

NO. \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

CHARLIE FOSTER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent

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

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PETITION FOR A WRIT OF CERTIORARI

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Respectfully submitted,

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## **QUESTION PRESENTED FOR REVIEW**

Consistent with the Fourth Amendment, may a law enforcement officer extend a traffic stop by asking for a driver's license and registration after the officer has already confirmed that no actual traffic violation has occurred?

## **LIST OF PARTIES**

The only parties to the proceeding are those appearing in the caption to this petition.

## **LIST OF DIRECTLY RELATED PROCEEDINGS**

*United States v. Charlie Foster*, No. 5:19-cr-50037-1, U.S. District Court for the Western District of Arkansas. Judgment entered January 29, 2020.

*United States v. Charlie Foster*, No. 20-1241, U.S. Court of Appeals for the Eighth Circuit. Judgment entered October 12, 2021; en banc and panel rehearing denied by order entered December 1, 2021.

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## PETITION FOR A WRIT OF CERTIORARI

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### OPINION BELOW

On October 12, 2021, the court of appeals entered its opinion and judgment affirming the district court's denial of the motion to suppress filed by Charlie Foster. *United States v. Foster*, 15 F.4th 874 (8th Cir. 2021). Petitioner's Appendix ("Pet. App.") 1a-5a. The Eighth Circuit's order denying rehearing is not reported. Pet. App. 15a.

### JURISDICTION

The judgment of the court of appeals was entered on October 12, 2021. On October 25, 2021, an order was entered extending the deadline for filing a petition for rehearing to November 9, 2021. A petition for en banc or panel rehearing was timely filed by Mr. Foster on November 9, 2021. On December 1, 2021, an order was entered denying the petition for rehearing. *See* Pet. App. 15a. This petition is timely submitted. Jurisdiction to review the judgment of the court of appeals is conferred upon this Court by 28 U.S.C. § 1254.

### CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Petitioner refers this Honorable Court to the following constitutional and statutory provisions:

#### U.S. Const. amend. IV:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

**Ark. Code Ann. § 27-32-101(a)(2)(A):**

Any law enforcement officer having reason to believe that a vehicle may have safety defects shall have cause to stop the vehicle and inspect for safety defects.

**STATEMENT OF THE CASE**

1. Charlie Foster was charged with, and entered a conditional plea of guilty to, being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). Mr. Foster was driving a vehicle that was stopped by Springdale, Arkansas, Police Officer Gene Johnson after Officer Johnson noticed a crack in the vehicle's windshield. During the course of the stop, Officer Johnson directed Foster to get out of the vehicle, conducted a pat-down search, and discovered a handgun. Foster moved to suppress the handgun on the grounds that (1) the traffic stop was unsupported by probable cause because the windshield's condition did not violate Arkansas law, and (2) Officer Johnson unreasonably extended the stop after he had an opportunity to inspect the windshield up close and see that it was not unsafe. The district court denied Foster's motion to suppress without a hearing, essentially treating the facts alleged by Foster in the motion as true.

2. Mr. Foster sought suppression of all evidence seized following the traffic stop that occurred on March 5, 2019. In the motion, Foster first argued that his Fourth Amendment rights were violated because Officer Johnson lacked probable cause to initiate the traffic stop. In his report, Officer Johnson noted that he had initiated the stop because Foster's vehicle had an "unsafe windshield (several cracks)." As Foster noted in his motion, there is no specific Arkansas statute that

prohibits the operation of a vehicle with a cracked windshield. However, the Arkansas Supreme Court has held that “a windshield with a crack running from roof post to roof post across the driver’s field of vision is the type of ‘safety defect’ contemplated by [Ark. Code Ann. §] 27-32-101(a)(2)(A),” a statute which permits law enforcement officers to stop and inspect a vehicle if they have reason to believe that a safety defect exists. *Villanueva v. State*, 426 S.W.3d 399, 402 (Ark. 2013). The *Villanueva* decision, in turn, was interpreted in an unpublished Eighth Circuit opinion to stand for the proposition that “[d]riving a vehicle with a windshield cracked across the driver’s field of vision . . . is a ‘safety defect’ under Ark. Code Ann. § 27-32-101(a)(2)(A).” *United States v. Davis*, 598 F. App’x 472, 473 (8th Cir. 2015).

