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NO. 22-\_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

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

Petitioner,

-vs.-

United States of America,

Respondent.

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**APPENDIX**

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## **APPENDIX**

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United States Court of Appeals  
For the Eighth Circuit

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No. 21-1241

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United States of America

*Plaintiff - Appellee*

v.

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

*Defendant - Appellant*

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Appeal from United States District Court  
for the Southern District of Iowa - Western

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Submitted: November 16, 2021

Filed: May 24, 2022

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Before COLLTON, GRASZ, and KOBES, Circuit Judges.

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KOBES, Circuit Judge.

Veronica Gonzalez-Carmona pleaded guilty to possessing heroin with intent to distribute. The district court<sup>1</sup> sentenced her to 120 months in prison and five years of supervised release. She appeals, arguing that the district court erred by: (1)

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<sup>1</sup>The Honorable Rebecca Goodgame Ebinger, United States District Judge for the Southern District of Iowa.

denying her motion to suppress; (2) denying her request for safety valve relief; and (3) miscalculating her Guidelines range. We affirm.

## I.

Gonzalez-Carmona was driving a rental car on I-80 in Iowa when Deputy Brian Miller pulled her over for going 60 in a 55 mph zone. When he approached the car, Miller smelled an “overwhelming” scent of candles. He asked for identification, and Gonzalez-Carmona gave him a California license<sup>2</sup> and the rental car agreement. She apologized for speeding and explained that she and the passenger, Giovani Andres Jiminez, rented the car in Las Vegas a few days before. Miller, standing on the passenger side of the car, had trouble hearing Gonzalez-Carmona and asked her to get out and talk with him behind the car.

Gonzalez-Carmona told Miller that she and Jiminez, her boyfriend, were going to Iowa. When Miller told her they were already in Iowa, she said they were going to a restaurant in Iowa and then to Ohio. Miller asked her about the rental agreement, which stated the car was due back in Las Vegas the previous day. Gonzalez-Carmona explained that they got an extension. Miller then asked who rented the car. Gonzalez-Carmona did not immediately respond, but looked down at the rental agreement, appearing to search for a name before responding that Jiminez rented it.

Miller then returned to the car to speak with Jiminez, who told him that they were on their way to Des Moines to “look around” and then would return to Las Vegas. Miller asked if they planned on traveling to any other states, and Jiminez said no.

Miller went back to his patrol car to issue a warning citation. Because Gonzalez-Carmona’s license would not scan, he asked her for her current address.

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<sup>2</sup> The license listed her name as Cinthia Selene Ramirez Barba.

She said that she moved from California to Las Vegas two months before, but she did not know her Las Vegas address. She could only describe it as near the Tropicana hotel. Miller asked if she had any mail with her current address, and she responded that she was still getting her mail in California.

Miller finished the citation manually and asked if Gonzalez-Carmona had any questions, and if there was anything illegal in the car. Both Gonzalez-Carmona and Jiminez said that there was not. Miller asked if he could search the car. He showed them a consent-to-search form in English and Spanish and asked if they had any questions. They verbally consented to the search but did not sign the form. Miller asked them to get out of the car and walk ahead, gesturing toward the shoulder. Gonzalez-Carmona started to drive the car where he gestured. Miller placed his hand on the car and told them to get out and walk. They both got out of the car and stood on the shoulder. In the trunk, Miller found three bundles of Firestarter logs with 28.4 pounds of heroin hidden inside. He arrested Gonzalez-Carmona and Jiminez.

Gonzalez-Carmona filed a motion to suppress the drugs, which the district court denied. She then conditionally pleaded guilty to possessing heroin with intent to distribute, preserving her right to appeal the denial of her suppression motion. After her plea, Gonzalez-Carmona gave a proffer interview to law enforcement officers to qualify for safety valve relief. During the interview, she told law enforcement how she became involved in drug trafficking, including who recruited her and the methods used to transport the drugs, as well as how she paid for living expenses since coming to the United States. But at sentencing, the district court found that she was not entirely truthful, specifically about the source of funds in her bank account, and denied the requested relief. It then found that because she was the point of contact with the drug source, she was not entitled to a mitigating role reduction. The court sentenced her to 120 months in prison followed by five years of supervised release. Gonzalez-Carmona appeals.

## II.

“When reviewing the denial of a motion to suppress, we review the district court’s factual findings for clear error and its legal conclusions *de novo*.” *United States v. Simmermaker*, 998 F.3d 1008, 1009 (8th Cir. 2021) (citation omitted). Gonzalez-Carmona argues that Miller violated the Fourth Amendment by: (1) stopping her car; (2) asking her to exit; (3) extending the traffic stop; and (4) searching the car.

### A.

The Fourth Amendment prohibits “unreasonable searches and seizures.” U.S. Const. amend. IV. “A traffic stop constitutes a seizure under the Fourth Amendment and must be supported by either reasonable suspicion or probable cause.” *United States v. Foster*, 15 F.4th 874, 877 (8th Cir. 2021) (citation omitted). But “any traffic violation, no matter how minor, is sufficient to provide an officer with probable cause.” *Id.* (citation omitted).

Miller testified that his radar showed Gonzalez-Carmona driving 60 in a 55 mph zone, and that she repeatedly apologized for speeding. Gonzalez-Carmona argues that the only evidence that she was speeding is Miller’s “incredible and contradicted” testimony. But the district court found Miller’s testimony credible, and that finding is “virtually unreviewable on appeal.” *United States v. Holly*, 983 F.3d 361, 363 (8th Cir. 2020) (citation omitted). Crediting a witness’s testimony “can almost never be a clear error unless there is extrinsic evidence that contradicts the witness’s story or the story is so internally inconsistent or implausible on its face that a reasonable fact-finder would not credit it.” *Id.* at 363–64 (citation omitted).

Gonzalez-Carmona points to several alleged inconsistencies in Miller's testimony. But the statements she points to are not actually inconsistent.<sup>3</sup> And even if they are, none rise to the level of clear error. As a whole, Miller's testimony is consistent and plausible. Because the district court's finding of credibility was not clear error, there was probable cause to stop Gonzalez-Carmona.

## B.

Gonzalez-Carmona also argues that Miller lacked the authority to ask her to get out of the car. That is wrong. During a lawful traffic stop, an officer may order the occupants to leave their car as a matter of course. *Pennsylvania v. Mimms*, 434 U.S. 106, 109–11 (1977) (per curiam); *United States v. Sanders*, 510 F.3d 788, 790 (8th Cir. 2007). Gonzalez-Carmona attempts to distinguish these cases by saying that Miller was not concerned for his safety. But an individualized finding of officer safety concerns is not required. *See Mimms*, 434 U.S. at 110–11 (holding that officer's practice of ordering occupants out of the car during all traffic stops was not a constitutional violation).

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<sup>3</sup>The alleged inconsistencies include: the traffic on the highway, whether there were guardrails near the stop, whether Gonzalez-Carmona knew why she was pulled over, and whether Miller acted in bad faith by not turning on his body camera. The district court specifically credited Miller's testimony about the presence of guardrails and found that Miller did not act in bad faith by not activating his body camera.

