NO. 22-_____

IN THE SUPREME COURT OF THE UNITED STATES

Veronica Gonzalez-Carmona, also known as Cinthia Selene Ramirez Barba, also known as Carolina Ponce Macias,

Petitioner,

-vs.-

United States of America,

Respondent.

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

Petition for Writ of Certiorari

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Questions Presented for Review

1. Whether an officer's interspersed drug interdiction questions impermissibly extend a traffic stop per this Court's decision in *Rodriguez v. United States*, 575 U.S. 348 (2015).

2. Whether the principles established in this Court's opinion in *Rodriguez v. United States*, 575 U.S. 348 (2015) apply when a law enforcement officer terminates a traffic stops, and reengages with the suspect thereafter.

3. Whether both extrinsic evidence *and* intrinsic evidence may be used to find an officer's testimony not credible.

4. Whether the Eighth Circuit's approach in finding a defendant ineligible for safety valve relief per 18 U.S.C. § 3553(f) on the Government's bare assertion that the defendant's proffer was "untruthful," without more, should be reversed in favor of the First, Fifth, and Ninth Circuit's burden-shifting approach.

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Opinion Below

Petitioner, Veronica Gonzalez-Carmona, respectfully prays that a writ of certiorari issue to review the judgment of the Eighth Circuit Court of Appeals in Case No. 21-1241 entered on May 24, 2022. *United States v. Gonzalez-Carmona*, 35 F.4th 636, (8th Cir. 2022), *rehearing and rehearing en banc denied July 1, 2022*. Rehearing and rehearing en banc was denied July 1, 2022.

Jurisdiction

The panel of the Eighth Circuit Court of Appeals entered its judgment on May 24, 2022. The Eighth Circuit Court of Appeals denied rehearing and rehearing en banc on July 1, 2022. Jurisdiction of this court is invoked under 28 U.S.C. § 1254.

Constitutional and Statutory Provisions Involved

U.S. Const. amd. 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.

18 U.S.C. 3553(f)

(f) Limitation on applicability of statutory minimums in certain cases.--
Notwithstanding any other provision of law, in the case of an offense under section 401, 404, or 406 of the Controlled Substances Act (21 U.S.C. 841, 844, 846), section 1010 or 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 960, 963), or section 70503 or 70506 of title 46, the court shall impose a sentence pursuant to guidelines promulgated by the United States Sentencing Commission under section 994 of title 28 without regard to any statutory minimum sentence, if the court finds at sentencing, after the Government has been afforded the opportunity to make a recommendation, that--
(1) the defendant does not have--

(A) more than 4 criminal history points, excluding any criminal history points resulting from a 1-point offense, as determined under the sentencing guidelines;
(B) a prior 3-point offense, as determined under the sentencing guidelines; and
(C) a prior 2-point violent offense, as determined under the sentencing guidelines;
(2) the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;
(3) the offense did not result in death or serious bodily injury to any person;
(4) the defendant was not an organizer, leader, manager, or supervisor of others in the offense, as determined under the sentencing guidelines and was not engaged in a continuing criminal enterprise, as defined in section 408 of the Controlled Substances Act; and
(5) not later than the time of the sentencing hearing, the defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the defendant has no relevant or useful other information to provide or that the Government is already aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

Information disclosed by a defendant under this subsection may not be used to enhance the sentence of the defendant unless the information relates to a violent offense.

Statement of the Case

On February 20, 2018, Petitioner Gonzalez-Carmona entered a conditional guilty plea to one count of Possession with Intent to Distribute a Controlled Substance in violation of 21 U.S.C. § 841(a)(1). Prior to trial, Petitioner moved to suppress contraband obtained during a traffic stop on Interstate 80 in Pottawattamie County, Iowa. The district court denied Petitioner's Motion to Suppress, finding that Sheriff's Deputy Brian Miller did not conduct an unlawful traffic stop, or otherwise unlawfully extend the traffic stop assessed against the Fourth Amendment. Petitioner pleaded guilty to the offense shortly thereafter. On

July 13, 2018, the District Court entered judgment against Petitioner; calculated Petitioner's Guideline sentencing range to be 120 months (the statutory minimum for the offense); found that Petitioner was ineligible for safety-valve relief under 18 U.S.C. § 3553(f); and sentenced Petitioner to 120 months' imprisonment. On June 24, 2019, Petitioner filed a Motion to Vacate, Set Aside, or Correct a Sentence pursuant to 28 U.S.C. § 2255. On January 28, 2021, the District Court granted Petitioner's Section 2255 Motion in part. On February 2, 2021, the District Court entered an identical "amended" judgment against Petitioner to permit her bringing appeal to the United States Court of Appeals for the Eighth Circuit. Petitioner timely appealed. On November 16, 2021, the Eighth Circuit heard oral argument. On May 24, 2022, the Court of Appeals for the Eighth Circuit affirmed (1) the district court's denial of Petitioner's Motion to Suppress; and (2) the district court's finding that Petitioner was ineligible for safety valve relief.

Relevant Factual Background – Traffic Stop

On August 4, 2017, Petitioner was driving a silver Nissan Altima sedan, a Budget Rent A Car System, Inc. ("Budget") rental vehicle, on Interstate 80 eastbound through Nebraska and Iowa with co-defendant Giovani Andres Jimenez. At approximately 11am, Omaha Police Department Officer Jeffrey Vaughn called Pottawattamie County Sheriff's Deputy Brian Miller. *See* Suppression Tr., at 19:23–25.[1] Deputy Miller testified:

> Officer Vaughn advised that he was traveling eastbound along I-80 and observed a silver Nissan Altima with two occupants inside the

[1] "Tr." references the transcript for the identified hearing (Suppression or Sentencing). "R Doc." references the District Court's docket entry.

> vehicle. He said that located on the rear seat was a white blanket. He had stated that the vehicle which he had seen was traveling at a very low rate of speed and continued driving at a very low rate of speed for an extended period of time. Officer Vaughn advised that this was a make-your-own case, he had no probable cause to stop the vehicle. He just thought that the behaviors which these individuals were presenting was suspicious in his own observations.

Suppression Tr., at 18:16–25. In 2017, the speed limit on Interstate 80 through Omaha was 60 miles per hour.[2] Petitioner subpoenaed Budget speed data, showing that in Omaha, Petitioner was driving approximately the speed limit[3]:

Date/Time	Street	City	Latitude	Longitude	Speed	Reason
08/04/2017 9:17 AM	Interstate 80	Omaha, NE 68105	41.226230	-95.965240	61	Periodic
08/04/2017 9:15 AM	Interstate 80	Omaha, NE 68106	41.223540	-96.003950	59	Periodic
08/04/2017 9:12 AM	Interstate 80	Omaha, NE 68124	41.223920	-96.042210	60	Periodic
08/04/2017 9:10 AM	Interstate 80	Omaha, NE 68144	41.223590	-96.080070	59	Periodic
08/04/2017 9:08 AM	Interstate 80	Omaha, NE 68137	41.202080	-96.094570	59	Periodic
08/04/2017 9:06 AM	Interstate 80	Omaha, NE 68138	41.179790	-96.116620	62	Periodic
08/04/2017 9:04 AM	Interstate 80	Omaha, NE 68138	41.155570	-96.148560	74	Periodic
08/04/2017 9:02 AM	Interstate 80	Gretna, NE 68028	41.130600	-96.181820	73	Periodic

See R Doc. # 73-1, at 5 (demonstrating, in reverse chronological order, Petitioner driving the speed limit in rural Nebraska, then slowing down to comport with Omaha's 60mph speed limit, but not traveling at a very low rate of speed).

