NO. _____

In The Supreme Court of the United States

JEFFREY WILLIAM FORGET,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

Joseph A. Davidow
Counsel of Record
WILLIS & DAVIDOW, L.L.C.
9015 Strada Stell Court, Suite 106
Naples, Florida 34109
(239) 465-0531
JDavidow@willisdavidow.com

Counsel for Petitioner

Dated: September 21, 2021

THE LEX GROUP[DC] ♦ 1050 Connecticut Avenue, N.W. ♦ Suite 500, #5190 ♦ Washington, D.C. 20036
(202) 955-0001 ♦ (800) 856-4419 ♦ www.thelexgroup.com

QUESTIONS PRESENTED

1. Whether the Eleventh Circuit erred in holding that the traffic stop of Petitioner was not unlawfully extended in violation of the Fourth Amendment, where officers were engaged in drug interdiction surveillance and held a vehicle subject to a traffic stop in order to order a k-9 unit prior to investigating the passenger seat belt violation which was the cause of the traffic stop.

2. Whether the Eleventh Circuit erred by holding that the warrantless search of Petitioner's items was permissible under the inventory search exception of the Fourth Amendment, where Petitioner was a passenger in a vehicle, no inventory of the items was created while the warrantless searches were being conducted, and where officers chose which searched items would be placed into police custody as evidence.

LIST OF PARTIES TO THE PROCEEDING

All parties appear in the caption of the case on the cover page.

STATEMENT OF RELATED CASES

There are no proceedings directly related to this case as required by Supreme Court Rule 14(1)(b)(iii).

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

CONSTITUTIONAL PROVISION

STATUTES

RULES

OTHER AUTHORITY

PETITION FOR A WRIT OF CERTIORARI

COMES NOW, Petitioner, Jeffrey William Forget ("Petitioner"), by and through undersigned counsel, and respectfully petitions this Honorable Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The order and opinion of the Eleventh Circuit Court of Appeals that is sought review of is in No. 20-10585[1] (App. 1a) unpublished opinion dated April 27, 2021.

JURISDICTION

The United States District Court for the Middle District of Florida asserted subject matter jurisdiction pursuant to 18 U.S.C. § 3231. The district court entered an order and opinion denying Petitioner's motion to suppress on August 16, 2019 to which Mr. Forget timely appealed to the United States Court of Appeal for the Eleventh Circuit.

The Eleventh Circuit had jurisdiction to hear Mr. Forget's appeal pursuant to 28 U.S.C.S. § 1291 and 18 U.S.C. § 3742(a)(1).

This Petition seeks the review of an Eleventh Circuit's Judgment dated April 27, 2021. (App. 1a). This Honorable Court has Jurisdiction pursuant to 28 U.S.C. § 1254(1) and Rule 10 of the Rules of the Supreme Court of the United States.

---

[1] Reference to Petitioner's Appendix before this Honorable Court is made as "APP. #_".

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment 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, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

United States Constitution, Amendment V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment XIV:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A. Course of Proceedings and Disposition in Court Below

On October 24, 2018, defendant/petitioner, Jeffrey W. Forget ("Petitioner" or "Mr. Forget") was charged by Indictment by a federal grand jury on two counts:

Count I charged that Jeffery W. Forget,

> With intent to defraud, did falsely make, forge, counterfeit, and alter an obligation or other security of the United States, as defined in 18 U.S.C. § 8, that is, Federal Reserve notes[,] in violation of 18 U.S.C. § 471.

Count II charged that Jeffery W. Forget,

> With intent to defraud, did possess a falsely made, forged, counterfeited, and altered obligation or other security of the United States, as defined in 18 U.S.C. § 8, that is Federal Reserve notes, which the defendant then knew to be falsely made, forged, counterfeited, and altered.[2]

[APPX1]

On April 12, 2019, Mr. Forget filed his Amended Motion to Suppress Evidence. [APPX43]. On August 16, 2019, the district court entered an Order denying Mr. Forget's Amended Motion to Suppress. [APPX80-APPX96]. In its Opinion and Order, the trial court held (1) that Appellant had a reasonable expectation of privacy in the backpack and, therefore, had standing to challenge the search and seizure of the backpack. The trial court went on to hold that (2) the stop was not unlawfully prolonged; and that (3) the warrantless search and seizure of the backpack by the detectives at the arresting site, constituted an inventory search exception to the general warrant requirement. [APPX80-APPX96].

On February 17, 2020, Petitioner filed his Notice of Appeal as to the Order denying the Appellant's Motion to Suppress. [Dist. Ct. Doc. 112][3]. On May 26, 2020, Petitioner filed his initial brief with the 11th Circuit Court of Appeals. *U.S. v. Forget*,

---

[2] All references to Appellant's Appendix filed in the United States Court of Appeals for the Eleventh Circuit are designated "APPX" plus the relevant page numbers.

[3] All references to the Docket Entries from trial court proceedings docket of the Middle District for the State of Florida will be designated as "Dist. Ct. Doc."

Case No. 20-10585. On August 13, 2020, Respondent filed its response brief. On October 1, 2020, Petitioner filed his reply brief.

On April, 27, 2021 the Eleventh Circuit entered an Opinion affirming the district court. [App __a]. On June 23, 2021, the Eleventh Circuit entered an Order denying Mr. Forget's Petition for Rehearing and Rehearing En Banc. [App __a].

B. Statement of Facts

On October 10, 2018, detectives, Michael Holmberg and Tony Davenport, of the Naples Police Department ("NPD") were conducting drug surveillance of the Inn of Naples at 4055 9th Street North, Naples, FL 34103. Transcript of hearing on Amended Motion to Suppress [Dist. Ct. Doc 116, P 36: L11] The purpose of the investigation was to investigate vice like crimes. [Dist. Ct. Doc 116, P 67: L 1-4]. During this time, detectives observed Mr. Forget exit the hotel while wearing a black backpack. [Dist. Ct. Doc 116, P 9: L2-4] They observed him place the black backpack between his legs on the floor of the passenger seat of a truck. [Dist. Ct. Doc 116, P 9: L11-12]. Detectives also observed Nicolas Cronin ("Mr. Cronin) waiting in the driver's seat while Mr. Forget and another individual carried bags from the hotel room and place them into the truck bed. [Dist. Ct. Doc 116, P 8: L18-20].

Mr. Forget was a passenger in the red Chevy pickup truck. [Dist. Ct. Doc 116, P 37: L17]. Mr. Cronin, was the driver of the pickup truck, and proceeded to drive out of the parking lot. [Dist. Ct. Doc 116, P 37: L15-19]. When the truck was exiting the hotel parking lot, Detective Holmberg radioed Detective Davenport to notify him that the truck was leaving the parking lot. [Dist. Ct. Doc 116, P 68: L 17-19]. Detective

Holmberg could not determine whether or not Mr. Forget was wearing his seatbelt at this time. [Dist. Ct. Doc 116, P 68: L 20-22]

After being notified by Detective Holmberg of the truck leaving, Detective Davenport allegedly observed that Mr. Forget was not wearing his seatbelt. [Dist. Ct. Doc 116, P 38: L1-3]. The vehicle proceeded from the hotel parking lot. [Dist. Ct. Doc 116, P 38: L10-12] A short time later, Detective Davenport initiated a traffic stop of the vehicle. [Dist. Ct. Doc 116, P 38: L22-23]. The pickup truck pulled over promptly into a parking lot and NPD detectives seized the vehicle, along with its occupants. [Dist. Ct. Doc 116, P 15-16]. The time of the stop was approximately 13:03. [Dist. Ct. Doc 116, P 70: L9-16] [Dist. Ct. Doc 166, P41: L20-24]. The stop occurred in a private parking lot of the Gulf Coast Inn, which is another hotel in Naples, Florida. [Dist. Ct. Doc 166: L15-19].

The officers then prolonged the stop by not immediately performing their traffic duties, but instead taking time from the traffic stop to request a k-9 unit from another police department. [Dist. Ct. Doc 116, P71: L18-20; P72, L2-10]. Detective Holmberg approached the passenger's side of the vehicle and made contact with Mr. Forget. [Dist. Ct. Doc 116, P 39: L14]. Detective Davenport approached the driver's side of the vehicle and made contact with Mr. Cronin. [Dist. Ct. Doc 116, P 39: L11-14]. Immediately upon approaching Cronin, Detective Davenport requested that Cronin allow Davenport to conduct a search of the pickup truck. Cronin refused to consent to the search. [Dist. Ct. Doc 116, P 106: L15-16].

Detective Davenport testified at hearing that although he acknowledged that the passengers had a right to refuse, that the exercise of this right, in part, raised his suspicions. [Dist. Ct. Doc 116, P 106: L15-21]. Despite that, and with no shred of reasonable suspicion of criminal activity, only a hunch based upon the vehicle leaving a hotel parking lot that was under a criminal surveillance; Detective Holmberg chose to not immediately perform his traffic duties, but instead chose to radio for a K-9 unit, ask for permission to conduct a voluntary search of the vehicle, and subsequently request an electronic fingerprinting device from another separate law enforcement agency.