Miller did say that traffic was light when he first saw Gonzalez-Carmona's car, but later said that he could not hear her over traffic noises during the stop. These statements are not inconsistent, given that he followed her for two miles before pulling her over. And the fact that Gonzalez-Carmona understood the reason for the stop does not mean that Miller could not speak to her.

C.

Gonzalez-Carmona next challenges the extension of the traffic stop. A lawful traffic stop can become unconstitutional if it is unreasonably extended. *United States v. Callison*, 2 F.4th 1128, 1131 (8th Cir. 2021). “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) (quotation omitted) (cleaned up).

To lawfully extend a traffic stop, an officer must have reasonable suspicion of criminal activity. *Id.* at 355. Reasonable suspicion requires “specific and articulable facts which, taken together with rational inferences from those facts, amount to reasonable suspicion that further investigation is warranted.” *United States v. Murillo-Salgado*, 854 F.3d 407, 415 (8th Cir. 2017) (quotation omitted). “An officer’s suspicion of criminal activity may reasonably grow over the course of a traffic stop as the circumstances unfold and more suspicious facts are uncovered.” *Id.* (citation omitted). We consider the totality of circumstances to decide whether there was reasonable suspicion. *Id.*

When Miller first approached the car, he noted an “overwhelming” smell of candles. Based on his training, he suspected the candles were a masking agent to cover the smell of drugs. When he asked Gonzalez-Carmona and Jiminez about their travel plans, they gave different answers—Gonzalez-Carmona said they were going to a restaurant in Iowa before going to Ohio, while Jiminez said they were going to Des Moines to “look around” and then heading back to Las Vegas.

Gonzalez-Carmona’s statements about her address also added to Miller’s suspicion. Her California driver’s license would not scan, so Miller asked for a current address, which she did not know. She only knew that she lived by the Tropicana hotel in Las Vegas. When Miller asked if she had any mail with her address, she said she was still receiving her mail in California. Miller also found

Gonzalez-Carmona's answers about her relationship with Jiminez suspicious. She said Jiminez was her boyfriend, but when Miller asked who rented the car, Gonzalez-Carmona had to look at the rental agreement to come up with his full name. These facts, viewed through the lens of Miller's training and experience with detecting drug trafficking along this stretch of I-80, gave Miller reasonable suspicion to extend the stop.

D.

Finally, Gonzalez-Carmona challenges the district court's finding that she and Jiminez voluntarily consented to the search of the car. “[W]e review a district court's finding of voluntary consent under a clear error standard.” *United States v. LeBeau*, 867 F.3d 960, 970 (8th Cir. 2017) (citation omitted). “[T]he analysis turns on whether it was reasonable for the officer to believe that the suspect gave him permission to search the requested item.” *United States v. Magallon*, 984 F.3d 1263, 1280 (8th Cir. 2021).

Miller testified that he went over the English and Spanish consent-to-search form with both of them and asked if they had any questions. Although they did not sign the form, he said that they verbally consented. Miller also testified that he asked them to step out of the car and walk ahead toward the shoulder of the road. Gonzalez-Carmona began driving the car toward where Miller gestured, so he put his hand on the car and told them they could just get out and walk. They followed his directions and moved farther away when asked. 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 in finding that Gonzalez-Carmona and Jiminez consented to the search.

Gonzalez-Carmona argues that even if she did consent, it was not voluntary. She relies primarily on the fact that Miller placed his hand on the car when she tried to drive away. We agree with the district court that this was the result of a slight miscommunication. It happened after Miller got verbal consent, and the video shows

that Gonzalez-Carmona started driving where Miller had gestured. When Miller told her to walk rather than drive, she quickly complied. Based on the totality of circumstances, the district court did not err in finding voluntary consent.

Because the district court properly found that Miller's actions did not violate the Fourth Amendment, we affirm the denial of the motion to suppress.

### III.

Gonzalez-Carmona also challenges the district court's denial of safety valve eligibility. Safety valve relief allows a judge to sentence less culpable drug offenders below the mandatory minimum term if certain conditions are met. *United States v. Hinojosa*, 728 F.3d 787, 790 (8th Cir. 2013). To qualify for safety valve relief, a defendant must prove the five requirements in 18 U.S.C. § 3553(f) by a preponderance of the evidence. *Id.* We review "a district court's findings regarding the completeness and truthfulness of information provided by a defendant and the ultimate denial of safety valve relief for clear error." *Id.* "The legal test is simply whether the record supports its safety valve findings." *United States v. Alvarado-Rivera*, 412 F.3d 942, 949 (8th Cir. 2005) (en banc).

The only requirement at issue is whether Gonzalez-Carmona "truthfully provided to the Government all information and evidence [she had] concerning the offense." 18 U.S.C. § 3553(f)(5). The district court found that there were "significant shortcomings" in the information Gonzalez-Carmona provided that could not be explained "by anything other than a lack of truthfulness and completeness." Specifically, the court discredited Gonzalez-Carmona's testimony about the source of the money in her bank account. The court found the Government's proffered testimony more credible, which suggested that the bank account activity was consistent with money laundering associated with drug trafficking.

Gonzalez-Carmona argues that the district court required her to give the Government *new* information, which goes beyond the requirement that she truthfully

provide information she has concerning the offense. But she misunderstands the record. While the Government did say that Gonzalez-Carmona failed to provide any information they weren't already aware of, this was not what the district court relied on in denying safety valve relief. The court found her evidence lacking and her explanations unpersuasive. Because the record supports this finding, we affirm the district court's denial of safety valve relief eligibility.

#### IV.

Finally, Gonzalez-Carmona argues that the district court erred by denying her a sentence reduction for being a minor participant under U.S.S.G. § 3B1.2. But even if the district court did err, any error was harmless. The district court gave Gonzalez-Carmona the lowest sentence it could—120 months, the mandatory minimum. Because that minimum is above the calculated Guidelines range of 87 to 108 months, any reduction in the Guidelines wouldn't have resulted in a lower sentence. *See United States v. Leanos*, 827 F.3d 1167, 1170 (8th Cir. 2016).

#### V.

We affirm the district court's denial of the motion to suppress and its denial of safety valve relief.

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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

VERONICA GONZALEZ CARMONA and  
GIOVANI ANDRES JIMENEZ,

Defendants.

