No. 21-_____

IN THE SUPREME COURT OF THE UNITED STATES
SEPTEMBER TERM, 2021

MIGUEL GONZALEZ SEGOVIA,
PETITIONER,

v.

UNITED STATES OF AMERICA,
RESPONDENT.

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

PETITION FOR WRIT OF CERTIORARI

MICHAEL J. DIAMONDSTEIN
Supreme Court I.D. No. 292444
Attorney for Miguel Gonzalez Segovia
Two Penn Center, Suite 900
1500 John F. Kennedy Boulevard
Philadelphia, Pennsylvania 19102
(215) 940-2700
(215) 940-2701 (fax)
mjd@michaeldiamondstein.com

QUESTION PRESENTED FOR REVIEW

Mr. Gonzalez Segovia respectfully raises the following issues for this Court's review:

> **Whether the Court erred when it denied Mr. Gonzalez Segovia's pretrial motion to suppress evidence seized pursuant to the vehicle stop.**

Mr. Gonzalez Segovia filed a pretrial motion to suppress on March 21, 2019. Judge Leeson held an evidentiary hearing on May 15, 2019 and issued an order and memorandum opinion denying the motion on August 2, 2019.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes **Page(s)**

Secondary Sources **Page(s)**

Constitutional Provisions **Page(s)**

No. 21-_____

IN THE SUPREME COURT OF THE UNITED STATES
SEPTEMBER TERM, 2021

MIGUEL GONZALEZ SEGOVIA,
PETITIONER,

v.

UNITED STATES OF AMERICA,
RESPONDENT.

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

PETITION FOR A WRIT OF CERTIORARI

Petitioner Miguel Gonzalez Segovia respectfully requests that the Court issue a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Third Circuit entered on June 11, 2021, in the above-captioned matter.

OPINION BELOW

The unpublished opinion of the United States Court of Appeals for the Third Circuit affirming Miguel Gonzalez Segovia's conviction and sentence is labeled Appeal No. 20-3028 and is reproduced in the appendix to this petition at 041a to 049a. The Court's judgment is at 039a to040a. The Court's order denying panel rehearing and rehearing en banc are at 050a.

JURISDICTION

Jurisdiction to review the judgment of the United States Court of Appeals for the Third Circuit by writ of certiorari is conferred upon this Court by 28 U.S.C. Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution 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 places to be searched, and the persons or things to be seized.

U.S. Const. Amend. IV.

STATEMENT OF THE CASE

On November 13th, 2018, at approximately 11:15 am, Pennsylvania State Trooper Stepanski was in a marked patrol vehicle at the Northampton County line. Trooper Stepanski saw a black Ford Expedition driving in the left lane approaching his location. As the vehicle drew closer, Trooper Stepanski saw that the sole occupant and driver, later identified as Miguel Gonzalez Segovia, initially had one hand on the steering wheel. As the Ford got closer to the Trooper's location,
the driver leaned to his left and put two hands on the wheel.

The Trooper then entered the highway and followed the Ford for several miles. Trooper Stepanski recognized a bar code indicating that the vehicle was a rental only

after beginning to follow the Ford. According to Trooper Stepanski, he "clocked" the car at 68 mph in a 65 mph zone for approximately 3/10 of a mile.

On cross examination, the Trooper was confronted with D2, a Certificate of Speedometer Accuracy from the patrol vehicle Trooper Stepanski was driving. According to the document, on July 16th, 2018, Trooper Stepanski's car was tested to determine the speedometer accuracy. In July, at a true speed of 60 mph, Trooper Stepanski's speedometer would overestimate the speed to show 61 mph. At a true speed of 70 mph, Trooper Stepanski's speedometer would overestimate the speed to show 72 mph. The Government did not introduce any documents to indicate how the accuracy of the speedometer had degenerated in the time between the test and the stop of Mr. Gonzalez.

While following the Ford, the Trooper testified that he observed the Ford, while passing another vehicle, move in too close behind a maroon pickup truck. The Trooper also testified that the Ford came too close to a large commercial vehicle before passing the same. The video of the stop clearly indicates that, as he was pursuing Mr. Gonzalez Segovia, the Trooper ignored a white Mercedes Benz which was clearly following too closely to the rear bumper of the Ford. The Trooper also ignored vehicles that passed both the Ford and the Trooper's patrol car. It is also clear from the video that while being followed by the Trooper for roughly nine (9) minutes, the Ford was traveling normally.

The Trooper then activated his overhead lights. Mr. Gonzalez Segovia stopped within 6-7 seconds of the Trooper signaling for the traffic stop. The Ford then pulled

over onto the right shoulder. However, as the Ford had pulled over on a bridge, the Trooper did not believe that such a location was safe for a traffic stop. The Trooper then, through his loud speaker, verbally instructed the Ford to pull off the bridge. After a number of verbal directions, the Ford reentered the right lane and then pulled over onto the right shoulder.

Trooper Stepanski told Mr. Gonzalez Segovia that the reason he was stopped is because he had been following too closely to a truck. Trooper Stepanski quickly entered into a of interrogating questions unrelated to the suggested reason for the traffic stop. The transcript and video indicate that after twenty-two (22) seconds of explaining why he was stopped, Trooper Stepanski began to interrogate Mr. Gonzalez Segovia. The video includes question after question that have nothing to do with the alleged traffic infractions. The questions range from where Mr. Gonzalez Segovia came from to where he was going; his familial relationships; names of his family members; his job; how and where he rented the vehicle; how long he is staying and beyond. The Trooper testified that he was asking questions of Mr. Gonzalez "instead of waiting for dead space, you know, with no conversation . . . ."

Trooper Stepanski testified that he asked Mr. Gonzalez where he was coming from and Mr. Gonzalez Segovia said Ohio. The Trooper asked Mr. Gonzalez Segovia where he was traveling to and Mr. Gonzalez Segovia said New Jersey. Trooper Stepanski asked where in New Jersey and Mr. Gonzalez Segovia said Brooklyn. The Trooper was interrogating Mr. Gonzalez Segovia for 1 minute and 36 seconds when he finally asked Mr. Gonzalez Segovia for identification.

