No. _____

In the
Supreme Court of the United States

OCTOBER TERM, 2022

ILSE IVON SOLIS,

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. **IN LIGHT OF THIS COURT'S OPINION IN *RODRIGUEZ V. UNITED STATES*, 575 U.S. 348 (2015), DID THE OFFICER'S INQUIRIES UNJUSTIFIABLY PROLONG THE TRAFFIC STOP WITHOUT REASONABLE SUSPICION?**

II. DID THE DISTRICT COURT REVERSIBLY ERR WHEN IT DENIED MS. SOLIS'S MOTION TO SUPPRESS THE DRUGS FOUND BY A POLICE OFFICER DURING AN IMPERMISSIBLY PROLONGED TRAFFIC STOP ?

III. **DID THE TRAFFIC STOP BY LAW ENFORCEMENT UNCONSTITUTIONALLY EXCEED THE SCOPE OF ITS INITIAL JUSTIFICATION?**

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U.S. CONST. Amend. IV . . . . . *in passim*

REPORTS OF OPINIONS

The decision of the Court of Appeals for the Fifth Circuit is reported as *United States v. Solis*, No. 22-40029 (5th Cir. January 4, 2023)(not published). It is attached to this Petition in the Appendix.

JURISDICTION

The decision by the United States Court of Appeals for the Fifth Circuit affirmed the District Court's judgment of conviction and sentence in the Southern District of Texas.

Consequently, Petitioner files the instant Application for a Writ of Certiorari under the authority of 28 U.S.C., § 1254(1).

BASIS OF FEDERAL JURISDICTION

IN THE COURT OF FIRST INSTANCE

Jurisdiction was proper in the United States District Court for the Southern District of Texas because Petitioner was indicted for violations of Federal law by the United States Grand Jury for the Southern District of Texas.

CONSTITUTIONAL PROVISIONS

The Fourth Amendment to the U.S. Constitution provides:

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

U.S. Const. amend. IV.

STATEMENT OF THE CASE

1. Procedural History.

Appellant Ilse Ivon Solis (hereinafter referred to as "Ms. Solis") and her co-defendant Mercedes Galvan were indicted by a federal grand jury in the Victoria Division of the United States District Court for the Southern District of Texas on April 18, 2019 for one count of conspiracy to possess with intent to distribute more than 500 grams of a mixture or substance containing a detectable amount of methamphetamine in violation of 21 U.S.C. §§ 846, 841(a)(1) and 841(b)(1)(A). ROA.15. The drugs were found secreted in the gas tank of the Saturn Vue owned by Ms. Solis and driven by Ms. Galvan on Interstate 10, after an officer stopped the car for a traffic violation and eventually obtained Ms. Galvan's and Ms. Solis's consent to search.

Ms. Solis moved to suppress any and all evidence, including statements made by her acquired by the Government as a result of an illegally prolonged detention. She argued, *inter alia*, that the traffic stop of [her] was unlawful because the officer's actions impermissibly prolonged the stop beyond what was necessary to effectuate his traffic mission, in violation of *Rodriguez v. United States*, 575 U.S. 348 (2015). She also argued that the grant of consent that was given was during this illegally prolonged detention, and that the fruits of the seizure must be suppressed. Ms. Galvan, Ms.

Solis's co-defendant, moved to suppress on similar grounds. The government filed a consolidated response. *See* ROA.54-61.

An evidentiary hearing was held before the district court on January 22, 2020. ROA.152-268 (hearing transcript). Thereafter, with the court's permission, Ms. Solis and Ms. Galvan jointly filed a brief in support of their motions to suppress. ROA.65-83, 252, 254. They argued, *inter alia*, that the facts of this case are similar to the facts of *United States v. Madrigal*, 626 Fed. Appx. 448 (5th Cir. 2015) (unpublished), in which "the Fifth Circuit reversed a denial of a motion to suppress involving *this same officer*"—Sgt. Randy Thumann. ROA.72- 73. Ms. Galvan and Ms. Solis also argued that their consent to a search of the car was not freely and voluntarily given, and in any event was not "an independent act of free will." ROA.78-80.