**No. 1:17-cr-00041-RGE-CFB**

**ORDER RE: DEFENDANTS'  
MOTIONS TO SUPPRESS**

**I. INTRODUCTION**

Now before the Court are Defendants Veronica Gonzalez Carmona and Giovani Andres Jimenez's Motions to Suppress. Andres Jiminez's Mot. Suppress, ECF No. 52; Gonzalez Carmona's Mot. Suppress, ECF No. 54. The matters came before the Court for hearing on January 5, 2018. Hr'g Mins. Defs.' Mots. Suppress, ECF No. 71. Attorney Mark Rater appeared on behalf of Gonzalez Carmona. *Id.* Attorney William McGinn appeared on behalf of Andres Jimenez. *Id.* Assistant United States Attorney Richard Rothrock appeared on behalf of the United States of America. *Id.* The Government called two law enforcement witnesses and presented evidence. Hr'g Witness List Defs.' Mot. Suppress, ECF No. 71-1; Hr'g Ex. List Defs.' Mot. Suppress, ECF No. 71-2. Defendants presented evidence. ECF No. 71-2. Each party argued in support of their respective positions. ECF No. 71; *see also* ECF Nos. 52, 54; Gov't's Resp. Defs.' Mot. Suppress, ECF No. 63.

Defendants ask the Court to suppress evidence seized after Gonzalez Carmona was stopped while driving Andres Jimenez's rental car. Defendants contend officers lacked probable cause to stop their car. They also assert the search of the car was a violation of their Fourth Amendment rights because the traffic stop was prolonged and the extension of the stop was not supported by

reasonable suspicion, and because they did not voluntarily and knowingly consent to the search of the car. For the reasons set forth below, the Court denies Defendants' Motions to Suppress.

## II. SUMMARY OF RELEVANT FACTS

At the hearing, the Government entered five exhibits. ECF No. 71-2. The first exhibit is a video recording taken from Pottawattamie County Sheriff's Office Deputy Brian Miller's patrol car camera on August 4, 2017. Gov't's Ex. 1, ECF No. 72. The video starts after Deputy Miller pulled over Defendants' rental car. The second exhibit is a rental agreement showing Giovani Jimenez rented the car Deputy Miller stopped from Budget Rental of Las Vegas on July 31 with a return date of August 3, 2017. Gov't's Ex. 2, ECF No. 72-1. Exhibit 3 is the warning citation Deputy Miller issued to Gonzalez Carmona on August 4, 2017. Gov't's Ex. 3, ECF No. 72-2. The fourth exhibit is a partially filled out consent-to-search form. Gov't's Ex. 4, ECF No. 72-3. Exhibit 5 is a list of Deputy Miller's training in drug interdiction. Gov't's Ex. 5, ECF No. 72-4. After the hearing, the Government entered Exhibit 6, the property receipt from the search performed with the consent of the Defendants. Gov't's Ex. 6, ECF No. 72-5. The Government called two witnesses: Deputy Miller and Officer Josh Hughes from the Council Bluffs Police Department. *See* ECF No. 71-1.

Gonzalez Carmona presented six exhibits. Defs.' Exs. A-F, ECF Nos. 73-1, 73-2, 73-3, 73-4, 74-5, 73-6. The first exhibit is a log from Budget Rental of Las Vegas showing the recorded speed of the rental car at periodic intervals on August 4, 2017. Defs.' Ex. A, ECF No. 73-1.<sup>1</sup> Exhibits B and C are two satellite views of Interstate 80 from Google Earth. The maps are identical, except Exhibit C identifies geographical coordinates for four positions along Interstate 80.

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<sup>1</sup> The parties stipulated this document is a business record and also stipulated the times are displayed in Pacific Time, a two-hour time difference from Central Time.

*Compare* Defs.’ Ex. B, ECF No. 73-2, *with* Defs.’ Ex. C, ECF No. 73-3. Exhibit E is a screenshot of Government’s Exhibit 1, the dash cam video, at 11:27:39. Defs.’ Ex. E, ECF No. 73-5. Exhibits D and F are Pottawattamie County Sheriff’s Office “Standard Operating Procedures” for “Body Worn Camera Audio/Video Recording Devices” and “In Car Audio/Video Recording Systems,” respectively. Defs.’ Exs. D, F, ECF Nos. 73-4, 73-6. Both Defendants received the assistance of an interpreter at the hearing. ECF No. 71.

The Court finds the following facts were established by a preponderance of the evidence at the suppression hearing. *See United States v. Matlock*, 415 U.S. 164, 177 n.14 (1974). At approximately 11:00 a.m. on August 4, 2017, Pottawattamie County Sheriff’s Deputy Brian Miller received a phone call from Omaha Police Department Officer Jeffrey Vaughn about a silver Nissan sedan with Nevada license plates traveling eastbound on Interstate 80. Officer Vaughn noted the car had been traveling at a low rate of speed for a long distance. He told Deputy Miller there were two individuals in the car and there was a white blanket covering the rear seat. Officer Vaughn found the car’s sustained low rate of speed suspicious but said he did not believe he had probable cause to stop the car.

At 11:26 a.m., Deputy Miller observed the reported silver Nissan traveling eastbound on Interstate 80 in Council Bluffs. Deputy Miller’s car was positioned in the median around mile marker 5. He checked the speed of the car with his radar and observed it traveling at 60 miles per hour in a 55-mile-per-hour zone. Deputy Miller testified he had tested his radar unit at the beginning of his shift on August 4, approximately an hour and a half prior to the traffic stop. At the point on the interstate where Deputy Miller was stationed, the speed limit was 55 miles per hour. Approximately a half-mile ahead, the speed limit increased to 65 miles per hour. He initiated

a traffic stop after he used his radar to observe the car traveling 5 miles per hour above the speed limit.<sup>2</sup>

Deputy Miller approached the car on the passenger's side. As he approached the car, Deputy Miller noted a white sweatshirt hanging off the back of the front passenger seat and a scarecrow. He saw two individuals in the car: a female in the driver's seat and a male in the passenger's seat. Deputy Miller smelled the "overwhelming" odor of candles; Deputy Miller testified strong smells are common masking agents used to disguise the scent of drugs. Deputy Miller told the occupants he was stopping their car because they were speeding and asked for their identification, which the occupants provided. *See* Gov't's Ex. 1 at 1:03, ECF No. 72. Deputy Miller asked the parties about the scarecrow in the backseat. *Id.* at 1:09. Deputy Miller parroted back their response—"Oh you got [the scarecrow] from Nevada." *Id.* at 1:12.

The female driver provided Deputy Miller with a California driver's license identifying her as Cinthia Selene Ramirez Barba.<sup>3</sup> The driver apologized for speeding. The male passenger was identified as Giovani Andres Jimenez by his New York driver's license. The parties also provided Deputy Miller a rental agreement stating the car had been rented five days prior from Budget Rental of Las Vegas to Giovani Jimenez. Gov't's Ex. 2, ECF No. 72-1. The rental agreement shows the car was due to be returned the prior day, on August 3. *Id.* The driver later told Deputy Miller they had called to extend the rental. Gov't's Ex. 1 at 3:26, ECF No. 72.

Approximately one minute after approaching the passenger-side door, Deputy Miller asked the female driver to come to the rear of the rental car because he could not hear her through the

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<sup>2</sup> Deputy Miller testified he initiated the stop a few miles later around mile marker 7 where he believed executing a traffic stop was safer than at mile marker 5 because the shoulder is wider and there are no guardrails.