Trooper Stepanski continued his interrogation asking Mr. Gonzalez Segovia how long he was staying and who he was going to see. Mr. Gonzalez Segovia said he was staying with his cousin for a few days. *Id.* The Trooper testified that he then asked for the rental agreement and Mr. Gonzalez Segovia indicated that he did not have it and that the car was due back tomorrow. *Id.* According to the video and transcript, Mr. Gonzalez Segovia – at the Trooper's suggestion – indicated that he had the paperwork in an email on his phone. The Trooper did not ask to see the rental email. *See Id.* Trooper Stepanski testified that he then noticed a large number of suitcases in the vehicle.

After the Trooper's exchange with Mr. Gonzalez Segovia, the Trooper returned to his vehicle. The Trooper testified that he had determined he would ask for consent to search and indicated "I knew I wanted to search the vehicle. I had reasonable suspicion that there was going to be criminal activity afoot." The Trooper radioed for back-up and waited a little over nine (9) minutes for his back-up to arrive so he could seek consent for a search. The Trooper directed the officers to wait behind so that he could seek consent. The Trooper ran Mr. Gonzalez Segovia's information for wants and warrants and the validity of his California driver's license. There is no indication there were any warrants or wants for Mr. Gonzalez Segovia or any problems or prohibitions on his driver's license.

Upon the arrival of his back-up, Trooper Stepanski again approached the passenger side and asked Mr. Gonzalez Segovia if he had any weapons. Mr. Gonzalez Segovia said no. The Trooper then ordered Mr. Gonzalez Segovia out of the vehicle.

While at the side of the highway, the Trooper again interrogated Mr. Gonzalez Segovia about his travel plans. The Trooper asked Mr. Gonzalez Segovia: Was he ever in trouble before? Was there any marijuana in the car? Was there cocaine in the vehicle? Was there any heroin in the car? Was there large amounts of money in the car? Was there firearms in the car or fraudulent credit cards in the car? Do you have untaxed cigarettes? To all of the questions, Mr. Gonzalez Segovia stated "no" or "no sir".

Upon receiving the responses, Trooper Stepanski asked Mr. Gonzalez Segovia if he could search the vehicle. Mr. Gonzalez Segovia said "sure". *Id.* It is clear from the video that Trooper Stepanski made the request to search the vehicle with his back turned to Mr. Gonzalez Segovia while walking away. It is also clear that Trooper Stepanski is extremely animated and speaking very quickly during this portion of the traffic stop.

Trooper Stepanski then produced a preprinted Pennsylvania State Police Waiver of Rights and Consent to Search Form (hereinafter "Waiver"). Trooper Stepanski testified "[a]nd then I read him the waiver of right to consent to search form." According to the video and transcript, after verbally asking for consent Trooper Stepanski said, "Hey, listen. You've been requested by me, the Pennsylvania State Police, to give the consent for the officer to search the vehicle. I understand that I have the right to refuse this request and I may not be able to conduct the search without a search warrant. Nonetheless, I voluntarily give my consent for the police to search this vehicle." It took Trooper Stepanski twelve seconds to read the above

words. After reading the aforementioned, the Trooper said "[o]kay. You okay? Here. What I am going to have you do is sign, print, and give me an address." *Id.* Trooper Stepanski held his hand on his firearm and was joined by his backup officer, immediately after handing the consent form to Mr. Gonzalez Segovia for review.

Trooper Stepanski did not "read him the waiver of right to consent to search form." A review of the video (transcript) and G8 shows Trooper Stepanski read only a portion of the language included in Section 6 of the Waiver. Trooper Stepanski did not read the entire form. Trooper Stepanski changed or skipped portions of Section 6 of the Waiver. In relevant part Section 6 reads "[g]ive my consent for police officers to search place(s), item(s), or vehicle(s) described above for the items described above." Section 5, which is immediately above Section 6 on the Waiver, includes the following preprinted language: "Items to be searched for and seized, if found: Any controlled substances, weapons, explosives, large amounts of US currency, stolen goods, untaxed cigarettes and/or fraudulent credit cards."

Section 7 of the form includes boxes for the consenter to indicate his/her attachment to the property to be searched. There is no indication Mr. Gonzalez Segovia filled out the same. There is language in Section 7 that indicates contraband may be seized. There is also language that relates that the consenter has not been threatened.

Thus, not only did Trooper Stepanski not read the entire form, he changed or ignored the form's preprinted language. At no point in time did the Trooper direct Mr. Gonzalez Segovia to read the form. Trooper Stepanski spent twelve seconds

"reading" the form to Mr. Gonzalez Segovia. While Mr. Gonzalez Segovia is fluent in English, he speaks Spanish as a first language. The language as read by the Trooper is not clear as the grammar and pronouns were incorrectly read. Mr. Gonzalez Segovia was never informed the Trooper intended to not only search the vehicle but intended to also search the luggage inside the vehicle.

The video shows that Mr. Gonzalez Segovia did not appear to read the form and simply followed the Trooper's direction to fill in his name and address. This conclusion is buttressed by not only the audio and video of the stop but also the fact that Mr. Gonzalez Segovia never filled in his name on the first line of Section 6.

Trooper Stepanski then conducted a pat down of Mr. Gonzalez Segovia and directed him away from the Ford. Trooper Stepanski entered the Ford, immediately grabbed a suitcase and believed it was heavier than the average suitcase. He placed it on the ground, opened it, and saw approximately 30 kilo type packages. The Trooper thought the packages were heroin. He immediately placed Mr. Gonzalez Segovia in handcuffs and in the backseat of his patrol vehicle. A search of the vehicle revealed that there was narcotics in the other suitcases.

Mr. Gonzalez Segovia was arrested and the Government charged possession with intent to deliver and aiding and abetting. On March 21st, 2019, Mr. Gonzalez filed a timely Motion to Suppress alleging that the stop was unconstitutional as the Trooper lacked reasonable suspicion for the stop, unreasonably extended the stop, the stop was impermissibly pretextual, and that the unconstitutionality so tainted the consent as to invalidate it. On May 15th, 2019, the motion was heard before the

Honorable Joseph F. Leeson, Jr. and denied by written Order and Opinion on August 2, 2019.

