

No. _____

**In The
Supreme Court of the United States**

GUILLERMO GONZALEZ-ZEA,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Pursuant to *Terry v. Ohio*, 392 U.S. 1, 22 (1968) and its progeny, law enforcement officers may conduct a brief, investigative stop when, under the totality of the circumstances, the officers have a particularized and objective basis for suspecting the particular person stopped of criminal activity. In the opinion below, the Eleventh Circuit determined that a *Terry* stop of any male individual leaving a particular residence was justified because a shared social security number at one point used by an ICE fugitive had been associated with that address more than eight months previously. Can the Eleventh Circuit's reasonable suspicion determination be reconciled with *Terry* and its progeny?

II. In *Rodriguez v. United States*, 135 S. Ct. 1609, 1614 (2015), this Court held that the scope of a *Terry* stop “must be carefully tailored to its underlying justification,” and the stop may “last no longer than is necessary” to complete its mission. In this case, the deportation officers were not looking for the defendant for any reason, and the sole justification for the *Terry* stop was to ascertain whether the defendant was a different individual sought by ICE. As the Tenth Circuit has held, does reasonable suspicion supporting the *Terry* stop evaporate once an objectively reasonable officer would have been able to determine that the two men were physically dissimilar? Or as the Eleventh Circuit determined in the opinion below, may the deportation officers

require the defendant to produce multiple forms of identification and answer questions proving his identity?

LIST OF PARTIES

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

RELATED CASES

- *United States v. Guillermo Gonzalez-Zea*, No. 17-cr-444, U.S. District Court for the Middle District of Alabama. Judgment entered on March 7, 2019.
- *United States v. Guillermo Gonzalez-Zea*, Appeal No. 19-11131. Judgment entered on April 30, 2021.

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PETITION FOR A WRIT OF CERTIORARI

Mr. Guillermo Gonzalez-Zea respectfully requests that this Court grant a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The Eleventh Circuit's decision below is published. *United States v. Gonzalez-Zea*, 995 F.3d 1297 (11th Cir. 2021). The opinion is included in Petitioner's Appendix. Pet. App. 1a.

The district court's order denying Mr. Gonzalez-Zea's motion to suppress is unreported. *United States v. Gonzalez-Zea*, 2018 WL 4295201 (M.D. Ala. 2018). The order is included in Petitioner's Appendix. Pet. App. 1b.

The report and recommendation of the magistrate judge, which recommended that Mr. Gonzalez-Zea's motion to suppress be denied, is unreported. *United States v. Gonzalez-Zea*, 2018 WL 5602898 (M.D. Ala. 2018), *adopted as modified by* 2018 WL 4295201. The recommendation is reproduced in the Petitioner's Appendix. Pet. App. 1c.

JURISDICTION

The Eleventh Circuit's opinion in this case was issued on April 30, 2021. *See* Pet. App. 1a. No rehearing was sought, rendering Mr. Gonzalez-Zea's petition for a writ of certiorari due in this Court on July 29, 2021. However, due to public health concerns relating to the COVID-19 pandemic, this Court entered an order, extending the deadline to file the petition to 150 days from

the date of the lower court judgment. The certiorari petition is now due on September 27, 2021. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL PROVISIONS

The Fourth Amendment to the U.S. Constitution protects the “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. CONST., amend. IV.

STATEMENT OF THE CASE

In October 2017, a federal grand jury returned an indictment against Mr. Guillermo Gonzalez-Zea, charging him with a single count of possession of firearms and ammunition by an alien illegally in the United States, in violation of 18 U.S.C. §§ 922(g)(5), 924(a)(2). (Doc. 15). Specifically, the indictment alleged that, on or about September 26, 2017, Mr. Gonzalez-Zea possessed a 12 gauge shotgun, a .17 caliber rifle, and a .357 caliber revolver. (*Id.* at 1).

Subsequently, Mr. Gonzalez-Zea filed a motion to suppress, arguing that: (1) the Immigration and Customs Enforcement (“ICE”) officers lacked reasonable suspicion to initiate a traffic stop of his vehicle on September 26, 2017; (2) the ICE officers unlawfully prolonged the duration of the stop by questioning Mr. Gonzalez-Zea on matters unrelated to the purpose of the stop; and (3) as a result, the exclusionary rule required suppression of all physical and testimonial items obtained as a result of the traffic stop and

illegal seizure. (Doc. 28 at 3-6). Mr. Gonzalez-Zea further argued that he did not voluntarily consent to the officers following him home to search his residence, because his consent was the product of the illegal roadside seizure, and there were no attenuating circumstances that would purge this taint. (*Id.* at 3, 7-8).