<sup>3</sup> After her arrest, the driver was identified as Defendant Veronica Gonzalez Carmona.

rental car's cabin. *Id.* at 1:46.<sup>4</sup> At the rear of the car, the driver apologized again for speeding. *Id.* at 2:05. The driver spoke to Deputy Miller in English. Deputy Miller asked the driver about her and the passenger's travel plans. *Id.* at 2:20. She responded their final destination was Iowa. *See id.* at 2:24. Deputy Miller told her she was in Iowa, to which the female driver responded they were planning to go to a restaurant in Iowa and travel on to Ohio. *See id.* at 2:36. In response to his questions, the driver also told Deputy Miller she had recently moved from Los Angeles, as listed on her California driver's license, to Las Vegas, where the car was rented. *See id.* at 3:01. The driver identified the passenger as her boyfriend. *See id.* at 2:56. Deputy Miller asked her who rented the car. Deputy Miller testified she did not immediately respond, but instead looked down at the rental agreement appearing to search for a name. *Id.* at 3:36.

Deputy Miller then returned to the passenger-side door to speak with the male passenger in the rental car while the driver stayed at the rear of the car. *Id.* at 3:48. When Deputy Miller approached, the male passenger was on a phone call and speaking in Spanish. Deputy Miller asked the passenger in Spanish if he spoke English. *Id.* at 4:00. The passenger responded affirmatively that he spoke English, and Deputy Miller continued his conversation in English. The male passenger answered Deputy Miller's questions and complied with his requests. The passenger told Deputy Miller they were on their way to Des Moines "to look around" and then were going back

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<sup>4</sup> The voices of the Defendants are difficult to hear during most of the video. At times, road noise and noise from Deputy Miller's patrol car radio make it difficult to hear Deputy Miller's voice. At the hearing, Defendants asked the Court to infer Deputy Miller acted in bad faith by not turning on his microphones and/or body camera. *See* Defs.' Exs. D & F, ECF Nos. 73-4, 73-6. The Court declines to draw any adverse inferences against Deputy Miller's testimony or his conduct during the traffic stop based upon his failure to activate his body camera. To the extent any additional audio could have been obtained had Deputy Miller turned on his body camera, the Court finds Deputy Miller did not act in bad faith in operating his audio and video equipment. The Court makes its factual findings based on the testimony of Deputy Miller in conjunction with the video as admitted into evidence.

to Las Vegas. *See id.* at 4:32. Deputy Miller asked him if they planned to travel to any states other than Iowa, such as Illinois; the passenger responded they did not and were traveling back to Nevada. *See id.* at 4:52. The passenger later again confirmed they were not traveling to any other state beside Iowa. *See id.* at 5:29. The passenger confirmed the address on his New York driver's license was his current address and that he rented the car. *See id.* at 5:14.

Deputy Miller returned to his patrol car to process the warning citation. He spoke to the driver on the way back to his car. *Id.* at 5:43. Deputy Miller asked the driver what restaurant was "so good" to cause them to travel "all the way" from Las Vegas. *Id.* at 5:57. The driver said they were going to a restaurant and then going to Ohio. *See id.* at 6:01. The driver returned to the car. *Id.* at 6:50.

The California driver's license the driver provided Deputy Miller would not scan on Deputy Miller's patrol car computer to populate the warning citation with the driver's information. Because he required the driver's most current address to issue the citation, Deputy Miller exited his patrol car and asked the female driver for her current address. *Id.* at 15:25. The female exited the car to join Deputy Miller between the rental car and Deputy Miller's patrol car. *Id.* She responded she did not have her new address. *Id.* at 15:34. She only said she lived "by the Tropicana." *Id.* at 15:38. Deputy Miller asked her to provide any piece of paper with her new address. The driver said she was still getting her mail in California even though she moved to Las Vegas two months ago. *Id.* at 16:00. Deputy Miller asked if the passenger—her boyfriend—was living with her. *Id.* at 16:09. She responded he was not. *Id.* at 16:11.

Deputy Miller again returned to his patrol car and completed the warning citation manually. The driver returned to the rental car. *Id.* at 16:57. Deputy Miller then returned to the rental car with the warning and gave the driver and passenger back their documents. *Id.* at 22:33; *see also* Gov't's

Ex. 3, ECF No. 72-2. By the time Deputy Miller returned to the car with the documents, approximately twenty-two minutes had passed since he initiated the stop. When he returned to the car, Deputy Miller noticed the passenger was viewing a pair of shoes on his phone priced at more than \$800. *See* Gov't's Ex. 1, ECF No. 72 at 22:55 (recording Deputy Miller saying "eight hundred forty-nine dollars"). He testified the website the passenger was viewing was in English. Deputy Miller remarked to the passenger, in English, that Deputy Miller could not afford that pair of shoes. The passenger laughed in response. *See id.* at 23:07. He explained the warning citation and asked if the occupants had any questions about the warning. *Id.* at 23:10.

Deputy Miller turned away from the car very briefly. *Id.* at 24:06. He then asked the occupants if there was anything illegal in car. *Id.* at 24:11. The driver and passenger replied there was not. Deputy Miller then asked both occupants if he could search the car. *Id.* at 24:16. Deputy Miller testified the occupants both verbally consented to the search. He showed an English and Spanish consent-to-search form to both Defendants but did not obtain either Defendant's signature. *See* Gov't's Ex. 4, ECF No. 72-3.<sup>5</sup> Deputy Miller asked either occupant if they had questions about the consent-to-search form, and neither had questions. Deputy Miller asked the occupants to "step out and walk over there" and gestured ahead of the car. Gov't's Ex. 1 at 24:58, ECF No. 72. The driver started to drive the car ahead toward the shoulder where Deputy Miller had gestured. *Id.* at 25:06. Deputy Miller said, "No, no, you can just walk." *Id.* at 25:08. Both occupants then exited the car and stood several yards in front of the car, on the highway shoulder. *Id.* at 25:18. Approximately one minute into the search, Deputy Miller asked the occupants to move further ahead away from the car and they complied. *Id.* at 26:14. During the search, Deputy Miller found

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<sup>5</sup> Deputy Miller testified because he only had one consent-to-search form with him, but two occupants from whom he wanted to obtain consent, he presented one form to both occupants.

three bundles of firestarter logs with a substance inside that field-tested positive for heroin. *See* Gov't's Ex. 6 at 1, ECF No. 72-5. In total, Deputy Miller discovered 24.8 pounds of heroin in the car. *Id.*

Deputy Miller testified he has received extensive drug interdiction training. *See* Gov't's Ex. 5, ECF No. 72-4. As a law enforcement officer, he has worked criminal interdiction on Interstate 80 since 2006. *See id.* Deputy Miller testified eastbound Interstate 80 is a main route for the trafficking of illegal drugs, and the proceeds of those sales travels back westbound on Interstate 80. He testified he has participated in more than 100 traffic stops resulting in searches uncovering illegal drugs on Interstate 80 in Pottawattamie County. Deputy Miller routinely travels with a certified police dog and had the canine in his car on August 4, 2017.