Mr. Gonzalez Segovia then entered into a plea agreement with the United States. In exchange for his agreement to plead guilty, the Government agreed to allow Mr. Gonzalez Segovia to appeal the denial of his motion. Judge Leeson sentenced Mr. Gonzalez Segovia to 120 months in prison.

SUMMARY OF THE ARGUMENT

A new trial should be ordered because the trial court erroneously denied Mr. Gonzalez Segovia's pretrial motion to suppress. Specifically, first, the Pennsylvania State Trooper lacked reasonable suspicion to conduct the initial stop and stopped Mr. Gonzalez Segovia for an unconstitutionally impermissible and pretextual reason. Second, without the requisite reasonable suspicion, the stop was unconstitutionally and unreasonably extended rendering it an unlawful seizure of Mr. Gonzalez Segovia.

REASONS RELIED ON FOR GRANTING THE PETITION

THE COURT ERRED WHEN IT DENIED MR. GONZALEZ SEGOVIA'S MOTION TO SUPPRESS.

The trial court erred when it denied Mr. Gonzalez Segovia's motion to suppress. The evidence at issue was seized after Pennsylvania State Police stopped Mr. Gonzalez Segovia without any reasonable suspicion that criminal activity was afoot, unlawfully extended the stop, and searched the vehicle without valid consent or the requisite level of suspicion necessary justifying the same based upon nebulous

and suspect "indicators". Accordingly, the judgment of sentence must be reversed.

This Court has explained the standard of review of the denial of a motion to suppress as follows:

> We review a district court's order denying a motion to suppress under a mixed standard of review. *United States v. Tracey*, 597 F.3d 140, 146 (3d Cir.2010). We review findings of fact for clear error, but we exercise plenary review over legal determinations. *Id.*

United States v. Lewis, 672 F.3d 232, 236-37 (3d Cir. 2012); *cf. also United States v. Grier*, 475 F.3d 556, 560 (3d Cir. 2007) ("A finding is 'clearly erroneous' when[,] although there is evidence to support it, the reviewing [body] on the entire evidence is left with the definite and firm conviction that a mistake has been committed." (citations omitted)). The applicable law was summarized by this Court as follows:

> The Fourth Amendment prohibits "unreasonable searches and seizures," and searches without a warrant are presumptively unreasonable. U.S. Const. amend. IV; *Horton v. California*, 496 U.S. 128, 133, 110 S.Ct. 2301, 110 L.Ed.2d 112 (1990). However, under the exception to the warrant requirement established in *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), the Supreme Court has held that "police can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity 'may be afoot,' even if the officer lacks probable cause." *United States v. Sokolow*, 490 U.S. 1, 7, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989) (quoting *Terry*, 392 U.S. at 30, 88 S.Ct. 1868). Further, an officer may conduct an investigatory stop of a moving vehicle if he has reasonable suspicion that its passengers are engaged in criminal activity. *Ornelas v. United States*, 517 U.S. 690, 693, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996); *United States v. Hensley*, 469 U.S. 221, 226–27, 105 S.Ct. 675, 83 L.Ed.2d 604 (1985).
>
> Reasonable suspicion is just that: suspicion that is

> reasonably based on the totality of the facts and circumstances. It is a belief that has been defined as "'a particularized and objective basis' for suspecting the person stopped of criminal activity." *Ornelas*, 517 U.S. at 696, 116 S.Ct. 1657 (quoting *United States v. Cortez*, 449 U.S. 411, 417–18, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981)). "The principal components of a determination of reasonable suspicion . . . will be the events which occurred leading up to the stop or search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion . . . ." *Id.* Officers may base their reasonable suspicion on less reliable information than that needed to show probable cause. *Alabama v. White*, 496 U.S. 325, 330, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990).
>
> To assess whether reasonable suspicion existed "that the particular individual being stopped [wa]s engaged in wrongdoing," courts look to "the totality of the circumstances" from the viewpoint of law enforcement officers, which involves dealing not "with hard certainties, but with probabilities." *Cortez*, 449 U.S. at 417–18, 101 S.Ct. 690. Though the individual factors giving rise to reasonable suspicion may be innocent in isolation, together they "must serve to eliminate a substantial portion of innocent travelers." *Karnes v. Skrutski*, 62 F.3d 485, 493 (3d Cir.1995). Law enforcement officers may "draw on their own experience and specialized training to make inferences from and deductions about the cumulative information," but must act on more than "a mere 'hunch'" to meet the reasonable suspicion standard for their stop. *United States v. Arvizu*, 534 U.S. 266, 273–74, 122 S.Ct. 744, 151 L.Ed.2d 740 (2002) (quoting *Terry*, 392 U.S. at 27, 88 S.Ct. 1868).

United States v. Mathurin, 561 F.3d 170, 173-74 (3d Cir. 2009).

A. Unlawful Stop

A traffic stop is a seizure under the Fourth Amendment. *Bekermer v. McCarty*, 468 U.S. 420 (1984). There must exist individualized reasonable suspicion that a traffic violation has occurred for the stop/seizure to comply with the Fourth

Amendment. *Terry v. Ohio*, 392 U.S. 1 (1968); *Delaware v. Prouse*, 440 U.S. 648 (1979). The individualized suspicion for a traffic stop must be both legally and factually reasonable. However, a reasonable mistake of law or reasonable mistake of fact does not negate reasonable suspicion for the stop so long as the overall facts of the stop demonstrate that the officer was reasonable in his mistakes. *Heien v. North Carolina*, 574 U.S. 54, 135 S. Ct. 530, 190 L.Ed.2d 475 (2014). The Government bears the burden of showing (and presenting evidence) that the traffic stop was reasonable. *United States v. Benoit*, 730 F.3d 280, 288 (3d Cir. 2013) (citations omitted).

