

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

PHILLIP SERAPIO BACA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

VIRGINIA L. GRADY
Federal Public Defender

JOHN C. ARCECI
Assistant Federal Public Defender
Counsel of Record for Petitioner
633 17th Street, Suite 1000
Denver, Colorado 80202
(303) 294-7002

QUESTION PRESENTED

Whether a passenger in a vehicle subject to a traffic stop may contest the legality of his detention, as this Court held in *Brendlin v. California*, or whether, as the Tenth Circuit continues to hold post-*Brendlin*, he may do so only in the narrow circumstance where he can show that *his* personal unlawful detention, and his unlawful detention only, caused the discovery of the challenged evidence?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
PETITION FOR A WRIT OF CERTIORARI.....	1
OPINION BELOW.....	1
JURISDICTION.....	1
FEDERAL PROVISION INVOLVED.....	1
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT.....	5
A. The circuits are split.....	7
B. The Tenth Circuit's approach is inconsistent with this Court's decision in <i>Brendlin v. California</i>	8
C. The issue is important and recurring, and only this Court's intervention can address it.	9
CONCLUSION	11

APPENDIX

Decision of the United States Court of Appeals for the Tenth Circuit.....	A1
Decision of the United States District Court for the District of Colorado	A4

TABLE OF AUTHORITIES

	Page
Cases	
<i>Brendlin v. California</i> , 551 U.S. 249 (2007)	8, 9
<i>Rodriguez v. United States</i> , 575 U.S. 348 (2015).....	3, 5, 7
<i>United States v. Baca</i> , No. 22-1377, 2023 WL 4542143 (10th Cir. July 14, 2023)	1
<i>United States v. DeLuca</i> , 269 F.3d 1128 (10th Cir. 2001)	<i>passim</i>
<i>United States v. Moseley</i> , 343 F.3d 249 (3d Cir. 2006)	7
<i>United States v. Torres-Ramos</i> , 536 F.3d 542 (6th Cir. 2008).....	7
Statutes	
18 U.S.C. § 3231	1
18 U.S.C. § 3742	1
18 U.S.C. § 922(g)(1)	3
28 U.S.C. § 1254(1).....	1
28 U.S.C. § 1291	1
Other Authorities	
Wayne R. LaFave, Search and Seizure § 11.4(d).....	7
Nadia B. Soree, <i>The Hitchhiker's Guide to the Fourth Amendment: the Plight of Unreasonably Seized Passengers under the Heightened Factual Nexus Approach to Exclusion</i> , 51 Am. Crim. L. Rev. 601 (2014)	8

PETITION FOR A WRIT OF CERTIORARI

Petitioner, Phillip Serapio Baca, respectfully petitions for a writ of certiorari to review the order and judgment of the United States Court of Appeals for the Tenth Circuit entered on July 14, 2023.

OPINION BELOW

The unpublished decision of the United States Court of Appeals for the Tenth Circuit in *United States v. Baca*, No. 22-1377, 2023 WL 4542143 (10th Cir. July 14, 2023) is found in the Appendix at A1. The underlying district court decision appears at Appendix at A4.

JURISDICTION

The United States District Court for the District of Colorado had jurisdiction in this criminal case under 18 U.S.C. § 3231. The Tenth Circuit had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742, and entered judgment on July 14, 2023. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

FEDERAL PROVISION INVOLVED

U.S. Const. amend. IV, provides in full, that:

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.

STATEMENT OF THE CASE

One winter evening, Denver police stopped a blue Toyota sedan because it was missing its front license plate and had tinted windows. (Vol. 1 at 9.)¹ Mr. Baca was in the front passenger seat of the vehicle, which was driven by Anthony Medina; Mr. Baca's son, Phillip Baca Jr., sat in the backseat behind the driver. (*Id.*)

