No. _____

IN THE

Supreme Court of the United States

GABRIEL MARTINEZ,
***Petitioner*,**

v.

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

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

PETITION FOR A WRIT OF CERTIORARI

MICHAEL CARUSO
Federal Public Defender
KATE TAYLOR
Assistant Federal Public Defender
Counsel of Record
150 West Flagler Street
Suite 1700
Miami, FL 33130
305-530-7000

Counsel for Petitioner

QUESTION PRESENTED

Law enforcement stopped the Petitioner based on a brief, uncorroborated tip from an anonymous motorist that the person in a white vehicle had pointed a gun at him. Rather than pull over to speak with law enforcement, the motorist drove off, leaving officers with absolutely no information that would permit them to identify, contact, or track down the motorist. The motorist's tip did not report an "ongoing" crime, like drunk driving, nor did it involve a 911 call system or other technology that would provide "safeguards against making false reports with immunity." *Navarette v. California*, 572 U.S. 393, 400, 402 (2014). The only corroboration of the barebones tip—the description of the vehicle—was the type rejected by this Court in *Florida v. J.L.*: corroboration of innocent, readily observable information that tends to identify a particular person but fails to bolster the reliability of the tip *in its assertion of illegality*. *Florida v. J.L.*, 529 U.S. 266, 272 (2000). As a result, the tip failed to establish reasonable suspicion, and the seizure was unlawful. The Eleventh Circuit, however, held differently below, putting it at odds with this Court's Fourth Amendment jurisprudence.

The question presented is:

Whether an uncorroborated anonymous tip, standing alone, can give rise to reasonable suspicion to justify a seizure.

PARTIES TO THE PROCEEDINGS

The case caption contains the names of all parties to the proceedings.

RELATED PROCEEDINGS

The following proceedings are directly related to this petition:

- *United States v. Martinez*, No. 19-20365-cr-RNS (S.D. Fla.) (Judgment entered Nov. 7, 2019).
- *United States v. Martinez*, No. 19-14657 (11th Cir. Apr. 1, 2021).

TABLE OF CONTENTS

TABLE OF APPENDIX

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes & Other Authorities

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2021

No: _____

GABRIEL MARTINEZ,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

Gabriel Martinez respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINION BELOW

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, *United States v. Martinez*, 851 F. App'x 946 (11th Cir. 2021), is contained in the Appendix (App. A).

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and Part III of the Rules of the Supreme Court of the United States. The Eleventh Circuit entered judgment on April 1, 2021. Due to the COVID-19 pandemic, the Court ordered that the deadline to file a petition for a writ of certiorari be extended to 150 days from the date of the lower court judgment, in any case in which the relevant lower court judgment was issued prior to July 19, 2021. Thus, this petition is due on or before August 30, 2021, and therefore is timely filed.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. amend. IV

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. Factual Background

On June 21, 2018, at about noon, off-duty Miami-Dade Police Officer Dael Vargas was flagged down by a motorist while driving southbound on the Florida Turnpike in Miami-Dade County. (Dist. Ct. Dkt. No. 37 at 5–7.) The motorist told Officer Vargas that the person in a white vehicle behind him had pointed a gun at him. (Dist. Ct. Dkt. No. 37 at 8.) Officer Vargas instructed the motorist to pull over, but the motorist instead drove off. (Dist. Ct. Dkt. No. 20, Def. Ex. 2 at 12:00:49; Dist. Ct. Dkt. No. 37 at 15, 18–19, 40.) The entire exchange, which took place while both men were driving on the Turnpike, speaking through their respective car windows, lasted less than one minute. (Dist. Ct. Dkt. No. 37 at 5–7, 12, 20–22.) Officer Vargas never obtained the motorist's name, phone number, address, email address, driver's license or identification, license plate number, make and model of his vehicle, or any other information that would enable Officer Vargas or any other member of law enforcement to identify, contact, or track him down. (Dist. Ct. Dkt. No. 37 at 22–24.) Nor was the exchange captured on body-worn camera, dash camera, or documented in any way that would enable identification or future contact. (Dist. Ct. Dkt. No. 37 at 18.)