Mr. Gonzalez Segovia was seized when Trooper Stepanski initiated the traffic stop in this case. For that seizure to comply with the Fourth Amendment, there must exist a reasonable basis for concluding that a violation of the motor vehicle laws had occurred. The stop was recorded on a system designed and intended to serve as an accurate, objective and complete video of the police stop. The issue, therefore, is whether the WatchGuard video showed a reasonable basis to conclude that the traffic violation of following too close – or the later identified offense of driving two miles over the speed limit – justified the traffic stop in this case.

Trooper Stepanski conducted a traffic stop of the car Mr. Gonzalez Segovia was driving. The stated basis of the traffic stop was as follows:

> I was stationary in the center median at mile marker 63.4, monitoring eastbound traffic on Interstate 78. When observed [sic] a black in color Ford Expedition with Ohio registration HND5742, traveling in the left lane approaching my location. As the vehicle approached my location, I observed the single male occupant to have only one hand on the steering wheel at the 12'oclock position. Once the male observed my presence, the operator abruptly

> grabbed the steering wheel with both hands and shifted his body behind the 'B' pillar on the door. I then pulled out and began to follow the said vehicle and clocked the vehicle with my vehicle speedometer at 68mph in a 65mph zone for 3/10th of a mile at approximately mile marker 66.3 while traveling in the right lane. I then observed the vehicle change lanes from the right lane to the left lane, directly behind a maroon in color Chevrolet pickup while following at a distance of less than one vehicle length. The said vehicle then moved back to the right lane of travel at approximately 68.8 and started to follow a commercial truck with a crane at approximately mile marker 70.2 at a distance of less than one vehicle length just before passing the commercial truck on the left. After observing the violations listed above, I initiated a traffic stop on Interstate 78 eastbound at mile marker 72.2 on the right shoulder, Williams Township – Northampton County.

The Pennsylvania statute relating to Following too Close is 75 Pa.C.S.A. § 3310. That statute provides in relevant part:

> General rule. – The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the vehicles and the traffic upon and the condition of the highway.

The video shows reasonable prudent driving by Mr. Gonzalez Segovia.

Trooper Stepanski has attempted to justify his obviously unconstitutional stop by including irrelevant false observations. According to the Trooper, he began following the black Ford after seeing the driver change from driving with one hand on the wheel to putting both hands on the wheel and supposedly "shift[ing] his body behind the 'B' pillar on the door". Beyond the ridiculous assertion that the officer was able to observe all of this while the car was passing him at a high rate of speed but was unable to discern that the driver was Hispanic, there is nothing illegal about

shifting while driving or putting both hands on the wheel. In fact, such conduct while driving on a highway is acceptable, legal, and normal human behavior.

If the Court is to believe that Mr. Gonzalez Segovia did reposition himself while passing the officer, there is no logical inference that Mr. Gonzalez Segovia did so because he was involved in illegal activity. In fact, there are far more legal reasons for someone driving on an interstate readjusting their position than there are illegal. Surely the trooper could not have known whether the driver was stretching his back, his foot had fallen asleep or any of the hundreds of other completely legitimate reasons a driver moves while driving. However, what he could see was a Hispanic man driving a vehicle with out of state plates.

After only this extremely limited observation, the Trooper then followed Mr. Gonzalez Segovia's vehicle for nearly ten (10) miles. The video unequivocally shows other cars speeding past both Mr. Gonzalez Segovia and the Trooper. More notably, the trooper can be seen drifting out of his lane while the distinct sounds of incoming and outgoing text messages ring. Moreover, at the outset of the Trooper following Mr. Gonzalez Segovia the video shows a white sedan following so closely behind Mr. Gonzalez that the sedan must slam on the breaks multiple times to avoid rear-ending him. These traffic violations were of no moment to the Trooper once he had his sights set on the Hispanic male later identified as Mr. Gonzalez Segovia.

The Trooper followed Mr. Gonzalez Segovia with laser focus for ten (10) miles hoping to observe anything to justify the inevitable pretextual stop. Trooper Stepanski justified the initial stop by stating that Mr. Gonzalez Segovia followed

behind a vehicle with less than one car length between him and the other vehicle. This is misleading. As the video shows, Mr. Gonzalez Segovia can be seen legally and prudently switching lanes without needing to slam on his breaks or doing so dangerously. Whether it was less than a vehicle length is a red herring as the statute makes no mention of requisite measurements and most certainly not vehicle lengths as a unit of measurement. Rather, the statute requires only that a driver not follow another vehicle more closely than is reasonable and prudent. The video shows nothing but reasonable, prudent driving and lane changes in accordance with traffic codes and the flow of traffic. Mr. Gonzalez Segovia's perfect driving is even more impressive with the fact that the Trooper was hanging behind Mr. Gonzalez Segovia in his blind spot and other vehicles were speeding by him.

Trooper Stepanski later attempted to justify the traffic stop on the basis of some traffic infraction which does not appear on the video, such as his claim that Mr. Gonzalez Segovia was driving three (3) miles per hour over the limit on an interstate; a fact the Trooper only decided to bring out well into the stop despite clearly making comments for the recording. Throughout the video Trooper Stepanski can be heard making commentary for the future video audience to justify his unconstitutional actions. However, when he supposedly "clocked" Mr. Gonzalez Segovia driving above the speed limit the officer makes no mention of the unverifiable conduct. Moreover, as stated supra, several vehicles can be seen speeding past Mr. Gonzalez Segovia and the trooper throughout the video.

The Trooper's conduct was unconstitutional and unreasonable. The

WatchGaurd video system records all the events of any particular shift; that is the selling point of the system. All important events of a particular encounter are recorded and available. The touchstone of any Fourth Amendment analysis is reasonableness. *Heien* supra. Mr. Gonzalez Segovia denies operating his vehicle other than in a reasonable and prudent manner and the video shows the same.

Therefore, the Trial Court erred in finding that the traffic stop was supported by a traffic violation.

B. The Trooper Unreasonably Extended the Traffic Stop.

The officer's flagrant misuse of the traffic stop as a means to interrogate Mr. Gonzalez Segovia with questions unrelated to the stop unconstitutionally extended the duration of the stop and violated his rights under the Fourth Amendment.