As exhibits to his motion to suppress, Mr. Foster attached still photos taken from officer body-cam video showing that the crack was toward the bottom of the windshield, near the dashboard; that it did not extend all the way across the windshield from roof post to roof post; and that it did not obstruct the driver’s view. Foster accordingly argued in his motion that, based on the facts and the law that was known or should have been known to Officer Johnson at the time of the traffic stop, there were no safety defects in the windshield and there was no objective justification to believe that a violation of law was present.

3. Mr. Foster argued in the alternative that, even if Officer Johnson was reasonable in stopping him, there was no reasonable suspicion to support the extension of the stop. A traffic stop’s tolerable duration is determined by the seizure’s “mission,” which is to address the traffic violation that warranted the stop. *Rodriguez*

v. *United States*, 575 U.S. 348, 354 (2015) (citing *Illinois v. Caballes*, 543 U.S. 405, 407 (2005)). Authority for the seizure ends when tasks tied to the traffic infraction are—or reasonably should have been—completed. *Id.* Foster argued that, once the stop was made and Officer Johnson was able to get a close-up view of the windshield, he was able to see that the condition of the windshield was not a violation of Arkansas law. After confirming that there was no actual violation of law, the officer should have let Foster go on his way. Instead, Officer Johnson unreasonably prolonged the seizure by asking for identification, insurance, and registration. These requests were not reasonably related to the purpose of the traffic stop.

4. The district court did not hold a hearing on Mr. Foster’s motion to suppress. In its order denying the motion, the district court found that “the crack was of the size and nature described by Mr. Foster in his Motion to Suppress.” Pet. App. 11a. In other words, the court agreed that the crack was toward the bottom of the windshield, did not go all the way across the windshield, and did not obstruct Foster’s view. The court found that “Officer Johnson had, at a minimum, a reason to suspect that Mr. Foster’s cracked windshield was a traffic violation under Arkansas law.” Pet. App. 12a. The court concluded that, even if Officer Johnson was mistaken about the cracked windshield being a violation of Arkansas law, “his mistake would be a reasonable one.” Pet. App. 13a. Thus, the court rejected Foster’s first argument that the stop itself was a violation of the Fourth Amendment. *Id.*

With regard to Mr. Foster’s second argument, the court concluded that, as long as the traffic stop was permissible, Officer Johnson was allowed to request

identification from the occupants of the vehicle, citing Eighth Circuit precedent. *Id.* (citing *United States v. Clayborn*, 339 F.3d 700, 702 (8th Cir. 2003)). The court concluded that, “even assuming Officer Johnson at some point realized that Mr. Foster’s windshield did not violate Arkansas law, Officer Johnson did not unconstitutionally extend the valid traffic stop by requesting Mr. Foster’s identification.” Pet. App. 14a. Therefore, the court found that “Mr. Foster was not unreasonably seized as a result of Officer Johnson asking for—and then running a record check of—his and his passenger’s identification.” *Id.*

5. Mr. Foster appealed the denial of his motion to suppress to the Eighth Circuit Court of Appeals. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291, which gives it jurisdiction over all final decisions of the district courts of the United States. The district court had jurisdiction over this federal criminal case pursuant to 18 U.S.C. § 3231. Foster argued that Officer Johnson did not make an objectively reasonable mistake in initiating the traffic stop, as it should have been clear to any observer that the condition of his windshield was not a violation of Arkansas law. Foster also argued that, even if Officer Johnson had made an objectively reasonable mistake, he still unreasonably extended the traffic stop by asking for Foster’s identification. Foster asserted that, once Officer Johnson had the opportunity to examine the windshield up close and was able see that the crack was not extensive and did not obstruct Foster’s view, the purpose of the stop was accomplished and he should have let Foster go on his way.

6. A panel of the Eighth Circuit affirmed the district court’s denial of Mr. Foster’s motion to suppress. *United States v. Foster*, 15 F.4th 874 (8th Cir. 2021). The panel agreed with Foster that the crack Officer Johnson observed in his windshield was not a violation of Arkansas law; however, it also found that “a reasonable officer could have believed on initial observation that the cracked windshield constituted a safety defect,” and that the initial stop was accordingly justified. *Id.* at 877-78. According to the panel, “[w]hile his initial observation turned out to be mistaken, Officer Johnson’s mistake of fact was an objectively reasonable one, and thus Foster was not unreasonably seized when Officer Johnson conducted the traffic stop.” *Id.* at 878. In response to Mr. Foster’s argument that Officer Johnson unreasonably extended the stop after its mission was completed, the panel found that it was bound to follow prior precedent and to conclude that asking for Foster’s license and registration did not constitute an unreasonable extension of the stop. *Id.*

Mr. Foster filed a timely petition for rehearing that was denied on December 1, 2021. Pet. App. 15a. This petition for a writ of certiorari follows.

