No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

THEODORE WILLIAMS, II,

***Petitioner*,**

v.

UNITED STATES OF AMERICA,

***Respondent*.**

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

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PETITION FOR WRIT OF CERTIORARI

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October 27, 2023

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QUESTION PRESENTED

In *Florida v. Royer*, 460 U.S. 491, 500 (1983) the Supreme Court held that the methods employed during an investigative detention under *Terry v. Ohio*, 392 U.S. 1 (1968), "should be the least intrusive means reasonably available." The question presented is:

> Whether, in determining whether a *Terry* stop has ripened into a de facto arrest, courts must consider the existence of reasonably available, less intrusive alternative means of detaining a suspect as a relevant factor.

PETITION FOR A WRIT OF CERTIORARI

Theodore Williams respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

ORDER AND OPINION BELOW

The district court denied Mr. Williams's motion to suppress. (Appendix A). After a stipulated facts bench trial, the district court entered judgment, adjudicating Mr. Williams guilty of possessing a firearm as a felon under 18 U.S.C. 922(g)(1). (Appendix B). The Eleventh Circuit affirmed the district court's judgment. *United States v. Williams*, No. 22-10426, 2023 WL 2785223 (11th Cir. Apr. 5, 2023) (Appendix C). The Eleventh Circuit denied the petition for rehearing. (Appendix D). The Supreme Court granted Mr. Williams's application for extension of time to file a petition for certiorari. (Appendix E).

JURISDICTION

The United States District Court, Middle District of Florida, had jurisdiction over this criminal case under 18 U.S.C. § 3231. Pursuant to 28 U.S.C. § 1291, the Eleventh Circuit Court of Appeals had jurisdiction to review the final order of the district court. The jurisdiction of this Court in invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the 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.

STATEMENT OF THE CASE

On May 28, 2020, undercover office Deputy Enriquez radioed to Deputy Otis that he observed Mr. Williams run a stop sign. Mr. Williams, having not been stopped by either officer, continued driving and turned into a convenience store parking lot. Deputy Otis followed Mr. Williams into the parking lot without initially activating his lights. After Mr. Williams pulled into a parking spot near the front of the well-lit store, Deputy Otis activated his lights and pulled in closely behind Mr. Williams's car, blocking him in.

Video evidence showed that Deputy Otis got out of his patrol car, and Mr. Williams got out of his Hyundai Elantra by taking a single step, such that he was standing by the rear driver's side door of his vehicle, and he stopped there and stood still with his arms flat by his sides. Deputy Otis approached Mr. Williams and told him that he was detaining him, immediately putting his hand on his arm to handcuff him.

After Deputy Otis grabbed him in order to handcuff him, Mr. Williams pulled away. Deputy Otis grabbed Mr. Williams's shirt, causing Mr. Williams to fall and both of them to end up on the ground. Deputy Enriquez saw this happen from approximately 30-50 feet away and ran over to assist Deputy Otis. Mr. Williams was ultimately handcuffed and officially arrested for resisting arrest.

Deputy Otis went over to Mr. Williams's vehicle and shined a flashlight into the window, after which he went back over to Mr. Williams and Deputy Enriquez. Deputy Otis conducted a search incident to arrest and found a blue package of

suspected marijuana. He then took Mr. Williams to his patrol car. Mr. Williams told him that he did not want to go back to prison and asked if the officer could get Mr. Williams's cell phone out of the vehicle so he could call his mother and girlfriend. Deputy Otis went to retrieve the cell phone. He opened the door and turned off the ignition and, according to his testimony, "smelled marijuana." He saw a phone plugged into a charging cable lying on the floor mat, and a gun right next to the phone. Deputy Otis returned to his patrol car and began a recorded interview with Mr. Williams, who was upset and apparently crying. During the recording, Mr. Williams asked him to get the phone numbers for his mother and girlfriend for him.

On November 19, 2020, Mr. Williams was indicted for possessing a firearm as a convicted felon. Mr. Williams moved to suppress the evidence, including the firearm, that had been obtained by law enforcement following the initial handcuff attempt, which Mr. Williams argued was a de facto arrest without probable cause. After a hearing, the district court denied the motion, finding that Deputy Otis's testimony that Mr. Williams appeared nervous and acted like he was trying to distance himself from the vehicle, combined with Deputy Otis being alone in a high crime area at a "highly frequented" convenience store, was sufficient justification for Deputy Otis to attempt to immediately handcuff Mr. Williams without first giving any verbal commands. The district court noted that Deputy Otis could have used alternative methods, but it did not consider those alternative methods in making its decision.