After the motorist-tipster drove off, Officer Vargas initiated a traffic stop of a white vehicle driven by Mr. Martinez. (Dist. Ct. Dkt. No. 37 at 25–26.) He did not independently observe or corroborate the information provided by the motorist, and was acting solely on the tip. (Dist. Ct. Dkt. No. 37 at 25.) Mr. Martinez had committed

no traffic violation; the stop was premised solely on the anonymous tip. (Dist. Ct. Dkt. No. 28 at 3 n.4.) Officer Vargas and other law enforcement officers who had arrived to assist in the stop removed Mr. Martinez from the vehicle and searched it, locating a firearm in a recess or shelf in the steering column of the vehicle. (Dist. Ct. Dkt. No. 37 at 29–30.) Following discovery of the firearm, Mr. Martinez was immediately arrested. (Dist. Ct. Dkt. No. 37 at 31–36.)

II. Procedural History

On June 18, 2019, nearly one year after Mr. Martinez's arrest, a federal grand jury sitting in the Southern District of Florida returned a one-count indictment against Mr. Martinez, charging him with possessing a firearm as a convicted felon, in violation of 18 U.S.C. § 922(g)(1).

Mr. Martinez filed a motion to suppress the physical evidence recovered—the firearm. (Dist. Ct. Dkt. No. 12.) The district court referred the matter to a magistrate judge, who held an evidentiary hearing. (Dist. Ct. Dkt. Nos. 14; 23.) Following the hearing and supplemental briefing, the magistrate judge issued a Report and Recommendation ("R&R") recommending that the motion to suppress be denied, relying in large part on *Navarette*. (Dist. Ct. Dkt. No. 28.) Mr. Martinez filed legal and factual objections to the R&R, which the district court denied in part and sustained in part, after hearing oral argument. (Dist. Ct. Dkt. Nos. 32; 38; 67.) Although recognizing that this was a "very close question," (Dist. Ct. Dkt. No. 67 at 13), the district court concluded that the seizure was supported by reasonable suspicion and denied the motion to suppress. (Dist. Ct. Dkt. Nos. 38; 67.)

Mr. Martinez then entered a conditional plea of guilty, preserving his right to appeal the "district court's denial of the motion to suppress evidence on the grounds that law enforcement did not have reasonable suspicion to stop [his] vehicle on June 21, 2018 . . . ." (Dist. Ct. Dkt. No. 39 ¶ 5.) The parties further agreed that "an order suppressing the subject evidence, or an appeal granting such relief, is case dispositive." (Dist. Ct. Dkt. No. 39 ¶ 5.)

At the sentencing hearing on November 6, 2019, the district court sentenced Mr. Martinez to a term of time served, followed by three years of supervised release. (Dist. Ct. Dkt. No. 54) Mr. Martinez timely filed a notice of appeal. (Dist. Ct. Dkt. No. 55.)

On appeal, Mr. Martinez again challenged the legality of his seizure. (Pet. C.A. Br. at 11–27.) More specifically, he argued that the anonymous motorist's tip, without any corroboration of its assertion of illegality, failed to give rise to reasonable suspicion, and the seizure was therefore contrary to the Fourth Amendment.

In an unpublished per curiam opinion, the Eleventh Circuit affirmed Mr. Martinez's conviction. In so doing, the Eleventh Circuit held that, given the totality of the circumstances, the driver's tip "bore sufficient indicia of reliability." (App. A at 3a.) The panel found significant that the anonymous tip was given "face-to-face," related to a recent incident that the anonymous tipster personally observed, and involved a specific vehicle. (App. A at 3a.) The panel distinguished *Florida v. J.L.* and relied heavily on *Navarette*, brushing aside the absence of key indicia of reliability

present in *Navarette* because "more than one set of facts will satisfy the law in these kinds of cases." (App. A at 3a.)

This petition follows.

REASONS FOR GRANTING THE PETITION

I. The Eleventh Circuit Misapplied Supreme Court Jurisprudence to Erroneously Conclude that an Uncorroborated Anonymous Tip Created Reasonable Suspicion to Render a *Terry* Seizure Constitutional

The Fourth Amendment protects the "right of people to be secure . . . against unreasonable searches and seizures." U.S. Const. amend. IV. In *Terry v. Ohio*, 392 U.S. 1 (1968), this Court created a "very narrow exception" to the longstanding and "broad general rule" that a person cannot be seized absent probable cause. *United States v. Tookes*, 633 F.2d 712, 715 (5th Cir. 1980). Pursuant to *Terry*, law enforcement officers may briefly detain an individual to conduct a limited investigatory stop—but only if there is "reasonable, articulable suspicion that criminal activity is afoot." *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000).