On April 7, 2020, the district court issued a written memorandum opinion and order denying the motions to suppress. ROA.92-98; *see also infra* text, at 16-17. In denying the Motion to Suppress, the District Court found that the officer developed reasonable suspicion to justify extending the stop to investigate additional criminal activity after the dispatch checks came back clean. ROA.88-94. The District Court also found that the detention was not longer than necessary to investigate the circumstances justifying the stop and that the consent to search obtained by the officer was valid. ROA.88-94.

Ms. Solis thereafter pled guilty to the Indictment on February 2, 2021, pursuant to a written plea agreement, reserving the right to appeal the district court's denial of the Motion to Suppress. On January 4, 2022, she was sentenced to a 121- month term of imprisonment. ROA.133-138 Ms. Solis thereafter timely filed a notice of appeal. ROA.139-140.

On January 4, 2023, a panel of the Fifth Circuit affirmed the Petitioner's conviction in an unpublished decision.

2. Statement of Facts.

The District Court held an evidentiary hearing on the Defendants' motion to suppress. The facts relevant to the issue raised in this appeal were established at the evidentiary hearing through the testimony of Sgt. Randy Thumann of the Fayette County Sheriff's Office. *See* ROA.157-231 (hearing transcript). The government also presented, as exhibits, the dash-cam video of the traffic stop, photographs of a bolt, hidden compartment, and wrench that were found in the vehicle during the search, and records of automated license plate readers located at the U.S.-Mexico border and in Seguin, Texas. ROA.311-19.

On June 15, 2018, Sgt. Thumann was patrolling Interstate 10 in an area "almost directly between San Antonio and Houston"—a "highly travelled area." ROA.157-58. He saw a Saturn Vue (a compact SUV) traveling east on the interstate. The Saturn was

an older model with a newer registration, which he found suspicious. because in a large percentage of his own prior stops of cars carrying narcotics, the car was a newly registered older car. ROA.159-60, 191. The Saturn was going about 75 miles per hour, which was the speed limit. ROA.158, 162. Sgt. Thumann ran the vehicle's license plate and discovered that the plate had "crossed [the] United States-Mexico border early in the morning[,] and that it had went through San Antonio [and] through the [automated license-plate readers] in Seguin" (east of San Antonio) on Interstate 10, and was now "headed towards Houston." ROA.161-62, 194, 197; *see also* ROA.211-14 (testifying that he did not, at the time of the stop, have photographs of people crossing the U.S.-Mexico border; the only information that he had was that *the plate* on the vehicle had crossed); ROA.232-33 (the government explained that Sgt. Thumann "didn't know who drove it" across the border and "didn't have the pictures"). Sgt. Thumann also agreed that the license plate's going through the license-plate reader in Seguin meant only that it had come from "anywhere west of that reader" and thus was not inconsistent with the vehicle coming from Laredo; that fact, that it came through the reader in Seguin, did not raise any suspicion in his mind. *See* ROA.197 (testifying, "It meant nothing. Absolutely nothing.").

When Sgt. Thumann pulled up next to the Saturn, he noticed that there were

three small children (approximately five or six years of age) in the back seat who were not wearing seat belts. ROA.158, 160, 166, 179-80, 193-94. "Almost immediately" he pulled the car over for that traffic violation (a violation of Tex. Transp. Code § 545.412(a).[1] ROA.158, 160, 223-25, 226-27. It was 11:05 a.m. ROA.92, 180; *see* Gov't Ex. 1, Dashcam Video ("Video") 1:00-15. Sgt. Thumann walked to the passenger side of the Saturn. ROA.162; *see* Video 1:49-57. He told the front-seat passenger (Ms. Solis) and the driver (Ms. Galvan) and that "those kids need to have seatbelts on." *See* Video 1:58-2:02; *see also* ROA.162. "They just both [responded], 'Sorry,' and gave a reason that the kids were fighting over something." ROA.163; *see* Video 2:01-03. Sgt. Thumann then asked to see driver's licenses and proof of insurance. ROA.163; *see* Video 2:05. He asked who the car belonged to, and Ms. Solis responded, "It's mine." *See* Video 2:07. He asked Ms. Solis how long she had owned the car, and she answered that she had owned it about two weeks. *See* Video 2:10-13.