To preserve his right to appeal the denial of the motion to suppress, Mr. Williams proceeded to a stipulated facts bench trial. He was convicted and sentenced to fifty-seven months' imprisonment and thirty-six months of supervised release. On appeal, the Eleventh Circuit affirmed the denial of the motion to suppress, reasoning that "Because Deputy Otis believed himself to be the only officer on the scene, and because Williams exited the vehicle quickly, appeared nervous, and appeared to be distancing himself from the vehicle," Deputy Otis was justified in attempting to handcuff Mr. Williams immediately without first giving any verbal commands. The Eleventh Circuit recognized that the district court disregarded reasonably available alternative means as irrelevant, and the Eleventh Circuit did not consider reasonably available alternative means in making its decision. Mr. Williams's petition for rehearing was denied.

REASONS FOR GRANTING THE WRIT

In *Florida v. Royer*, the Supreme Court held that the methods employed during an investigative detention under *Terry v. Ohio*, 392 U.S. 1 (1968) "should be the least intrusive means reasonably available." 460 U.S. 491, 500 (1983) (plurality opinion).[1] Before the Eleventh Circuit's decision in *Williams*, circuit courts agreed that the reasonable availability of less intrusive, alternative means of detention was at least relevant consideration in determining whether a *Terry*[2] stop had ripened into a de

[1] Justice Brennan's concurrence went farther than the plurality did, stating that "a lawful stop must be so strictly limited that it is difficult to conceive of a less intrusive means that would be effective to accomplish the purpose of the stop." 460 U.S. at 511 n.* (Brennan, J., concurring).

[2] *Terry v. Ohio*, 392 U.S. 1 (1968).

facto arrest under *Royer*. However, a circuit split had developed as to whether (1) it is a requirement that the officer use the least intrusive means reasonably available; or (2) reasonably available, less intrusive means are simply a relevant factor in the analysis. The Eleventh Circuit's decision in *Williams* departed from both sides of the circuit split on that issue, creating a three-way split. The Eleventh Circuit's decision also conflicts with *Royer*: it erroneously declined to consider reasonably available, less intrusive means in determining whether Deputy Otis's immediate attempt to handcuff Mr. Williams amounted to a de facto arrest.

A. The Eleventh Circuit's decision departed from both sides of the previous circuit split by treating less intrusive, reasonably available alternative means of detaining a suspect as irrelevant in determining whether a *Terry* stop has ripened into a de facto arrest.

This Court has held that, with respect to a *Terry* stop, "the investigatory methods employed [during a detention] should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time.'" *Royer*, 460 U.S. at 500. However, in determining whether a *Terry* stop has ripened into a de facto arrest, the circuits have been split over whether (1) it is a requirement that the officer use the least intrusive means reasonably available; or (2) whether reasonably available, less intrusive means are simply a relevant factor in the analysis.

Most circuits apply the "least intrusive means" test. *See United States v. Aquino*, 674 F.3d 918, 923 (8th Cir. 2012) (describing the requirement that "officers 'must use the least intrusive means that are reasonably necessary' to protect officer safety" as "noncontroversial and well-established"); *see also Allen v. Hays*, 65 F.4th 736, 745 (5th Cir. 2023) (stating that "the investigative methods employed should be the least

intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time"); *United States v. Palmer*, 820 F.3d 640, 649 (4th Cir. 2016) (stating that law enforcement officer "must employ 'the least intrusive means reasonably available'"); *United States v. Bailey*, 743 F.3d 322, 340 (2d Cir. 2014) (holding that, where police handcuff a suspect during a *Terry* stop, "[t]he relevant inquiry is whether police have a reasonable basis to think that the person detained poses a present physical threat and that handcuffing is the least intrusive means to protect against that threat"); *United States v. Young*, 707 F.3d 598, 605 (6th Cir. 2012) (stating that, in a *Terry* stop, the "techniques used should be 'the least intrusive means reasonably available'"); *United States v. Tilmon*, 19 F.3d 1221, 1225 (7th Cir. 1994) ("The police should, of course, use the least intrusive means reasonably available to verify or dispel their suspicions in a short period of time."); *United States v. Baron*, 860 F.2d 911, 914 (9th Cir. 1988) ("When assessing the circumstances, we must bear in mind the Supreme Court's admonition that to qualify as a *Terry*-stop, 'the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time.'").

