reasoned Fourth Amendment decisions of Kentucky's highest court likewise compel suppression; those decisions by that state supreme court should have been given respect by the lower federal courts, and should not have been ignored, and especially so because this case involves the conduct of Kentucky police officers seeking to enforce Kentucky's traffic laws against a Kentucky citizen on a Kentucky road.

In addition to these many federal and state cases, there are at least three relevant, recent, and authoritative decisions from Kentucky's highest court—applying the Fourth Amendment and *Rodriguez*—which likewise dictate, on these facts, that Petitioner's suppression motion was required to be granted. *Smith*, 542 S.W.3d 276; *Davis*, 484 S.W.3d 288; *Moberly v. Commonwealth*, 551 S.W.3d 26 (Ky. 2018).

In his motion papers in the district court, and in his brief in the Sixth Circuit below, Petitioner cited and relied upon these decisions of Kentucky's highest court. Nonetheless, the lower federal courts did not even acknowledge them much less cite or address them. True, state court decisions applying the federal constitution are not "binding" on federal courts. But they ***are*** entitled to great respect and should be "give[n] great weight" as "the considered conclusions of a coequal state judiciary," *Miller v. Fenton*, 474 U.S. 104, 112 (1985), particularly when they are persuasive and well-reasoned. These three decisions easily meet that requirement; they are faithful to this Court's precedent and to the importance of Fourth Amendment freedoms.

Smith involved a turn-signal stop of John Smith, whom police suspected to be involved in cocaine trafficking. The officer who saw the turn-signal violation radioed to his canine officer

(Eaton) to pull over Smith's car for that violation. After approaching the car and deciding Smith was "nervous," Eaton got his canine and "ran" Smith's car, ultimately resulting in an "alert" and finding 7 grams of cocaine. Smith was arrested ***8 minutes*** after he was pulled over. The Kentucky Supreme Court upheld suppression of the drugs because Smith's detention was unreasonably prolonged. "We reject the Commonwealth's argument that Eaton avoided the *Rodriguez* problem simply by deploying the dog at the beginning of the stop, before addressing the traffic violation, instead of at the end of the stop after addressing the traffic violation. If the traffic citation was deferred to complete the sniff search, then the officer did not act with reasonable diligence to pursue the legitimate object of the traffic stop. Either way, the stop was prolonged beyond what was reasonably needed to complete the purpose of the stop. Eaton deferred the issuance of the citation to conduct the dog sniff search, and thereby unreasonably prolonged the stop, albeit for a very brief time. 'There is no 'de minimis exception' to the rule that a traffic stop cannot be prolonged for reasons unrelated to the purpose of the stop.'" *Smith*, 542 S.W.3d at 282.

Davis was a traffic stop for crossing the center line and suspicion of impaired driving. After the officer (McCoy) had spent 2-3 minutes conducting sobriety tests on the driver (Davis), which he passed thereby negating one reason for the stop, McCoy had his canine perform a sniff search of the vehicle's exterior. That sniff led to the discovery of drugs. Thirteen minutes after the initial stop, Davis was arrested. The Kentucky Supreme Court reversed the trial court and ordered that the search violated the Fourth Amendment and *Rodriguez*. Even though it determined that the thirteen-minute length of Davis's detention was not itself unreasonable, the court held that the sniff search unreasonably prolonged the stop beyond its original purpose and was unrelated to that purpose because "[t]he only reason for the sniff search was to discover illegal drugs." *Davis*, 484 S.W.3d at 294.

In *Moberly*, the court concluded, and the Commonwealth ultimately was compelled to

agree (as the U.S.A. should have done here), that the mission of the traffic stop was impermissibly extended when the officer ceased checking online data bases and instead called in a canine, purportedly due to the driver's perceived "nervousness," sweat on his brow, glancing over his shoulder, and blowing cigarette smoke toward the car's interior. The canine sniff resulted in finding a handgun and drugs. The court rejected the Commonwealth's argument seeking to avoid suppression and held that the subject cited factors about the driver's demeanor and behavior "do not create a reasonable suspicion that [the driver] was then and there engaged in illegal behavior beyond the apparently obvious traffic violations for which he was stopped. . . . It follows that the dog sniff which followed was unreasonable and constitutionally impermissible." *Moberly*, 551 S.W.3d at 33-34.