Sgt. Thumann asked the pair where they were going, and they said Houston.*See* Video 2:14-16. He asked them why they were going to Houston, and they told him

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[1]In Texas, "[a] person commits an offense if the person operates a passenger vehicle, transports a child who is younger than eight years of age, unless the child is taller than four feet, nine inches, and does not keep the child secured during the operation of the vehicle in a child passenger safety seat system according to the instructions of the manufacturer of the safety seat system." Tex. Transp. Code § 545.412(a) (2018).

they were headed to "the boardwalk." ROA.165; *see* Video 2:35-48. Sgt. Thumann was unaware of any boardwalk in Houston, although he was familiar with the boardwalk in Kemah (near the Houston area). ROA.202-03. He did not ask for any more specifics about which boardwalk they were going to. *See* ROA.203 ("They had told me the boardwalk in Houston. So I went with that.").

Sgt. Thumann next asked the two women, "Where are y'all coming from? Laredo?" They responded, "Laredo." *See* Video 2:48-50; ROA.163-64. He then asked them, "Mexico or Laredo?" The two replied, "Laredo." *See* Video 2:50-53; *see also* ROA.164, 217, 229. At that time, Sgt. Thumann had no evidence that Ms. Galvan and Ms. Solis had crossed from Mexico with the vehicle. *See* ROA.214 (admitting this). He just "thought, since seeing the plate [had] cross[ed] from Mexico, that they obviously were the ones in charge of that plate crossing from Mexico," even though that "does not have to be true" because "somebody else" could have crossed it. ROA.196-97; *see also* ROA.198 (testifying, "I've also known it true that loaded vehicles come across, and the people driving the vehicle may not get the vehicle until it has already crossed. Somebody else could have crossed it. I'm aware of that as well."). And, as he acknowledged during the following exchange on cross-examination at the suppression hearing, there could have been a "miscommunication" between what he was "expecting to hear" (*i.e.*, that the women were traveling from —

or "coming from" — Mexico) and what they were "expecting [his] question to be about" (*i.e.*, where they live and thus "come from" generally).

After Sgt. Thumann received additional identification from Ms. Solis (her driver's license), he asked her whose kids were in the back seat, and she answered that they were hers. *See* Video 2:57-3:14. Sgt. Thumann asked the women how long they were going to be in Houston, and they told him that they would be there for "just the weekend." ROA.203; *see* Video 3:15-20.

Sgt. Thumann then told Ms. Galvan and Ms. Solis to wait there and he would "be right back." *See* Video 3:28-30. At that point (11:07 a.m.), he returned to his police cruiser (with the licenses) and ran checks on Ms. Galvan and Ms. Solis with dispatch. ROA.93, 164, 200; *see* Video 3:30-6:45. Both came back clear; there were no warrants, and the vehicle was not reported stolen. ROA.93, 164, 200-01, 218; *see* Video 6:10-45. Also, the check of their driver's licenses showed that they both reside in Laredo, Texas. ROA.198.

At 11:09 a.m., Sgt. Thumann returned to the Saturn (on the passenger side). ROA.93, 164; *see* Video 6:37-45. Thumann never wrote a citation for the unrestrained children in the back seat nor did he issue a warning for the traffic code violation for which he stopped Defendants. He was apparently finished investigating the traffic violation for which he detained Defendants. ROA.229:13-18 and 231:8-12. Rather

than issuing a ticket or warning for a traffic violation, he asked Ms. Galvan to get out of the car and come and talk to him. ROA.93, 227; *see* Video 6:45-50. At that time Sgt. Thumann believed that "they had already lied" about not coming from Mexico, and found it significant that they said they were coming from Laredo rather than Mexico. ROA.164.

Sgt. Thumann and Ms. Galvan walked to the back of the Saturn. *See* Video 6:55-7:02. He asked her if there were any guns in the car, and she said no. *See* Video 7:03-05. He asked her again if they were coming from Laredo, and she said yes. *See* Video 7:06. He asked where they planned to stay in Houston, and she said that they were going to stay in a hotel but hadn't booked one yet (they would find one and check in when they arrived). ROA.166; *see* Video 7:05-15.