The traffic seizure was initiated at 13:03. [Dist. Ct. Doc 116, P 41: L20-24]. The Seizure occurred in a private parking lot of the Gulf Coast Inn, which is another hotel in Naples. [Dist. Ct. Doc 166: P 101: L22-25]. Substantial time passed from the time of the initiation of the traffic seizure, a seizure that was based upon a passenger allegedly not wearing a seatbelt, until the arrival of officers from a separate law enforcements agency, the Collier County Sheriff's Office ("CCSO"), to the scene. [Dist. Ct. Doc 46.1, P 1-22, Government's Exhibit 1; Admitted at Hearing, Dist. Ct. Doc 116, P 40: L 23-25]. Although the stop was prolonged by taking time to request a k-9 unit, no k-9 unit was available or arrived; however, an officer from another law enforcement agency, the CCSO, did arrive a significant time later with a biometric fingerprint device. [Dist. Ct. Doc 46.1, P 1].

Approximately three minutes after delaying the stop to request a k-9 unit from another separate law enforcement agency, the NPD detectives made a request for an

identification device to verify the identity of Mr. Forget. [Dist. Ct. Doc 116, P 74: L8-11, 22-25]. They began to question the identification that was provided to them by Mr. Forget, and proceeded with what Detective Holmberg classified as essentially vice investigation/vice detention. [Dist. Ct. Doc 116, P 73: L17-20]. The detectives were then informed that their office's rapid ID was not working [Dist. Ct. Doc 116, P 75: L 20-23]. So, they proceeded to make another additional request for a rapid ID, this time to a separate law enforcement agency, the CCSO. [Dist. Ct. Doc 116, P 76: L 5-10]. At approximately 13:36, Mr. Forget was identified through rapid ID. [Dist. Ct. Doc 116, P 79: L 17-19]. Mr. Forget was sitting in the vehicle from 13:03 until approximately 13:30. [Dist. Ct. Doc 116, P 5-7].

After a fingerprint scan was conducted, it was determined that Mr. Forget had an active warrant. [Dist. Ct. Doc 46.1, P 1]. He was then arrested based on that active warrant. [Dist. Ct. Doc 116, P 51: L1-4]. His person was searched, including the contents of his wallet, and he was placed into handcuffs. During this time, police left the black backpack in the truck where Mr. Forget had been sitting prior to arrest.

At some point during this prolongment, the CCSO officer informed the NPD detectives of a separate investigation of an alleged attempt to pass a counterfeit bill at Orchard Hardware Store. [Dist. Ct. Doc 116, P 58: L18-25; P 59: L3-10]. The NPD detectives further prolonged the detainment of Mr. Forget at the scene of the traffic stop, so that an Orchard Hardware Store cashier could arrive at the scene, and perform a show-up attempt at identification. [Dist. Ct. Doc 116, P 59: L3-10]. The cashier was transported to the scene and identified Mr. Forget as a suspect who had

attempted to purchase with purported counterfeit bills earlier in the day. [Dist. Ct. Doc 116, P 59: L3-10]. The cashier never mentioned any backpack or suitcases being involved in the incident.

After the show-up, while Mr. Forget was still handcuffed, he was placed into the back of a police patrol car. [Dist. Ct. Doc 116, P 90: L14-17]. Cronin was still seized at the scene at this point without probable cause or reasonable suspicion to hold him there. Cronin was never issued a citation nor arrested. At this time, Mr. Forget was safely secured in a locked patrol vehicle and had no way of accessing the passenger compartment or the bed of the truck. [Dist. Ct. Doc 116, P 90: L14-17].

After Mr. Forget had been successfully placed into handcuffs and locked into the back of a patrol car, Detective Holmberg entered the vehicle and conducted a warrantless, non-consensual search of the passenger compartment of the pickup truck. [Dist. Ct. Doc 116, P 55: L20-22]. Detective Holmberg located and seized a black backpack from the passenger's compartment of the pickup. [Dist. Ct. Doc 116, P 55: L21-22].

Next, instead of seeking a warrant from the court to search the backpack, Detective Holmberg decided to conduct a warrantless search of it. [Dist. Ct. Doc 116, P 56: L1-5]. After Holmberg's search had been conducted, Detective Davenport then conducted another separate search of the same backpack. [Dist. Ct. Doc 116, P 56: L7-9]. Among the items obtained from the interior of the backpack were several books and a folder. [Dist. Ct. Doc 116, P 56: L7-9]. Detective Davenport then proceeded to

remove the books and folder and conducted warrantless searches of the interior of those items. [Dist. Ct. Doc 116, P 56: L7-9].

Inside one of the books, Detective Holmberg obtained washed and counterfeit bills, inter alia. The detectives then proceeded to conduct a warrantless search of the inside of the folder and found sixteen (16) purported-to-be-fraudulent hundred-dollar bills. [Dist. Ct. Doc 116, P 88: L23-25].

These searches were done at the scene while Mr. Forget was sitting in a patrol car. [Dist. Ct. Doc 116, P 51: L1-11; Doc 116 P 56: L1-9]. However, the general order that the NPD Detectives were relying upon only instructed them on what to do with items, it did not instruct them on how to lawfully retrieve or seize/impound the items. [Dist. Ct. Doc 116, P 85: L22-25; P 86: L1-2]. During this time none of the items searched on scene in the backpack were ever "inventoried" or placed onto any Naples Police Department Inventory property receipt.

Instead, it was not until around two hours later, after the incident had concluded and the scene was cleared, at approximately 16:00, that the items were actually subjected to an "inventory" search and "inventoried" onto a Naples Inventory Property receipt by another NPD officer, Officer Holcomb, who generated the inventory property receipt off scene. [Dist. Ct. Doc 116, P 60, L 5-23]; see also Government's Exhibit 5 [Dist. Ct. Doc 46.5, P 1-3].

The separate searches conducted on-scene, by Detectives Holmberg and Davenport were not done for the purpose of inventorying the items, as inventory was documented of the on-scene searches. Instead, Officer Holcomb inventoried the items

off-scene during a second subsequent search. Detective Davenport and Detective Holmberg did not participate in the second subsequent search. The on-scene searches conducted by Davenport and Holmberg were thus done simply to ravage through personal belongings in an attempt to obtain evidence without a search warrant, in violation of the Fourth Amendment.

REASONS FOR GRANTING WRIT OF CERTIORARI

I. THE ELEVENTH CIRCUIT ERRED IN HOLDING THAT THE TRAFFIC STOP OF PETITIONER WAS NOT UNLAWFULLY EXTENDED IN VIOLATION OF THE FOURTH AMENDMENT, WHERE OFFICERS WERE ENGAGED IN DRUG INTERDICTION SURVEILLANCE AND HELD A VEHICLE SUBJECT TO A TRAFFIC STOP IN ORDER TO ORDER A K-9 UNIT PRIOR TO INVESTIGATING THE PASSENGER SEAT BELT VIOLATION WHICH WAS THE CAUSE OF THE TRAFFIC STOP.

The Court's Opinion affirming the lower court's denial of Petitioner's Motion to Suppress is contrary to this Court's precedent and presents a precedent-setting question of exceptional importance and first impression thereby warranting a writ of certiorari.

On April 12, 2019, Petitioner filed his Amended Motion to Suppress Evidence in which he argued that his Fourth Amendment rights had been violated by law enforcement's warrantless searches when (1) Detectives unlawfully prolonged the traffic stop beyond the time necessary to address the seatbelt offense; and (2) Detectives unlawfully searched Defendant's backpack without a warrant and no exception to the warrant requirement applied. [11th Cir. APPX80-96].

NPD officers unconstitutionally seized Mr. Forget and searched his items. In doing so, the NDP detectives deprived the judicial branch of its constitutional

authority to determine the existence of probable cause and to determine whether or not to issue a warrant. The result was an unconstitutional, warrantless search of Mr. Forget's personal effects and an unconstitutional, warrantless prolonged seizure of Mr. Forget.

The Fourth Amendment 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 person or things to be seized.

U.S. CONST. amend. IV (emphasis added).

"[S]earches conducted outside the judicial process, without prior approval by a judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357 (1967) (emphasis added).

The purpose of the warrant requirement is to ensure that the decision is made "by a neutral and detached magistrate instead of being judged by the officer engaged in the often-competitive enterprise of ferreting out crime." *Johnson v. United States*, 333 U.S. 10, 13-14, 68 S. Ct. 367 (1948).

A traffic stop has been recognized as a 'seizure' within the meaning of the Fourth Amendment. *See Whren v. United States*, 517 U.S. 806, 809-10 (1996).

Furthermore, Courts have for centuries noted the importance of obtaining prior judicial approval. "[T]he police must, whenever practicable, obtain advance judicial approval of searches and seizures through a warrant procedure." *Terry v.*

Ohio, 392 US 1, 20 (1968). The Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty. *See Gerstein v. Pugh*, 420 U.S. 103, 113-114 (1975)(emphasis added).

Unreasonable delays are those "delays for the purpose of gathering additional evidence to justify the arrest, a delay motivated by ill will against the arrested individual, or delay for delay's sake." *County of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991).