Additional factual findings will be set forth below, as needed.

### **III. DISCUSSION**

Defendants make three arguments in support of their motions to suppress: 1) Deputy Miller did not have probable cause to initiate the traffic stop, ECF No. 52 ¶ 3; ECF No. 54 ¶ 14; 2) Deputy Miller extended the stop for an excessive amount of time after he completed the purpose of the stop without reasonable suspicion to do so, ECF No. 52 ¶ 4(c); ECF No. 54 ¶¶ 15–19; and 3) Deputy Miller did not obtain valid consent to search the car, ECF No. 52 ¶ 4(a); ECF No. 54 ¶ 20. Gonzalez Carmona contends “[e]vidence from the rental car company, Budget Rental, shows [the] vehicle was not speeding on the reading before the alleged violation nor was it speeding on the reading after the alleged violation.” ECF No. 54 ¶ 13. Andres Jiminez states Deputy Miller “failed and[/]or refused to obtain an interpreter to insure [an] understanding of [his] rights.” ECF No. 52 ¶ 4(c). Defendants move to suppress the evidence obtained from the rental car search. ECF No. 52 ¶ 5; ECF No. 54 at 3. Neither Defendant submitted a brief supporting his or her arguments.

The Government responds Deputy Miller had probable cause to stop the car because it was speeding. ECF No. 63 at 6–7. Additionally, the Government asserts “Deputy Miller did not unlawfully expand the scope of the traffic stop nor were the defendants detained for an excessive amount of time.” *Id.* at 8. The Government also argues in its written materials that Gonzalez Carmona lacks standing to challenge the search. *Id.* at 10–11.<sup>6</sup>

The Fourth Amendment prohibits unreasonable searches and seizures. The Fourth Amendment provides:

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

U.S. Const. amend. IV. The United States Supreme Court has consistently held, “subject only to a few specifically established and well delineated exceptions,” warrantless searches and seizures are *per se* unreasonable under the Fourth Amendment. *Minnesota v. Dickerson*, 508 U.S. 366, 372 (1993) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)). Absent a recognized exception, both direct and indirect evidence discovered during an illegal search or seizure must be suppressed. *Murray v. United States*, 487 U.S. 533, 536–37 (1988). It is uncontested Deputy Miller did not have a warrant to seize or search Defendants or the car. The Court concludes Deputy Miller had probable cause to stop the car because it was speeding. The Court also finds Deputy Miller had reasonable suspicion to extend the traffic stop to seek consent to and then search the rental car. The Court denies Defendants’ Motion to Suppress.

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<sup>6</sup> Because the Court concludes Defendants’ Fourth Amendment rights were not violated, the Court need not consider the Government’s cursory standing argument.

### A. Traffic Stop

“The Fourth Amendment permits investigative traffic stops when law enforcement has reasonable suspicion of criminal activity.” *United States v. Tamayo-Baez*, 820 F.3d 308, 312 (8th Cir. 2016) (citing *Navarette v. California*, 134 S. Ct. 1683, 1687 (2014)). “A traffic stop ‘must be supported by reasonable suspicion or probable cause.’” *United States v. Hollins*, 685 F.3d 703, 706 (8th Cir. 2012) (quoting *United States v. Houston*, 548 F.3d 1151, 1153 (8th Cir. 2008)). In the traffic context, any traffic violation, even a minor one, supports the more demanding standard of probable cause. *Id.* (quoting *United States v. Wright*, 512 F.3d 466, 471 (8th Cir. 2008)). A court determines whether the officer had either reasonable suspicion or probable cause to conduct a stop “by looking to what the officer reasonably knew at the time” of the stop. *Id.* (quoting *Wright*, 512 F.3d at 706). Even if an officer mistakenly concludes a traffic violation occurred, the stop does not violate the Fourth Amendment if the officer’s mistake was objectively reasonable. *See, e.g., United States v. Herrera-Gonzales*, 474 F.3d 1105, 1109 (8th Cir. 2007).

The Court finds Deputy Miller had probable cause to stop the rental car because it was speeding. Deputy Miller testified he observed the car traveling 60 miles per hour in a 55-mile-per-hour zone. The speed limit where he observed the car was in fact 55 miles per hour. Deputy Miller testified the driver, Gonzalez Carmona, apologized twice for speeding, stating she accelerated as she approached the 65-mile-per-hour sign. The video supports his testimony, which the Court finds credible. *See* Gov’t’s Ex. 1 at 2:05, ECF No. 72.

Although the speed limit increased to 65 miles per hour shortly after Deputy Miller’s observation, the speed limit where he observed the car was in fact 55 miles per hour. Exhibit A showing the alleged speeds of the rental car on August 3 is unhelpful. ECF No. 73-1. Exhibit A shows recorded speeds at two-minute intervals. *Id.* The Court finds credible Deputy Miller’s

testimony he observed the car speeding. Based on the data presented in Exhibit A, there is no way to correlate the car's change in speed to the posted change in speed-limit zones. Nor does Exhibit A provide the rental car's speed at the precise moment Deputy Miller observed the car, even when relying on the GPS coordinates overlaid on the map in Exhibit C. ECF Nos. 73-1, 73-3. Deputy Miller's testimony and Exhibit A are not inconsistent. Officer Hughes of the Council Bluffs Police Department compared the rental car record in Exhibit A with the radar reading used by Deputy Miller on the day of the stop. Deputy Miller recorded a specific speed of the rental car at a specific time, likely at a different time than the speed recorded in Exhibit A. Deputy Miller testified as to his training and experience operating radar equipment. He checked the accuracy of the radar earlier that day and had no reason to believe it was not functioning correctly. Thus, Deputy Miller had probable cause to stop the car. Even if Deputy Miller was mistaken about where the car was when his radar showed it was traveling at 60 miles per hour, his mistake was objectively reasonable. *Herrera-Gonzales*, 474 F.3d at 1109.

Andres Jimenez additionally argues “[t]he stop was not a traffic stop but was an investigatory [stop] . . . as law enforcement was directed to initiate the traffic stop.” ECF No. 52 ¶ 4(b). It is well-established “[o]nce an officer has probable cause, the stop is objectively reasonable and any ulterior motivation on the officer’s part is irrelevant.” *United States v. Fuehrer*, 844 F.3d 767, 772 (8th Cir. 2016) (quoting *United States v. Frasher*, 632 F.3d 450, 453 (8th Cir. 2011)). “Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.” *Whren v. United States*, 517 U.S. 806, 813 (1996). Deputy Miller had probable cause for the traffic stop because the car was speeding and other motivations he may have had are irrelevant. See *Fuehrer*, 844 F.3d at 771. Therefore, Deputy Miller’s observation of the car speeding based on the use of his radar provided him probable cause to conduct a traffic stop.