Reasonable suspicion can be based on tips—that is, information relayed to, rather than witnessed by, law enforcement officers. But when a tipster remains anonymous, that tip is treated with great skepticism and, standing alone, will seldom demonstrate sufficient indicia of reliability to support a *Terry* seizure. *See Alabama v. White*, 496 U.S. 325, 329 (1990). As this Court has explained, "[u]nlike a tip from a known informant whose reputation can be assessed and who can be held responsible if her allegations turn out to be fabricated, an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity." *J.L.*, 529 U.S. at 270 (internal quotation marks omitted). An anonymous tipster "has not placed his credibility at risk and can lie with impunity." *Id.* at 275 (Kennedy, J., concurring). As a result, anonymous tips typically require "something more"—most commonly,

corroboration—before they can justify a seizure. *White*, 496 U.S. at 329 (quoting *Illinois v. Gates*, 462 U.S. 227 (1983)). In other words, for an anonymous tip to give rise to reasonable suspicion, it must demonstrate—typically through corroboration—the tipster's basis of knowledge, veracity, and—critically—that the tip is "reliable *in its assertion of illegality*" not merely its tendency to identify a particular person. *J.L.*, 529 U.S. at 272 (emphasis added); *compare White*, 496 U.S. at 323, 327, 332 (although a "close case," the anonymous tip was sufficiently reliable in its assertion of illegality because law enforcement officers were able to corroborate several details of *predictive* information, testing both the veracity and the knowledge of the tipster), *with J.L.*, 529 U.S. at 268–69, 272 (anonymous tip that young black male wearing a plaid shirt and standing at a particular bus stop was carrying a firearm did not create reasonable suspicion where officers corroborated innocent and "readily observable" details, demonstrating that the tip was reliable in its tendency to identify a determinate person, but did not demonstrate that the tip was reliable in its assertions of illegality).

In *Navarette*, this Court had the opportunity to revisit its anonymous tip jurisprudence, in the unique context of a report of a potential drunk driver on the road. 572 U.S. 393. Although the Court stopped short of explicitly recognizing a "drunk driving" exception to *J.L.*, its analysis was heavily informed by the unique urgency and dangers and of "ongoing" crimes like drunk driving. *Id.* at 400–01, 404; *see also Virginia v. Harris*, 558 U.S. 978 (2009) (Roberts, C.J., dissenting to the denial of certiorari) ("[I]t is not clear that *J.L.* applies to anonymous tips reporting drunk or erratic driving. . . . There is no question that drunk driving is a serious and potentially

deadly crime . . . [and t]he imminence of the danger posed by drunk drivers exceeds that at issue in other types of cases. In a case like *J.L.*, the police can often observe the subject of a tip and step in before actual harm occurs; with drunk driving, such a wait-and-see approach may prove fatal.").

Also central to the Court's holding in *Navarette* was the caller's use of a 911 system that would allow the call to be traced and the tipster to be identified—increasing the tip's reliability. 572 U.S. at 400–01, 404. Specifically, the 911 system had the ability to record and trace the call, and required phone carriers to relay the caller's phone number and geographic location to the dispatcher, even if the caller did not voluntarily identify herself. *Id.* at 400–01. In other words, the 911 system used by the caller in *Navarette* had numerous "safeguards against making false reports with immunity," thereby rendering the otherwise anonymous tip more reliable. *Id.* at 400.

These two factors—the unique urgency of an "ongoing" crime like drunk driving and the safeguards woven into the 911 system—were central to the Court's holding. Yet, even with these factors and other indicia of reliability present, the 5-4 majority recognized that *Navarette* was a "close case." *Id.* at 404.

In upholding the seizure here, the lower court misapplied this Court's anonymous tip jurisprudence—extending *Navarette* well beyond what this Court has countenanced and minimizing *J.L.* to the point of extinction.