Sgt. Thumann thought it was "a little odd that they were traveling such a distance with no guarantee that they could stay anywhere." ROA.166, 204. In his opinion, "the majority of parents would [book a hotel room in advance]. The ones who would not, to me, that is suspicious. That is unreasonable. It's not common." ROA.205-06. Also, in his personal opinion, being a person of "lesser means has nothing to do with the way you handle it" as a parent. ROA.205. However, he agreed with defense counsel that there that are "lots and lots of motels in Houston"; that "you don't necessarily have to book online a reservation for a hotel"; you can "walk up to

a hotel" without booking a room ahead of time and then knock on the front door and say, 'Hi. I would like to get a room for the night.'" ROA.204-05. He did not ask Ms. Galvan or Ms. Solis why they did not book a room ahead of time. ROA.207.

Sgt. Thumann asked Ms. Galvan if she was going to a "boardwalk." She said yes, and added that she planned to go to a "waterpark" the next day. *See* Video 7:15-30. He then asked her again where she was coming from, and she said Laredo. *See* Video 7:30-35. He asked her if she either lived in Mexico, was coming from Mexico, or had been in Mexico recently, and she answered no. *See* Video 7:33-45.Sgt. Thumann then asked Ms. Galvan whether there was "anything illegal" inside the car, and she said no. *See* Video 7:45-57.

There was nothing "inconsistent or contradictory in [Ms. Galvan's and Ms. Solis's] statements about their travel itinerary." ROA.202. But in his police report, Sgt. Thumann wrote that there were "many" suspicious travel itinerary details, by which he meant: "[T]he vehicle is coming from a source city [and] is going to a major hub [*i.e.*, Houston]. The boardwalk is not in Houston. No plans for anywhere to stay for the whole weekend. . . . And then, also, the vehicle having crossed the United States border earlier that morning." ROA.206-07; *see also* ROA.216-search the car, and she consented. [*See* ROA.166-67, 183; Video 8:00-06].

Sgt. Thumann then walked to the passenger side of the vehicle to speak with Solis. [*See* Video 8:05-10]. In response to his questions, Solis stated that they planned to visit "the Boardwalk" in Houston and would get a hotel room when they arrived. [*See* Video 8:10-42]. She further stated [when asked] that they were coming from Laredo, not Mexico [*see* Video 8:41-45]. When asked whether anyone else had the car, Solis stated that the car had been at a shop for a couple of days. [*See* Video 8:47-9:05]. When asked whether there was anything illegal in the car, Solis responded no. [*See* Video 9:06-17]. At 11:12 A.M., Solis granted Sgt. Thumann's request for permission to search the car and asked if she needed to get her kids out. [*See* ROA.167-68, 183; Video 9:18-30].

Because of the dangers of being on the side of I-10, Sgt. Thumann asked Defendants if they would like to drive the car to the next exit to get off the road. [*See* ROA.167-70; Video 9:32-38]. Galvan responded yes and followed him to a nearby gas station. [*See* Video 9:37-14:33; ROA.170-71, 185-86]. At 11:21 A.M., Sgt. Thumann began searching the car with his K-9 unit, Lobos. One minute later, K-9 Lobos alerted to narcotics in the vehicle. [*See* Video 19:08; ROA.171-72; ROA.186-89]. At 11:25 A.M., Sgt. Thumann found narcotics in the vehicle's gas tank. [*See* ROA.172-78].

On cross-examination, Sgt. Thumann agreed that he "reasked" a number of itinerary related questions after the record checks had already come back clear,

because he was "making sure that the stories were consistent." ROA.208. He testified: "[I]f they would have gave different stories, which happens a lot, then that would have been another piece to add to all the rest of the reasonable suspicion I had." ROA.209.

Roughly an hour later, officers towed the vehicle to the Fayette County Sheriff's Office, where deputies retrieved approximately 21 kilograms of methamphetamine from the car's gas tank. Thumann then obtained various statements from the Defendants.

On January 4, 2023, the Fifth Circuit affirmed Ms. Solis's conviction and sentence. *See United States v. Solis*, No. 21-40723 (5th Cir. 2022)(not published). Petitioner now asks this Court to resolve an important question of constitutional law that implicates division among the lower courts on the proper interpretation of the Court's decision in *Rodriguez*: whether the Fourth Amendment prohibits a police officer from continuing his warrantless detention of a motorist after the officer has decided not to issue a ticket for the traffic violation that justified the initial seizure.