[2] Subsequently, in 2018, the speed limit in Omaha on Interstate 80 was increased to 65 miles per hour, which it is presently. *See* Neb. Rev. Stat. § 60-6,186(1)(i); 2018 Neb. Legis. L.B. 1009 § 6.

[3] The Budget vehicle was rented in Las Vegas, Nevada. DCD 72-1, at 1. The time stamps are in Pacific Daylight Time. *See* Suppression Tr., at 55:21 – 56:1. Converted to Central Daylight Time, each would be between 11:02am and 11:17am (as opposed to 9:02 – 9:17am).

Petitioner continued along Interstate 80 eastbound, over the Missouri River, and into Council Bluffs, Pottawattamie County, Iowa. Deputy Miller testified he was situated at Mile Marker 5 at the relevant time, approximately five miles from the Missouri River. *See* Suppression Tr., at 20:6–8. As Petitioner approached Deputy Miller's position, Deputy Miller testified to first identifying Petitioner's vehicle at 11:26am. *See id.* at 21:1–2. Petitioner was driving in the right lane at the time. *Id.* at 23:17–23. Deputy Miller reported that traffic was "extremely light" at the time, and that Petitioner was the only vehicle that was on the roadway. *Id.* at 23:3–7.[4] When Deputy Miller first saw Petitioner's vehicle, as much as 26 minutes after receiving Officer Vaughn's call, Deputy Miller confirmed Petitioner was traveling the speed limit—55 miles per hour. *See id.* at 24:2–11. This is generally corroborated by speed data from Budget's subpoena response:

56	13077525	65A162940001	08/04/2017 9:25 AM	Interstate 80	Council Bluffs, IA 51503	41.242550	-95.823150	54	Periodic

R Doc. # 73-1, at 4 (Petitioner's speed was 54 mph at 11:25am CDT).

Deputy Miller testified that where he was situated, in the median, Petitioner could read the speed limit sign increasing the speed from 55mph to 65mph, as the interstate leaves Council Bluffs, Iowa. *See* Suppression Tr., at 22:7–10. Deputy Miller did not have his camera on at this point. *See id.* at 67:19–25.[5] Deputy Miller then testified that Petitioner accelerated, and he observed the vehicle at 60 miles

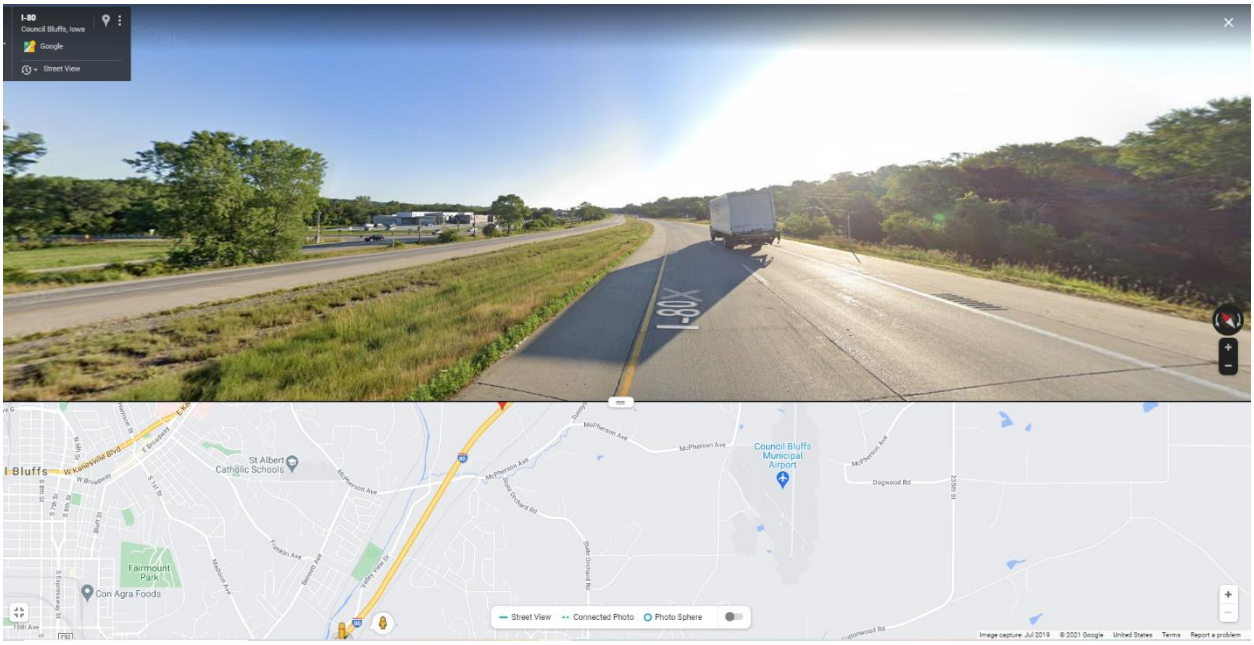
[4] This was reaffirmed on cross-examination. *See* Suppression Tr., at 66:14–16.

[5] Specifically, the camera system consists of a view recording out the front windshield and rear view, and a camera pointed back at the officer inside the vehicle. *See* Suppression Tr., at 26:17–22.