A magistrate judge conducted a hearing on the motion to suppress. (Doc. 53). At this hearing, ICE Deportation Officer Scott Skillern testified that, on September 26, 2017, he and his fellow ICE officers were investigating a “lead” that an ICE fugitive—a Honduran national named Mr. Jose Rodolfo Alfaro-Aguilar—“may be living at an address” in Randolph County, Alabama. (*Id.* at 4-5); (*see also id.* at 39, 63). The lead was provided to Deportation Officer Purdy by a different field office, and purportedly established that there was “a utility connection at that address linked to the fugitive’s name.” (Doc. 53 at 5-6).¹ Deportation Officer Skillern clarified that Mr. Gonzalez-Zea was not the fugitive, and they were not looking for him for any reason. (*Id.* at 5).

As it turned out, the lead in question consisted of a ThomsonReuters CLEAR report, which revealed that: (1) a social security number at one point used by Alfaro-Aguilar had been used to set up utilities at the Randolph County address; (2) the social security number in question belonged to a Hawaiian individual named Jose Sanchez and was being shared by multiple

¹ The ICE deportation officers use the term “fugitive” in this context to refer to anyone subject to an administrative warrant ordering his removal. (Doc. 53 at 63); (doc. 60 at 3).

individuals; and (3) the SSN had *not* been associated with the Randolph address for more than eight months. (*Id.* at 65-76); (*see also id.* at 3) (admitting the CLEAR report into evidence as Defendant's Exhibit 8).

Acting on this lead, Deportation Officer Skillern and two of his colleagues—Deportation Officers Christopher Purdy and Waylon Hinkle—travelled to the Randolph County address in the “predawn” hours of September 26, 2017 to surveil the house and look for Mr. Alfaro-Aguilar. (*Id.* at 5-7). Deportation Officer Skillern explained that their operation plan was for Deportation Officer Purdy to “keep a visual of the house, see if anybody’s coming or going,” then relay that information to Skillern and Hinkle, who would “go and make contact” with “*anybody* who left or came from the residence.” (*Id.* at 6-7) (emphasis added).

The deportation officers executed this plan, and Deportation Officer Purdy soon indicated to his colleagues “that a male was departing, getting in a vehicle and departing the residence.” (*Id.* at 10). The vehicle passed by where Deportation Officers Skillern and Purdy were stationed, but they were unable to tell who was driving because it was still “in the predawn areas” with “very minimal, if any” sunlight. (*Id.*).

Nevertheless, Deportation Officer Skillern activated his “red and blue lights and a siren,” causing the vehicle to pull over to the shoulder of the road. (*Id.* at 10- 11). Deportation Officer Skillern approached the vehicle, and asked the driver—Mr. Gonzalez-Zea—for his name. (*Id.*). Mr. Gonzalez-

Zea provided his name, and Deportation Officer Skillern immediately “recognize[ed] that it didn’t match the person we were looking for.” (*Id.*). Deportation Officer Skillern then asked Mr. Gonzalez-Zea “if he had any ID,” and Mr. Gonzalez-Zea produced “some form of identification from Mexico.” (*Id.* at 12). Deportation Officer Skillern inquired if Mr. Gonzalez-Zea had any other form of identification, and Mr. Gonzalez-Zea simply “said no.” (*Id.*). Deportation Officer Skillern admitted that it was “at this time” that he began to “inquire as to [Mr. Gonzalez-Zea’s] citizenship status.” (*Id.*).

Deportation Officer Skillern further testified that he asked Mr. Gonzalez-Zea “why he wasn’t able to have an Alabama driver’s license or any other United States issued ID,” and Mr. Gonzalez-Zea responded “that he was in the country illegally.” (*Id.*). Deportation Officer Skillern estimated that his conversation with Mr. Gonzalez-Zea up to that point had lasted “maybe a minute,” and had remained “friendly,” and “cordial.” (*Id.* at 13). The conversation occurred entirely in English, and Deportation Officer Skillern opined that Mr. Gonzalez-Zea seemed to understand everything and respond appropriately. (*Id.*). Deportation Officer Skillern did not, “in his mind,” consider Mr. Gonzalez-Zea to be under arrest. (*Id.*).