REASONS WHY CERTIORARI SHOULD BE GRANTED

I. IN LIGHT OF THIS COURT'S OPINION IN *RODRIGUEZ V. UNITED STATES*, 575 U.S. 348 (2015), DID THE OFFICER'S INQUIRIES UNJUSTIFIABLY PROLONG THE TRAFFIC STOP WITHOUT REASONABLE SUSPICION?

II. **DID THE DISTRICT COURT REVERSIBLY ERR WHEN IT DENIED MS. SOLIS'S MOTION TO SUPPRESS THE DRUGS FOUND BY A POLICE OFFICER DURING AN IMPERMISSIBLY PROLONGED TRAFFIC STOP ?**

III. DID THE TRAFFIC STOP BY LAW ENFORCEMENT UNCONSTITUTIONALLY EXCEED THE SCOPE OF ITS INITIAL JUSTIFICATION?

The Court should grant the petition to decide an important question of constitutional law that has arisen in the wake of this Court's decision in *Rodriguez v. United States*, 575 U.S. 348 (2018). This Court held that a traffic stop is unlawfully prolonged if the officer conducts activity that is unrelated to the stop. *Id*. at 350-51. As two circuits have recognized, lower courts have "adopted starkly divergent interpretations of *Rodriguez*." *United States v. Green*, 897 F.3d 173, 180 (3d Cir. 2018); *see* also *United States v. Frazier*, 30 F.4th 1165, 1173 n.2 (10th Cir. 2022). This Court's intervention is necessary to bring clarity and uniformity on a recurring issue of the permissible scope of traffic stops after *Rodriguez*.

This is a case in which the Ms. Solis was unreasonably detained by law enforcement when the officer continued questioning her after the purpose for the stop was completed. *See United States v. Jones*, 234 F.3d 234 (5th Cir. 2000); *United States v. Dortch*, 199 F.3d 193 (5th Cir. 1999). The Fourth Amendment protects individuals against unreasonable searches and seizures. U.S. CONST. amend. IV. The Fourth Amendment guarantees individuals the right to be "secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. The protection of the Fourth Amendment "extends to vehicle stops and temporary detainment of a vehicle's occupants." *United States v. Andres*, 703 F.3d 828, 832 (5th Cir. 2013). Evidence that was obtained from a "substantial and deliberate" violation of the Fourth Amendment will be suppressed and excluded from consideration. *Franks v. Delaware*, 438 U.S. 154, 171 (1978). The ultimate touchstone of the Fourth Amendment is "reasonableness. *Riley v. California*, 573U.S. 373, 381 (2014).

A traffic stop is more analogous to a *Terry* stop than to a formal arrest. *Rodriguez v. United States*, 575 U.S. 348, 354 (2015); *see* also *Terry v. Ohio*, 392 U.S. 1 (1968). As with *Terry* stops, "the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission'-to address the traffic violation that warranted the stop and attend to related safety concerns." *Rodriguez*,

575 U.S. at 354. A traffic stop "may last no longer than necessary to address the traffic violation, and constitutional authority for the seizure 'ends when tasks tied to the traffic infraction are-or reasonably should have been-completed.'" *Rodriguez*, 575 U.S. at 354.

In *Rodriguez*, this Court held that a traffic stop is unconstitutionally prolonged if it lasts longer than is necessary to effectuate the stop's purpose. Whether a traffic stop is a reasonable and thus constitutional intrusion is examined under the two-pronged analysis described in *Terry v. Ohio*, 392 U.S. 1 (1968). First, courts consider "whether the officer's action was justified at its inception," *Id*. at 20, for example, hen an officer observes a suspected violation of the traffic code. Second, courts determine wheher the stop "was reasonably related in scope to the circumstances which justified the interference in the first place." *Id*.