These persuasive and well-reasoned decisions likewise require suppression on Petitioner's similar facts. They should have been followed and applied as "the considered conclusions of a coequal state judiciary." *Miller v. Fenton*, 474 U.S. at 112. That is even more true here, in a case involving ***Kentucky police officers***, because the state court decisions are those of Kentucky's highest court and they address the conduct of Kentucky police officers, seeking to enforce Kentucky traffic laws, in a traffic stop against Kentucky citizens, and applying Rodriguez, all on facts very similar to those here. *Wright v. West*, 505 U.S. 277, 305 (1992) (O'Connor, concurring).

C. Both stops failed the *Terry* test of manner and methods.

In addition to the failure of *Terry*'s duration prong, both stops failed *Terry*'s mandate that police must conduct such a seizure by manner and methods which are not unreasonably intrusive in intensity and scope. Petitioner raised below this second part of *Terry*'s scope test including when he characterized the stops as, in effect, "roaming" roadblocks which violated his Fourth Amendment rights for reasons like those in *Edmonds*. (R. 26, Motion at 3 (PageID 109); R. 57, Brief at 9-10 (PageID 421-22).)

By any fair measure, attentive to the Fourth Amendment's purposes, the conduct of LMPD in both traffic stops was of intolerable intensity and scope and was hardly the "least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time." *Lott*, 954 F.3d at 923.

When a routine traffic stop, for window tint, results in the local police force quickly amassing all available officers at that roadside scene—in this case resulting in ***10 or more armed officers at each of the traffic stops***—plus a drug-sniffing dog, those officers have failed to use the least intrusive means which the Fourth Amendment demands. And it is not *only* the use of massive force which violated *Terry*'s manner/methods requirement, but also the deployment of that force immediately towards a search for other crimes, without *any* reasonable suspicion, and using tactics which unquestionably further escalated the character of the encounter between the police and Petitioner into one which is "broader, more adversarial, and (in at least some cases) longer." *Caballes*, 543 U.S. at 421 (Ginsburg, J., dissenting). *See also United States v. Sharpe*, 470 U.S. 675, 678 (1985) (stating that stop must be "reasonably related in scope to the circumstances which justified the interference in the first place."); *State v. Alvarez*, 138 Haw. 173, 182, 185, 378 P.3d 889, 898, 901 (2016) ("[T]he subject matter and intensity of the investigative detention must be limited to that which is justified by the initial stop. . . . Here, law enforcement brought the canine to the scene of the traffic stop to investigate Alvarez for possible drug dealing that was unrelated to the traffic offenses that justified the initial stop.") (Fourth Amendment and Hawaii Constitution).

Here, that escalation occurred almost immediately due to the amassing of so many armed officers, the ordered removals of the citizens from the vehicles and the frisks for weapons without any justifiable grounds, the slow-walking of pertinent traffic-mission tasks and immediate diversion from the mission to investigations of other crimes, and the summoning and prompt use

of a drug-sniffing dog with no reasonable suspicion to justify that escalation. And, doing it all in Louisville's poorest neighborhoods.

Plus, all eleven of the LMPD officers on November 11 were and are white, whereas both seized citizens were and are Black. Yet these police officers *still* had the audacity to claim that alleged "nervousness" of Petitioner and his passenger was a purported proper basis for ordering them out of the vehicle and subjecting them to intrusive pat downs. Given LMPD's role, for example, in the infamous Breonna Taylor case, are they really that oblivious? *Jamison v. McClendon*, 2020 U.S. Dist. LEXIS 139327, at *49 (S.D. Miss. Aug. 4, 2020) ("Black people in this country are acutely aware of the danger traffic stops pose to Black lives.").