### B. Reasonable Suspicion to Extend the Traffic Stop

The Court next considers whether reasonable suspicion justified Deputy Miller's extension of the traffic stop. Considering the totality of the circumstances, the Court concludes Deputy Miller had reasonable suspicion to extend the traffic stop to request consent to search and then to conduct the search of the rental car.

Neither party disputes this traffic stop was extended. The Supreme Court's decision in *United States v. Rodriguez* governs the extension of traffic stops. 135 S. Ct. 1609, 1613–15 (2015). The Court in *Rodriguez* rejected the Eighth Circuit's longstanding precedent permitting the *de minimis* extension of a traffic stop, such as a “seven- or eight-minute delay” to perform a canine search. *Id.* at 1613–15. The *Rodriguez* Court held any “traffic stop ‘prolonged beyond’ the time ‘reasonably required to complete [the stop’s mission]’ is ‘unlawful’ absent reasonable suspicion to support the continued detention. *Id.* at 1616 (second alteration in original) (quoting *Illinois v. Caballes*, 543 U.S. 405, 407 (2005)). After noting the appropriate standard to apply, the Supreme Court remanded the case to determine “whether reasonable suspicion of criminal activity justified detaining [the defendant] beyond completion of the traffic infraction investigation.” *Id.* at 1616–17, *aff’d on remand*, 799 F.3d 1222, 1223–24 (8th Cir. 2016) (finding the exclusionary rule did not apply because the officer conducted the search “in objectively reasonable reliance on binding appellate precedent” (quoting *Davis v. United States*, 564 U.S. 229, 249–50 (2011))). The issue before the Court is whether Deputy Miller had reasonable suspicion to justify extending the traffic stop.

The Court finds Deputy Miller had reasonable suspicion of criminal activity justifying an extension of the traffic stop and therefore the continuation of the stop did not violate Defendants' Fourth Amendment rights. To demonstrate reasonable suspicion, an “officer must be able to point

to specific and articulable facts” indicating criminal activity may be occurring. *Terry v. Ohio*, 392 U.S. 1, 21 (1968). “Reasonable suspicion must be supported by more than a mere hunch, but the likelihood of criminal activity need not rise to the level required for probable cause, and it falls considerably short of satisfying the preponderance of the evidence standard.” *United States v. Williams*, 796 F.3d 951, 957 (8th Cir. 2015) (quoting *United States v. Roberts*, 787 F.3d 1204, 1209 (8th Cir. 2015)); *accord Navarette*, 134 S. Ct. at 1687. The Court must consider “the totality of the circumstances” when determining whether an “officer has a particularized and objective basis to suspect wrongdoing.” *Williams*, 796 F.3d at 957 (internal citations omitted).

The Government argues “the odor of a masking agent, the differing stories of the defendants regarding their travel plans, and the responses defendant Gonzalez Carmona gave when asked about her forged driver’s license, taken together, gave Deputy Miller reasonable suspicion to extend the stop.” ECF No. 63 at 10. The Court agrees.

The totality of the circumstances demonstrates Deputy Miller had reasonable suspicion of criminal activity to extend the traffic stop of Defendants’ rental car. Deputy Miller found Defendants’ statements about their travel plans inconsistent and suspicious: he received differing stories from both Defendants with different final destinations and different objectives for their trip. *See, e.g., United States v. Riley*, 684 F.3d 758, 764 (8th Cir. 2012) (summarizing *United States v. Beck*, 140 F.3d 1129, 1139 (8th Cir. 1998) as holding “reasonable suspicion could derive from ‘unusual or suspicious travel plans’”); *United States v. Suitt*, 569 F.3d 867, 872 (8th Cir. 2009), *overruled on other grounds*, *United States v. Englehart*, 811 F.3d 1034, 1041 (8th Cir. 2016) (“Although each answer could be innocent when viewed in isolation, the suspicious character of each response was magnified by the evasions that preceded it.”). Andres Jimenez said they were going to Des Moines “to look around” before returning to Las Vegas, whereas Gonzalez Carmona

said they planned to have breakfast in Iowa before traveling to Ohio. *See United States v. Gill*, 513 F.3d 836, 844–45 (8th Cir. 2008) (finding officers had reasonable suspicion where, among other things, “the defendants gave inconsistent statements about their travel plans[; the driver] stated the couple was traveling to Ohio, while [the passenger] repeatedly stated they were going to Iowa”). In addition, the driver was unable to provide a current mailing address to Deputy Miller. Her California driver’s license would not scan. She told Deputy Miller she had lived in Nevada for two months but still received her mail in California. She was unable to provide her Las Vegas address; she could only say she lived by the Tropicana. The driver identified the passenger as her boyfriend. Yet the driver attempted to look at the rental agreement (containing Andres Jiminez’s name) when Deputy Miller asked her to identify who rented the car. *See United States v. Donnelly*, 475 F.3d 946, 953 (8th Cir. 2007) (“When considered together, however, otherwise innocent facts can give rise to a reasonable suspicion, especially when viewed through the perspective of an experienced law enforcement officer.”); *see also United States v. Murillo-Salgado*, 854 F.3d 407, 416 (8th Cir. 2017) (“The traffic stop was not unlawfully prolonged given [the officer]’s observations of the truck’s contents, the seeming implausibilities and inconsistencies in the responses to [the officer]’s routine questions, the reasonable suspicion [the officer] developed as a result of those improbable responses, as well as from [the officer]’s independent observations.”). Deputy Miller also observed passenger Andres Jimenez purchasing an \$849 pair of shoes. *See* Gov’t’s Ex. 1 at 22:55, ECF No. 72; *cf. United States v. Rodriguez*, 484 F.3d 1006, 1012–13 (8th Cir. 2007) (citing Eighth Circuit case law approving the admissibility of evidence of unexplained wealth and approving the admission of receipts for a car security system and tire purchase, wire transfers, and a bond payment); *United States v. Carrera*, 259 F.3d 818, 829 (7th Cir. 2001) (setting forth a widely-followed test for admissibility of unexplained wealth in drug cases). Deputy Miller viewed

these facts through the lens of his training and experience relating to drug interdiction stops along this portion of Interstate 80 in particular. *See* Gov't's Ex. 5, ECF No. 72-4; *cf. United States v. Lyon*, 486 F.3d 367, 371–72 (8th Cir. 2007) (citing *United States v. Arvizu*, 534 U.S. 266, 273 (2002), and *United States v. Fuse*, 391 F.3d 924, 929 (8th Cir. 2004), for the proposition that in determining whether an officer “had reasonable suspicion, [a court] must consider the totality of the circumstances in light of [the officer’s] experience”).