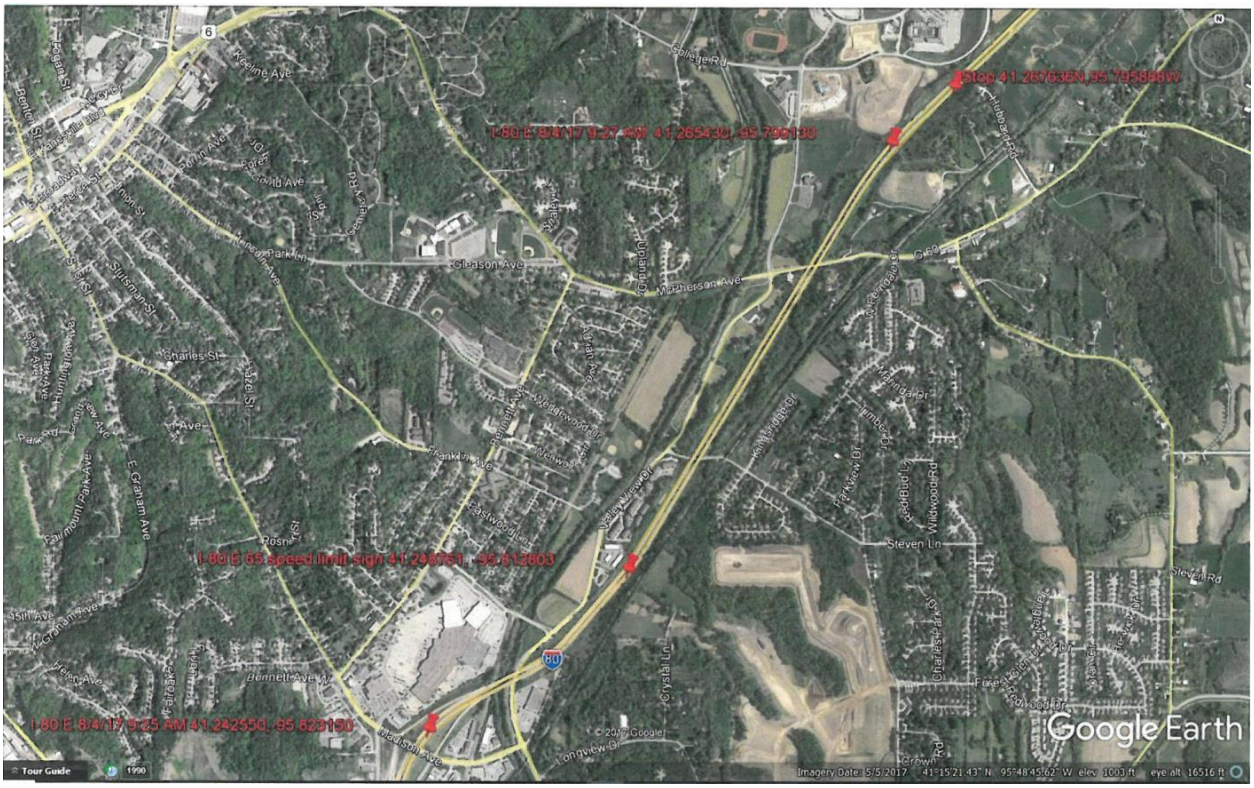
per hour. *See id.* at 25:2–6. Deputy Miller still did not have his camera on. *See id.* at 67:19–25; 70:10–16. Deputy Miller did not save any radar reading or recording of Petitioner's vehicle. *See id.* at 71:6–11.[6] Deputy Miller "pursued after the vehicle," but did not signal or pull Petitioner over immediately. *Id.* at 25:8–18. Despite admitting that traffic was "extremely light" and that Petitioner was the only vehicle on the road, Deputy Miller "think[s] it's most safe for both the violator's safety and my safety that I wait until the 7 mile marker to activate my lights." *Id.* at 25:18–20.

Deputy Miller contended that it was safer because "there's no guardrails" there, but two sets of guardrails present prior to Mile Marker 7 may pose a "safety issue for myself and also the violators in which I conduct traffic stops on." *Id.* at 26:1–6. According to GPS data from Budget, Petitioner was ultimately stopped at coordinates 41.267720 N, -95.795840 W. *See* R Doc. # 73-1, at 4. Between Mile Marker 5 and that location, plenty of areas lack guardrails and are otherwise open to conduct a traffic stop:

[6] Deputy Miller notes that the radar and camera system onboard the vehicle was capable of saving the radar reading, but was not hooked up to do so. *See* Suppression Tr., at 73:9–20.



Google Maps Screen Capture of I-80 Eastbound Between Mile Marker 5 and the Eventual Traffic Stop of Appellant's vehicle.



Defendant's Suppression Hearing Exhibit C, R Doc. # 73-3.

Nevertheless, Deputy Miller testified that his car's camera is "activated 30 or 45 seconds prior to the activation of my emergency lights." *See* Suppression Tr., at 26:25 – 27:7. Therefore, Deputy Miller agrees, that if he were to immediately turn on his sirens and lights, the car's camera would record his initial identification and the radar reading he allegedly took of Petitioner's car. *Id.* at 73:21 – 74:8. He did not do so. The reason he provided above, namely safety, is directly contradicted by himself (intrinsic inconsistencies) and extrinsic evidence.

At 11:27am, Deputy Miller finally activated his lights, pulled Petitioner over and approached the vehicle from the passenger side. *Id.* at 29:10–16; 60:15–19.[7] Different from Deputy Miller's testimony of Officer Vaughn's concern of a blanket, Deputy Miller noticed a sweatshirt draped over the passenger seat and a scarecrow laying in the backseat. *Id.* at 30:8–13.

Upon contacting the occupants, Deputy Miller reports the car "smelled like a very strong odor of candles coming from within the vehicle." *Id.* at 31:14–15.[8] Then:

> A. Upon my approach [to the vehicle] . . . I had made contact with the female driver and male passenger, and I advised the female driver for the reason for conducting a traffic stop.
> Q. So you told the driver that the stop was for what?
> A. For traveling 60 in a 55.
> Q. At that point did she have any response?
> A. She apologized. She said that she observed the 65 mile per hour sign and had sped up.

[7] Deputy Miller agrees that the car video starts at 11:26:09am, thirty seconds prior to the activation of the warning lights. *See* Suppression Tr., at 61:8–13. His body camera is still off. *Id.* at 68:1–6.

[8] It is a rental car, which are likely cleaned and freshened more readily than a privately owned vehicle.

Id. at 30:8–18. Deputy Miller asked Petitioner for her driver's license, and Petitioner produced a California driver's license. *Id.* at 31:24 – 32:5. Petitioner and the passenger then explained to Deputy Miller that the vehicle was a rental, and produced a brochure from Budget and the rental agreement. *Id.* at 32:10–25. Deputy Miller asked for no other documentation. *Id.* at 32:24 – 33:1.

Then, despite the fact that he had previously testified traffic "was extremely light" and Petitioner was the only vehicle on the roadway, Deputy Miller then contradicted himself with the following testimony:

> Due to the roadway environment and *the large amount of traffic* that was happening at that time of the traffic stop, I could not hear [Appellant] all that well, and I wanted to make sure that she understood the reason for the conducting of the traffic stop. So, therefore, I asked her to the rear of her vehicle to make sure she understood the reason for conducting the traffic stop and to obtain the necessary information and complete my law enforcement action.

Id. at 33:7–14 (emphasis added). But, she already understood the reason for the traffic stop, as described above. *See id.* at 30:8–18.

At 11:38am, after questioning both Petitioner (at the rear of the car) and her passenger (still in the car), Deputy Miller began the process of issuing Petitioner a warning. *See id.* at 42:15 – 43:3; *see also* R Doc. # 72-2. After processing the warning, Deputy Miller reapproached the vehicle on the passenger side. *See* Suppression Tr., at 44:15–19. At approximately 11:49am, Deputy Miller handed the warning ticket to Petitioner. *See* Suppression Tr., at 82:19–23. Deputy Miller then conversed with the passenger about a pair of shoes that the passenger was looking at on his smartphone. *Id.* at 44:21 – 45:17. Deputy Miller and the passenger both

laughed "that [the $800+ shoes] were an extremely large amount of money." *Id.* at 45:18–21.