Even assuming *Navarette* applies outside the context of drunk driving offenses, it clearly does not support the Eleventh Circuit's decision in this case. There are at

least two key factors present in *Navarette* that are missing here. First, in *Navarette*, the caller reported detailed information regarding "an *ongoing* crime"—possible drunk driving—"as opposed to an isolated episode of past recklessness" or criminality. 572 U.S. at 401 (emphasis added); *see also United States v. Watson*, 900 F.3d 892, 893, 895–96 (7th Cir. 2018) (explaining that, unlike the drunk driving tip in *Navarette*, an anonymous 911 call reporting contemporaneous observation of "boys" "playing with guns" did not involve an ongoing imminent risk). Here, the motorist alleged *past* misconduct, not an ongoing crime. As *J.L.* made clear, it is of no moment that the alleged misconduct involved a firearm. 529 U.S. at 272 (explicitly rejecting the state's invitation to create a "firearm exception" to *Terry*—even though "[f]irearms are dangerous"—because "*Terry*'s rule," which requires reasonable suspicion rather than probable cause already "responds to this concern," and a firearm exception "would enable any person seeking to harass another to set in motion an intrusive, embarrassing police search of the targeted person" by making a false report); *see also Watson*, 900 F.3d at 896 ("[A] mere possibility of unlawful use of a gun is not sufficient to establish reasonable suspicion").

Secondly, the *Navarette* caller's use of a 911 system that enabled law enforcement to identify and trace callers provided "safeguards against making false reports with immunity," thereby rendering the tip more reliable. 572 U.S. at 400. Thus, even though technically anonymous, the 911 caller—unlike the typical anonymous tipster—could "be held responsible if her allegations turn out to be fabricated." *J.L.*, 529 U.S. at 270. These regulatory and technological developments

discussed at length in *Navarette* assured the Court that a false tipster would "think twice" before using such a system. 572 U.S. at 401; *see also Watson*, 900 F. 3d at 895 (holding that a 911 call made on borrowed phone was less reliable than the tip in *Navarette* because "it is not obvious" that, under the circumstances, the caller "would be worried about getting caught providing false information and therefore 'think twice' before doing it" (quoting *Navarette*, 572 U.S. at 401)). No such safeguards are present here. In this case, neither Officer Vargas nor any other member of law enforcement obtained any identifying information from or about the motorist. (Dist. Ct. Dkt. 37 at 22–24.) Nor is there any recording or documentation of any kind that would enable law enforcement to contact the motorist—either to corroborate and follow up on his information, or to hold him accountable if it were false. (Dist. Ct. Dkt. 37 at 15, 18.) In sum, there are absolutely no "safeguards against making false reports with immunity" akin to the 911 system in *Navarette*, which separated that call from the average anonymous tipster who cannot be held accountable. 572 U.S. at 400.

That the tip was "face-to-face" rather than over the phone does not alter the outcome. The entire exchange—which "happened so fast," lasted less than one minute, and occurred while both the tipster and the law enforcement officer were driving their respective vehicles on the Florida Turnpike and speaking across their car windows—was hardly the type or quality of interaction that comes to mind when one envisions a "face to face" encounter. (Dist. Ct. Dkt. 36 at 12, 20–22.) The tipster remained truly anonymous and—unlike in *Navarette*—there were no "safeguards" that would make the tipster "think twice" about making a false report. *Navarette*, 572 U.S. at 400–01.

Rather, the tip here—that the person in the white vehicle pointed a gun at the motorist—was similar to the barebones tip in *J.L.* *See Watson*, 900 F.3d at 897 (anonymous tip based on personal, contemporaneous observation that boys were playing with guns was "controlled by *J.L.*" and not sufficiently reliable to create reasonable suspicion). And the only corroboration—the description of the vehicle—is the same kind deemed insufficient in *J.L.*: corroboration of innocent, readily observable information that tends to identify a particular person but fails to bolster the reliability of the tip in its assertion of illegality. *J.L.*, 529 U.S. at 272; *see also Navarette*, 572 U.S. at 407 (Scalia, J., dissenting) ("[E]veryone in the world who saw the car would have that knowledge. . . . Unlike the situation in *White*, that generally available knowledge in no way makes it plausible that the tipster saw the car run someone off the road."). And again, the fact that the tip involved a firearm does not and cannot alter the conclusion—it neither waters down the reasonable suspicion standard, nor does it heighten the reliability of the tip. *See J.L.*, 529 U.S. at 272.