Deportation Officer Skillern further testified that, at this point, he was “pretty positive [Mr. Gonzalez-Zea] was not the guy we were looking for.” (*Id.* at 14). Nevertheless, he asked Mr. Gonzalez-Zea: “Is that your house? Is anybody else there with you?” (*Id.*). Mr. Gonzalez-Zea responded that it was

his house, and he lived alone. (*Id.*). Deportation Officer Skillern then asked Mr. Gonzalez-Zea “for consent to search his residence.” (*Id.* at 15). Deportation Officer Skillern explained that “we asked him if he’d mind if we go back and take a look” to verify that he was the only one living at the address. (*Id.*). According to Deportation Officer Skillern, Mr. Gonzalez-Zea “didn’t have any objection at all” to this request. (*Id.*). Deportation Officer Skillern apparently interpreted Mr. Gonzalez-Zea’s lack of objection as “consent[] to allow y’all to return to his residence to [] search it.” (*Id.* at 17). The deportation officers then “allowed” Mr. Gonzalez-Zea to drive his own car “from the scene of the stop back to the residence,” which was “a short ways down the road and [around] a turn-off.” (*Id.*).

Deportation Officer Skillern further testified that, upon entering Mr. Gonzalez-Zea’s residence, the deportation officers observed a 12-gauge shotgun in the corner of the bedroom, and a .17 caliber rifle in the closet. (*Id.* at 21). Deportation Officer Hinkle read Mr. Gonzalez-Zea his *Miranda* warnings, and asked him if there were any additional weapons in the house. (*Id.* at 22, 26). Mr. Gonzalez-Zea responded affirmatively, and then led Deportation Officer Hinkle to a .357 magnum revolver. (*Id.* at 26-27). The deportation officers then placed Mr. Gonzalez-Zea under arrest. (*Id.* at 28).

A magistrate judge recommended that Mr. Gonzalez-Zea’s motion to suppress be denied. (Doc. 56 at 9). Mr. Gonzalez-Zea filed objections, reiterating his earlier arguments concerning the constitutionality of the

consent and the vehicle stop, and challenging each of the magistrate judge's legal conclusions. (Doc. 57).

The district court overruled Mr. Gonzalez-Zea's objections, and denied his motion to suppress. (Doc. 60 at 16). Like the magistrate judge, the district court concluded that the vehicle stop did not violate the Fourth Amendment because the deportation officers "had reasonable suspicion to believe that the man they saw leaving the [Randolph County address] was the fugitive Jose Alfaro-Aguilar." (*Id.* at 9). The court further determined that the deportation officers did not unreasonably extend the vehicle stop, because the seizure was brief and the officers remained focused on the reason for the stop, which was to see if Mr. Gonzalez-Zea was in fact Mr. Alfaro-Aguilar. (*Id.* at 11). The court acknowledged that there was binding Supreme Court precedent establishing that officers cannot spend any more time than is reasonably required to complete the stop's mission, but found that Officer Skillern's questions were "ordinary inquiries incident to the stop." (*Id.* at 12-13) (citing *Rodriguez v. United States*, 135 S. Ct. 1609, 1615 (2015)). Finally, the district court determined that Mr. Gonzalez-Zea provided valid consent to the search of his home. (*Id.* at 13-15).

Thereafter, Mr. Gonzalez-Zea entered into a conditional guilty plea. (Doc. 66). Mr. Gonzalez-Zea agreed to plead guilty to the indictment, but reserved his right to appeal the district court's adverse ruling on his motion to suppress. (*Id.* at 6). Ultimately, the district court sentenced Mr. Gonzalez-

Zea to time served, which was 16 months and 18 days' imprisonment. (Doc. 83 at 2). Mr. Gonzalez-Zea was then remanded to ICE custody for deportation proceedings. (*Id.*).

Mr. Gonzalez-Zea appealed, arguing that: (1) the vehicle stop conducted by the ICE deportation officers was not supported by individualized reasonable suspicion; (2) even assuming the vehicle stop was justified at its outset, Officer Skillern unlawfully prolonged the stop; and (3) Mr. Gonzalez-Zea's consent was the product of the illegal vehicle stop and was not voluntarily given.