It may be that courts do not delve into an officer's *subjective* motivation for a traffic stop made on reasonable suspicion of a routine traffic violation, thereby tolerating pretextual stops whose given reasons are a lie. *Whren v. United States*, 517 U.S. 806, 818-19 (1996). But the flip side of that indulgence is that the officer's *given reason* defines the mission and establishes the permissible scope for purposes of both parts of *Terry*'s scope prong. Judged against the *original alleged purpose* of these stops, LMPD's conduct here was greatly excessive in intensity, manner, and methods, to the point of being shocking and unjustifiable.

There is no safe harbor in the Fourth Amendment for violations which take place before the expiration of some arbitrary time limit. The manner of execution greatly matters: Not simply how long it took but also the manner in which police have exercised their extraordinary powers against fellow citizens. *That* is why both prongs of *Terry*'s scope inquiry are essential.

This should be an easy case for concluding that police action during routine traffic stops greatly transcended *Terry*'s limit on manner and methods, *even if* those same actions might (but they did not here, on at least November 11) have otherwise gotten in under the wire of a "duration" clock ticking during the stops.

II. In circumstances such as Petitioner's November 11 stop, where the subject roadside encounter was between, on the one hand, eleven armed white police officers and a drug dog, and, on the other, a stopped driver and his sole passenger who were both Black, a determination that "reasonable suspicion" exists to extend the traffic stop to conduct a drug-dog sniff is clearly erroneous and contrary to law when, as here, it was based in whole or in part on alleged police-declared "nervousness" of the stopped vehicle's driver and/or passenger.

The trial court, in a footnote and with no request by the government or briefing (R. 56, Govt. Response (PageID 403)), said that the officers on November 11 nevertheless "would have had reasonable suspicion to extend the stop for a canine sniff." (*Appx*-014 (R. 66, Order at 7 & n.4 (PageID 514)).) Like the lower courts' other conclusions on the suppression issue, this conclusion is mistaken on both the facts and law.

The lower courts cited three factors for "reasonable suspicion": (1) nervousness, (2) the towel as an effort to conceal identity, and (3) the windows were not rolled down all the way. Any such factual conclusions are clearly erroneous.

As addressed in the context of the pat-downs, neither Petitioner nor Northington exhibited nervousness; the videos confirm this. The police were misremembering or lying when claiming otherwise. Reliance on their hearing testimony for this alleged fact, when it is contradicted by the videos, is the epitome of a "clearly erroneous" finding. *See, e.g.*, *United States v. Rodriguez-Escalera*, 884 F.3d 661, 669 (7th Cir. 2018) (holding that the court was not required to credit an officer's testimony that a defendant "appeared nervous where the court's own review of the video footage of the traffic stop led it to the opposite conclusion"); *United States v. Carter*, 2018 U.S. Dist. LEXIS 217343, at *16-17 (D.S.C. Dec. 28, 2018) ("[T]he video clearly shows that Carter was composed throughout the entire stop, and that he and Whitfield communicated to one another calmly and respectfully. Certainly, the video of the traffic stop is 'the most reliable evidence of the detainees' demeanor.'").

But, even pretending, *arguendo*, that the LMPD officers were correct in perceiving "nervousness," that emotion would not be unusual for citizens who are encountered late at night by so many armed officers during a traffic stop. And this is especially true when the targets are all Black and the officers are all white. *Jamison v. McClendon*, 2020 U.S. Dist. LEXIS 139327, at *49 ("Black people in this country are acutely aware of the danger traffic stops pose to Black lives."); *see also United States v. Knights*, 989 F.3d 1281, 1296 (11th Cir. 2021) ("The evidence demonstrates that race can matter during interactions with the police. Black Americans on the whole are 2.5 times more likely to be shot and killed by police officers than white Americans. . . . ***For Black citizens, the fear of violence often overlays the entire law-enforcement encounter***.") (Rosenbaum, C.J., concurring) (emphasis supplied).

Indeed, in this case on November 11 there were ***eleven*** armed white police officers and a drug dog against ***two*** Black citizens. This stark racial aspect of the police-citizen encounter was not even acknowledged by the reviewing courts when they, nonetheless, allowed the alleged officer-perceived "nervousness" of Petitioner and his passenger to be held *against* those two Black citizens and to justify LMPD's escalation of the routine window-tint stop.