At the "very heart of the Fourth Amendment directive" is that

> where practical, a governmental search and seizure should represent both the efforts of the officer to gather evidence of wrongful acts and the judgment of the magistrate that the collected evidence is sufficient to justify invasion of a citizen's private premises or conversation. Inherent in the concept of a warrant is its issuance by a 'neutral and detached magistrate.

United States v. United States Dist. Court for Eastern Dist. of Mich., 407 U.S. 297, 316, 92 S. Ct. 2125, 32 L. Ed. 2d 752 (1972)(emphasis added).

In United States Dist. Court for Eastern Dist. of Mich., This Court clarified,

> Over two centuries ago, Lord Mansfield held that common-law principles prohibited warrants that ordered the arrest of unnamed individuals who the officer might conclude were guilty of seditious libel. "It is not fit," said Mansfield, "that the receiving or judging of the information should be left to the discretion of the officer. The magistrate ought to judge; and should give certain directions to the officer."

United States v. United States Dist. Court for Eastern Dist. of Mich., 407 U.S. at 316 (emphasis added); *citing Leach v. Three of the King's Messengers*, 19 How. St. Tr. 1001, 1027 (1765); *See also*, *Malley v. Briggs,* 475 U.S. 335, 352 (1996).

"These Fourth Amendment freedoms cannot properly be guaranteed if [limited] solely within the discretion of the Executive Branch. The Fourth

Amendment does not contemplate the executive officers of Government as neutral and disinterested magistrates." *United States Dist. Court for Eastern Dist. of Mich.,* 407 U.S. at 317. "The historical judgment, which the Fourth Amendment accepts, is that unreviewed executive discretion may yield too readily to pressures to obtain incriminating evidence and overlook potential invasions of privacy and protected speech." *Id.*

"The Fourth Amendment contemplates a prior judicial judgment, not the risk that executive discretion may be reasonably exercised." *Id.* at 317. "This judicial role accords with our basic constitutional doctrine that individual freedoms will best be preserved through a separation of powers and division of functions among the different branches and levels of Government." *Id.* citing Harlan, Thoughts at a Dedication: Keeping the Judicial Function in Balance, 49 A. B. A. J. 943-944 (1963).

"The independent check upon executive discretion is not satisfied, as the Government argues, by 'extremely limited' post-surveillance judicial review." *Id.*, *See also, Delaware v. Prouse*, 440 US 648, 655 (1979) ("other safeguards are generally relied upon to assure that the individual's reasonable expectation of privacy is not 'subject to the discretion of the official in the field[.]'").

In the present case, the Eleventh Circuit erred by finding that NPD Detectives did not need a warrant in order to extend the traffic seizure of Mr. Forget and convert that seizure into a criminal investigation seizure. NPD Detectives, Davenport and Holmberg, initiated a traffic stop seizure of Mr. Forget to purportedly issue a traffic citation for failure to wear a seatbelt. NPD officers went beyond the constitutional

scope of a normal traffic seizure and unconstitutionally prolonged the traffic seizure of Mr. Forget and converted that seizure into a criminal seizure and investigation.

NPD Detectives did not obtain any warrant to prolong the seizure of Mr. Forget. They did not seek advance judicial approval. Instead, they unilaterally extended the duration for the purposes of requesting a k-9 unit to conduct a drug sniff, prior to performing their traffic responsibilities.

In addition, they added time to the traffic stop by requesting a consensual search of the vehicle and requesting a fingerprint identification device from an entirely separate law enforcement agency.

As discussed supra, this Court has restricted the scope of a traffic seizure. NPD detectives chose to go outside of those defined parameters and prolonged the stop. Such prolongment requires judicial approval in the form of a warrant. In prolonging the seizure and neglecting to obtain a warrant to extend the traffic stop, NPD officers violated the Fourth Amendment, and deprived the judiciary of its role recognized through the constitutional principle of separation of powers.

Furthermore, instead of seeking advanced judicial approval to obtain a search warrant, NPD officers conducted multiple warrantless searches of Appellant's backpack. These multiple searches accorded on scene without Detectives properly creating an inventory list. As such, the on-scene searches fell outside of the defined standardized NPD inventory search procedures. Furthermore, NDP did not have any standardized procedure for determining when to take items into its possession and when to allow owners to make alternative arrangements for their items. Since the

searches were not done in accordance with standardized police procedures, they violated the Fourth Amendment and fell outside of any recognized constitutional exceptions to the warrant requirement.

This Court's precedents cast serious doubt on the Eleventh Circuit's holding. This Court should grant this Petition to resolve this issue.

A. THE ELEVENTH CIRCUIT'S OPINION ON THE PROLONGMENT OF THE STOP IS IN CONFLICT WITH THE DECISIONS OF THIS COURT AND OTHER UNITED STATES COURTS OF APPEALS.

The Eleventh Circuit's Opinion affirming the lower court's denial of Mr. Forget's Motion to Suppress is contrary to this Court's precedent and decisions of other United States Courts of Appeals finding that prolongment of a traffic stop constitutes a violation of the 4h Amendment.

The district court found that "detectives did not unlawfully prolong Forget's stop with the rapid ID, K9 Unit, and the [request for] consent to search Cronin's truck." [Doc 80, P6]. However, the seizure was an unconstitutional prolonging of a detention beyond the time reasonably required to address a passenger, seat belt traffic violation, and the fruits of that unlawful detention should be suppressed under Rodriguez and its progeny. *See Rodriguez v. United States*, 135 S. Ct. 1609 (2015).

"[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. A seizure justified only by a police-observed traffic violation, therefore, 'become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission' of issuing a ticket for the violation." *Id* at 1612.

Even where police have reasonable suspicion to make a traffic stop, courts have held that they do not have unfettered authority to detain persons indefinitely. Such detentions are "limited in scope and duration." *Florida v. Royer,* 460 U.S. 491, 500 (1983). Officers have a duty to conduct their investigation diligently. *See, Rodriguez,* 135 S. Ct. at 1616. ("[T]he Government acknowledges that an officer always has to be reasonably diligent.") (internal quotation omitted). The scope of a traffic stop must be carefully tailored to its underlying justification. *U.S. v. Campbell,* No. 16-10128 (11th Cir. 2019).

"Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed." *Rodriguez*, 135 S. Ct. at 1614 (emphasis added); citing *United States v. Sharpe*, 470 U.S. 675, 686, 105 S. Ct. 1568, 84 L. Ed. 2d 605 (1985).

"Beyond determining whether to issue a traffic ticket, an officer's mission includes 'ordinary inquiries incident to [the traffic] stop.'" *Rodriguez*, 135 S. Ct. at 1615, *citing Illinois v. Caballes*, 543 U.S. 405, 408, 125 S. Ct. 834, 160 L. Ed. 2d 842 (2005). "Typically such inquiries involve checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." *Rodriguez*, 135 S. Ct. at 1615 (emphasis added), *citing Delaware v. Prouse*, 440 U.S. 648, 658-660, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979).

"A dog sniff, by contrast, is a measure aimed at "detect[ing] evidence of ordinary criminal wrongdoing." *Rodriguez*, 135 S. Ct. at 1615, *citing Indianapolis v.*

Edmond, 531 U.S. 32, 40-41, 121 S. Ct. 447, 148 L. Ed. 2d 333 (2000). "[a] dog sniff, unlike the routine measures just mentioned, is not an ordinary incident of a traffic stop." Id. If a stop is unlawfully prolonged without reasonable suspicion in violation of the Fourth Amendment, any evidence obtained as a result of that constitutional violation must generally be suppressed. *See Wong Sun v. United States,* 371 U.S. 471, 484-85 (1963).

The routine measures for a passenger citation for failure to wear a seatbelt are defined in the Florida Statutes. Florida Statute § 316.614 provides "[s]afety belt usage", "[i]t is unlawful for any person 18 years of age or older to be a passenger in the front seat of a motor vehicle […] unless such person is restrained by a safety belt when the vehicle or autocycle is in motion." Fla Stat. § 316.614(5).

Further, the section provides several exceptions, including, an exception for "[a] person who is certified by a physician as having a medical condition that causes the use of a safety belt to be inappropriate or dangerous [is not] required to be restrained by a safety belt." Fla. Stat. § 316.614(6)(a). The prescribed penalty for a violation is "[a]ny person who violates the provisions of this section commits a nonmoving violation, punishable as provided in chapter 318." Fla. Stat. § 316.614(8)(emphasis added).

Chapter 318 provides "[i]t is the legislative intent in the adoption of this chapter to decriminalize certain violations of chapter 316[.]" Fla. Stat. § 318.12 (emphasis added).

In Florida, prohibition against giving a false name or false identification falls under Title XLVII – Criminal Procedure, Chapter 901. The relevant statute provides "[i]t is unlawful for a person who has been arrested or lawfully detained by a law enforcement officer to give a false name, or otherwise falsely identify himself or herself in any way, to the law enforcement officer or any county jail personnel." Fla. Stat. § 901.36.