The Tenth Circuit has held that, while failure to use less intrusive alternatives is a relevant factor, officers need not use "the least intrusive means in the course of a detention, only reasonable ones." *United States v. Albert*, 579 F.3d 1188, 1193 (10th Cir. 2009); *see also United States v. King*, 990 F.2d 1552, 1563 (10th Cir. 1993). However, it has not been entirely consistent on the issue. *See United States v. Solorio*,

78 F. App'x 696, 699 (10th Cir. 2003) (stating "the investigative methods employed should be the least intrusive means reasonably available").

Previously, the Eleventh Circuit agreed that "the 'investigatory methods employed [during a detention] should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time.'" *Gray ex rel. Alexander v. Bostic*, 458 F.3d 1295, 1306 (11th Cir. 2006); *see also United States v. Simms*, 385 F.3d 1347, 1353 (11th Cir. 2004); *Salvato v. Blair*, No. 5:12-CV-635-OC-10PRL, 2014 WL 1899011, at *8 (M.D. Fla. May 12, 2014), *aff'd sub nom*. *Salvato v. Miley*, 790 F.3d 1286 (11th Cir. 2015) (stating "it is the law of this Circuit that officers 'should employ the least intrusive means available' when conducting an investigatory stop."). In Mr. Williams's case, it abandoned that position and affirmed the district court's reasoning: "[t]hat Otis could have used other means to detain Williams but chose to use handcuffs is irrelevant, because while he could have used other methods he was not required to." Eleventh Cir. Op. at 7. Like the district court did, the Eleventh Circuit treated other less intrusive means as irrelevant to the analysis, characterizing *Gray* as standing for the proposition "that it is reasonable for officers to use handcuffs to protect themselves during an investigative detention." *Id.* at 10. In so doing, the Eleventh Circuit created a three-way circuit split.

B. In addition to worsening a pre-existing circuit split, the Eleventh Circuit's decision ran afoul of *Royer*.

At a minimum, *Royer* admonishes courts to consider reasonably available, less intrusive alternative means in determining whether a *Terry* stop has ripened into a de facto arrest. There is no question that there were less intrusive, reasonably

available alternatives to handcuffing in the instant case. The district court expressly acknowledged that "Deputy Otis could have used methods other than handcuffing Williams in order to detain him." Dist. Ct. Order at 9. Indeed, it would have been as simple as telling him to get back in the vehicle.[3] Moreover, as this Court has indicated, a driver exiting the vehicle creates a *safer* situation for law enforcement officers. *Pennsylvania v. Mimms*, 434 U.S. 106, 110 (1977) ("Establishing a face-to-face confrontation [by asking the driver to exit the vehicle] diminishes the possibility, otherwise substantial, that the driver can make unobserved movements; this, in turn, reduces the likelihood that the officer will be the victim of an assault.").

In Mr. Williams's case, there were no reports of violent or serious crimes, gunshots, noncompliance, or analogous particularized safety risks that would make handcuffing reasonable. There was only a young black man, driving a car in a poor neighborhood, who, after seeing the patrol car's lights, stepped out of his car in a well-lit convenience store parking lot, and then stood still beside it with his arms flat at his sides.[4]

Deputy Otis made no effort to minimize the intrusiveness of the detention. Deputy Otis did not give Mr. Williams an opportunity to comply with verbal commands before attempting to handcuff him, and Mr. Williams had been otherwise compliant by standing still beside his vehicle. Plainly, Deputy Otis's goal was not to briefly

[3] A verbal order to "stop" would have made no sense, as the surveillance video shows Mr. Williams stood still next to his vehicle after exiting it.

[4] The video and police reports make clear that Mr. Williams made no further movements after exiting the vehicle and closing the door, until Deputy Otis attempted to handcuff him.

investigate an articulable, reasonable suspicion of criminal activity with minimal intrusion. Attempting to immediately handcuff Mr. Williams solely for standing next to his vehicle was unreasonable and constituted a de facto arrest under *Royer*.

C. This case is an excellent vehicle to resolve the conflict.

This case is an ideal vehicle for further review and gives this Court the opportunity to harmonize conflicting decisions in the circuit courts. It is clear that neither the Eleventh Circuit nor the district court considered reasonably available alternative means in reaching their decisions. Given the apparently worsening nature of the conflict, this Court's review is needed to resolve the inconsistencies both among and within the circuits.

CONCLUSION

For the above reasons, Mr. Williams respectfully requests that this Court grant the petition for a writ of certiorari.

Respectfully submitted,

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