At 11:51am, Deputy Miller testified he "stepped back away from the vehicle, and then I reengaged both individuals by asking them if I could ask them a couple more questions." *Id.* at 46:21 – 47:1. No affirmative response can be heard on Deputy Miller's microphone. *See id.* at 84:17–23. Deputy Miller testified that he then asked them multiple questions: "I asked if they had anything illegal in the vehicle . . . . I asked to a consent search of the vehicle." *See id.* at 47:4–18. On cross-examination, Deputy Miller admits that he asked if there were "*drogas*," Spanish for drugs, in the vehicle. *See id.* at 83:5–9. Deputy Miller then presented a consent form to Petitioner, which he testified to filling out prior to returning to the vehicle to issue the warning. *Id.* at 48:1–23; *see also* R Doc. # 72-3.[9] The consent form provides: "I understand that I have the right to refuse to consent to the search described above and to refuse to sign this form." R Doc. # 72-3. Neither Petitioner nor passenger signed the form. *Id.*; *see also* Suppression Tr., at 83:10–16. Deputy Miller testifies that no consent to the search can be heard on audio, either. *See* Suppression Tr., at 84:17–23; 85:5–7. Nevertheless, Deputy Miller contends consent was given. *See id.* at 49:14–15. Yet, approximately 16 seconds later, at 11:51:54am, having received the warning and the traffic stop over, Petitioner began to drive the car forward. *See id.* at 85:16 – 86:7. Deputy Miller put his arm on the car, stopping it. *See id.* at 86:14–21. The United States Court of Appeals for the Eighth Circuit

[9] This, of course, means the form was completed prior to any conversation between Deputy Miller and the passenger related to expensive shoes.

would later determine that this was not a show of force or exercise of control, but was merely Deputy Miller gesturing or pointing Petitioner where she should park her car.

Deputy Miller then asked both occupants out of the vehicle. *See id.* at 49:18–20. The search uncovered approximately 25 pounds of heroin. *Id.* at 50:17–21. It was then, at approximately 11:58am, that Deputy Miller turned his body camera on, immediately after finding the contraband. *See id.* at 68:4–13.[10] At 12:02pm, Deputy Miller then placed both Petitioner and the passenger under arrest. *Id.* at 51:2–9.

The District Court denied Petitioner's Motion to Suppress the contraband.

Sentencing Hearing

At sentencing, the District Court calculated Petitioner's Guideline range to be the statutory minimum for the offense—120 months. Petitioner timely objected to the calculation, and submitted she was eligible for safety valve relief. At sentencing, the only safety-valve element at issue was the "truthfulness" prong. 18 U.S.C. § 3553(f)(5). The Government argued that Petitioner "managed to tell the government everything the government knew before [it] even talked to the [Petitioner]." Sentencing Tr. 59:22–24. The District Court ultimately denied Petitioner safety-valve relief. *Id.* 64:6–15. The District Court sentenced Petitioner to 120 months.

[10] According to Pottawattamie County Sheriff's Office policy, the body-worn camera is required to be turned on during any "[l]aw enforcement related citizen encounters;" "law enforcement activities," which includes traffic stops; and during the "[c]ollection of evidence or contraband." *See* R Doc. # 73-4, at 2–3. Deputy Miller admits he did not adhere to this policy. *See* Suppression Tr., at 69:23 – 70:9. Similarly, in-car audio video recording is required to be activated during the same periods. *See* R Doc. # 73-6, at 2.

Reasons for Granting the Writ

I. The Eighth Circuit has decided important issues of federal law as to the unreasonable extension of a traffic stop, in conflict with relevant decisions of this Court.

The United States Court of Appeals for the Eighth Circuit decided important issues of federal law (a) whether interspersed drug interdiction questioning are akin to a canine drug sniff in *Rodriguez* in unlawfully extending a traffic stop; (b) whether the principles this Court settled in *Rodriguez* may apply to the circumstance where a traffic stop is concluded, and law enforcement then re-engages the stopped part; and (c) whether the Eighth Circuit's failure to consider Deputy Miller's internal inconsistencies—as opposed to merely extrinsic evidence—is reversable error.

A. This Court should reverse the Eighth Circuit's holding that Deputy Miller's interspersed drug interdiction questioning permissibly formed reasonable suspicion to extend the traffic stop.

At 11:49am, Deputy Miller had completed the purpose of the traffic stop—issue a warning or ticket for speeding. *See* Suppression Tr., at 82:19–23. This marks 23 minutes of engagement with Petition, from the time he first made the decision to pull her over to the time he handed back Petitioner's documents and issued the warning. *Id.* at 21:1–2.

But, the seizure continued. *Michigan v. Chesternut*, 486 U.S. 567, 573–74 (1988) ("The test provides that the police can be said to have seized an individual 'only if, in view of all of the circumstances surrounding the incident, a reasonable

person would have believed that he was not free to leave.'" (quoting *United States v. Mendenhall*, 446 U.S. 544, 554 (1980))); *see also* Suppression Tr., at 86:14–21 (wherein Deputy Miller prevented Appellant from using her vehicle).

In 2015, the Supreme Court limited the lawful bounds of a traffic seizure:

> We hold 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, "becomes unlawful if it is prolonged beyond the time reasonably required to complete the mission" of issuing a ticket for the violation.

Rodriguez v. United States, 575 U.S. 348, 350–51 (2015) (quoting *Illinois v. Caballes*, 543 U.S. 405, 407 (2005)).

The Court described permissible inquiries, as part of "an officer's mission" during a traffic stop to "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." *Id.* at 355. "Unquestionably, these provisions, properly administered, are essential elements in a highway safety program." *Delaware v. Prouse*, 440 U.S. 648, 658 (1979) (noting the inquiries concomitant to a traffic stop are related to *traffic* safety and infractions, and the interest must extend only so far). In other words, "[w]hen an officer makes a routine traffic stop, 'the officer is entitled to conduct an investigation *reasonably related in scope to the circumstances that initially prompted the stop*.'" *United States v. Lyons*, 486 F.3d 367, 371 (8th Cir. 2007) (quoting *United States v. McCoy*, 200 F.3d 582, 584 (8th Cir. 2000) (per curiam)) (emphasis added).

When the traffic stop ends, absent more, the officer is not entitled to continue the traffic stop. *Rodriguez*, 575 U.S. at 353. The traffic stop ends when the warning ticket is issued. *Lyons*, 486 F.3d at 371 ("When Trooper Brehm gave Lyons the warning ticket, the traffic stop ended.").

Eighth Circuit's Errors Below:

Petitioner respectfully submits the Eighth Circuit erred by omitting Deputy Miller's admitted interspersed drug interdiction questioning throughout the pendency of the traffic stop. See Suppression Tr., at 47:4–18, 83:5–9. Specifically, Deputy Miller asked Ms. Gonzalez-Carmona if there were "*drogas*" in the vehicle, among others. *See id.* The Eighth Circuit's opinion makes no reference to this question. *See generally Gonzalez-Carmona*, 35 F.4th 636 (8th Cir. 2022).

It is axiomatic that "a seizure justified only by a police-observed traffic violation . . . 'becomes unlawful if it is prolonged beyond the time reasonably required to complete the mission' of issuing a ticket for the violation." *Rodriguez*, 575 U.S. at 350–51 (extending a traffic stop to conduct a canine sniff of a vehicle violates the Fourth Amendment protection); *United States v. Jones*, 249 F.3d 919, 924–25 (8th Cir. 2001) (recognizing "[t]he scope of the detention must be carefully tailored to its underlying justification" (internal quotations omitted) and that a person is unlawfully seized when "the legitimate investigative purposes of the traffic stop were completed"). Indeed, the proper analysis consistent with *Rodriguez* is determining an impermissible line of drug interdiction question is equally violative of the Fourth Amendment:

> The stop was delayed because of the trooper's drug interdiction questioning, not because of anything related to the investigation or processing of the traffic violation.
> …
> The extent and duration of the trooper's focus on non-routine questions prolonged the stop 'beyond the time reasonably required' to complete its purpose. This violated Peralez's Fourth Amendment right to be free from unreasonable searches.