In addition, Deputy Miller smelled the “overwhelming” scent of a masking agent coming from inside the car each time he approach it. When added to Deputy Miller’s other suspicions, the smell of the masking agent contributed to Deputy Miller’s reasonable suspicion of illegal activity. *Cf. United States v. Briasco*, 640 F.3d 857, 859–60 (8th Cir. 2011) (affirming a district court order denying a motion to suppress where the officer detained the defendant “based on the strong odor of air freshener in the car, the sagging or squatting of the back end of the vehicle, [the defendant]’s increasing nervousness shown by the developing dryness in his mouth and visible carotid artery, [the defendant]’s imprecise description of his travel plans, and his failure to disclose the full facts about his criminal history”); *United States v. Ward*, 484 F.3d 1059, 1062 (8th Cir. 2007) (finding “the circumstances—the patriotic magnet on a rental car, newer lock on the U–Haul trailer, DEA cap, inconsistent INS/Homeland Security credentials, air freshener, and [the defendant]’s nervousness—support suspicions unrelated to the traffic offense”). Based on the testimony and evidence presented and considering the totality of the circumstances, the Court concludes Deputy Miller had reasonable suspicion justifying an extension of the traffic stop.

### C. Consent

Deputy Miller asked for Defendants’ consent to search the car immediately after the purpose of the original stop was completed. *See* Gov’t’s Ex. 1 at 24:16, ECF No. 72. Defendants

both assert Deputy Miller did not obtain their valid consent. ECF No. 52 ¶ 4(a); ECF No. 54 ¶ 20. At the hearing, both Defendants questioned Deputy Miller's communication with each Defendant in English. Defendants also argued the video of the stop does not contain audio with Defendants' verbal consent and Deputy Miller did not obtain signatures on the consent-to-search form.

Voluntary and knowing consent provides a valid basis for a warrantless search. *See Katz*, 389 U.S. at 356–57; *accord United States v. Correa*, 641 F.3d 961, 966 (8th Cir. 2011). “The question of voluntariness requires a broad factual inquiry; there is no bright-line rule to determine when an ‘essentially free and unconstrained choice,’ becomes one that is ‘the result of duress or coercion.’” *United States v. LeBeau*, 867 F.3d 960, 971 (8th Cir. 2017) (quoting *United States v. Willie*, 462 F.3d 892, 896 (8th Cir. 2006) (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 225, 248 (1973))). The Court must determine based on the totality of the circumstances “not whether [a defendant] subjectively consented, but rather, whether a reasonable officer would believe consent was given.” *Correa*, 641 F.3d at 967 (quoting *United States v. Pena-Ponce*, 588 F.3d 579, 584 (8th Cir. 2009)). “In examining the reasonableness of the officer’s belief, we consider the nature of the encounter and the characteristics of the consenting party, including the party’s age, intelligence and education, whether he was under the influence of drugs or alcohol, whether he was informed of his right to withhold consent, and whether he was aware of rights afforded criminal suspects.” *United States v. Almendares*, 397 F.3d 653, 660–61 (8th Cir. 2005); *accord LeBeau*, 867 F.3d at 971.

The Government has met its burden to demonstrate Deputy Miller obtained voluntary consent from both Defendants. While there is no audio of Defendants' responses, Deputy Miller's follow-up questions, actions, body language, and testimony support the conclusion he received consent from Defendants. *See* Gov't's Ex. 1 at 24:06–25:15, ECF No. 72. Deputy Miller testified

he asked Defendants if they had any follow-up questions about the consent or the consent-to-search form. The video records Deputy Miller conversing in English with both the driver and the passenger throughout the duration of the stop. There are several instances where Deputy Miller gives one or both Defendants an instruction and each complies with it; e.g., retrieving a driver's license or walking further ahead.<sup>7</sup> *See, e.g., id.* at 26:14. The passenger and Deputy Miller even joke about the shoes the passenger was looking at on his phone. *Id.* at 22:55. The Eighth Circuit has upheld consent in situations where the consenting defendant did not speak English. *See, e.g., United States v. Cedano-Medina*, 366 F.3d 682, 685–88 (8th Cir. 2004) (upholding consent to search a car after evaluating the language barrier between the driver and officer, the driver's confusion, and the driver's nonverbal cues). In observing the video and Deputy Miller's testimony, there were few instances in which the occupants seemed confused or unable to understand the conversation. Both Defendants were in their rental car, neither was handcuffed, and Deputy Miller had previously stepped away following his issuance of a warning citation. A reasonable officer would believe consent was given by both Defendants. Accordingly, the Court determines Deputy Miller obtained voluntary consent from both Defendants to search the rental car.

Moreover, Deputy Miller testified had he not received consent to search the car, he would have either requested consent to employ his canine to perform a sniff or performed the canine sniff and searched the car without consent. Thus, even if Deputy Miller did not obtain valid consent from Defendants, the Court's prior determination Deputy Miller had reasonable suspicion to

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<sup>7</sup> At the hearing, Defendants argued one instance in particular demonstrates Defendants did not understand Deputy Miller: after Deputy Miller obtained their consent, the driver attempted to drive the car further ahead on the road rather than walk to the side of the road. Gov't's Ex. 1 at 25:06, ECF No. 71-1. The video clearly shows the driver driving toward where Deputy Miller had previously gestured. Deputy Miller quickly told Defendants they could instead walk where he had gestured. *Id.* at 25:08. Defendant quickly complied. This slight miscommunication does not demonstrate Defendants were unable to provide consent.

extend the stop supports the conclusion a lawful search based on reasonable suspicion without consent would have discovered the same evidence. *See generally Nix v. Williams*, 467 U.S. 431 (1985).

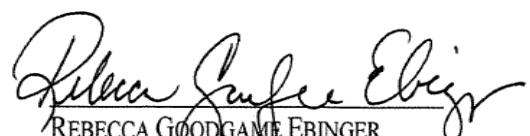
Because the rental car was speeding, there was reasonable suspicion to extend the traffic stop, and Deputy Miller obtained consent from both Defendants to conduct a search of the rental car, the Court denies Defendants' Motions to Suppress.

#### **IV. CONCLUSION**

The Court denies Defendants' Motions to Suppress. Deputy Miller had reasonable suspicion to stop the rental car and had reasonable suspicion justifying the extension of the traffic stop to obtain Defendants' consent to search the car.

**IT IS SO ORDERED** that Defendants' Motions to Suppress, ECF Nos. 52, 54, are **DENIED**.

Dated this 2nd day of February, 2018.



REBECCA GOODGAME EBINGER  
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF IOWA**

UNITED STATES OF AMERICA

v.

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

**JUDGMENT IN A CRIMINAL CASE**

Case Number: 1:17-CR-00041-001  
USM Number: 18229-030

Mark J. Rater  
Defendant's Attorney

**THE DEFENDANT:**

pleaded guilty to count(s) One of the Superseding Indictment filed on September 26, 2017.

pleaded nolo contendere to count(s) \_\_\_\_\_ which was accepted by the court.

was found guilty on count(s) \_\_\_\_\_ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section <span style="color: blue;">?</span>	Nature of Offense	Offense Ended	Count
21 U.S.C. § 841(a)(1), 841(b)(1)(A)	Possession with Intent to Distribute One Kilogram or More of a Mixture or Substance Containing a Detectable Amount of Heroin	08/04/2017	One

See additional count(s) on page 2

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

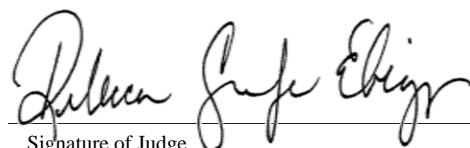
The defendant has been found not guilty on count(s) \_\_\_\_\_

Count(s) Two  is  are dismissed on the motion of the United States.