A traffic stop typically begins when a car "is pulled over for investigation of a traffic violation." *Arizona v. Johnson*, 555 U.S. 323, 129 S. Ct. 781, 788, 172 L. Ed. 2d 694 (2009). It typically ends when the police officer has "no further need to control the scene, and inform[s] the driver and passengers they are free to leave." *Id.* The United States Supreme Court has held "that 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." *Rodriguez v. United States*, 135 S. Ct. 1609, 1612, 191 L. Ed. 2d 492 (2015) (quoting *Illinois v. Caballes*, 543 U. S. 405, 407, 125 S. Ct. 834, 160 L. Ed. 2d 842 (2005)).

Because a traffic stop is more analogous to an investigative detention than a custodial arrest, a traffic stop, whether based on probable cause or reasonable suspicion, is assessed under the standard set forth in *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). *Berkemer v. McCarty*, 468 U.S. 420, 439, 104 S. Ct. 3138, 82 L. Ed. 2d 317 (1984) (citation omitted).

This approach presents a dual inquiry: "whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place." *Terry*, 392 U.S. at 20; *see also Florida v. Royer*, 460 U.S. 491, 500, 75 L. Ed. 2d 229, 103 S. Ct. 1319 (1983) ("The scope of the detention must be carefully tailored to its underlying justification."). If the initial traffic stop was illegal or the officers exceeded the stop's proper scope, the seized contraband is excluded under the "fruit of the poisonous tree doctrine." *See, e.g., Wong Sun v. United States*, 371 U.S. 471, 484, 9 L. Ed. 2d 441, 83 S. Ct. 407 (1963) (citation omitted).

It is clearly established under the second part of *Terry* that an investigative detention must be temporary, lasting no longer than necessary to effectuate the purpose of the stop, and the scope of the detention must be carefully tailored to its underlying justification. *Florida v. Royer*, 460 U.S. at 500 (1983). With regard to the scope component, "the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time." *Id.* Regarding the duration component, courts evaluate "whether the police diligently pursued a means of investigation that was likely to confirm or dispel their

suspicions quickly, during which time it was necessary to detain the defendant." *United States v. Sharpe*, 470 U.S. 675, 686, 105 S. Ct. 1568, 84 L. Ed. 2d 605 (1985); *see also Illinois v. Caballes*, 543 U.S. 405, 407, 125 S. Ct. 834, 160 L. Ed. 2d 842 (2005) (noting that a traffic stop may become "unlawful if it is prolonged beyond the time reasonably required to complete [its] mission"); *Royer*, 460 U.S. at 500 (noting that the scope of a seizure "must be carefully tailored to its underlying justification," and that the government bears the burden to "demonstrate that the seizure it seeks to justify . . . was sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure"). "A stop becomes unlawful when it lasts longer than is necessary to complete its mission, the rationale being that the authority for the seizure ends when tasks tied to the mission are, or reasonably should have been, completed." *United States v. Clark*, 902 F.3d 404, 410 (3d Cir. 2018) (internal quotation marks and alterations omitted) (citing *Rodriguez v. United States*, 135 S. Ct. 1609, 1616 (2015)).

Beyond determining whether to issue a traffic ticket or warning, an officer may inquire to ensure officer safety or "ordinary inquiries incident to [the traffic] stop." *Illinois v. Caballes*, 543 U.S., at 408, 125 S.Ct. 834; *see also Rodriguez v. United States*, 135 S. Ct. 1609, 1615, 191 L. Ed. 2d 492 (2015) ("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."); *Delaware v. Prouse*, 440 U.S. 648, 658–660, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979).

While the Supreme Court has remained silent on the specific issue, the United States Court of Appeals for the Third Circuit has generally found routine questions about vehicle ownership and a motorist's itinerary to qualify as ordinary inquiries incident to a traffic stop. *See, e.g., United States v. Caraballo*, 104 F. App'x 820, 822 (3d Cir. 2004) (finding that it was reasonable for an officer to inquire about the ownership and use of a vehicle when provided with a license from one state and registration from another) quoting *United States v. Givan*, 320 F.3d 452, 459 (3d Cir. 2003) (relying on *United States v. Williams*, 271 F.3d 1262, 1267 (10th Cir. 2001) "[Q]uestions relating to a driver's travel plans ordinarily fall within the scope of a traffic stop."). In *United States v. Williams*, the Tenth Circuit held that questions related to travel were reasonably within the scope of the stop as the officer began the process of verifying whether the driver had lawful possession of the vehicle. 271 F.3d 1262, 1267 (10th Cir. 2001).

The landmark Supreme Court decision, *Rodriguez v. United States*, 575 U.S. 348, 135 S. Ct. 1609, 191 L.Ed.2d 492 (2015), analyzed and established the duration and scope of authority an officer legally has during a traffic stop. The Supreme Court established that a dog sniff was not fairly characterized as part of the officer's traffic mission as it lacked the same close connection to roadway safety as the ordinary inquiries. The *Rodriguez* Court, relying on 4 W. LaFave, Search and Seizure § 9.3(c), pp. 507-517 (5th ed. 2012), rationalized that such ordinary inquiries were permissible because they "serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly." *Rodriguez* at 355.

4 Wayne R. LaFave's Search and Seizure treatise, convincingly observes that there are many circumstances where questions about travel plans exceed the scope of a traffic stop because "[t]he objective [of such questions] is not to gain some insight into the traffic infraction providing the legal basis for the stop, but to uncover inconsistent, evasive or false assertions that can contribute to reasonable suspicion or probable cause regarding drugs." 4 Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment, § 9.3(d), at 392-95 (4th ed. 2004). If a police officer seeks to prolong a traffic stop to allow for investigation into a matter outside the scope of the initial stop, he must possess reasonable suspicion or receive the driver's consent. See *Royer*, 460 U.S. at 500. Under the Supreme Court's decision in *United States v. Sokolow*, 490 U.S. 1, 109 S. Ct. 1581, 104 L. Ed. 2d 1 (1989), an officer's articulated facts must in their totality serve to eliminate a substantial portion of innocent travelers before reasonable suspicion will exist. Id. The Fourth Amendment does not recognize "bonus time to pursue an unrelated criminal investigation." *Rodriguez v. United States*, 575 U.S.at 357 (2015).

i. First Interaction and Line of Questioning

The Trial Court erred in finding that the "*Rodriguez* moment" or the moment when the stop was unconstitutionally extended occurred when the Trooper called for backup. Here, it was clear from the outset that Trooper Stepanski's interest and inquiry was not related to the traffic stop nor officer safety. The Trooper – a seasoned officer who has testified hundreds of times – began his inquiry with a routine line of questioning but quickly went beyond the routine and onto a line of questions that can

only be described as a fishing expedition for other illegal activity.