Relying on such officer-perceived "nervousness," in circumstances of such stark racial disparity in the police-citizen encounter, is clearly erroneous and contrary to law. It disregards the fear of violence which, for Black citizens, "often overlays the entire law-enforcement encounter," especially when all the officers are white and the encountered citizens are all Black.

Without the erroneous reliance on the alleged police-perceived "nervousness," the supposed alleged "reasonable suspicion" for extending the November 11 stop, for the drug-dog sniff—which was insufficient *even with* "nervousness"—is completely non-existent.

The little towel and window-roll-down status are insufficient. There was no effort to conceal identity once the window-tint stop began (as the videos confirm). Windows were rolled

down more than enough, including to enable multiple officers to shine flashlights into the car's interior, all before the dog arrived. (GX3, Holland Video-1 00:00-00:45, Hogan Video-1 2:40-3:40, 5:20-7:15; GX4 James Video 00:55-2:15 (showing open windows); ST1 at 15, 36-37, 44, 63-64, 84 (PageID 175, 196-97, 204, 223-24).) If the windows were not down far enough, the officers could have ordered them down more, but they did not.

There is nothing from any of the courts' cited facts that would give rise to a reasonable and articulable suspicion that criminal activity was afoot beyond that of excessive window tint. *Every* window-tint violation will involve impairment of police ability to see into the car, concealing driver "identity," which is the essence of that offense. The little towel here was at most "belt and suspenders," the exact same concealment effect as the window tint, as the officers themselves noted. (ST1 at 15-17, 43, 63 (PageID 175-77, 203, 223).)

A window tint violation does not itself give rise to reasonable suspicion to escalate the stop into a search for guns or drugs. That should go without saying. *See, e.g.*, *Burley-Carter*, 2021 Md. App. LEXIS 595, at *25-27 (in context of widow-tint stop addressed under *Rodriguez* and Fourth Amendment, drug-dog sniff was not justified by reasonable suspicion); *United States v. Lee*, 2020 U.S. Dist. LEXIS 33091, at *6-9 (D. Idaho Feb. 25, 2020) (reasonable suspicion did not exist to extend a window-tint stop despite "brief scent of marijuana"); *Carter*, 2018 U.S. Dist. LEXIS 217343, at *16 ("the government has not identified anything that occurred during the actual stop that provides enough reasonable suspicion of Carter's criminal activity that could justify extending the [window-tint] stop"). Indeed, window tint is sometimes necessitated by a driver's medical needs and is permitted by medical waiver. *See, e.g.*, *State v. Dillard*, 2018 Del. Super. LEXIS 127, at *21-23 (Super. Ct. Mar. 16, 2018).

And a hunch, too, does not amount to reasonable suspicion. *Terry*, 392 U.S. at 27. Yet a "hunch" is, *at best*, all the LMPD officers had here; they lacked any independent reasonable

suspicion that might have justified the additional detention to await a drug-dog sniff.

It is not surprising, therefore, that federal and state courts have routinely and consistently found reasonable suspicion, including to extend a traffic stop, to be lacking in cases presenting far greater "suspicion" than the exceedingly weak, and insufficient, circumstances relied upon here. *See, e.g.*, *United States v. Johnson*, 482 Fed. Appx. 137, 144-48 (6th Cir. 2012); *Noble*, 762 F.3d at 521-25; *Bowman*, 884 F.3d at 213-19; *Burley-Carter*, 2021 Md. App. LEXIS 595, at *25-27; *United States v. Byron*, 817 F. App'x 753, 758-60 (11th Cir. 2020); *Lee*, 2020 U.S. Dist. LEXIS 33091, at *6-9; *Valverde*, 2018 U.S. Dist. LEXIS 229315, 24-34; *Dillard*, 2018 Del. Super. LEXIS 127, at *23; *Moberly*, 551 S.W.3d at 31-33; *Jackson v. United States*, 56 A.3d 1206, 1212-13 (D.C. 2012); *Commonwealth v. Cartagena*, 63 A.3d 294, 306 (Pa. Super. 2012) (en banc).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

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