At least seven officers soon descended on the scene. (*Id.*) One approached the vehicle, knocked on the trunk, and directed the occupants to roll down the windows. (*Id.*) As the occupants complied, the officer told the driver, Mr. Medina, that there was no front plate on the car. (*Id.* at 10.) Mr. Medina pointed to where the front plate was sitting on the dashboard of the vehicle, and Officer Gergits said, "Alright." (*Id.*) The officer then shined a flashlight on Phillip Baca Jr. in the backseat and directed the driver, Mr. Medina, to step out of the car. (*Id.*) As Mr. Medina opened the door to comply with the order, Officer Gergits grabbed both of Mr. Medina's hands and held them behind his back, then escorted him to a police vehicle where he was handcuffed and frisked. (*Id.*)

Shortly thereafter, and within one minute of the car being stopped, Mr. Baca and Phillip Baca Jr. were also directed out the vehicle, handcuffed, and frisked. (*Id.*)

¹ Citations are to the record on appeal in the Tenth Circuit and the page number at the bottom, right-hand side of each page. The citations are provided for the Court's convenience in the event this Court deems it necessary to review the record to resolve this petition. *See Sup. Ct. R. 12.7.*

After Phillip Baca Jr. was escorted away from the Toyota to be handcuffed and frisked, an officer returned to the vehicle, kneeled beside the open rear-passenger door to shine his flashlight beneath the driver's seat, and located a firearm. (*Id.*) That officer then gave a thumbs up to other officers on the scene and retrieved the firearm. (*Id.*) After completing an initial examination of the firearm—identifying its make and model, writing down its serial number, and determining whether and how it was loaded—he told other officers that he had just grabbed one firearm and had “not gone through the rest” of the vehicle yet. (*Id.*) Another officer responded, “I’ll go through it,” put on a pair of gloves, and began a search of the rest of the vehicle, starting with the driver’s seat, where he located another firearm. (*Id.* at 10-11.) At around the same time, another began inspecting the front passenger compartment, where he located a third firearm beneath the front passenger seat. (*Id.* at 11.)

Mr. Baca was eventually charged federally with one count of possessing a firearm as a previously-convicted felon, in violation of 18 U.S.C. 922(g)(1). (*Id.* at 5.) Thereafter, he moved to suppress all evidence discovered during the January 26th traffic stop, arguing that the officers illegally extended the detention of the vehicle’s occupants. (*Id.* at 9.)

Specifically, that is, he argued that under this Court’s decision in *Rodriguez v. United States*, 575 U.S. 348 (2015), police were justified in detaining the vehicle’s occupants only to investigate the identified traffic violations (the missing front license

plate, and the tinted windows). (Vol. 1 at 11.) He further explained that under *Rodriguez*, the officers could deviate from that traffic-related mission to conduct unrelated investigations, or to take “safety precautions” to facilitate such unrelated investigations, only so long as they “did not lengthen the roadside detention.” *Id.* at 356, 354. But instead, he observed, police almost immediately abandoned any inquiry into the traffic infractions to engage in an unrelated and unsupported investigation, stopping to frisk each of the occupants and to search the vehicle for weapons. (*Id.* at 11-14.) And these unrelated investigative detours, Mr. Baca argued, lacked any valid justification under the Fourth Amendment because they were done without reasonable suspicion and prolonged the stop in violation of *Rodriguez*, and therefore resulted in his unlawful detention. (*Id.*)

He acknowledged, however, that relief on his motion was foreclosed by a heightened “factual nexus” requirement imposed by the Tenth Circuit in *United States v. DeLuca*, 269 F.3d 1128 (10th Cir. 2001). Under that circuit-specific rule, a passenger who is unlawfully detained in violation of *Rodriguez*, but who (like Mr. Baca) lacks a possessory or ownership interest in the stopped vehicle, must show that the evidence sought to be suppressed would not have been discovered but for his—and *only his*—detention. *See id.* at 1132-33. And because under *DeLuca* Mr. Baca could not prove that “had he requested to leave the scene of the traffic stop” prior to the *Rodriguez* violation, “he would have been able to do so,” the district court was forced to

“assume that regardless of [Mr. Baca’s] presence, the car and [its remaining occupants] would have continued to be detained and the officer still would have found the [firearm].” *Id.* at 1133. Accordingly, he conceded, his motion could not be granted. (Vol. 1 at 15.) He argued for preservation purposes, however, that *DeLuca* was wrongly decided and should be overruled. (*Id.*)

The district court agreed that *DeLuca* controlled and denied the suppression motion. (Appendix at A4-A5.) Mr. Baca entered a conditional plea to the indictment, preserving his right to challenge the denial of his suppression motion. (Vol. 1 at 27.) On appeal, the Tenth Circuit reached the same conclusion that *DeLuca* precluded Mr. Baca’s ability to challenge his detention as unlawful, and recognized the preservation of his claim for review by this Court. (Appendix at A2.) This petition follows.