The fact that some of Trooper Stepanski's questions were permissible under the Fourth Amendment as inquiry about travel plans does not change this result. As was stated in *United States v. Holt*, 264 F.3d 1215, 1220 (10th Cir. 2001):

> When stopped for a traffic violation, a motorist expects "to spend a short period of time answering questions and waiting while the officer checks his license and registration." At the same time, the government has a strong interest in ensuring that motorists comply with traffic laws. Thus, it is beyond dispute that an officer may ask questions relating to the reason for the stop. Ordinarily, this also includes questions relating to the motorist's travel plans. Travel plans typically are related to the purpose of a traffic stop because the motorist is traveling at the time of the stop. For example, a motorist's travel history and travel plans may help explain, or put into context, why the motorist was weaving (if tired) or speeding (if there was an urgency to the travel).

The Trooper almost immediately asked Mr. Gonzalez Segovia about his travel plans. Within roughly the first minute of interaction the Trooper – while showing little or no interest in a valid driver's license or documentation necessary to effectuate the stop – had questioned Mr. Gonzalez Segovia about where he was coming from, point of destination, how he knew where he was going, and finally who he was visiting. The Trooper, seemingly unsatisfied with Mr. Gonzalez Segovia's answer that he was visiting his cousin, insisted on both the first and last name of the cousin. Such a question goes well beyond any inquiry into travel plans associated with a traffic stop but rather sought to investigate Mr. Gonzalez Segovia's familial associations. The Trooper focused on all of the aforementioned travel plans without ever taking the driver's license initially presented by Mr. Gonzalez Segovia or attempting to

effectuate the purpose for the stop.

There is no indication that Trooper Stepanski even attempted to investigate the traffic violation. The Trooper testified that Mr. Gonzalez Segovia had his driver's license in hand extended to the window in anticipation of the Trooper's request. However, Trooper Stepanski showed no interest in Mr. Gonzalez Segovia's driver's license or any other documentation to effectuate a traffic stop. Mr. Gonzalez Segovia made clear that the rental agreement for the vehicle was in an email but the Trooper ignored that information and continued to pepper Mr. Gonzalez Segovia with questions unrelated to the supposed reason for the stop.

While the United States Court of Appeals for the Third Circuit has held that questions relating to a driver's travel plans ordinarily fall within the scope of a traffic stop, this Court has yet to clarify the scope and quantity of questions regarding one's travel plans reasonably related to the traffic stop. Surely, some limitation must exist or the second prong of *Terry* falls toothless. Officers cannot be permitted to indefinitely seize those who commit minor traffic violations to interrogate indefinite travel plans or probe for intimate or specific details regarding people the driver has or will come into contact with.

It is clear from the video that instead of investigating the alleged traffic violation – or any other traffic violation – Trooper Stepanski showed no interest in Mr. Gonzalez Segovia's driver's license or any other documentation to effectuate a traffic stop. The Trooper almost immediately abandoned the initially purported justification for the stop and ventured on a witch hunt for any illegality using a tactic

of rapid-fire questioning. The question is one of reasonableness under the totality of the circumstances. Viewed in this light, the intrusive questioning Trooper Stepanski engaged in prior to returning to his vehicle constituted unconstitutional, purposeful probing more akin to a fishing expedition than to a permissible expansion of an investigative stop supported by reasonable suspicion, which is not surprising given the pretextual nature of the stop. The Trooper's entire line of questioning considering the totality of the circumstances, neither the questioning nor the detention in general was carefully tailored to the traffic violation.

ii. Delay for Backup and Second Interaction and Line of Questioning

The Trial Court erred in finding that the Trooper had reasonable suspicion necessary to prolong the stop once he reentered his vehicle. Having erroneously identified this moment – when Trooper Stepanski returned to his car and decided to wait for backup to arrive – as the earliest possible Rodriguez moment, the Court erred in determining that the facts known to Trooper Stepanski at that moment were sufficient to establish reasonable suspicion. *See Green*, 897 F.3d at 179 ("After determining when the stop was extended—the 'Rodriguez moment,' so to speak— we can assess whether the facts available to [the officer] at that time were sufficient to establish reasonable suspicion that [the defendant] was involved in drug trafficking.").

The Supreme Court has recognized that factors consistent with innocent travel can, when taken together, give rise to reasonable suspicion. *United States v. Sokolow*, 490 U.S. 1, 9, 109 S. Ct. 1581, 104 L. Ed. 2d 1 (1989) ("Any one of these factors is not

by itself proof of any illegal conduct and is quite consistent with innocent travel. But we think taken together they amount to reasonable suspicion."). The articulated innocent factors collectively must serve to eliminate a substantial portion of innocent travelers before the requirement of reasonable suspicion will be satisfied. *Id.*

[R]easonable suspicion cannot be defeated by a so-called "divide-and-conquer" analysis, whereby each arguably suspicious factor is viewed in isolation and plausible, innocent explanations are offered for each." *United States v. Green*, 897 F.3d 173, 183 (3d Cir. 2018) (citation omitted). "But in considering whether the factors articulated by a police officer amount to reasonable suspicion, [courts have] "[] separately address[ed] each of these factors before evaluating them together with the other circumstances of the traffic stop." *United States v. Bowman*, 884 F.3d 200, 214 (4th Cir. N.C. March 1, 2018) quoting *United States v. Powell*, 666 F.3d 180, 187-88 (4th Cir. 2011); *see Williams*, 808 F.3d at 247-53 (considering each factor alone, at length, before considering the factors together with the totality of circumstances).