In *Morrow*, the Second District Court of Appeal dealt with the following set of facts,

> Morrow was a passenger in a car that a police officer stopped for speeding and for failing to display a tag. The officer approached the driver's side of the car and asked the driver for his driver's license and registration. After the driver complied, the officer then asked Morrow, who was sitting in the front passenger seat, for identification because Morrow was not wearing his seat belt. Morrow refused to tell the officer his name. In response to Morrow's refusal, the officer temporarily abandoned his investigation of the traffic infractions that led to the stop. He walked around the car and positioned himself "right outside the passenger door" while he called for back-up. When the back-up officer arrived, Morrow gave his name, and it was discovered that Morrow had outstanding warrants for his arrest. A search of Morrow's person incident to arrest revealed crack cocaine and marijuana.

See Morrow v. State, 848 So. 2d 1290, 1292 (Fla. 2d DCA 2003).

In *Morrow*, the court determined that "the officer did not have a reasonable suspicion of criminal activity that would have justified an investigatory detention." Id. (emphasis added). "[A] significant identifying characteristic of a consensual encounter is that the officer cannot hinder or restrict the person's freedom to leave or freedom to refuse to answer inquiries...." *Id* at 1292-1293; *see also, Cooks v. State*, 901 So. 2d 963, 965 (Fla. 2d DCA 2005)(where "officers lacked reasonable suspicion to

detain Cooks and did not otherwise have probable cause to arrest him, there was no probable cause to arrest for the giving of the false name.")

In the present case, Mr. Forget was a passenger in the truck when he was stopped for a non-moving violation for failing to wear a seat belt under Fla Stat. § 316.614. Instead of inquiring with Mr. Forget regarding the purported traffic violation and inquiring to see if any of the statutory exceptions applied to his situation, officers inquired with the driver about a consensual search. Under Rodriguez and Campbell, the scope of the seizure was the time necessary to issue the citation for non-moving traffic violation to a passenger. However, the NDP detectives prolonged the seizure by requesting a k-9 unit before ever requesting the verification of the identification of Mr. Forget.

The stop was pretextual. The same NPD detectives were conducting surveillance on the hotel as part of an investigation into drug and other criminal activity. [Doc 116, P 67: L 1-4]. They were part of the NPD drug detective task force, not part of the road traffic patrol. [Doc 116, P 66: L 23-25]. Detective Holmberg was assigned to the narcotics division of NPD [Doc 116, P 7: L 23-25, P 8: L1]. Detective Davenport was assigned to the crime suppression division. [T12: L-8-9]. They had no evidence whatsoever that either Mr. Forget or Mr. Cronin were involved in any crimes or involved with drugs [Doc 116 P 71: L21-25], but in their capacity as officers assigned to crime prevention and narcotics, they proceeded to conduct a drug stop and investigation anyways. They conducted a pretextual traffic stop of Mr. Forget under the guise of a passenger seat belt violation.

NPD Detectives did not have probable cause or any suspicion that Mr. Forget was involved in any criminal activity. [Doc 116 P 104].

NPD officers did not immediately conduct the procedures for issuing the traffic citation. Instead, they requested that they be allowed to search the vehicle, as well as, questioned the validity of the name provided to them by a passenger. At that point, instead of using the equipment from their own office to verify the identity, they had to prolong the stop and contact another separate law enforcement agency. They prolonged the stop further and waited for the arrival of another law enforcement agency to arrive on the scene.

They made this decision to prolong the existing traffic seizure and convert it into a criminal investigation without ever consulting a neutral magistrate to request the issuance of a warrant.

The historical foundations of the Fourth Amendment, the extensive case law enumerating the importance of separation of powers, and public policy are best served by the requiring officers of the executive branch, law enforcement agents, to seek judicial determination before converting a traffic seizure into a criminal investigation.

The potential for abuse would be substantial if law enforcement agents were allowed an exception to the prolongment doctrine recognized in *Rodriguez* and *Campbell*, any time those agents merely assert that they questioned the validity of an identification provided to them by a citizen. Affording law enforcement agents unchecked deference to unilaterally convert a traffic seizure into a criminal

investigation would act to usurp the holdings in *Rodriguez* and *Campbell*, as well as, the Judiciary's authority to make independent determinations through the warrant process.

A far better policy is to recognize the need for a neutral and detached magistrate to determine whether law enforcement agents' assertions justified prolongment and whether the traffic seizure should be allowed to be converted into a criminal investigation.

Such a policy is consistent with the Fourth Amendment and the principle of separation of powers. Where officers question the validity of an identification provided to them by a traffic offender, the determination as to whether a good faith basis exists to convert the existing traffic seizure into a criminal seizure should be made a determination left to the judicial branch. This ensures that innocent citizens are not subjected to extended detainment that would otherwise be prohibited under *Rodriguez* and *Campbell* absent a good faith basis to question the validity of the identification provided.

In the present case, NPD officers violated the Fourth Amendment by prolonging the traffic seizure of Mr. Forget and by not seeking and obtaining judicial approval to convert the traffic seizure into a criminal seizure.

Accordingly, the evidence showed an unlawful prolongment of the traffic stop. As such, the Eleventh Circuit's Opinion affirming the district court's denial of Petitioner's Motion to Suppress is in conflict with the decisions of other United States Courts of Appeals. This Court should grant this Petition to resolve this circuit conflict.

II. THE ELEVENTH CIRCUIT ERRED BY HOLDING THAT THE WARRANTLESS SEARCH OF PETITIONER'S ITEMS WAS PERMISSIBLE UNDER THE INVENTORY SEARCH EXCEPTION OF THE FOURTH AMENDMENT, WHERE PETITIONER WAS A PASSENGER IN A VEHICLE, NO INVENTORY OF THE ITEMS WAS CREATED WHILE THE WARRANTLESS SEARCHES WERE BEING CONDUCTED, AND WHERE OFFICERS CHOSE WHICH SEARCHED ITEMS WOULD BE PLACED INTO POLICE CUSTODY AS EVIDENCE.

The Eleventh Circuit's Opinion affirming the lower court's denial of Petitioner's motion to suppress based upon the inventory search exception is contrary to decisions of other United States Courts of Appeals. At a minimum, a search falling under the inventory search exception should include an inventorying. In the present case, officers conducted an on-scene rummaging, and only later decided to create an inventoried list of items, at a later time and place.

In its Opinion, the circuit court determined that admission of items obtained from the truck bed of the truck that Petitioner was a passenger in were proper under the inventory search exception to the warrant requirement.

The district court erred in finding "the search falls within the inventory exception" to the Fourth Amendment. [Doc 80, P 7]. The NPD did not have proper standardized procedures in place to determine whether or not to place items in to inventory. Furthermore, the searches conducted by the NPD detectives on scene were not inventoried pursuant to the NPD procedures, and were only listed upon a property receipt at a significantly later time.

Although warrantless searches have been held to be per se unreasonable courts have recognized "a few 'jealously and carefully drawn' exceptions" to the warrant

requirement. *Arkansas v. Sanders*, 442 U.S. 753, 759 (1979); *quoting Jones v. United States*, 357 U.S. 493, 499 (1958).

The United States Supreme Court has stated "[o]ur view that standardized criteria or established routine must regulate the opening of containers found during inventory searches is based on the principle that an inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence." *Florida v. Wells*, 495 U.S. 1, 4, 110 S. Ct. 1632, 1635, 109 L. Ed. 2d 1 (1990); *see also United States v. Glover*, 441 Fed. Appx. 748, 752 (11th Cir. 2011) ("'An inventory search is not a surrogate for investigation, and the scope of an inventory search may not exceed that necessary to accomplish the ends of the inventory.'") *quoting United States v. Khoury*, 901 F.2d 948, 958-59 (11th Cir. 1990) *mod'd on other grounds*, 910 F.2d 713 (11th Cir. 1990) (finding that officer's search had no purpose other than to investigate and stating that "a warrantless investigatory search may not be conducted under the guise of an inventory").

Four primary cases of this Court have defined the inventory search exception to the warrant requirement of the Fourth Amendment: *South Dakota v. Opperman*, 428 U.S. 364, 96 S. Ct. 3092, 49 L. Ed. 2d 1000 (1976), *Illinois v. Lafayette*, 462 U.S. 640, 103 S. Ct. 2605, 77 L. Ed. 2d 65 (1983), *Colorado v. Bertine*, 479 U.S. 367, 107 S. Ct. 738, 93 L. Ed. 2d 739 (1987), *and Florida v. Wells*, 495 U.S. 1, 110 S. Ct. 1632, 109 L. Ed. 2d 1 (1990).

The inventory search doctrine is an exception to the warrant requirement based upon the theory that police are not searching for evidence but are performing

a "community caretaking function." *Opperman*, 428 U.S. at 368-69. The majority's holding in *Opperman* has been the subject of criticism "[t]he word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away[.]" *South Dakota v. Opperman*, 428 U.S. at 387 (Marshall, J., dissenting); *citing Coolidge v. New Hampshire*, 403 U. S. 443, 461 (1971). "The Court's opinion appears to suggest that its result may in any event be justified because the inventory search procedure is a 'reasonable' response to,

> 'three distinct needs: the protection of the owner's property while it remains in police custody... ; the protection of the police against claims or disputes over lost or stolen property... ; and the protection of the police from potential danger.'