Faithfully applying this Court's anonymous tip jurisprudence requires the conclusion that the largely uncorroborated anonymous tip in this case was insufficiently reliable, and that law enforcement therefore lacked reasonable suspicion to effectuate a seizure of Mr. Martinez. Instead, the lower Court misapplied this Court's precedent—minimizing *J.L.*'s seminal holding and extending what this Court already classified as a "close case," *Navarette*, 572 U.S. at 404—permitting a violation of Mr. Martinez's Fourth Amendment right to go unremedied.

II. The Question Presented Is Exceptionally Important

The Fourth Amendment concerns starkly presented in this case are of exceptional importance. Granting this petition would enable the Court to clarify its Fourth Amendment anonymous tip jurisprudence, which is especially important in light of lower court decisions, like this one, that erode this Court's seminal cases.

The "touchstone" of the Court's Fourth Amendment analysis is the reasonableness "of the particular governmental invasion of a citizen's personal security." *Maryland v. Wilson*, 519 U.S. 408, 411 (1997) (internal quotation marks omitted). Faithfully applying the Constitution to protect the people against government overreach and intrusion is just as important when it is inconvenient as it is when it is easy. Yet, because courts only see "the cases in which the conduct of the officer resulted in contraband being found," "there is always a temptation in cases of this nature . . . to let the end justify the means." *United States v. Freeman*, 209 F.3d 464, 467 (6th Cir. 2000) (Clay, J., concurring). When officers stop someone, but find no contraband, the court "would not even know that this traffic stop occurred"—but the violation of the innocent citizen's privacy interest is just as real. *Id; see also Elkins v. United States*, 364 U.S. 206, 220 (1960) ("The innocent suffer with the guilty, and we cannot close our eyes to the effect the rule we adopt will have on the rights of those not before the court." (citation and internal quotation marks omitted)). As a result, even though it may appear as though the court is "thwarting what some may view as a good piece of police work" when suppressing evidence, *Freeman*, 209 F.3d

at 467, the Fourth Amendment compels such a result when, as here, an individual's liberty and privacy are invaded without reasonable suspicion.

If every "close case" is decided in favor of the government, and lower courts, like the panel here, are permitted to further extend and contort these close cases in order to find in favor of the government, the rights of the people to be free from unreasonable searches and seizures will die a death by a thousand cuts. This Court must intervene to avoid this inexorable erosion of the foundational privacy and liberty interests of the people protected by the Fourth Amendment.

III. This Is an Ideal Vehicle

This case presents an ideal opportunity for the Court to clarify its Fourth Amendment jurisprudence regarding warrantless seizures based on anonymous tips. First, the question is fully preserved and squarely presented here. And second, the lower court's erroneous denial of Mr. Martinez's motion to suppress resulted in error that requires reversal.

Mr. Martinez challenged the legality of his seizure both in the district court and on appeal. The district court denied his motion to suppress the physical evidence recovered following the seizure (the firearm), finding the warrantless seizure justified based on the anonymous tip, and relying "in great part on *Navarette v. California*, 572 U.S. 393, 399 (2014)[.]" (Dist. Ct. Dkt. No. 38 at 2.) Mr. Martinez subsequently entered into a conditional plea of guilty that specifically reserved his right to seek appellate review of the district court's denial of his motion to suppress on the ground that law enforcement lacked reasonable suspicion for the seizure. (Dist. Ct. Dkt. No.

39 ¶ 5.) Both parties acknowledged that "an order suppressing [the firearm], or an appeal granting such relief, [would be] case dispositive." (Dist. Ct. Dkt. No. 39 ¶ 5.) Mr. Martinez again challenged the legality of his seizure on appeal. The Eleventh Circuit, misapplying this Court's jurisprudence, dismissed Mr. Martinez's arguments, and affirmed the district court's order denying the motion to suppress. (App. A at 1a.) Factually, the significance of the erroneous denial of the motion to suppress cannot be overstated; as the government itself acknowledged, the motion is case dispositive. Thus, if this Court reverses the Eleventh Circuit, Mr. Martinez's conviction must be vacated.

CONCLUSION

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

Respectfully submitted,

MICHAEL CARUSO
FEDERAL PUBLIC DEFENDER

By: */s/ Kate Taylor*
Kate Taylor
Assistant Federal Public Defender
Counsel of Record
150 West Flagler Street
Suite 1700
Miami, FL 33130
(305) 530-7000

Counsel for Petitioner

Miami, Florida
August 26, 2021