United States v. Peralez, 526 F.3d 1115, 1120–21 (8th Cir. 2008) (quoting *Illinois v. Caballes*, 543 U.S. 405, 407 (2005)). Moreover, the Eighth Circuit has recently reiterated that "[i]t is clear under *Rodriguez* that investigating general criminal wrongdoing is outside a routine traffic stop's purposes." *United States v. Callison*, 2 F.4th 1128, 1131 n.2 (8th Cir. 2021). Nevertheless, the Eighth Circuit erred in declining to treat—let alone definitively find violative—Deputy Miller's interspersed drug interdiction questioning.

B. This Court should intervene and hold that *Rodriguez* does not permit the termination of a traffic stop and initiation of another seizure on facts which are shared by many travelers.

The Eighth Circuit erred in finding Deputy Miller acted with reasonable suspicion. To wit, the Eighth Circuit improperly relied on circumstances which "describe a very broad category of predominately innocent travelers." *Reid v. Georgia*, 448 U.S. 438, 441 (1980). The Eighth Circuit appeared to rely on four circumstances for the basis of the "reasonable suspicion" finding: (1) the odor of candles; (2) inconsistent travel plans; (3) Ms. Gonzalez-Carmona's license would not scan; and (4) that Gonzalez-Carmona did not appear, at least to Deputy Miller, to know the name of her boyfriend and vehicle passenger (Jimenez) because Deputy

Miller testified Petitioner had to look down at the rental agreement to ascertain his identity.[11]

Odor of Candles

Specifically, the officers may not merely rely on a "hunch" or circumstances describing "a very broad category of predominantly innocent travelers." *Id.*

Petitioner does not dispute the vehicle she was operating was a rental vehicle. Rather, Petitioner challenges the lower courts' lessening of the reasonable suspicion standard without properly considering the necessary consequences of that fact. Indeed, this Court has held that a driver of a rental vehicle—even if not the renter listed on the rental agreement—retains a reasonable expectation of privacy in that rental vehicle. *Byrd v. United States*, 138 S. Ct. 1518, 1531 (2018) ("[T]he Court now holds[] that the mere fact that a driver in lawful possession or control of a rental car is not listed on the rental agreement will not defeat his or her otherwise reasonable expectation of privacy.").

Taken together, Petitioner noted that the frequent freshening of the vehicles between renters is one such circumstance enjoyed by innocent travelers in rental vehicles which cannot reasonably increase suspicion. "[I]t is impossible for a combination of wholly innocent factors to combine into a suspicious conglomeration unless there are concrete reasons for such an interpretation." *United States v. Beck*, 140 F.3d 1129, 1137 (8th Cir. 1998) (quoting *United States v. Wood*, 106 F.3d 942, 948 (10th Cir. 1997)). Accordingly, Petitioner submits the purported recognition of

[11] Petitioner notes the district court relied on different facts for its "reasonable suspicion" finding. See R. Doc. 76, at 13–15.

the scent of candles emanating from the stopped vehicle cannot constitute a factor supporting a finding of reasonable suspicion, and that both the District Court and United States Court of Appeals for the Eighth Circuit erred in their inapposite findings.

Inconsistent Travel Plans

Petitioner submits the Eighth Circuit similarly determined Petitioner's and her passenger's purportedly inconsistent travel plans generated reasonable suspicion. This finding constitutes a substantial lessening of the reasonable suspicion standard within the Eighth Circuit. Indeed, for each case cited by the panel, and for each case the United States Court of Appeals for the Eighth Circuit has otherwise considered inconsistent travel plans, those cases presented inconsistent travel plans coupled with more. *See, e.g.*, *United States v. Gill*, 513 F.3d 836, 844–45 (8th Cir. 2008) (identifying untruthfulness to past criminal conduct, nervousness, a passenger attempting to show the officer a badge, and a suspicious mechanism on the vehicle itself in addition to inconsistencies); *United States v. Sanchez*, 955 F.3d 669, 675 (8th Cir. 2020) (identifying expired paper tags on out-of-state vehicle, no valid driver's license among the vehicle's occupants, owner information verifiably different between insurance card and other statements made to the officer, lack of paint for a 2-3 day out-of-state paint job, the presence of young children despite the represented purpose of the drive for a paint job); *Jones*, 269 F.3d at 922–23 (reversing erroneous denial of a defendant's motion to suppress despite the defendant exuding nervousness including physical manifestations of

nervousness, the defendant conceding he had no permanent address, the defendant's untruthful remarks about his criminal history, and the officer's drug interdiction questions subsequent to returning the defendant's licensure paperwork and warning).

In short, inconsistent travel plans cannot, taken alone, be grounds for a finding of reasonable suspicion. Petitioner submits there here, because each of the other bases on which the Courts have predicated their finding of reasonable suspicion in this case is untenable or otherwise insufficient, the Eighth Circuit panel erred by relying on inconsistent travel plans alone.

License would not scan

Petitioner submits that this is not an extraordinary circumstance generating reasonable suspicion, alone or in tandem with other circumstances. Indeed, Deputy Miller testified that bar codes on the back of a driver's license do not always scan and that the Sheriff's Office has procedures for manually entering the relevant details. *See* Suppression Tr., at 39:2–19. By Deputy Miller's own testimony, this is not an extraordinary circumstance which can be used to create reasonable suspicion.

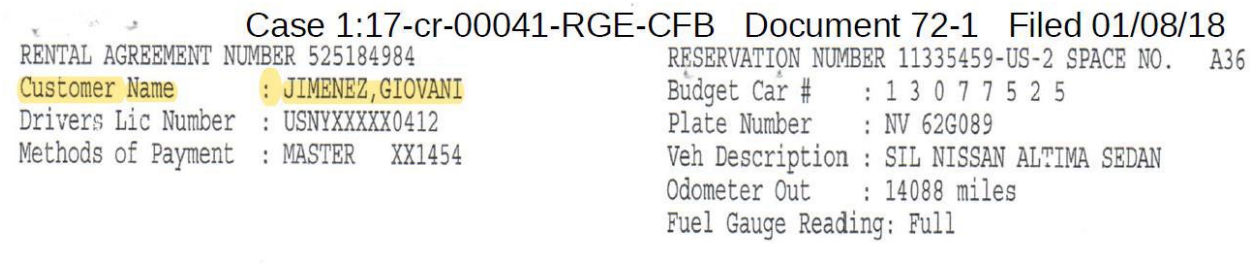
Jimenez's Name on the Rental Agreement

The District Court and the United States Court of Appeals for the Eighth Circuit found another circumstance generating reasonable suspicion was Deputy Miller's testimony that Petitioner did not know the passenger's name. On this point, Deputy Miller testified:

> When I asked [Petitioner] the name of the driver, she had to look at the rental agreement. It appeared to me that she was—as if she was trying to locate a name because she didn't know it. She only said his first name was Andres. And then she had later said that actually he goes by two names, but given me the name of Andres.