Id. at 389 (Marshall, J., dissenting). "This suggestion is flagrantly misleading, however, because the record of this case explicitly belies any relevance of the last two concerns. In any event it is my view that none of these 'needs,' separately or together, can suffice to justify the inventory search procedure approved by the Court." *Id*. "Even aside from the actual basis for the police practice in this case, however, I do not believe that any blanket safety argument could justify a program of routine searches of the scope permitted here." *Id*. "ordinarily 'there is little danger associated with impounding unsearched automobiles.'" *Id*. Further "inventories are [not] a completely effective means of discouraging false claims, since there remains the possibility of

In *Florida v. Wells*, this Court recognized limitations upon the inventory search exception to the warrant requirement. *Florida v. Wells*, 495 U.S. 1, 4 (1990). The "standardized criteria, ibid., or established routine […] must regulate the opening of containers found during inventory searches is based on the principle that an

inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence." *Florida v. Wells*, 495 U.S. at 4. (emphasis added). "The policy or practice governing inventory searches should be designed to produce an inventory. The individual police officer must not be allowed so much latitude that inventory searches are turned into "a purposeful and general means of discovering evidence of crime." *Id*. (emphasis added).

It was also pointed out that the facts of the case in *Wells* "demonstrate a prime danger of insufficiently regulated inventory searches: police may use the excuse of an 'inventory search' as a pretext for broad searches of vehicles and their contents." *Florida v. Wells*, 495 U.S. at 5 (BRENNAN, J., concurring). "[A]n inventory search is reasonable under the Fourth Amendment only if it is done in accordance with standard procedures that limit the discretion of the police." *Id* at 8 (emphasis in original). "Opening a closed container constitutes a great intrusion into the privacy of its owner even when the container is found in an automobile." *Id*. at 9. "I continue to believe that in the absence of consent or exigency, police may not open a closed container found during an inventory search of an automobile." *Id*. "If the Court wishes to revisit that holding, it must wait for another case. Attempting to cast doubt on the vitality of the holding in *Bertine* in this otherwise easy case is not justified." *Wells*, 495 U.S at 10 (BRENNAN, J., concurring).

The concurrence in Wells also stated that "[i]f [the United States Supreme Court's] cases establish anything, it is that an individual police officer cannot be given complete discretion in choosing whether to search or to leave undisturbed containers

and other items encountered during an inventory search. *Florida v. Wells*, 495 U.S. at 10 (BLACKMUN, J., concurring).

Numerous courts have continued to limit the scope of the inventory search exception to the warrant requirement. Numerous circuits have required that standard police procedures must establish protocol for when officers are to place items into evidence or "impound" items into police custody.

In *Marshall*, the Eight Circuit Court of Appeals recognized that the police must have a legitimate basis not only for inventorying a vehicle, but also for taking custody of that vehicle. Here, the police failed to show an established departmental policy for the impoundment of the vehicle. The Court also pointed out alternative options to taking custody of the vehicle. There were other people around who were available to drive the car, including the defendant's girlfriend and brother. *United States v. Marshall*, 986 F.2d 1171 (8th Cir. 1993).

"[T]he central inquiry is whether the inventory search is reasonable under all the facts and circumstances of the particular case." *Id*. at 1174; citing Opperman at 373. "An inventory search is not constitutionally reasonable, however, merely because it serves important governmental interests. To pass constitutional muster, the search also must be conducted pursuant to standard police procedures." *Marshall*, 986 F.2d at 1175 (emphasis added). "The police may not raise the inventory-search banner in an after-the-fact attempt to justify what was […] in fact purely and simply a search for incriminating evidence." *Id*. (emphasis added). In *Marshall*, the court held,

> Having carefully reviewed the trial transcript, we find that the testimony of Officers […] does not reveal any established procedures designed to inventory and remove valuable or dangerous items from the impounded vehicle and to guide the scope of the officers' discretion in conducting the search. From their statements, the only factors guiding the officers' search appear to have been their experience and intuition regarding the likely location of incriminating items in a vehicle. Thus, we hold that the absence of standardized procedures in this case, coupled with the substantial evidence of an investigatory motive on the part of the police, rendered the search of the mini-van unreasonable under the Fourth Amendment.

Marshall, 986 F.2d at 1175 (8th Cir 1993)(emphasis added).

In *Sanders*, the Tenth Circuit Court of Appeals held that if a defendant is arrested and his car is parked on private property, the car may not be placed into an inventory unless the car poses a threat to public safety, or there is a non-pretextual policy that addresses community-caretaking concerns. *See United States v. Sanders*, 796 F.3d 1241 (10th Cir. 2015).

In *Sanders*, "police, for reasons not articulated in any policy, impounded a vehicle lawfully parked in a private lot after arresting its driver as she exited a store. They made no meaningful attempt to allow the driver, her companion, or the owner of the parking lot to make alternative arrangements." *Id* at 1242 (emphasis added). The court in Sanders went on to hold "that when a vehicle is not impeding traffic or impairing public safety, impoundments are constitutional only if guided by both standardized criteria and a legitimate community-caretaking rationale." *United States v. Sanders*, 796 F.3d at 1243 (10th Cir. 2015)(emphasis added). "The government bears the burden of proving that its impoundment […] satisfies the Fourth Amendment." *Id* at 1244; *citing United States v. Ibarra*, 955 F.2d 1405, 1409 (10th Cir. 1992). "[The] standardized criteria generally must confine officer discretion

to impound[.]" *Sanders* at 1247. "[i]mpoundments must not be performed 'in bad faith or for the sole purpose of investigation.'" *Id.* (emphasis added).

The Tenth Circuit in *Sanders* held "impoundment of a vehicle located on private property that is neither obstructing traffic nor creating an imminent threat to public safety is constitutional only if justified by both a standardized policy and a reasonable, non-pretextual community-caretaking rationale." *Sanders* at 1248. "Protection against unreasonable impoundments, even those conducted pursuant to a standardized policy, is part and parcel of the Fourth Amendment's guarantee against unreasonable searches and seizures." *Id.* at 1250.

In *United States v. Duguay*, the Seventh Circuit held that placing of a citizen's property into police custody was unconstitutional because it did not follow written standardized criteria or an unwritten policy. *See United States v. Duguay* 93 F.3d 346, 351-352 (7th Cir. 1996).

The Seventh Circuit in *Duguay* concluded that the "suggestion that the police were obliged to impound the vehicle to protect it from theft or vandalism, strikes us as making up new police obligations after the fact where none existed before. The police do not owe a duty to the general public to remove vulnerable automobiles from high-crime neighborhoods." *Duguay*, 93 F.3d at 352 (quotation omitted) (emphasis added).

In *United States v. Proctor*, the D.C. Circuit recognized that "if a standard impoundment procedure exists, a police officer's failure to adhere thereto is unreasonable and violates the Fourth Amendment." *United States v. Proctor*, 489

F.3d 1348, 1354 (D.C. Cir. 2007). Because the police in Proctor did not follow their own procedure requiring that arrestees be given the opportunity to make alternative arrangements to the placing of the vehicle into police custody, the court concluded that the impoundment at issue was unlawful. *Id*.

In *Miranda v. City of Cornelius*, the Ninth Circuit held that decisions to place vehicles into police possession cannot be left to unfettered officer discretion. *Miranda v. City of Cornelius*, 429 F.3d 858, 863 (9th Cir. 2005). In *Miranda*, the Ninth Circuit analyzed the impoundment of a vehicle and found that the vehicle created no impediment to traffic or public safety, and held that officers had "no adequate basis for impoundment." *Id*. at 864-66.

The Eleventh Circuit erred in upholding the district court's finding that the inventory search exception to the Fourth Amendment's warrant requirement was applicable. In the present case, the Government did not meet its burden to establish standardized police procedures for the impounding of items.

Naples Police Department General Order 333, "establishe[es] procedures for the proper preservation, storage, security, and disposition of property and evidence." [Doc 116, P84: L24-25; P85: L1] quoting Government Exhibit 4, admitted in to evidence at [Doc 116, P 52: L 17-18]. The NPD's operating procedures state "[a]ll property/evidence taken into custody by Department members shall be brought to the Police Department and placed in the secured evidence lockers or the secured outdoor property compound as soon as practicable, but no later than the end of the seizing employee's tour of duty." (Gov't Ex. 4 at 2). However, this language gave no

instruction as to when items are to be taken into custody. Further, the trial court acknowledged that "this language does not mandate (or even suggest) that inventory searches must occur at a set time or location." *United States v. Forget*, [Doc. 80, P 10].

Detective Holmberg also acknowledged that General Order 333 did not instruct him when and how to retrieve items. [Doc 116, P 85: L22-24; P 86: L1-2].

In addition, to lacking standardized procedures directing officers when to take items in to custody, the NPD Detectives failed to comply with the standardized procedures for conducting an inventory. Detective Holmberg testified that he would have had time to make an inventory receipt while awaiting a determination on a search warrant, had he chosen to seek one. [Doc 116: P 86: L8-11]. However, multiple searches were conducted of Mr. Forget's backpack without any inventorying of those items whatsoever.

When testifying about the searching of the bag, Officer Holmberg also testified to multiple searches being conducted on the backpack,

> I opened it up. I discovered three or four hard-covered books that were very out of place, very odd. I also found a -- one of those restaurant books that you get your bill in, in there too with some counterfeit bills in it. And then there was some more -- not that I searched. After I placed him under arrest, I looked at the books. He said -- the suspect said, "Hey, they are nothing," to that effect. And then my partner conducted a secondary search of that backpack and in the books discovered some counterfeit bills in there.