#### **REASONS FOR GRANTING THE PETITION**

**The Eighth Circuit’s decision conflicts with this Court’s precedent (and Tenth Circuit precedent) holding that authority for a traffic stop ends when the stop’s mission is, or reasonably should have been, completed.**

As this Court clarified in *Rodriguez v. United States*, 575 U.S. 348 (2015), any extension of a stop beyond the time reasonably needed to complete the stop’s mission is unreasonable under the Fourth Amendment, even if such an extension constitutes

only a *de minimis* intrusion on an individual's personal liberty. *Id.* at 353, 357. The Eighth Circuit's opinion in the instant case is in conflict with *Rodriguez*. Although Officer Johnson's mission had been completed when he was able to see that the condition of Mr. Foster's windshield did not violate Arkansas law, he did not terminate the seizure at that time. While *Rodriguez* indicates that an officer may ordinarily check a driver's license and a vehicle's registration in the course of an investigation that is justified by reasonable suspicion regarding a traffic violation, the opinion is equally clear that "[a]uthority for the seizure ends when tasks tied to the traffic infraction are—or reasonably should have been—completed." *Id.* at 349. The Eighth Circuit's decision in the instant case allows an officer to ask for a driver's license and registration after the mission of the traffic stop has already been completed, and therefore does not require the seizure to end as soon as the stop's mission is completed.

The Tenth Circuit has addressed this particular situation—a traffic stop in which the officer's reasonable suspicion is immediately dispelled—on several occasions. In *United States v. Edgerton*, 438 F.3d 1043 (10th Cir. 2006), a Kansas State Trooper observed a vehicle traveling on the interstate without a license plate but displaying a plate-sized temporary registration tag in the rear window. *Id.* at 1045. The trooper testified that he could not read the state of origin or the number of the tag from a distance of "four to five car lengths," so he decided to stop the vehicle "for a tag violation." *Id.* When he approached the vehicle, he was able to see that it was an unremarkable Colorado temporary tag. *Id.* The trooper informed the

defendant why he had stopped her and asked for her license and registration. *Id.* at 1045-46. After performing a check and issuing a warning ticket, the trooper obtained consent to search the vehicle's trunk, where a large amount of cocaine was eventually discovered in a secret compartment. *Id.* at 1046.

The Tenth Circuit concluded that the initial stop of the vehicle was constitutionally permissible. *Edgerton*, 438 F.3d at 1048. However, the court went on to find that the trooper unreasonably extended the traffic stop by asking for the driver's license and registration. *Id.* at 1051. "Once Trooper Dean was able to read the Colorado tag and deem it unremarkable, any suspicion that Defendant had violated [the relevant statute] dissipated . . ." *Id.* At that point, "Trooper Dean, as a matter of courtesy, should have explained to Defendant the reason for the initial stop and then allowed her to continue on her way without requiring her to produce her license and registration." *Id.* In the instant case, once the purpose of the stop was completed and reasonable suspicion had dissipated, Officer Johnson should have allowed Mr. Foster to continue on his way without asking him for his license and registration.

The Tenth Circuit based its decision in *Edgerton* largely upon its previous opinion in *United States v. McSwain*, 29 F.3d 558 (10th Cir. 1994). In *McSwain*, the defendant did not contest the initial validity of a traffic stop; instead he argued that "the initially valid stop evolved into an unreasonable detention," and the court of appeals agreed. *Id.* at 561. *McSwain* involved a stop of a vehicle with a temporary registration sticker but no license plates; Trooper Avery was unable to read the

expiration date on the sticker because it appeared to be covered with reflective tape. *Id.* at 560. As the trooper approached the vehicle, he noticed that the temporary registration sticker was from Colorado and that the reflective tape was a new device used by the State of Colorado to prevent alteration of the sticker's expiration date; he also "observed that the sticker was valid and had not expired." *Id.* Trooper Avery then approached the driver (Mr. McSwain), made a comment about the sticker, and asked whether McSwain had just bought the vehicle and whether he was taking it for a test drive. *Id.* He then asked McSwain for identification and vehicle registration. *Id.* The investigation continued and led to a consensual search that revealed contraband. *Id.*