Suppression Tr., at 36:2–7.

Petitioner provided Deputy Miller the name "Andres" (the middle name of her passenger, Giovani Andres Jimenez). But the name on the rental agreement did not contain "Andres":


Case 1:17-cr-00041-RGE-CFB Document 72-1 Filed 01/08/18

RENTAL AGREEMENT NUMBER 525184984
Customer Name : JIMENEZ,GIOVANI
Drivers Lic Number : USNYXXXXX0412
Methods of Payment : MASTER XX1454

RESERVATION NUMBER 11335459-US-2 SPACE NO. A36
Budget Car # : 1 3 0 7 7 5 2 5
Plate Number : NV 62G089
Veh Description : SIL NISSAN ALTIMA SEDAN
Odometer Out : 14088 miles
Fuel Gauge Reading: Full

R. Doc. 72–1, at 1 (highlighting supplied). Petitioner submits that Deputy Miller's recitation lacks credibility that she had to look at the rental agreement to arrive at the name of the passenger, but the name she provided is not on the rental agreement. In other words, the story that Petitioner had to rely on the rental agreement for a name is belied by the very rental agreement.

Rodriguez Traffic Stop

None of the above four circumstances could generate reasonable suspicion consistent with *Rodriguez*, 575 U.S. at 350–51. Nevertheless, Deputy Miller acknowledges that he had terminated the traffic stop, acknowledging that before conducting the search of the vehicle he necessarily had to "reengage[]" Petitioner. *See* Suppression Tr., at 46:23 – 47:1. The Court erred by permitting Deputy Miller to re-initiate a seizure of Petitioner based on those circumstances.

C. This writ should be granted to correct the Eighth Circuit's seeming requirement of *extrinsic* evidence—as opposed to *intrinsic* evidence—to demonstrate Deputy Miller's testimony was not credible.

The Eighth Circuit has held that when an arresting officer tells two different incompatible statements, an order denying a motion to suppress must be reversed. *United States v. Prokupek*, 632 F.3d 460, 463 (8th Cir. 2011). The panel did not cite or treat *Prokupek*. *See generally Gonzalez-Carmona*, 35 F.4th 636. Rather, the panel concluded "the statements [Petitioner] points to are not actually inconsistent." *Id.* at 640 & n.3. Indeed, the Court noted that Deputy Miller's inconsistent statement as to the amount of traffic (initially claiming it was light, and later claiming it was heavy to justify further detention) was not inconsistent because Deputy Miller waited two miles to initiate the traffic stop.[12] *Id.* at 640 n.3. The panel additionally found that whether Petitioner understood the reason for the stop "does not mean that Miller could not speak to her." *Id.* Lastly, the Court offered complete deference to the District Court on other elements of Deputy Miller's testimony. *Id.* While some deference must ordinarily be afforded, that deference must yield to extrinsic and intrinsic inconsistencies and implausibility as here. The Eighth Circuit panel did not conduct the proper deference analysis—to determine whether deference would be appropriate. That is reversable error.

Indeed, the lack of treatment of Deputy Miller's intrinsic inconsistencies appear to suggest the Eighth Circuit required *extrinsic* evidence to prove Deputy

[12] That position requires failing to appreciate that the traffic that would have surrounded Petitioner when initially spotted would also have been around her two miles down the road—all traffic moves the same direction.

Miller's lack of credibility. *See id.* at 642 ("Given the district court's finding that Miller was a credible witness, and the lack of extrinsic evidence contradicting his testimony, the district court did not err…."). Petitioner respectfully submits intrinsic inconsistencies are sufficient, too. The Eighth Circuit's seeming extrinsic evidence requirement is in direct conflict with this Court's holding in *Anderson v. City of Bessemer City, N.C.*:

> Documents or objective evidence may contradict the witness' story; or the story itself may be so internally inconsistent or implausible on its face that a reasonable factfinder would not credit it. Where such factors are present, the court of appeals may well find clear error even in a finding purportedly based on a credibility determination.

Anderson v. City of Bessemer City, N.C., 270 U.S. 564, 575 (1985).

The internal inconsistencies within Deputy Miller's testimony renders it incredible. Petitioner provided a number of inconsistencies (both intrinsic and extrinsic) to contradict Deputy Miller's testimony. *See Gonzalez-Carmona*, 35 F.4th at 640 n.3. But Petitioner also provided more:

- The reason for removing Petitioner from the vehicle was not so she could understand the reason for the stop; that had been explained already. Nor was there a concern for officer safety.[13]

[13] *Cf. Pennsylvania v. Mimms*, 434 U.S. 106, 110–11 (1977). Petitioner argued below, and maintains here, that a law enforcement officer's unequivocable statement that the basis for removal was *other than* officer safety that a law enforcement officer may not invoke the protections of *Pennsylvania v. Mimms*. In *Mimms*, this Court found that a law enforcement officer's "proffered justification [for removing the occupants of a stopped vehicle]—the safety of the officer—is both legitimate and weighty." *Id.* at 110. This Court did not confront a law enforcement officer expressly offering a *different*, inconsistent, and not weighty justification for the removal. *See generally id.* Rather, Petitioner submits that the holding in *Mimms* ought not be applied in these circumstances.

- Traffic was light at mile marker 5, but heavy at mile marker 7, despite Deputy Miller travelling with the 'mile marker 5 traffic' to get to mile marker 7 and no on-ramp exists between mile marker 5 and mile marker 8.
- That Deputy Miller forgot to activate his camera manually, nor by activating his siren and lights timely, nor during the pursuit, nor during the ultimate initiation of the traffic stop, nor during interaction with Petitioner, nor during questioning, nor during the search of the vehicle. Deputy Miller has demonstrated a pattern of similar conduct in other traffic stops. *See Flora v. Sw. Iowa Narcotics Enf't Task Force*, 292 F. Supp. 3d 875, 882–83 (S.D. Iowa 2018) (denying qualified immunity defense and Deputy Miller's summary judgment motion for similar conduct, in an action brought per 42 U.S.C. § 1983).
- Deputy Miller testified that Petitioner required the rental agreement to arrive at the name "Andres," but the rental agreement does not contain the name Andres.
- That there is no evidence to corroborate a voluntary consent to search when Petitioner and her passenger expressly declined to sign the consent to search form, Deputy Miller acknowledges he failed to adhere to department protocol with respect to his car camera and his body camera (activated after the discovery of the contraband), Deputy Miller acknowledges the audio reflects no verbal affirmation of consent to search, nor other corroboration to dispute Petitioner's reasonable understanding of Deputy Miller's act of placing his

hand on the hood of the vehicle as a show of authority—whether it was a "miscommunication" or not.

Petitioner submits there is a pattern and practice of Deputy Miller engaging in such pretextual stops. *See Flora*, 292 F. Supp. 3d at 882–83 (denying Deputy Miller qualified immunity as a matter of law).

Petitioner respectfully submits that the panel for the United States Court of Appeals for the Eighth Circuit erred in requiring more than *intrinsic* inconsistencies to decline deference to a finding of credibility.[14]

II. This Court should resolve the procedural split among the Circuits as to whether 18 U.S.C. § 3553(f) requires the Government rebutting a defendant's satisfaction of prima facie safety valve eligibility, and whether the consideration of an impermissible factor falls short of that burden.