REASONS FOR GRANTING THE WRIT

Mr. Baca had a clear and compelling claim for suppression under *Rodriguez*. When law enforcement officers stopped the blue Toyota, there were two valid bases for the detention: (1) the missing front license plate, and (2) the tinted windows. Under *Rodriguez v. United States*, 575 U.S. 348 (2015), police were justified in detaining the vehicle’s occupants to investigate those violations—and could deviate from that traffic-related mission to conduct unrelated investigations, or to take “safety precautions” to facilitate such unrelated investigations, only so long as they “did not lengthen the roadside detention.” *Id.* at 356, 354. Unrelated inquiries that delay

resolution of the traffic stop result in detentions that violate the Fourth Amendment, unless those unrelated inquiries are themselves justified by reasonable suspicion. *See id.*

In this case, police almost immediately abandoned any inquiry into the traffic infractions that were the valid mission of the stop to engage in an unrelated and unsupported investigation. Other than a brief exchange about the front license plate, which occurred approximately 15 seconds into the stop, police engaged exclusively in unrelated investigative activity intended to uncover evidence of other crimes, or safety precautions undertaken in support of those unrelated inquiries. Relevant here, they detoured from the mission of the stop to frisk each of the occupants and to search the vehicle for weapons. These unrelated investigative detours, which lacked any valid justification under the Fourth Amendment, prolonged the stop in violation of *Rodriguez* and therefore resulted in Mr. Baca's unlawful detention.

The only reason he could not prevail on this claim was because in the Tenth Circuit he could not bring it. That's because that circuit imposes a "heightened factual nexus" requirement barring passengers seized in stopped vehicles from challenging the fruits of that seizure. Because this important and recurring constitutional question is the subject of a circuit split, and because the Tenth Circuit's approach is inconsistent with this Court's decision in *Brendlin v. California*, this Court should grant certiorari.

A. The circuits are split.

As Mr. Baca acknowledged below, relief on his suppression motion was foreclosed by the heightened “factual nexus” requirement set forth in *United States v. DeLuca*, 269 F.3d 1128 (10th Cir. 2001). Under that rule, a passenger who is unlawfully detained but who lacks a possessory or ownership interest in the stopped vehicle, must show that the evidence sought to be suppressed would not have been discovered but for his—and only his—detention. *See id.* at 1132-33. And Mr. Baca could not meet that burden. As the district court explained, Mr. Baca “had no possessory interest in the vehicle searched,” and could not “establish that the firearm and other evidence recovered during the police search of the vehicle . . . would not have been discovered and seized but for his individual detention.”

The *DeLuca* rule, however, is a question that has split the courts of appeal. The Third Circuit, for example, has disagreed with the *DeLuca* standard. *See United States v. Mosley*, 454 F.3d 249, 254-56 & n.11 (3d Cir. 2006). The Sixth Circuit similarly has decided that such a standard was the wrong one under the Fourth Amendment. *See United States v. Torres-Ramos*, 536 F.3d 542, 549 (6th Cir. 2008). Moreover, *DeLuca*’s heightened “factual nexus” test has been extensively criticized elsewhere, including by the dissenting judge in the case itself, *see DeLuca*, 269 F.3d at 1135-49 (Seymour, J., dissenting), and by commentators—including the leading criminal law treatise, which, embracing that dissent, described the test as “ludicrous,” *see, e.g.*, 6 Wayne R. LaFave,

Search and Seizure § 11.4(d) (6th ed.); *see also* Nadia B. Soree, *The Hitchhiker's Guide to the Fourth Amendment: the Plight of Unreasonably Seized Passengers under the Heightened Factual Nexus Approach to Exclusion*, 51 Am. Crim. L. Rev. 601 (2014).