Following oral argument, the Eleventh Circuit rejected Mr. Gonzalez-Zea's arguments, and affirmed the district court's denial of his motion to suppress. *Gonzalez-Zea*, 995 F.3d at 1308. With respect to Mr. Gonzalez-Zea's first argument, the panel concluded that a *Terry*² stop was justified because the ICE deportation officers "possessed an objective, reasonable suspicion that any man leaving the house was either the fugitive, or as a resident of the house, may have known the fugitive and his whereabouts." *Id.* at 1303. In reaching this conclusion, the court determined that, cumulatively, the following facts were sufficient to support a finding of reasonable suspicion to conduct a *Terry* stop:

The officers knew that a social security number associated with the fugitive Alfaro-Aguilar had been used recently to connect a utility service at the Heflin house. Thus, they had a specific, articulable, objective basis for believing that the fugitive could be

² *Terry v. Ohio*, 392 U.S. 1, 22 (1968).

found at that location. Additionally, when the officers observed Gonzalez-Zea leaving the house, it was in the pre-dawn hours of September 26, 2017. Given the time of day, the officers possessed an objective, reasonable suspicion that any man leaving the house was either the fugitive, or as a resident of the house, may have known the fugitive and his whereabouts. This information provided officers with sufficient particularized, reasonable suspicion to conduct an investigatory stop of Gonzalez-Zea.

Id.

The panel further determined, with respect to Mr. Gonzalez-Zea's second argument, that the ICE deportation officers did not unlawfully prolong the vehicle stop because the "identification questions" asked by the officers "were related in scope to the circumstances that justified the stop in the first place—confirming whether the driver of the vehicle was the fugitive." *Id.* at 1305. According to the panel:

[T]he officers stopped the vehicle leaving the Heflin house and immediately began asking a series of questions to dispel promptly and quickly with the task of confirming Gonzalez-Zea's identity. Officer Skillern asked Gonzalez-Zea for his name and for identification to confirm the name he gave. . . Asking for an alternate form of identification simply was another identification-related inquiry that was part of the task of verifying Gonzalez-Zea's identity, which was the purpose of the *Terry* stop.

Id. The panel also determined, as a final matter, that Mr. Gonzalez-Zea voluntarily consented to the officers' search of the house. *Id.* at 1306-08.

This petition for a writ of certiorari follows.

REASONS FOR GRANTING THE WRIT

- I. The Eleventh Circuit's decision—that the ICE deportation officers had reasonable suspicion to stop Mr. Gonzalez-Zea—is contrary to, or misapprehends a crucial aspect of, *Terry* and its progeny.**

The Fourth Amendment protects the “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. CONST., amend. IV. Ordinarily, a warrantless search or seizure is *per se* unreasonable. *See Katz v. United States*, 389 U.S. 347, 357 (1967) (“Over and over again this Court has emphasized that the mandate of the (Fourth) Amendment requires adherence to judicial processes, and that searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specially established and well delineated exceptions”) (quotation and citation omitted).

However, police may conduct a brief, investigatory *Terry* stop if “the officer has a reasonable, articulable suspicion that criminal activity is afoot.” *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000) (citing *Terry v. Ohio*, 392 U.S. 1, 22 (1968)). This Court’s precedent is clear: in determining whether a *Terry* stop is justified, the totality of the circumstances—the whole picture—must be taken into account. *Navarette v. California*, 572 U.S. 393, 397 (2014) (citing *United States v. Cortez*, 449 U.S. 411 (1981)). Based upon that whole picture, the detaining officers must have “a *particularized and objective basis for suspecting the particular person stopped of criminal activity*.” *Id.* at 396 (emphasis added).

As noted previously, the Eleventh Circuit determined in the opinion below that Deportation Officer Skillern possessed reasonable suspicion to

conduct a *Terry* stop of *any* man leaving the Heflin, Alabama residence on September 26, 2017. *Gonzalez-Zea*, 995 F.3d at 1303. This determination misapplies this Court’s precedent, and overlooks both the temporal remoteness of the utility connection, as well as its tenuous connection to the fugitive, Alfaro-Aguilar.