This Court should resolve a split among the Circuits as to whether the Government, when recommending the defendant be denied safety-valve relief under 18 U.S.C. § 3553(f), must present any evidence to rebut the defendant's satisfaction of the prima facie safety valve eligibility.

By way of background, safety valve relief provides the sentencing court "shall impose a sentence pursuant to the guidelines promulgated by the United States Sentencing Commission under section 994 of title 28 *without regard to any statutory minimum sentence*." 18 U.S.C. § 3553(f). Safety valve eligibility is *not* tantamount to a substantial assistance motion. *Compare* U.S.S.G. § 5K1.1, *with* 18 U.S.C. §

[14] The panel also found, contrary to the Google screenshot provided in this Petition for Writ of Certiorari and in Petitioner's Appellant's Brief before the Eighth Circuit, that there was not external evidence contradicting Deputy Miller's testimony that he could not immediately turn on his sirens and initiate the traffic stop due to officer safety. Petitioner submits that is error, too.

3553(f). In determining safety valve eligibility, courts should not conflate the value of the proffer (substantial assistance criteria) with safety valve eligibility. These are distinct analyses and are not to be coalesced. Accordingly, here, the District Court, in finding Petitioner safety valve ineligible, found itself bound by the ten-year mandatory minimum. It was not.

A. The Eighth Circuit rejects burden-shifting.

The United States Court of Appeals for the Eighth Circuit has rejected the argument "that the government has the burden to come forward with additional evidence if it finds a defendant's proffer inadequate." *United States v. Alvarado-Rivera*, 412 F.3d 942, 947 (8th Cir. 2005). At least two other Circuits agree with the Eighth Circuit's approach. *See United States v. Aidoo*, 670 F.3d 600, 606 (4th Cir. 2012) ("[T]he government has no obligation to present evidence of the defendant's failure to satisfy the requirements of the safety valve."); *see also United States v. Collins*, 924 F.3d 436, 442 (7th Cir. 2019) ("[W]e [reject] any form of burden shifting.").

Fourth Circuit: The Fourth Circuit evaluated this issue in *Aidoo* and concluded that "[a] defendant's 'bare assertion that he was truthful' . . . is insufficient to 'satisfy his burden to prove by a preponderance of the evidence that he provided a full and honest disclosure.'" *Aidoo*, 670 F.3d at 607 (quoting *United States v. Montes*, 381 F.3d 631, 637 (7th Cir. 2004)). Notably, the Fourth Circuit held that the burden of proof under the safety valve "rests, *at all times*, on the defendant." *Id.* at 607 (emphasis supplied).

Seventh Circuit: In *Collins*, the Seventh Circuit expressly rejected "any form of burden shifting" for safety-valve eligibility. *Collins*, 924 F.3d at 442. It admitted the Government "cannot prevail . . . simply by asserting *its* disbelief or *its* lack of satisfaction." *Id.* at 444. However, it finds that "there is no doctrinal disagreement among the circuits," and "[s]ome circuits simply have taken the time to emphasize that when the defendant makes an initial submission that appears credible and complete . . . [t]he Government can hope to rebut the defendant's credible showing only by giving the district court a concrete, fact-based rationale for rejecting the defendant's case." *Id.*[15]

The approach taken in the Fourth, Seventh, and Eighth Circuits is in conflict with at least three other Circuits.

B. The First, Fifth, and Ninth Circuits impose a burden-shifting regime.

As a preliminary matter, Petitioner does not dispute her obligation to satisfy the prima facie elements of safety valve relief. Indeed, "every circuit to have considered the matter has held" that the defendant has the initial burden to prove her safety valve eligibility by the preponderance of the evidence. *Collins*, 924 F.3d at 442 n.11. The issue for this Court is whether the Government must rebut that finding with its own evidence to deny safety valve relief.

On this issue, and in conflict with the approach taken in the Fourth, Seventh, and Eighth Circuits, the First, Fifth, and Ninth Circuits all provide that the

[15] Accordingly, the Seventh Circuit may have implicitly acknowledged a burden-shifting scheme.

Government must provide more than mere speculation for the district court's decision on safety-valve eligibility.

First Circuit: The First Circuit requires more than the Eighth Circuit. *See United States v. Bravo*, 489 F.3d 1, 12 (1st Cir. 2007) ("The district court's finding on eligibility must be 'an independent determination,' resting on more than 'bare conclusions.'" (citation omitted)). The First Circuit relied on a 1996 case wherein the Court found that the defendant's "characterization [as a passive participant] was never objected to nor explicitly contradicted by the government." *United States v. Miranda-Santiago*, 96 F.3d 517, 529 (1st Cir. 1996).

Noteworthy, in *United States v. Miranda-Santiago*, the First Circuit held that when determining safety-valve eligibility, "[t]he government cannot assure success simply by saying, 'We don't believe the defendant,' and doing nothing more." *Id.* at 529. The Court explained that the "district court's bare conclusion that [defendant] did not 'cooperate fully,' absent either specific factual findings or easily recognizable support in the record," could not be sufficient to deny safety valve eligibility. *Id.* The First Circuit later clarified its approach, specifying that

> *Miranda-Santiago* stands merely for the proposition that when the record, taken as a whole, will not support a finding that the defendant has failed to provide a truthful and complete proffer, the government's lack of confidence in the proffer is insufficient, in and of itself, to justify a denial of access to the safety valve.

United States v. Marquez, 280 F.3d 19, 24 (1st Cir. 2002).

Fifth Circuit: Similar to the First Circuit's approach, the United States Court of Appeals for the Fifth Circuit requires more than speculation to deny safety valve

eligibility. *United States v. Miller*, 179 F.3d 961, 968–69 (5th Cir. 1999) (finding that the government's "assertion [wa]s based on pure speculation" and "inadequate to justify the district court's decision not to grant safety valve relief.").

After examining the *Miranda-Santiago* in relation to later First Circuit opinions, the Fifth Circuit came to a similar conclusion. *See Miller*, 179 F.3d at 969. The court noted that in *United States v. White,* 119 F.3d 70 (1st Cir. 1997), "[t]he First Circuit determined the district court's finding was based on extensive evidence and was a carefully considered conclusion, not the bare conclusion relied on in *Miranda-Santiago*." *Id.* at 968–69. The Fifth Circuit then vacated and remanded the defendant's sentence because it found that Defendant Miller's situation was akin to Defendant Miranda-Santiago. *See id.* at 969. Specifically, the Government argued Defendant Miller "lied about his knowledge of cocaine drying," and the Fifth Circuit took issue with the government basing this argument "on the fact that the process is complex and that Miller had been previously involved in cocaine trafficking." *Id.* The Fifth Circuit rejected this basis as "mere speculat[ion]." *Id.*

Ninth Circuit: The Ninth Circuit also recognizes an affirmative obligation on the part of the Government to deny safety valve eligibility when a defendant proffers. *United States v. Shrestha*, 86 F.3d 935, 940 (9th Cir. 1996) (holding that if a defendant satisfies his burden to demonstrate his eligibility, the government must "show the information [defendant] supplied is untrue or incomplete.").