This Court provided guidance on the second *Terry* prong in *Rodriguez*. States, 575 U.S. 348 (2015). The Court explained, "Like a *Terry* stop, the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission'—to address the traffic violation that warranted the stop . . . and attend to related safety concerns." *Rodriguez*, 575 U.S. at 354. "Because addressing the infraction is the purpose of the stop, it may 'last no longer than is necessary to effectuate that] purpose.'" *Id. ; see also Florida v. Royer*, 460 U.S. 491, 500 (1983).

A stop becomes unlawful "if it is prolonged beyond the time reasonably required to complete the mission" of the stop. *Id*. at 349. For the stop to pass constitutional muster, officers "always have] to be reasonably diligent" in their investigations as well. *Id*. at 357.

This Court emphasized that it does not matter whether an officer's off-purpose activity occurs before or after the mission of a stop is completed; all that matters is whether the off-purpose activity "adds time" to the stop beyond the "time reasonably required to complete [the stop's] mission." *Id*.; *Illinois v. Caballes*, 543 U.S. 405, 407 (2005). The Court rejected the argument that *de minimi* extensions of a traffic stop should be an exception to this rule.

The Eighth Circuit had evaluated the traffic stop in *Rodriguez* using a *de minimi* exception, concluding that a slight additional intrusion upon the motorist was permissible. *See id.* at 353. The Supreme Court rejected that *de minimi* exception, finding that such an exception should only apply in situations where intrusion is necessary to ensure officer safety. *Id*. at 356-57. The Court stated, "On-scene investigation into other crimes, however, detours from that mission [of completing the traffic stop.]" *Id*. at 357. Having eschewed a *de minimi* exception, the Court concluded that the "critical question" is whether off purpose activity "prolongs" the stop. *Id*.

Appellant was illegally detained after the purpose of the stop ended. In *Rodriguez*, this Court unambiguously held that officers may not prolong a traffic stop beyond the traffic-related purposes of the detention in order to bring a drug-sniffing dog to the scene. Under *Rodriguez*, Appellant was illegally detained. The only basis for stopping Appellant's vehicle, children not restrained by seat belts, did not provide a basis for the lengthy detention. The officer testified that children in the vehicle were not properly restrained. No additional time was necessary to confirm or dispel the officer's conclusion that a violation of the Transportation Code had occurred. Generously construed, the circumstances would not have supported a continued detention beyond a few minutes. The deputy did not develop reasonable suspicion or probable cause to justify a continued detention. The Panel's conclusion, that the detention of the vehicle and Appellant was lawful, was incorrect.

Contrary to the Fifth Circuit's reading of *Rodriguez* in petitioner's case, other courts have properly read *Rodriguez* as placing limits on the constitutionally permissible scope of a traffic stop. The Second Circuit, for instance, had held in *United States v. Harrison*, 606 F.3d 42 (2d Cir. 2010), that an officer's questioning of a motorist for five-to-six minutes on matters unrelated to the traffic violations for which the officer had initiated the stop did not violate the Fourth Amendment *Id*. at

45. The Second Circuit held that *Rodriguez* abrogated *Harrison*. *United States v. Gomez*, 877 F.3d 76, 81 & n.1 (2d Cir. 2017).

The Second Circuit correctly recognized that its prior analysis in *Harrison* did not survive *Rodriguez*. In *Harrison*, the officer initiated the traffic stop for a defective light, and the Second Circuit had approved of the stop's extension for the officer to question the passengers on topics unrelated to the defective light, even though the officer had "testified that he 'had all of the information needed to issue the traffic ticket before he first approached' the car's passengers." *Id*. at 87-88. The Second Circuit in Harrison had explained that the extension to ask about "the passengers' comings and goings" was reasonable because it lasted "only five to six minutes," which was a shorter duration than other circuits had "deemed tolerable." *Id*. at 88; *Harrison*, 606 F.3d at 45. In *Rodriguez*, this Court had rejected such a *de minimi* rule. *Id*. at 94.

Had Ms. Solis's prosecution arisen in the Second, Third, or Eleventh Circuits, the court would have found that the traffic stop was unlawfully prolonged. Similar to the officer in *Harrison* who had all the information he needed to issue a ticket but took a detour to ask about travel plans, the officer in petitioner's case did not need any further information about the basis for the stop, the traffic infractions, because he apparently decided he was not going to issue a ticket.