[Doc 226, P 56: L1-9]. Importantly, he did not testify to inventorying the items while conducting any of these searches.

It is clear from the testimony and Government Exhibit 5 that the first inventorying of the items occurred at "Time: 16:00." The NPD standardized

procedures for inventorying were not properly followed by the NPD Detectives while they were searching at the scene, instead, NPD Detectives were conducting a "general rummaging in order to discover incriminating evidence" the type of which is clearly prohibited by the court in Wells.

In addition, it is apparent that the multiple searches on scene were not conducted for the "inventorying" rationale of minimizing the number of false claims under Opperman. Government Exhibit 5 has a signature block where the property owner is to sign. It is blank. This shows that Mr. Forget was not even afforded the opportunity to sign the inventory form as required by NPD procedure. Such a signed copy, or at least a note of refusal to sign the copy, would aid in providing evidence against false claims.

However, NPD officers could not obtain a signature at the time they performed the "inventory", because the inventorying was done after the fact by another officer. The multiple searches by Detectives Holmberg and Davenport that were conducted at the scene were not inventory searches under the NPD procedures. Instead, the government's argument as for the inventory exception is the type of argument described in Marshall as an attempt to "raise the inventory-search banner in an after-the-fact attempt to justify what was […] in fact purely and simply a search for incriminating evidence."

Detectives Davenport and Holmberg testified that they were involved in criminal drug surveillance of the hotel. Detective Davenport admitted that his request to perform a consensual search of the vehicle was based on his viewing Mr.

Forget and Mr. Cronin "sitting in the parking lot for an extended period of time," "going up to the room," and "coming back down to it." [T106: L15-19]. Despite not having a reasonable suspicion of any criminal activity, Detectives wanted to conduct a warrantless search. Officer Davenport had a hunch that "[t]here may possibly be drugs in the car." [T107: L3-5]. When having to choose between asking for permission or begging forgiveness, the NPD detectives decided not to seek a warrant to search the backpack, but instead chose to assert an after the fact "inventory" search exception for a search in which they did not inventory items.

Furthermore, the only standardized NPD procedures submitted by the Government were procedures related to the process for searching and inventorying the items after the items were placed into police custody, i.e., impounded or seized. There was nothing placed into evidence by the Government to show an NPD standardized policy to meet the prerequisite, for showing a standardized policy enumerating when to place of items into custody.

The lack of standardized procedures for determining when to impound items as part of an inventory, and policy instructing as to when to allow owners to make other arrangements, makes the search of those items fall well outside of the inventory exception. A standardized policy is required under Bertine, where the Supreme Court provided that "police officers are not vested with discretion to determine the scope of the inventory search." As a result, the warrantless search of Mr. Forget's back pack was not pursuant to standardized police policy and was an unconstitutional warrantless search, not falling within the inventory exception. Accordingly, the

Opinion affirming the lower court's decisions regarding the aforementioned evidentiary issues is in direct conflict with the decisions of other United States Courts of Appeals. This Court should grant this Petition to resolve this circuit conflict

CONCLUSION

For the foregoing reasons, the Supreme Court should grant Jeffrey William Forget's Petition for Writ of Certiorari.

Respectfully submitted,

/s/ Joseph A. Davidow
Joseph A. Davidow
Counsel of Record
Florida Bar No. 65885
Attorney for Petitioner
WILLIS & DAVIDOW, L.L.C.
9015 Strada Stell Court, #106
Naples, Florida 34109
(239) 465-0531
jdavidow@willisdavidow.com

APPENDIX

TABLE OF CONTENTS

Appendix Page

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-10585
Non-Argument Calendar

D.C. Docket No. 2:18-cr-00188-SPC-NPM-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JEFFREY WILLIAM FORGET,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida

(April 27, 2021)

Before JILL PRYOR, BRANCH, and GRANT, Circuit Judges.

PER CURIAM:

Jeffrey Forget was riding as a passenger in a truck which was pulled over after officers observed that he was not wearing a seatbelt. When an officer asked for Forget's identification so that he could issue him a citation for the seatbelt violation, Forget gave a false name and claimed to have lost his wallet. After the police officers identified Forget and discovered two outstanding warrants for his arrest, they arrested him and searched a backpack in his possession in which they discovered counterfeit one-hundred-dollar bills. On appeal, Forget challenges the district court's denial of his motion to suppress the evidence obtained at the traffic stop, including any statements he made, the fraudulent one-hundred dollar bills in his wallet, and the evidence obtained from his backpack, arguing that the officers unlawfully extended the traffic stop in violation of the Fourth Amendment and that they improperly searched his backpack without a warrant. After careful consideration, we affirm the district court.

I. Background

A. Factual background

On October 10, 2018, detectives Michael Holmberg and Chad Davenport of the Naples Police Department ("NPD") were surveilling a hotel for drug-related activity in Naples, Florida. Holmberg saw Forget and another man leave the hotel in a red pickup truck. The two men later returned with food and a black backpack and went into a hotel room. Forget and the other man left the hotel room shortly

afterwards accompanied by a third man and got back into the truck. Forget was sitting in the passenger seat and had the black backpack on the floor between his legs. Holmberg radioed Davenport, who was sitting in a separate car in a different location near the hotel, to tell him that the truck was leaving. Davenport noticed that Forget was not wearing a seatbelt and pulled the truck over as it turned into another nearby parking lot.

The traffic stop began at 1:03 p.m. After pulling the truck over, Davenport asked everyone in the truck for identification, approached the driver's window, and began speaking with the driver, who he identified as Nicholas Cronin. Cronin refused to provide consent to search the truck. While Davenport was speaking with Cronin, Holmberg arrived on the scene, went to the passenger side of the car, and began speaking with Forget, because Forget had committed the seatbelt offense. Forget told Holmberg that his name was Jason Farber and provided a birthdate, but said he had forgotten his wallet, did not have another form of identification, and did not know his social security number. Holmberg noticed that Forget had tattoos that appeared to be jailhouse tattoos and was wearing a long-sleeved shirt, which struck him as odd because it was a hot day. Holmberg asked Forget if he had ever been arrested and Forget said that he had not.

Holmberg returned to his police car to confirm Forget's identity and radioed dispatch and asked them to search for Jason Farber in the state drivers' license

database. Holmberg learned from dispatch that there was a Jason Farber who lived on the other side of the state, but Farber's identification picture did not fully match Forget's appearance. Although there was some similarity between Forget and the picture, Forget's story about "where he was coming from and where the ID was from . . . didn't make a lot of sense" to Holmberg. Holmberg also thought it was suspicious that Forget did not know his social security number and was travelling from out of town without a wallet.

Holmberg needed to confirm Forget's identity to write him a ticket for the seatbelt offense, so at 1:10 p.m. he called in a request for a fingerprint scanner from the county sheriff's office. A few minutes before he called for a fingerprint scanner, Holmberg called in a request for a K-9 unit despite being unable to smell drugs or see any contraband in the truck. The K-9 unit did not show up and the request was eventually cancelled.

Deputy Creamer from the county sheriff's office arrived with a fingerprint scanner at approximately 1:30 p.m. Creamer thought he recognized Forget because Forget matched the description of a suspect who had attempted to pass a fake one-hundred-dollar bill at a hardware store less than a quarter of a mile away earlier that morning. The scanner identified Forget and showed two warrants outstanding for his arrest. At approximately 1:36 pm, the officers arrested Forget because of the outstanding warrants and because he had given a false name to a

law enforcement officer—a crime under Florida law. As a search incident to the arrest, Davenport searched Forget's wallet—which was on his person—and found two fake one-hundred-dollar bills.

After Forget's arrest, Holmberg asked Cronin about the backpack Forget had been carrying, which had been between Forget's legs on the passenger floorboard during the stop. Cronin replied that the backpack was Forget's, Cronin did not wish to keep it, and that he did not even know Forget but had only given him a ride. Holmberg and Davenport then performed an inventory search of Forget's backpack in accordance with NPD policy, which requires that all property taken into custody be documented on a receipt, regardless of whether the property was evidence or personal property. Inside Forget's backpack, Holmberg and Davenport discovered hard-covered books with counterfeit bills between the pages. Another NPD officer who arrived on the scene created a property receipt to keep track of everything that the officers found.

B. Procedural History

A grand jury indicted Forget for counterfeiting currency, in violation of 18 U.S.C. § 471,[1] and possession of counterfeit currency, in violation of 18 U.S.C.

[1] "Whoever, with intent to defraud, falsely makes, forges, counterfeits, or alters any obligation or other security of the United States, shall be fined under this title or imprisoned not more than 20 years, or both." 18 U.S.C. § 471.

§ 472.[2] Forget filed a motion to suppress the evidence obtained at the traffic stop,[3] arguing, as relevant to this appeal, that the stop was unreasonably prolonged because the detectives asked to search Cronin's truck, requested a fingerprint scanner to confirm Forget's identity, and requested a drug-sniffing dog unit to the scene, which added time to the stop without reasonable suspicion. Forget also argued that the evidence of the contents of his backpack should have been suppressed because the police should have waited for a warrant before searching it, he had a reasonable expectation of privacy in the backpack, and the police had no reasonable belief that it contained anything illegal.