Indeed, the Ninth Circuit has the clearest articulated burden-shifting approach. In addition to *Shrestha*, the Ninth Circuit held that once a defendant

demonstrates by a preponderance of the evidence that he is eligible for safety-valve relief, the burden falls to the government to prove the information was untrue or incomplete. *United States v. Diaz-Cardenas*, 351 F.3d 404, 409 (9th Cir. 2003). The Ninth Circuit applied a burden-shifting analysis.

In sum, although the Seventh Circuit finds there is no Circuit split regarding this issue, Petitioner submits the Seventh Circuit is mistaken. The Ninth Circuit clearly expressed a burden-shifting approach in *Shrestha* and the Seventh Circuit admits it and the Fourth Circuit expressly reject any sort of burden-shifting under safety-valve eligibility. *Collins*, 924 F.3d at 442. The issue, however, is that the First, Fifth, and Ninth Circuits have addressed the approach to take when a district court relies on information which is arguably mere speculation. The Fourth, Seventh, and Eighth Circuits seem to presume that a district court will not rely on mere speculation, and the government will assert more than disbelief. *See id.* at 444 ("No circuit disputes that a defendant can fail to carry the burden by producing a story so riddled with inconsistencies and implausibility that the district court cannot accept it. In such cases, the Government's silence is immaterial. . . The Government can hope to rebut the defendant's credible showing only by giving the district court a concrete, fact-based rationale for rejecting the defendant's case.").

C. Establishing safety valve eligibility, by way of burdens and procedure, should be clarified by this Court as procedural errors are tantamount to substantive failures.

Petitioner submits that the above dichotomy is relevant and an essential procedural safeguard for safety valve eligibility. Here, Petitioner submits the

District Court and the United States Court of Appeals for the Eighth Circuit erred in treating her proffer and sentencing hearing testimony in tandem with the Government's proffered evidence—namely the purported testimony of Deportation Officer William Witt—consisting entirely of speculative conclusions. Petitioner submits the manner in which the District Court considered the truthfulness and completeness prong of safety valve eligibility is reversable error.

First, the split among the Circuits relates to whether the burden shifts as to safety valve eligibility. *Compare Gonzalez-Carmona*, 35 F.4th at 642, *with Diaz-Cardenas*, 351 F.3d at 409. Stated differently, the various Circuits have set forth different standards as to when eligibility can be denied to a defendant. Here, the Eighth Circuit may disbelieve a defendant and deny eligibility. Other circuits require more.

Second, other circuits, in establishing a burden-shifting regime, may require the defendant's story be credible in its own right first. *See Shrestha*, 86 F.3d 935, 940 ("The initial burden is uncontestably on the defendant to demonstrate by a preponderance of the evidence that he is eligible for the reduction. Once he has made this showing, however, it falls to the Government to show that the information he has supplied is untrue or complete." (citation omitted)). In other words, an independent review of the defendant's story may pass prima facie safety valve eligibility muster. Petitioner here submits the Eighth Circuit considered her testimony in tandem with the speculative, conclusory proffered testimony of Deportation Officer William Witt. To the extent the Eighth Circuit panel found

Petitioner incredible in her testimony, it did not conduct a burden-shifting analysis, which Petitioner maintains would be appropriate.

Third, the procedural manner in which the safety valve issue is conducted matters, because the basis for the District Court discrediting Petitioner's testimony was speculative proffer. The District Court had before it no concrete evidence as to the allegedly *correct* source of the funds in Petitioner's bank account. Sentencing Tr., at 30:12–21. Rather, the District Court relied on speculation that financial transactions may be consistent with money laundering in order to discredit Petitioner's story. *Id.*

Fourth, the procedure for safety valve eligibility also matters because, as here, the inclusion of an impermissible factor taints the analysis. Here, the Government noted that Petitioner had not told the Government anything it did not already know. *Id.* at 59:22–24. This factor is not sufficient to deny safety valve eligibility. 18 U.S.C. § 3553(f)(5).

Fifth, that the District Court did not believe Petitioner's testimony following the Government's proffered testimony is insufficient to find it was not truthful. As the Tenth Circuit Court of Appeals declares, "[c]redibility determinations cannot be based upon which *lawyer* is more believable."[16] *United States v. Cervantes*, 519 F.3d 1254, 1258 (10th Cir. 2008).

[16] Indeed, the United States Court of Appeals for the Tenth Circuit appears to put the onus on the defendant to rebut the Government's proposed truth with the defendant's own.

D. Petitioner was denied safety valve eligibility because the Court found Petitioner incomplete or untruthful, though the Government offered different conclusory explanations, and even declined an obstruction enhancement.

Here, the Eighth Circuit reviewed the District Court's finding of Petitioner's safety-valve ineligibility and held that the District Court based its decision on a finding that Petitioner's "evidence [was] lacking and her explanations [were] unpersuasive." *Gonzalez-Carmona*, 35 F.4th at 642. The Eighth Circuit denied the District Court relied on the government's assertion that "Gonzalez-Carmona failed to provide any information they weren't already aware of." *Id.* at 642–43.

The District Court found the Government's theory, as presented by proffered purported testimonies of Deportation Officer William Witt and Narcotics Detective Chase at sentencing, of the source of the money in Petitioner's bank account was more "compelling, particularly when the evidence is compared to the other evidence in regards to the rental car used in this offense and the defendant's irregular travel pattern." Sentencing Tr. 64:9–12. However, specifically with Petitioner's travel pattern, the Government argued Petitioner's statement was incomplete because "she has a very convenient memory [and s]he answers only those things that she knows [the government has] proof of." *Id.* at 61:4–6. The government then speculated a story that they believe "does make sense," in view of the facts. *Id.* at 61:11–13.

Petitioner sat for an over-two-hour interview answering any questions the Government had and would have continued to sit for the interview as long as the Government needed her. *Id.* at 58:17–20. It appears that to determine Petitioner

was ineligible for safety-valve relief, the district court relied on the Government's speculation regarding Petitioner's bank transactions, and the government's disbelief of Petitioner's account. It also seems that, in direct conflict with 18 U.S.C. §3553(f), the District Court considered the fact that the Government knew everything Petitioner told them to determine her account incredible.

Indeed, during argument at sentencing, the Government asked the sentencing court find Petitioner ineligible for safety valve relief because "Defendant has managed to tell the government everything the government knew before we even talked to the defendant." Sentencing Tr., at 59:22–24. Of course, truthfulness and completeness is an inquiry independent of whether "the defendant has [] relevant or useful other information to provide or that the Government is already aware of the information." 18 U.S.C. § 3553(f)(5). The Government's request that the Court consider an improper factor was error, and that the Court appeared to agree with the Government was error. There must be more than mere speculation.

The Eighth Circuit panel appeared to absolve the District Court by holding the District Court "found her evidence lacking and her explanations unpersuasive." *Gonzalez-Carmona*, 35 F.4th at 643. Petitioner submits that whether a burden-shifting scheme is required on the issue of safety valve resolves both issues—whether the Government must do more the rebut safety valve eligibility than argue the Government learned nothing new from Petitioner's proffer. Petitioner respectfully submits the Government did not do enough to rebut her proffer, and that this constitutes reversable error.

Conclusion

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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