This split is entrenched and long standing, and it requires no additional development. And, as with other Fourth Amendment circuit splits, only this court's intervention can resolve the constitutional question. *See, e.g.*, *Rodriguez*, 575 U.S. at 353 (describing division among lower courts). Certiorari should be granted for this reason alone.

B. The Tenth Circuit's approach is inconsistent with this Court's decision in *Brendlin v. California*.

Certiorari also is warranted, however, because the Tenth Circuit's approach is inconsistent with *Brendlin v. California*, 551 U.S. 249 (2007), which this Court decided after *DeLuca*.

In *Brendlin*, this Court unanimously held that *all occupants in a vehicle are seized* when the vehicle is stopped for a traffic violation. 551 U.S. at 255-62. That's because, the Court explained, when an officer initiates a traffic stop, a reasonable passenger would not believe they could simply ignore the officer's directions (whether to remain seated, show hands, or exit the vehicle) or believe they were free to leave the car and start walking away. *Id.* at 257-58. It followed, therefore, that *any* occupant of the vehicle that is subsequently charged with a crime based upon evidence seized during a

search of the vehicle may challenge the reasonableness of the stop and seek suppression of evidence obtained as a result of it. *Id.* at 263.

In *DeLuca*, however, the Tenth Circuit's decision that the defendant could not establish a link between his unlawful detention and the subsequent discovery of evidence used against him turned on his “fail[ure] to show that had he requested to leave the scene of the traffic stop, he would have been able to do so in [the driver's] car.” 269 F.3d at 1133. Such a requirement is completely contrary to the reasoning in *Brendlin*. See 551 at 257-58 (discussing how, during a traffic stop, all vehicle occupants are seized and explaining, *inter alia*, that “a sensible person would not expect a police officer to allow people to come and go freely from the physical focal point of an investigation into faulty behavior or wrongdoing”). Put simply, *Brendlin* abrogated the logic of *DeLuca*, and the latter is irreconcilable with the former. The stop of a vehicle is a seizure of all its occupants, and their *continued* seizure—when it becomes unlawful, for example, as here, in violation of *Rodriguez*—is the but-for cause of the subsequent search. The Fourth Amendment and this Court's cases require nothing more, and for this additional reason, this Court's review of the *DeLuca* standard is appropriate.

C. The issue is important and recurring, and only this Court's intervention can address it.

Finally, review is warranted because the constitutional question presented is recurring and important. Traffic stops are utilized as a form of interdiction by law enforcement agencies nationwide, and frequently result in Fourth Amendment claims

before district courts, courts of appeal, and, even in this Court. Moreover, it goes without saying, that many drivers travel with passengers. But under the rule in *DeLuca*, those passengers generally are prevented from challenging the fruits of their unlawful detention.

As *DeLuca*'s critics have noted, this rule "provides positive encouragement for Fourth Amendment violations by telling the police that there are potential law enforcement benefits to be derived, at least against the passengers, in extending lawful stops even when, as in *DeLuca*, such action is 'flagrantly illegal.'" *Id.* (quoting *DeLuca*, 269 F.3d at 1148 (Seymour, J., dissenting)). In doing so, *DeLuca* expressly countenances what this Court in *Brendlin* expressly cautioned against:

Holding that the passenger in a private car is not (without more) seized in a traffic stop would invite police officers to stop cars with passengers regardless of probable cause or reasonable suspicion of anything illegal. The fact that evidence uncovered as a result of an arbitrary traffic stop would still be admissible against any passengers would be a powerful incentive to run the kind of "roving patrols" that would still violate the driver's Fourth Amendment right.

551 U.S. at 263. The scope and impact of this important constitutional question, one that only this Court can finally resolve, also favors this Court granting review.

CONCLUSION

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

Respectfully submitted,

VIRGINIA L. GRADY
Federal Public Defender

/s/ John C. Arceci _____
JOHN C. ARCECI
Assistant Federal Public Defender
Counsel of Record
633 17th Street, Suite 1000
Denver, Colorado 80202
(303) 294-7002

October 12, 2023