The district court denied Forget's motion to suppress, finding, as relevant to this appeal, that the officers did not unlawfully prolong the traffic stop.[4] It explained that the request for the fingerprint scanner was directly related to the

[2] "Whoever, with intent to defraud, passes, utters, publishes, or sells, or attempts to pass, utter, publish, or sell, or with like intent brings into the United States or keeps in possession or conceals any falsely made, forged, counterfeited, or altered obligation or other security of the United States, shall be fined under this title or imprisoned not more than 20 years, or both." 18 U.S.C. § 472.

[3] The motion to suppress at issue in this appeal is Forget's amended motion. The district court denied his initial motion to suppress without prejudice for lack of standing. For clarity's sake, we only discuss and refer to the amended motion in this opinion.

[4] The district court noted the parties disagreed over whether our then valid precedent, *United States v. Campbell*, 970 F.3d 1342 (11the Cir. 2019), applied because Forget was stopped before the opinion was issued. The district court determined that, under any existing case law, the detectives did not unlawfully prolong the stop. To the extent that the parties rely on *Campbell*, we note that following briefing in this case, a majority of this Court voted to grant rehearing *en banc* in *Campbell*, and as a result we vacated the underlying panel decision, 981 F.3d 1014 (2020). Accordingly, *Campbell* is no longer good law and will not be discussed further.

stop's purpose because, without verification of Forget's identity, the officers could not write him a citation for his seatbelt violation. It also explained that the request to search the truck and the request for the K-9 unit did not unlawfully prolong the stop because both requests were made before the police identified Forget and because Forget himself prolonged the stop by lying about his identity. The district court also held that the police did not need a warrant to search Forget's backpack because it fell within the inventory exception to the Fourth Amendment's warrant requirement. Once Cronin disowned the backpack, the officers had to either take it into custody or leave it by the roadside. The officers followed standard procedure to itemize Forget's property so it was protected from interference and so the police were protected from any unknown but dangerous items inside. Additionally, the court explained, the officers were not required to complete the inventory at the station per NPD standard procedure and, even if the backpack had been searched at the station, the counterfeit bills would have been discovered anyway.

Forget waived his right to a jury trial and the parties agreed to a stipulation of facts. After a bench trial, the district court found Forget guilty on both charges and sentenced him to 30 months' imprisonment followed by three years of supervised release. Forget timely appealed the order denying his motion to suppress.

II. Standard of Review

"A district court's ruling on a motion to suppress presents a mixed question of law and fact." *United States v. Zapata*, 180 F.3d 1237, 1240 (11th Cir. 1999). We accept the district court's factual findings as true unless the findings are clearly erroneous. *Id*. at 1240–41. "[A]ll facts are construed in the light most favorable to the prevailing party below." *United States v. Bervaldi*, 226 F.3d 1256, 1262 (11th Cir. 2000). We review the district court's application of the law to the facts *de novo*. *Id*. If a suppression argument is raised for the first time on appeal, however, we review it for plain error. *United States v. Johnson*, 777 F.3d 1270, 1274 (11th Cir. 2015).

III. Discussion

A. The district court properly found that the traffic stop was not unlawfully prolonged.

Forget argues that the district court should have found that the officers unlawfully prolonged the traffic stop beyond the amount of time needed to address the seatbelt offense when they asked permission to search the car and called for a K-9 unit before requesting verification of his identity. He also argues that the officers prolonged the stop by requesting a fingerprint scanner from the county sheriff's office instead of using their own. Finally, he asserts that the traffic stop

was pretextual because the officers were on narcotics duty rather than traffic patrol, and the purpose of the stop was to look for drugs without reasonable suspicion.

When conducting a traffic stop, police officers may not detain a suspect indefinitely and the stop must be "limited in scope and duration," *Florida v. Royer*, 460 U.S. 491, 500 (1983), and cannot be unlawfully prolonged. *See Rodriguez v. United States*, 575 U.S. 348, 354–56 (2015). In *Rodriguez*, the Supreme Court explained that "[a] seizure for a traffic violation justifies a police investigation of that violation." *Id*. at 354. In conducting a traffic stop, an officer may, in addition to determining whether to issue a citation, conduct ordinary inquiries such as checking the driver's license, determining whether the driver has outstanding warrants, and inspecting the vehicle registration and proof of insurance. *Id.* at 355. The "[a]uthority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed." *Id.* at 354. If a traffic stop is unlawfully prolonged and violates the Fourth Amendment, any evidence collected may be suppressed under the exclusionary rule. *See Davis v. United States*, 564 U.S. 229, 231–32 (2011) (explaining that the exclusionary rule "bars the prosecution from introducing evidence obtained by way of a Fourth Amendment violation.").

In *Rodriguez*, the Supreme Court found that a traffic stop was unlawfully prolonged where an officer stopped a car for a traffic infraction, issued a citation to

the driver and returned his license and proof of insurance, and then conducted a K-9 sniff of the car to search for drugs. 575 U.S. at 350–52, 354–55, 358. The drug sniff was not an inquiry incident to writing a ticket for the traffic infraction and the officer prolonged the stop beyond the time needed to address the traffic infraction. The Court also explained that its holding was consistent with two earlier cases addressing whether a stop was unlawfully prolonged, *Illinois v. Caballes*, 543 U.S. 405 (2005), and *Arizona v. Johnson*, 555 U.S. 323 (2009). *Id.* at 354–55.

In *Caballes*, the Court held that a traffic stop was not unlawfully prolonged by a drug sniff of a car because the search occurred while the officer was in the process of writing a ticket. 543 U.S. at 406–08. The unrelated investigation "did not lengthen the roadside detention." *Rodriguez*, 575 U.S. at 354 (citing *Caballes*, 543 U.S. at 406, 408). And in *Johnson*, a traffic stop was not unlawfully prolonged where three officers pulled over a car for a traffic infraction, and while one officer made inquiries into the driver's license and vehicle registration, another officer simultaneously asked a passenger unrelated questions about gang affiliation. 555 U.S. at 327–28. The Supreme Court explained that the stop was not unlawfully extended because "[a]n officer's inquiries into matters unrelated to the justification for the traffic stop . . . do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop." *Id*. at 333.

Applying *Rodriguez* here, we find that the officers did not unlawfully extend the traffic stop. Viewing the facts in the light most favorable to the government, Davenport requested all three passengers' identification before asking Cronin if he could search the truck, and Holmberg simultaneously began discussing Forget's identification with him so he could issue a citation for the seatbelt offense. Although Davenport's request to search the car was not related to the purpose of the stop, it occurred simultaneously with Holmberg's inquiries into Forget's identification, and thus it did not add any time to the stop beyond the time it took to complete inquiries incident to the seatbelt violation. *See Rodriguez*, 575 U.S. at 355; *Johnson*, 555 U.S. at 327–28.

Holmberg's request for a K-9 unit also did not unlawfully extend the traffic stop. Holmberg had already asked Forget for his identification and was waiting for dispatch to send him the picture and other identifying information for Jason Farber when he requested the K-9 unit. There is no evidence that Holmberg's request lengthened the process of identifying Forget. Some time elapsed while the fingerprint scanner was brought to the scene, but because Forget lied about his identity and the picture for Jason Farber was not an exact match, that delay was necessary to identify Forget so Holmberg could issue a traffic citation. The K-9 unit did not show up at the scene and the request was cancelled, so the original call did not add any time to the stop beyond the time it took to identify Forget. Forget

urges us to find that the mere fact that Holmberg called for the K-9 unit before he called for the fingerprint scanner was an unlawful extension, but that interpretation goes beyond the bounds of *Rodriguez* and we decline to do so.

Forget also argues that the officers' motive for the stop was pretextual and that they only pulled the truck over to look for drugs without reasonable suspicion. But we have held that as long as an officer conducting a traffic stop has probable cause to believe a traffic violation has occurred, "the officer's motive in making the traffic stop does not invalidate what is otherwise objectively justifiable behavior under the Fourth Amendment." *United States v. Harris*, 526 F.3d 1334, 1337 (11th Cir. 2008) (quotation omitted). Here, because the officers saw that Forget was not wearing a seatbelt, pulled him over to issue a citation for the seatbelt violation, and their inquiries unrelated to the seatbelt did not add any time to the stop, the traffic stop was not invalidated by what the officers were doing immediately before the stop. We affirm the district court's denial of Forget's motion to suppress the evidence obtained at the traffic stop.

B. The district court properly found that the inventory exception applied to the contents of Forget's backpack.

Forget argues that the district court erroneously found that the inventory exception applied to the contents of his backpack for two reasons. First, he argues that the NPD did not have proper standardized procedures for determining whether items should be inventoried and that the officers did not comply with the standard

operating procedures that the NPD did have in place. Second, he alleges that the that the officers' reasons for searching the bag were pretextual, as they were looking for drugs and had no reasonable suspicion based on his actions. We disagree.