Trooper Stepanski explained that "indicators" could increase his level of suspicion. It was clear from his testimony that nearly any item or combination of items could be considered an indicator of illegal activity. Indicators included: keys or lack thereof; energy drinks; luggage or lack thereof; air fresheners; nervousness or lack thereof; not talkative or talkative; rental cars; multiple cell phones; a person's income level and/or their job. Trooper Stepanski testified that "[w]ith other factors, you could take most anything [as an indicator]." The Trial Court identified various factors the Trooper relied upon in finding reasonable suspicion: nervousness, the stop

occurred in a known drug corridor, inconsistent travel itinerary, unknown destination address, a large number of suitcases for such a short trip. However, when viewed individually or collectively, the factors fail to establish reasonable suspicion that would eliminate a substantial portion of innocent travelers.

Courts that have cited nervousness, and/or use of a rental vehicle, as factors supporting a finding of reasonable suspicion have done so only in conjunction with other more tangible, objectively articulable indicators of criminality. For example, in *United States v. Finke*, the use of a rental vehicle and prior criminal history was coupled with other compelling suspicious behavior to support a finding of reasonable suspicion. *United States v. Finke*, 85 F.3d 1275 (7th Cir. 1996). In *Finke*, the Seventh Circuit found, under the totality of the circumstances, there was reasonable suspicion that the vehicle was transporting drugs because: (1) the car was a rental; (2) it had been driven to California and back in five days; (3) the passenger compartment appeared as if the occupants had been living in it, i.e., making a straight trip without stopping; (4) extreme nervousness; (5) defendant appeared to be feigning grogginess in an attempt to avoid answering questions; and (6) the defendant had prior drug convictions. Similarly, in *United States v. Contreras*, the Tenth Circuit found reasonable suspicion existed based on the defendant's nervousness, her purported travel plans to drive 2,300 miles roundtrip for a one-day visit, the use of a rental car, and presence of food wrappers from a California restaurant when the defendant claimed to be driving to Nebraska from Las Vegas. *United States v. Contreras*, 506 F.3d 1031 (10th Cir. 2007).

In *United States v. Brugal*, officers stopped the defendant at a drug check checkpoint off of Interstate 95 in South Carolina. 209 F.3d 353 (4th Cir. 2000). While reviewing the defendant's driver's license and rental agreement, the officer asked the defendant why he exited the interstate and where he was going. The defendant responded that he needed gas and was driving to Virginia Beach. During this questioning, the officer noticed that the vehicle had a quarter of a tank of gas and three pieces of luggage in the rear cargo area. The defendant was in full compliance with the terms of the rental agreement, however, the officer instructed the defendant to pull over to the shoulder of the road. The officer's decision to instruct the defendant to pull his vehicle over was based on the following circumstances: (1) Interstate 95 is a major thoroughfare for narcotics trafficking; (2) the defendant exited Interstate 95 after passing two well-lit decoy drug checkpoint signs; (3) the defendant rented a vehicle in Miami; (4) the defendant had a New York State driver's license and the rental agreement indicated that he had a New York City address; (5) a common practice of drug couriers is to fly to Miami, acquire drugs, rent a vehicle, and drive north; (6) the defendant indicated that he was searching for gas even though his vehicle had a quarter of a tank of gas; (7) the defendant just passed an exit with several well-lit twenty-four hour gas stations but he was looking for a gas station in an area that showed no signs of activity at 3:30 a.m.; (8) the defendant was traveling at 3:30 a.m.; and (9) there was an insufficient amount of luggage.

The Fourth Circuit held in *Brugal*, under the totality of the circumstances, the officer possessed reasonable suspicion to instruct the defendant to pull his vehicle

over to conduct a further investigation. The Court noted that "standing alone, there is nothing atypical about an individual from New York City renting a vehicle in Miami." However, the use of a rental vehicle when considered in conjunction with the officer's other observations such as unusual travel itinerary, traveling northbound on a known drug courier at 3:30 a.m.; traveling in a rental vehicle from a known source city for drugs; exiting the interstate after passing two decoy drug checkpoint signs; and the defendant's implausible story that he was looking for gas, created reasonable suspicion permitting the continuation of the traffic stop.

In *United States v. Digiovanni*, the Fourth Circuit distinguished Brugal, finding that the police did not have reasonable suspicion to prolong a traffic stop because the defendant's unusual travel itinerary was not keyed to other "compelling suspicious behavior." *United States v. Digiovanni*, 650 F.3d 498, 512-13 (4th Cir. 2011), as amended (Aug. 2, 2011). In *Digiovanni*, the Court held that unusual travel itinerary, driving a rental car from a "source state" on I-95 a known drug courier, and nervousness in their totality, did not support a finding of reasonable suspicion because "[s]uch facts, without more, simply do not eliminate a substantial portion of innocent travelers."

Likewise, in *State v. Passerini*, the Court of Appeals of Nebraska found, under the totality of the circumstances, police officers did not have reasonable suspicion to justify a prolonged detention. In that case, the officer observed that the defendant was nervous, abruptly exited the interstate, was lawfully operating a rental vehicle properly registered in his name and had a drug-related criminal history. *State v.*

Passerini, 18 Neb. Ct. App. 552, 789 N.W.2d 60 (Neb. Ct. App. 2010). The Court noted that "[t]he fact that [the defendant] was driving a rental vehicle is perfectly consistent with law-abiding activity, and furthermore, the matching names on the driver's license and rental agreement, coupled with the consistency of [the defendant's] story as to the timeframe of the trip . . . should have dispelled, rather than created, further suspicion." *Id. See also See United States v. Valdez*, 267 F.3d 395, 397-98 (5th Cir. 2001) (conflicting stories from driver and passenger, driver's nervousness, and fact that neither were listed on rental agreement did not give rise to reasonable suspicion of drug trafficking); *United States v. Jones*, 234 F.3d 234, 241 (5th Cir. 2001) (discrepancies between driver and passenger's explanations about travel, fact that driver's mother was only person listed on rental agreement, and driver's admission that he was previously arrested for crack did not support finding of reasonable suspicion). *Cf. also United States v. Fifty-three Thousand Eighty-Two Dollars in U.S. Currency*, 958 F.2d, 245, 250 (6th Cir. 1992) (discovering that plaintiffs were traveling with over $50,000.00 in cash did not justify *Terry* detention, investigatory seizure, or probable cause); *United States v. U.S. Currency $30,060.00* (9th Cir. 1994) (over $30,000 in cash found in car arranged in $1,000.00 stacks did not support finding of probable cause even coupled with "dog sniff" alert).