This case presents an ideal vehicle for the Court to resolve this division among the lower courts about how to interpret *Rodriguez*. The question presented was fully litigated, and so no procedural hurdles hinder review of the question presented. Moreover, the fact that petitioner eventually consented to the search is of no significance, given the well-established rule that consent is invalid if it is not an independent act of free will. *See*, e.g., *United States v. Mafias*, 658 F.3d 509, 523-24 (5th Cir. 2011). Petitioner's consent was not independent; it was obtained during the unconstitutionally prolonged detention. Finally, the question is important and recurring, since police officers conduct millions of traffic stops per year. *See*, e.g., The Stanford Open Policing Project, Findings, https://openpolicing.stanford.edu/findings ("Police pull over more than 50,000 drivers on a typical day, more than 20 million motorists every year.")(last visited April 2, 2023).

The Panel erred by upholding the District's Court's decision. Consequently, the evidence confiscated as a result of the unlawful search and seizure was "tainted by the fruit of the poisonous tree."[2] As a result, the judgment of conviction and sentence should be reversed, and the cause should be remanded to the trial court for further proceedings.

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[2]The "fruit of the poisonous tree" doctrine serves to exclude as evidence not only the direct products of Fourth Amendment violations, but also the indirect products. *Wong Sun v. United States*, 371 U.S. 471, 484, 487-88(1963) (exclusionary rule applies to evidence "obtained either during or as a direct result of" Fourth Amendment violation).

CONCLUSION

This Petition for Writ of Certiorari should be granted and the decision of the Fifth Circuit should be vacated, and the case should be remanded for proceedings consistent with this Court's opinion.

Respectfully submitted,

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RELIEF REQUESTED

FOR THESE REASONS, the Petitioner moves this Court to grant a Writ of Certiorari in order to review the Judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 4th day of April, 2023, I served one (1) copy of the foregoing Petition for Writ of Certiorari on the following individuals by mail (certified mail return receipt requested) by depositing same, enclosed in post paid, properly addressed wrapper, in a Post Office or official depository, under the care and custody of the United States Postal Service, or by other recognized means pursuant to the Rules of the Supreme Court of The United States of America, Rule 29:

Solicitor General
U.S. Department of Justice
Washington, D.C. 20530

Carmen Castillo Mitchell, Assistant U.S. Attorney
U.S. Attorney's Office
Southern District of Texas
Suite 2300
1000 Louisiana Street
Houston, TX 77002

ILSE IVON SOLIS
USM # 92327-479
FCI MARIANNA SATELLITE CAMP
P.O. BOX 7006
MARIANNA, FL 32447-7006

/s/ Amy R. Blalock
AMY R. BLALOCK

No. _____

In the

Supreme Court of the United States

OCTOBER TERM, 2022

ILSE IVON SOLIS,

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

APPENDIX

OPINION OF THE UNITED STATES COURT

OF APPEALS FOR THE FIFTH CIRCUIT

United States Court of Appeals for the Fifth Circuit

No. 22-40029
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
January 4, 2023
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ILSE IVON SOLIS,

Defendant—Appellant,

CONSOLIDATED WITH

No. 22-40088
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MERCEDES GALVAN,

Defendant—Appellant.

Appeals from the United States District Court
for the Southern District of Texas
USDC Nos. 6:19-CR-30-2, 6:19-CR-30-1

Before SMITH, DENNIS, and SOUTHWICK, *Circuit Judges*.

PER CURIAM:[*]

Following their conditional guilty pleas to conspiracy to possess with the intent to distribute methamphetamine and individual sentencings, Ilse Ivon Solis and Mercedes Galvan appeal the district court's denials of their motions to suppress. On appeal from the denial of a motion to suppress, this court reviews the district court's factual findings for clear error and the ultimate constitutionality of the actions by law enforcement de novo. *United States v. Pack*, 612 F.3d 341, 347 (5th Cir.), *modified on denial of reh'g*, 622 F.3d 383 (5th Cir. 2010). The evidence is viewed in the light most favorable to the prevailing party, here the Government, *Pack*, 612 F.3d at 347, and the district court's ruling will be upheld "if there is any reasonable view of the evidence to support it." *United States v. Michelletti*, 13 F.3d 838, 841 (5th Cir. 1994) (en banc) (internal quotation marks and citation omitted).