When the deportation officers staked out the Heflin, Alabama residence in September 2017, they did so based on their “lead” that a social security number that was at one point used by their fugitive, Alfaro-Aguilar, had been used to set up utilities at that address. As the deportation officers testified, this lead came from a CLEAR report, which revealed that the social security number in question was being shared by multiple individuals, and in fact belonged to a Hawaiian male named Jose Sanchez. (Doc. 53 at 66-76); (Def. Exh 8 at 1-2) (listing multiple names associated with the SSN); (Def. Exh. 8 at 11 and 13) (identifying Jose Sanchez as Hawaiian). When Deportation Officer Purdy generated his own report using this SSN as a search term, it pulled up 26 separate names with varying dates of birth. (Defendant’s Exhibit 8 at 4) (category titled “subject,” and listing 26 aliases associated with this SSN, with aliases 9 and 11 having a separate date of birth from Jose Sanchez); (doc. 53 at 76) (testifying that “all these records are generated based off of a Social Security number. So multiple people could be using the Social Security number in 15 different locations.”). Crucially, the report/ lead also revealed that the SSN in question had been associated with the Heflin address from

September 12, 2011 through January 10, 2017. (Defendant's Exhibit 8 at 5) (listing the "reported dates" of the Heflin, Alabama utilities listing as associated with this SSN from September 12, 2011 through January 10, 2017). Accordingly, at the time of the vehicle stop in September 2017, it had been *more than 8 months since the last "confirmed date" that the social security number was associated with this residence.* (Defendant's Exhibit 8 at 1).

Moreover, when Deportation Officer Purdy went to "verify" the clear report by checking the EARM (enforcement and removal module) report and the relevant immigration documents, he discovered that Alfaro-Aguilar was ordered removed by an immigration judge in July 2016, when he did not show up for an immigration hearing in Houston, Texas. (Doc. 53 at 63) (confirming that Defendant's Exhibit 9—Alfaro-Aguilar's immigration documents—were "what they were operating off of" in investigating this lead). At that hearing, Alfaro-Aguilar's lawyer presented evidence that he had departed the United States in July 2013. (Defendant's Exhibit 5 at 2) (confirming that Alfaro-Aguilar was ordered removed in 7/12/16, and that Alfaro's Aguilar's counsel was "present in Houston and presented evidence that subject departed the US on 6/27/13").

Accordingly, at best, all this information reveals is that an unknown individual using a shared social security number set up an unknown utilities connection at this residence in Heflin, Alabama, and that social security number had not been associated with the address for *eight months* prior to the

vehicle stop. Contrary to the Eleventh Circuit’s conclusion, this amorphous and temporally stale lead does not provide a particularized and objective basis for stopping *any male individual* that left the residence on September 26, 2017.

As a result, the Eleventh Circuit’s holding conflicts with this Court’s Fourth Amendment jurisprudence, and this Court’s review is required to ensure that the Eleventh Circuit gives full force and effect to *Terry*. It is also required to ensure that individuals in the Eleventh Circuit are not subject to arbitrary search and seizure based simply on a shared social security number that has not been associated with their address for more than eight months.

II. The Eleventh Circuit’s conclusion that the ICE deportation officers did not unlawfully prolong the *Terry* stop is contrary to this Court’s precedent in *Rodriguez*. This issue is one of exceptional importance, as it creates a circuit split with the authoritative decision of the 10th Circuit.

The scope of a *Terry* stop “must be carefully tailored to its underlying justification,” and the stop may “last no longer than is necessary” to complete its mission. *Rodriguez*, 135 S. Ct. at 1614 (quoting *Florida v. Royer*, 460 U.S. 491, 500 (1983)). As a result, “[a]uthority for the seizure ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.” *Id.* Thus, as this Court made clear in *Rodriguez*, law enforcement officers may not extend an otherwise-completed *Terry* stop in order to conduct an investigation into unrelated criminal activity. *Id.* 1614 (holding that, absent reasonable suspicion, a dog sniff conducted after the completion of traffic stop violated the Fourth Amendment). In other words, although an officer may conduct certain

unrelated checks during an otherwise lawful stop, he may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual. *Id.* at 1615.

Even assuming, arguendo, that the vehicle stop was justified at its outset, it was unlawfully prolonged when Deportation Officer Skillern began asking Mr. Gonzalez-Zea questions that were unrelated to the purpose of the stop. As discussed previously, the deportation officers unequivocally testified that the sole purpose of the stop was to ascertain whether Mr. Gonzalez-Zea was the ICE fugitive, Mr. Alfaro-Aguilar. (Doc. 53 at 32). Deportation Officer Skillern had a picture of Mr. Alfaro-Aguilar “right in front of him” on the field work sheet, and it would have been immediately apparent from even a cursory visual inspection that Mr. Gonzalez-Zea was not the man ICE was looking for. (*Id.* at 33).