The Tenth Circuit noted that "Trooper Avery stopped Mr. McSwain for the sole purpose of ensuring the validity of the vehicle's temporary registration sticker. Once Trooper Avery approached the vehicle on foot and observed that the temporary sticker was valid and had not expired, the purpose of the stop was satisfied." *McSwain*, 29 F.3d at 561. The trooper's further detention of the vehicle to question McSwain and to request his license and registration "exceeded the scope of the stop's underlying justification." *Id.* While the Government attempted to argue that certain Tenth Circuit precedent allowed Trooper Avery to "engage in such 'minimally intrusive' conduct," the court found these cases to be inapposite: "They all involve situations in which the officer, at the time he or she asks questions or requests the driver's license and registration, still has some objectively reasonable articulable suspicion that a traffic violation has occurred or is occurring." *Id.* (citations and internal quotation

marks omitted). By contrast, “Trooper Avery’s reasonable suspicion regarding the validity of Mr. McSwain’s temporary registration sticker was completely dispelled *prior* to the time he questioned Mr. McSwain and requested documentation.” *Id.* Accordingly, “Trooper Avery’s actions in questioning Mr. McSwain and requesting his license and registration exceeded the limits of a lawful investigative detention and violated the Fourth Amendment.” *Id.* at 561-62.

The parallels to the instant case are again obvious. Any reasonable suspicion possessed by Officer Johnson that the condition of Mr. Foster’s windshield violated Arkansas law was completely dispelled before he asked Foster for his license and registration, and there was nothing left to investigate past that point. Officer Johnson’s actions in requesting Foster’s license and registration exceeded the limits of a lawful investigative detention and violated the Fourth Amendment.

In yet another case, the Tenth Circuit concluded that a trooper who stopped a vehicle for having only a single California license plate should have realized as he approached the vehicle that it did not violate Wyoming law because the vehicle’s California registration number was displayed even though a front license plate was not. *United States v. Trestyn*, 646 F.3d 732, 743 (10th Cir. 2011). Because the only reason for the stop was to investigate whether the vehicle violated the statute concerning vehicles traveling in Wyoming but registered in another state, as soon as the trooper should have realized there was no violation, “the continued detention of [the defendants] exceeded the scope of the stop’s underlying justification.” *Id.* At the point at which the trooper could have observed that the vehicle’s registration number

was displayed on a sticker at the corner of the license plate, his “reasonable suspicion that [the defendants] violated [the Wyoming statute] would have dissipated, and the purpose of the stop was satisfied.” *Id.* at 744. Citing to its prior decisions in *McSwain* and *Edgerton*, the Tenth Circuit explained that the trooper “should have explained to [the vehicle’s occupants] the reason for the initial stop and then allowed them to continue on their way.” *Id.* The continued detention, during which the trooper asked for license and registration, violated the Fourth Amendment. *Id.*

Again, in the instant case, once Officer Johnson realized (or should have realized) that Mr. Foster’s cracked windshield did not violate Arkansas law, any reasonable suspicion justifying the stop dissipated, and he should have advised Foster of the reason for the stop and allowed him to continue on his way without starting a new investigation by asking for his driver’s license and registration. The Eighth Circuit’s opinion in the instant case, which allows an officer to conduct additional investigation after the purpose of the stop has already been satisfied and reasonable suspicion has been dispelled, stands in clear contradiction to the law established within the Tenth Circuit on this issue. The Eighth Circuit’s opinion here stands for the proposition that a law enforcement officer is permitted to ask for license and registration every time a traffic stop is made, even in cases in which the officer is quickly able to confirm that they were mistaken and that no traffic violation had occurred. Foster’s petition for a writ of certiorari should be granted so that this Court may resolve the conflict concerning this important Fourth Amendment issue.

## CONCLUSION

For all of the foregoing reasons, Petitioner Charlie Foster respectfully requests that this Court grant the petition for a writ of certiorari and accept this case for review.

DATED: this 1st day of March, 2022.

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