Next, the Court's finding that "the stop occurred in a known drug corridor" is not supported by the record. Trooper Stepanski testified that that "any road that connects from a big city to another big city could be considered a drug corridor." Thus, if every highway leading to and from a major city is a drug corridor with millions of

cars passing, the same simply can't be a reliable indicator of any illegality. Nor was any additional testimony received on the question of drug trafficking along the stretch of Interstate 78 versus any other types of travel or drug trafficking along any other stretch of highway. Yet the Court concluded that the particular stretch of highway was a well-known drug corridor. *See Brigman*, 350 F.3d at 313; *compare Valentine*, 232 F.3d at 352 (finding that area in question was "high crime area" based on testimony that neighborhood was "'very bad' with '[a] lot of shootings.'").

Mr. Gonzalez Segovia most respectfully submits that the Trial Court failed consider the totality of the circumstances and the Trooper's history. The Court dismissed the evidence of Trooper Stepanski's well-evidenced pattern and practice of extending stops only when a minority was involved. During the hearing, Mr. Gonzalez Segovia presented evidence obtained pursuant to a subpoena of every vehicle stop in which the Trooper sought consent to search during the twelve (12) months prior. The records provided by the Pennsylvania State Police indicated that during the twelve (12) months prior Trooper Stepanski had extended a total of forty-four (44) stops in order to seek consent to search a vehicle. The records indicated that in all forty-four (44) stops the vehicles had minority occupants. In fact, in all of the car stops where Trooper Stepanski sought consent to search, there were only two (2) Caucasians and they were woman who were passengers with minority men.

If possible more shockingly, the records indicated that of the forty-four (44) times Trooper Stepanski believed that his "indicators" gave rise to reasonable suspicion to extend a stop in order to seek consent to search, he was only correct

twenty-two percent (22%) of the time. Said another way, Trooper Stepanski, relying on his training and experience and his indicators of criminal activity, extended forty-four (44) traffic stops of only minorities and was wrong seventy-eight percent (78%) of the time.

While not conclusive, the Trooper's history must be taken into consideration when weighing the totality of the circumstances and the information known at the time he extended the stop. The Trooper knew that in the past year, despite similar factors being present, he was wrong to believe criminal activity was afoot an overwhelming majority of the time he relied upon his indicators. As such, if his indicators were incorrect 88% of the time they could not give rise to a reasonable suspicion that criminal activity was afoot.

But at the risk of speaking too frankly, Mr. Gonzalez Segovia respectfully submits that our society has seen how certain segments of the population are treated differently by law enforcement. Allowing law enforcement to use malleable, unreliable and nebulous factors to search gives the government unfettered discretion and stretches our Constitution well past the point of breaking. Such a holding will continue to put a judicial imprimatur on how different members of our society are treated differently by law enforcement. Mr. Gonzalez Segovia prays that this Honorable Court will find that no longer can law enforcement rely on nebulous indicators as a basis to search a car.

The stop was unreasonably extended without reasonable suspicion in order that law enforcement could investigate Mr. Gonzalez Segovia well beyond the time

necessary to effectuate the stop. In fact, the pretextual stop was made for that very purpose. And even if law enforcement was entitled to make the stop, the line of reasonableness was explicitly crossed in this case and the lawful encounter became an illegal roadside detention. The information known to the Trooper at the time he returned to his vehicle was that a Hispanic man from California was nervous when stopped by a Caucasian State Trooper in the middle of Pennsylvania, he had a rental car in his name, the driver was coming from Ohio because he worked for a moving company and had just completed a move, he was on his way to visit a cousin – whom he identified by first and last name – for a few days in Brooklyn, he did not have the exact address but knew how to get to his destination, the vehicle was traveling on a highway which connects Ohio and New York, and he had a few pieces of luggage.

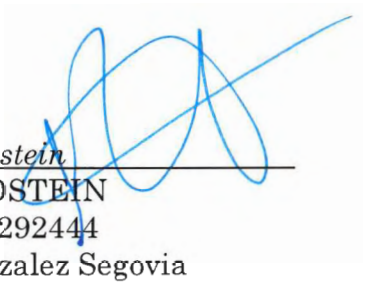
The articulated facts, in their totality, simply do not eliminate a substantial portion of innocent travelers. The State Police conducted a pretextual stop which, even if justified at its inception, was then extended in such a way as to render it unlawful and unreasonable. The Trial Court's reliance on the factors articulated by the Trooper failed to collectively establish reasonable suspicion. Moreover, this was done merely to conduct an investigation that the Constitution of the United States would not support - there was nothing to suggest that criminal activity was afoot.

In this case, the trial court concluded that law enforcement had reasonable suspicion to believe that criminal activity was afoot. As we have demonstrated, this conclusion was erroneous. We therefore respectfully submit that the judgment of sentence should be reversed.

CONCLUSION

For the foregoing reasons, Mr. Gonzalez Segovia urges this Court to vacate his conviction in light of the erroneous denial of his suppression motion.

Respectfully submitted,



/s/ Michael J. Diamondstein
MICHAEL J. DIAMONDSTEIN
Supreme Court I.D. No. 292444
Attorney for Miguel Gonzalez Segovia
Two Penn Center, Suite 900
1500 John F. Kennedy Boulevard
Philadelphia, Pennsylvania 19102
(215) 940-2700
(215) 940-2701 (fax)
mjd@michaeldiamondstein.com

September 24, 2021