Mr. Gonzalez-Zea—a 38 year old Mexican citizen—simply did not match the description or the photo of Mr. Alfaro-Aguilar—a 48 year old Honduran citizen. The two men look nothing alike, and Mr. Gonzalez-Zea has several notable physical deformities. As Deportation Officer Skillern was able to clearly observe, Mr. Gonzalez-Zea is missing several fingers and has discolored pigmentation on his hands and arms; immutable physical traits that did not match their description of Alfaro-Aguilar. (*Id.* at 39). Moreover, the deportation officers asked Mr. Gonzalez-Zea for his name, and he provided an answer that was not the name of the fugitive. (*Id.* at 11, 38). They asked if he

had any ID, and he produced a Mexican identification card with his name and photo on it, that did not match the name, age, or Honduran nationality of the fugitive. (*Id.*). These discrepancies, viewed by any objectively reasonable officer, would have immediately dispelled any suspicion that Mr. Gonzalez-Zea was the fugitive Alfaro-Aguilar.

As a result, even if the initial stop had been lawful, extending it to request identification—then additional identification in the form of U.S. identification—then clarification as to why Mr. Gonzalez-Zea did not have an Alabama driver’s license—then consent to search Mr. Gonzalez-Zea’s house—was a diversion from the purpose of the stop, and an impermissible foray into investigating unrelated criminal activity. *See Rodriguez*, 135 S. Ct. at 1614. Indeed, Deportation Officer Skillern specifically testified that he “continued to engage” with Mr. Gonzalez-Zea, even after he clarified who he was and that he wasn’t the fugitive. (Doc. 53 at 39-40). As a result, Deportation Officer Skillern’s questions requiring Mr. Gonzalez-Zea to produce various forms of identification unlawfully prolonged the stop.

As noted previously, the Eleventh Circuit determined in the opinion below that the deportation officers did not unlawfully prolong the vehicle stop—or otherwise run afoul of *Rodriguez*—because the “identification questions” asked by the officers were related in scope to the circumstances that justified the stop in the first place. *Gonzalez-Zea* 995 F.3d at 1305.

However, the Tenth Circuit has reached a contrary conclusion under virtually identical facts. Specifically, in *United States v. De La Cruz*, 703 F.3d 1193 (10th Cir. 2013), the Tenth Circuit confronted a situation where three ICE agents staked out a car wash where an individual thought to be unlawfully in the United States was purported to work. *Id.* at 1194-95. The deportation officers had a photograph of their suspect, but nevertheless detained a different individual, Mr. De La Cruz, and required him to produce his identification “just to be safe.” *Id.* at 1196. The Tenth Circuit held that this detention was unlawful, because “any reasonable suspicion that De La Cruz was [the ICE suspect] would have been dispelled when an objective officer in Agent Stanko’s position was able to compare the photo he had of [the ICE suspect] with De La Cruz. At that point any justification for detaining De La Cruz vanished.” *Id.* at 1197.

Mr. Gonzalez-Zea and Mr. De La Cruz were both in the wrong place at the wrong time when a troop of deportation officers looking for somebody else pulled them over, detained them, and required them to produce identification proving they were not the fugitive sought. In the Tenth Circuit, such detention violates the Fourth Amendment once an objectively reasonable officer would have realized that the detained individual was not the fugitive. *De La Cruz*, 703 F.3d at 1196-97. As is made clear from the decision below, defendants and citizens in the Eleventh Circuit receive no such similar protection from

arbitrary ICE intrusion. It is solely the happenstance of geography that differentiates Mr. De La Cruz from Mr. Gonzalez-Zea.

Unless this Court grants certiorari and resolves the circuit split, this scenario will continue to occur, and individuals in the Tenth Circuit will receive heightened Fourth Amendment protections as compared to individuals in the Eleventh. Regardless of which side of the split this Court takes, permitting the split to fester undermines confidence in the federal courts and the criminal justice system. For this reason, this Court should grant certiorari and resolve the circuit split.

CONCLUSION

For the above reasons, this Court should grant this petition for writ of *certiorari*.

Respectfully submitted,

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