The appellants do not challenge the validity of the initial traffic stop but argue that the arresting officer, Sgt. Randy Thumann, did not develop further reasonable suspicion to prolong their detention beyond the initial purposes of the stop and that their subsequent consent to search given during their illegally prolonged detention was invalid. The appellants urge that Sgt. Thumann's actions were based on little more than the recent registration of an older vehicle and purportedly vague travel plans, noting that, when the

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[*] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

records check came back clear, Sgt. Thumann knew only that the defendants were residents of Laredo who were traveling with unsecured children on I-10 in an older model car that was newly registered en route to Houston, which facts they contend were not sufficiently suspicious, especially as they exhibited no nervousness and provided consistent statements to Sgt. Thumann. The appellants acknowledge that Sgt. Thumann also knew that the car's license plate had traveled across the border from Mexico earlier that morning but assert that there was no evidence proving at that time that the car itself or the women in it had done so and thus that any suspicion on Sgt. Thumann's part was merely a hunch which did not justify additional investigation.

Viewing the evidence in the aggregate and in the light most favorable to the Government, the district court did not err in determining that Sgt. Thumann had developed reasonable suspicion of additional criminal activity while investigating the original stop based on the appellants' traveling along the drug corridor of I-10 in a newly registered older model vehicle that he knew had crossed the border from Mexico only hours earlier and where he believed that the defendants had lied about having come from or traveled to Mexico. *See Pack,* 612 F.3d at 347, 360; *see also United States v. Andres*, 703 F.3d 828, 834 (5th Cir. 2013); *United States v. Lopez-Moreno*, 420 F.3d 420, 431 (5th Cir. 2005); *United States v. Ibarra-Sanchez*, 199 F.3d 753, 759 (5th Cir. 1999). Sgt. Thumann's suspicion was not a mere hunch but was reasonably based on his knowledge of the license plate check and the proximity in time from the border crossing to the stop; contrary to the appellants' suggestion, he did not need additional proof that the car itself or the women in it actually drove across the border. *See United States v. Estrada*, 459 F.3d 627, 631 (5th Cir. 2006); *Ibarra-Sanchez*, 199 F.3d at 759; *see also United States v. Arvizu*, 534 U.S. 266, 274, 277 (2002).

In sum, Sgt. Thumann had reasonable suspicion of criminal activity apart from the initial traffic violation to continue the stop for the relatively short additional three-minute period during which he obtained consent to search from the appellants. *See United States v. Place*, 462 U.S. 696, 709 (1983); *see also Pack*, 612 F.3d at 362. The district court therefore properly denied the defendants' motions to suppress. *See Michelletti*, 13 F.3d at 841.

Solis's appointed counsel on appeal, David Klein, has moved for leave to withdraw and for the appointment of substitute counsel. The motion to withdraw and for appointment of new counsel is GRANTED. The Clerk shall appoint new counsel to advise Solis of her right to file a petition for certiorari.

The judgments of the district court are AFFIRMED.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

January 04, 2023

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing or Rehearing En Banc

No. 22-40029, USA v. Solis
USDC No. 6:19-CR-30-2

Consolidated with

No. 22-40088, USA v. Galvan
USDC No. 6:19-CR-30-1

Enclosed is a copy of the court's decision. The court has entered judgment under FED. R. APP. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

FED. R. APP. P. 39 through 41, and 5TH CIR. R. 35, 39, and 41 govern costs, rehearings, and mandates. **5TH CIR. R. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following FED. R. APP. P. 40 and 5TH CIR. R. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. 5TH CIR. R. 41 provides that a motion for a stay of mandate under FED. R. APP. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under FED. R. APP. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to

file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari**. Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk

By:_____
Dantrell L. Johnson, Deputy Clerk

Enclosure(s)

Ms. Amy R. Blalock
Mr. Brent David Chapell
Mr. Michael Lance Herman
Mr. David Jay Klein
Mr. Scott Andrew Martin
Ms. Marjorie A. Meyers
Ms. Carmen Castillo Mitchell