Because Forget raises these arguments for the first time on appeal, we review them for plain error only. *Johnson*, 777 F.3d at 1274. We will find plain error only 'where (1) there is an error in the district court's determination; (2) the error is plain or obvious; (3) the error affects the defendant's substantial rights in that it was prejudicial and not harmless; and (4) the error seriously affects the fairness, integrity, or public reputation of judicial proceedings.'" *Id*. at 1277 (quoting *United States v. Clark*, 274 F.3d 1325, 1326 (11th Cir. 2001)); *see also United States v. Olano*, 507 U.S 725, 732–37 (1993). The defendant bears the burden of establishing plain error. *Johnson*, 777 F.3d at 1277.

Generally, the Fourth Amendment requires that law enforcement officers obtain a warrant supported by probable cause before searching a person's property. *United States v. Babcock*, 924 F.3d 1180, 1186 (11th Cir. 2019). However, inventory searches of an arrestee's personal property are a "well-defined exception" to the warrant requirement. *Colorado v. Bertine*, 479 U.S. 367, 371 (1987). "An inventory search is the search of property lawfully seized and detained, in order to ensure that it is harmless, to secure valuable items (such as

might be kept in a towed car), and to protect against false claims of loss or damage." *Whren v. United States*, 517 U.S. 806, 812 n.1 (1996) (citing *South Dakota v. Opperman,* 428 U.S. 364 (1976)); *see also United States v. Farley*, 607 F.3d 1294, 1333 (11th Cir. 2010). Police officers have "both the right and the duty" to take into custody and inventory a suspect's property that would otherwise be left unattended. *United States v. Staller*, 616 F.2d 1284, 1290 (5th Cir. 1980).

An inventory search "must not be a ruse for a general rummaging in order to discover incriminating evidence," *Florida v. Wells*, 495 U.S. 1, 4 (1990), but an otherwise reasonable inventory search is not rendered illegal simply because police officers had a "suspicion that contraband or other evidence may be found," *Staller*, 616 F.2d at 1290 (quotation omitted). And, if evidence would have inevitably been discovered during a routine inventory search, it is admissible. *United States v. Rhind*, 289 F.3d 690, 694 (11th Cir. 2002).

When officers conduct an inventory-search, they must base their decision to search a bag or container on "standardized criteria" or "established routine." *Wells*, 495 U.S. at 3–4. However, "'standard criteria' need not be detailed criteria." *Johnson*, 777 F.3d at 1277. No Supreme Court precedent "prohibits the exercise of police discretion" during an inventory search "so long as that discretion is exercised according to standard criteria and on the basis of something other than

suspicion of evidence of criminal activity." *Wells*, 495 U.S. at 3–4 (quoting *Bertine*, 479 U.S. at 375).

Forget has not carried his burden of establishing that the district court's ruling was in error and that the error was plain. The district court properly found that the inventory search exception applied to Forget's backpack. The officers knew that the backpack belonged to Forget because Cronin told them that it was not his and that he did not want to keep it. And, as the officers had already arrested Forget, they had a duty to take the backpack and could not leave it unattended at the scene. S*ee Farley*, 607 F.3d at 1333. The detectives complied with the NPD's standard operating procedures by searching the backpack and they recorded the backpack's contents on an inventory receipt.

We now turn to Forget's two arguments that the inventory exception should not apply. First, he argues that the NPD did not have proper inventory procedures and that the officers did not comply with the procedures that the NPD did have in place. To support his assertions, Forget cites to decisions from other circuits involving vehicle impoundment where courts found that the inventory exception did not apply because officers impounded or searched a vehicle without a warrant when their departments did not have a standardized procedure for vehicle impoundment and there was not evidence that the vehicle in question was a public safety threat. Forget appears to argue by analogy that the same rationale applies to

his backpack and that the inventory exception does not apply because the NPD did not have standardized procedures for taking personal items into custody and they had no reason to suspect his backpack was dangerous. Forget's argument is meritless. The NPD did have a policy directing its officers to search items taken into custody to protect officers from any potentially dangerous items, to protect the NPD from theft accusations, and to safeguard an arrestee's property. As we have already explained, the fact that this policy gives officers discretion in searching property for inventory purposes does not mean that there is no "standard criteria." *See Wells*, 495 U.S. at 3–4; *Johnson*, 777 F.3d at 1277. Forget's allegations are insufficient for us to overturn the district court's application of the inventory exception under plain error review.

Second, Forget argues that the search of the backpack was motivated by a desire to search for incriminating evidence. This argument likewise fails. Forget's assertion that the officers were fishing for incriminating evidence also does not justify the exclusion of the evidence because the search was otherwise reasonable in the context of Forget's arrest, and the officers' suspicion that there may be some evidence of illegal activity is not enough to invalidate the search. *Staller*, 616 F.2d at 1290. Thus, we affirm the district court's denial of Forget's motion to suppress the evidence of the contents of his backpack.

AFFIRMED.

UNITED STATES COURT OF APPEALS
For the Eleventh Circuit

No. 20-10585

District Court Docket No.
2:18-cr-00188-SPC-NPM-1

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JEFFREY WILLIAM FORGET,

Defendant - Appellant.

Appeal from the United States District Court for the
Middle District of Florida

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: April 27, 2021
For the Court: DAVID J. SMITH, Clerk of Court
By: Jeff R. Patch

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA

v.

JEFFREY WILLIAM FORGET

Case Number: 2:18-cr-188-FtM-38NPM

USM Number: 59973-018

Joseph A. Davidow, CJA
851 5th Ave N, Ste 301
Naples, FL 34102

JUDGMENT IN A CRIMINAL CASE

Defendant was found guilty to Counts One and Two of the Indictment. Defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 U.S.C. § 471	Counterfeiting Federal Reserve Notes	October 10, 2018	One
18 U.S.C. § 472	Possession of Counterfeit Federal Reserve Notes	October 10, 2018	Two

Defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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

Date of Imposition of Judgment:

February 10, 2020

SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

February 11, 2020

»

Jeffrey William Forget
2:18-cr-188-FtM-38NPM

IMPRISONMENT

Defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **30-MONTHS, such term to run consecutive to the term of imprisonment imposed in FLMD Case No. 6:13cr193.**

The Court makes the following recommendations to the Bureau of Prisons:

- **Participation in any and all drug/alcohol programs available, to include the intensive 500 Hour Drug Treatment Program, if and when eligible.**

Defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this judgment as follows:

_____

_____

_____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By: _____
Deputy U.S. Marshal

Jeffrey William Forget
2:18-cr-188-FtM-38NPM

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of **3-YEARS; such term consists of 3 years as to Count One and 3 years as to Count Two, all terms to run concurrent to each other.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
4. Defendant shall cooperate in the collection of DNA, as directed by the probation officer.

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

Jeffrey William Forget
2:18-cr-188-FtM-38NPM

STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature:_____ Date:_____

Jeffrey William Forget
2:18-cr-188-FtM-38NPM

ADDITIONAL CONDITIONS OF SUPERVISED RELEASE

1. Defendant shall participate in a substance abuse program (outpatient and/or inpatient) and follow the probation officer's instructions regarding the implementation of this court directive. Further, Defendant shall contribute to the costs of these services not to exceed an amount determined reasonable by the Probation Office's Sliding Scale for Substance Abuse Treatment Services. During and upon completion of this program, Defendant is directed to submit to random drug testing.

2. Defendant shall participate in a mental health treatment program (outpatient and/or inpatient) and follow the probation officer's instructions regarding the implementation of this court directive. Further, Defendant shall contribute to the costs of these services not to exceed an amount determined reasonable by the Probation Office's Sliding Scale for Mental Health Treatment Services.

3. The Court orders the Defendant to submit to random drug screens not to exceed 104 tests per year.

4. Defendant shall be prohibited from incurring new credit charges, opening additional lines of credit, or making an obligation for any major purchases without approval of the Probation Officer. Defendant shall provide the probation officer access to any requested financial information.

5. Defendant shall provide the probation officer access to any requested financial information.

6. Defendant shall submit to a search of Defendant's person, residence, place of business, any storage units under Defendant's control, computer, or vehicle, conducted by the United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. Defendant shall inform any other residents that the premises may be subject to a search pursuant to this condition.

Jeffrey William Forget
2:18-cr-188-FtM-38NPM

CRIMINAL MONETARY PENALTIES

Defendant shall pay the following total criminal monetary penalties under the schedule of payments set forth in the Schedule of Payments.

	Assessment	AVAA Assessment[1]	JVTA Assessment[2]	Fine	Restitution
TOTALS	**$200.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**

SCHEDULE OF PAYMENTS

Special assessment shall be paid in full and is due immediately.

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

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court, unless otherwise directed by the court, the probation officer, or the United States attorney.

Defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

FORFEITURE

Defendant shall forfeit to the United States those assets seized in the October 10, 2018 traffic stop that is the subject of the Indictment filed in this case, that are subject to forfeiture.

---

[1] Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
[2] Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-10585-HH

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JEFFREY WILLIAM FORGET,

Defendant - Appellant.

Appeal from the United States District Court
for the Middle District of Florida

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: JILL PRYOR, BRANCH, and GRANT, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Panel Rehearing is also denied. (FRAP 40)