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

July 13, 2018

Date of Imposition of Judgment

  
Signature of Judge

Rebecca Goodgame Ebinger, U.S. District Judge

Name of Judge

Title of Judge

July 13, 2018

Date

DEFENDANT: Veronica Gonzalez-Carmona also known as Cinthi  
CASE NUMBER: 1:17-CR-00041-001

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

120 months as to Count One of the Superseding Indictment filed on September 26, 2017.

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

That the defendant be placed at FCI Tallahassee or, if not available, FCI Waseca, and that the defendant receive credit for time served since her arrest on August 4, 2017.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at \_\_\_\_\_  a.m.  p.m. on \_\_\_\_\_

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before on \_\_\_\_\_

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

a \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Veronica Gonzalez-Carmona also known as Cinthi

Judgment Page: 3 of 7

CASE NUMBER: 1:17-CR-00041-001

**SUPERVISED RELEASE**

Upon release from imprisonment, you will be on supervised release for a term of :

Five years as to Count One of the Superseding Indictment filed on September 26, 2017.

**MANDATORY CONDITIONS**

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.  
 The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4.  You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5.  You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6.  You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7.  You must participate in an approved program for domestic violence. *(check if applicable)*

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

DEFENDANT: Veronica Gonzalez-Carmona also known as Cinthi  
CASE NUMBER: 1:17-CR-00041-001

Judgment Page: 4 of 7

**STANDARD CONDITIONS OF SUPERVISION**

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

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

**U.S. Probation Office Use Only**

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

Defendant's Signature \_\_\_\_\_

Date \_\_\_\_\_

DEFENDANT: Veronica Gonzalez-Carmona also known as Cinthi  
CASE NUMBER: 1:17-CR-00041-001

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## SPECIAL CONDITIONS OF SUPERVISION

At the completion of your term of imprisonment, you must be surrendered to the custody of the U.S. Immigration and Customs Enforcement for removal proceedings consistent with the Immigration and Nationality Act. If removed, you must not reenter the United States without the prior written permission of the Undersecretary for Border and Transportation Security. The term of supervised release will be non-reporting while you are residing outside the United States. If you reenter the United States within the term of supervised release, you must report to the nearest U.S. Probation Office within 72 hours of your arrival.

If not deported, you must submit to a mental health evaluation. If treatment is recommended, you must participate in an approved treatment program and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment and/or compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

If not deported, you must participate in a program of testing and/or treatment for substance abuse, as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Office. At the direction of the probation office, you must receive a substance abuse evaluation and participate in inpatient and/or outpatient treatment, as recommended. Participation may also include compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment. You must not use alcohol and/or other intoxicants during the course of supervision.

If not deported, you must not patronize business establishments where more than fifty percent of the revenue is derived from the sale of alcoholic beverages.

If not deported, you will submit to a search of your person, property, residence, adjacent structures, office, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), and other electronic communications or data storage devices or media, conducted by a U.S. Probation Officer. Failure to submit to a search may be grounds for revocation. You must warn any other residents or occupants that the premises and/or vehicle may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your release and/or that the area(s) or item(s) to be searched contain evidence of this violation or contain contraband. Any search must be conducted at a reasonable time and in a reasonable manner. This condition may be invoked with or without the assistance of law enforcement, including the U.S. Marshals Service.

DEFENDANT: Veronica Gonzalez-Carmona also known as Cinthi

Judgment Page: 6 of 7

CASE NUMBER: 1:17-CR-00041-001

**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

Pursuant to 18 U.S.C. § 3573, upon the motion of the government, the Court hereby remits the defendant's Special Penalty Assessment; the fee is waived and no payment is required.

<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b> \$ 100.00	\$ 0.00	\$ 0.00	\$0.00

The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
<b>TOTALS</b>	\$0.00	\$0.00	\$0.00

Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the  fine  restitution.

the interest requirement for the  fine  restitution is modified as follows:

\* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

\*\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Veronica Gonzalez-Carmona also known as Cinthi  
CASE NUMBER: 1:17-CR-00041-001

## SCHEDULE OF PAYMENTS

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

**A**  Lump sum payment of \$ 100.00 due immediately, balance due  
 not later than \_\_\_\_\_, or  
 in accordance  C,  D,  E, or  F below; or

**B**  Payment to begin immediately (may be combined with  C,  D, or  F below); or

**C**  Payment in equal \_\_\_\_\_ (*e.g., weekly, monthly, quarterly*) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (*e.g., months or years*), to commence \_\_\_\_\_ (*e.g., 30 or 60 days*) after the date of this judgment; or

**D**  Payment in equal \_\_\_\_\_ (*e.g., weekly, monthly, quarterly*) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (*e.g., months or years*), to commence \_\_\_\_\_ (*e.g., 30 or 60 days*) after release from imprisonment to a term of supervision; or

**E**  Payment during the term of supervised release will commence within \_\_\_\_\_ (*e.g., 30 or 60 days*) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

**F**  Special instructions regarding the payment of criminal monetary penalties:

All criminal monetary payments are to be made to the Clerk's Office, U.S. District Court, P.O. Box 9344, Des Moines, IA. 50306-9344.

While on supervised release, you shall cooperate with the Probation Officer in developing a monthly payment plan consistent with a schedule of allowable expenses provided by the Probation Office.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

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

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

The defendant shall pay the cost of prosecution.  
 The defendant shall pay the following court cost(s):  
 The defendant shall forfeit the defendant's interest in the following property to the United States:

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

**UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

No: 21-1241

United States of America

Appellee

v.

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

Appellant

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Appeal from U.S. District Court for the Southern District of Iowa - Western  
(1:17-cr-00041-RGE-1)

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**ORDER**

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

July 01, 2022

Order Entered at the Direction of the Court:  
Clerk, U.S. Court of Appeals, Eighth Circuit.

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/s/ Michael E. Gans

NO. 22-\_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

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

Petitioner,

-vs.-

United States of America,

Respondent.

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**PROOF OF SERVICE**

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I, Adam D. Zenor, appointed pursuant to the Criminal Justice Act, hereby certify that on September 27, 2022, one (1) copy of the Appendix, in the above-entitled case, was mailed by depositing it in a U.S. Postal Service Depository located in Des Moines, Iowa, first-class postage prepaid and addressed to counsel for the respondent:

Solicitor General of the United States  
Room 5616, Department of Justice  
950 Pennsylvania Ave., N. W.  
Washington, DC 20530-0001

I further certify that all parties required to be served have been served.

/s/ Adam D. Zenor

**Adam D. Zenor**

**Derek R. LaBrie**

*Counsel of Record*

Zenor Kuehner, P.L.C.

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