No.24-5501

IN THE SUPREME COURT OF THE UNITED STATES

VICTOR CAMPOS-AYALA, PETITIONER

V.

UNITED STATES OF AMERICA, RESPONDENT

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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INTRODUCTION

This case presents three issues worthy of certiorari. The government does not seek to defend the Fifth Circuit's construction of those issues but, instead, tries to assure the Court of the factbound nature of this case, hoping that these issues will not be so treated in the future. The government fails to appreciate the far-reaching consequences of the *en banc* Fifth Circuit's holding.

First, this case hinged on a well-defined and deepening split: whether law enforcement can avoid the requirements of *Miranda* by interrogating suspects during roadside apprehensions—with weapons drawn, physical movement entirely restrained, and impending arrest obvious—so long as they ask the questions before the arrest and are supported by the reasonable suspicion necessary to justify a brief detention. The Court should take this case to resolve that split because Campos made an array of statements during his detention, prior to arriving in a secure transport van. The last statement, that he had "helped" with the marijuana, made steps from the van, was key to the government's conviction.

Second, in its zeal to ensure someone was held responsible for possessing the marijuana that did not belong to Campos or Moncada, the *en banc* Fifth Circuit held that any person who possesses two cell phones can be convicted of possession with intent to distribute marijuana. *United States v. Campos-Ayala*, 105 F.4th 235, 245 (5th Cir. 2024) ("the jury was entitled to give any amount of weight or credence to . . . any . . . of, the following, any of which is enough to establish sufficiency of the evidence: . . . Campos's possession of two cell phones."). That holding clearly violates

this Court's dictate in *Jackson v. Virginia*, that the government must offer sufficient evidence to establish every element of a criminal offense beyond a reasonable doubt. 443 U.S. 307, 316-19 (1979). Of more interesting debate, is the Fifth Circuit's holding that touching marijuana—without any real ability to control it—is sufficient to establish possession. *Campos-Ayala*, 105 F.4th at 245 ("the jury was entitled to give any amount of weight or credence to . . . any . . . of, the following, any of which is enough to establish sufficiency of the evidence: . . . That the defendants voluntarily surrounded themselves with what was admittedly a controlled substance."). That holding splits with the other three circuits to have considered the issue.

Finally, all twelve of the Fifth Circuit's holdings on sufficiency of the evidence to show possession of a controlled substance, *id.* (articulating twelve facts "any one of which is enough to establish sufficiency"), rely on the jury inferring contrary to the statements of the sole, material, favorable witness. Those statements were sponsored by the government to avoid sanction for having deported that witness. The Fifth Circuit's holding that the government could simultaneously introduce them to avoid violating Campos's and Moncada's rights while urging that the jury could rationally disbelieve them is insupportable given this Court's holding in *United States v. Valenzuela-Bernal*, 458 U.S. 858, 864-65 (1982).

REASONS FOR GRANTING THE WRIT

I. THE COURT SHOULD GRANT THE PETITION TO REVIEW THE *MIRANDA* ISSUE.

A. Campos's case presents a well-defined circuit split about whether a traffic stop can ever escalate to custodial interrogation, requiring *Miranda* warnings, short of a completed arrest.

In *Miranda v. Arizona*, this Court established a rule: "if the police take a suspect into custody and then ask him questions without informing him of [certain] rights, his responses cannot be introduced into evidence to establish his guilty." *Berkemer v. McCarty*, 468 U.S. 420, 429 (1984) (citing *Miranda v. Arizona*, 384 U.S. 436, 444 (1966)). Since *Miranda*, courts have often struggled to answer: when is a suspect taken "into custody?"

This Court has consistently held that whether a person is "in custody" depends on how a reasonable person, in his position, would feel. *See J.D.B. v. North Carolina*, 564 U.S. 261, 270-71 (2011) ("Rather than demarcate a limited set of relevant circumstances, we have required police officers and courts to examine all of the circumstances surrounding the interrogation including any circumstance that would have affected how a reasonable person in the suspect's position would perceive his or her freedom to leave."). That inquiry then informs the ultimate question: whether there is a "formal arrest or restraint on freedom of movement of the degree associated with a formal arrest." *California v. Beheler*, 463 U.S. 1121, 1125 (1983). Despite that holding, many lower courts have held, like the *en banc* Fifth Circuit did here, that *Miranda* warnings are not required when the actions of officers are "reasonabl[e]"—regardless of whether a person would feel he was restrained to the degree associated

with formal arrest. *United States v. Campos-Ayala*, 105 F.4th 235, 250 (5th Cir. 2024) (en banc).

The government's response does not seek to defend the increasingly prevalent practice of lower courts collapsing the custody question under *Miranda* with the reasonableness standard in the Fourth Amendment.[1] The government, however, ignores the plain language of the opinion. Here, the lynchpin of the Fifth Circuit's analysis was that the interrogation "was reasonably designed to ascertain whether the agents were dealing only with aliens or, instead, with a more serious situation posing a greater immediate risk." *Campos-Ayala*, 105 F.4th at 249. Neither the Fifth Circuit nor the government explain how the fact that an officer's inquiry is reasonable in light of a larger investigation has anything to do with whether the question is asked in a situation that restrains movement to the degree associated with formal arrest. This was not an isolated, fact specific analysis by the Fifth Circuit. *See United States v. Coulter*, 41 F.4th 451, 460 (5th Cir. 2022) (finding questioning was justified by "objective concerns for officer safety" and, therefore, not custodial).

Further, the government's response—by citing to additional cases beyond those in Campos's petition in which courts were even more explicit in approving interrogations that occurred during "reasonable" detentions, short of arrest—shows the importance of resolving this issue. The Ninth Circuit has recently held that, at least in cases near the international border, courts must determine whether a

[1] The "reasonableness" of the officers' actions is normally evaluated under the framework of whether the questioning occurs in the course of a proper "*Terry* stop." "A *Terry* stop is an officer's brief detention of a person when the officer reasonably suspects that the person has committed or is about to commit a crime." *United States v. Cabrera*, 83 F.4th 729, 734 n.2 (9th Cir. 2023).

suspect's interrogation "was permissible pursuant to *Terry*, rather than whether he was 'in custody' pursuant to *Miranda*." *Cabrera*, 83 F.4th at 735; *see also United States v. Singh*, 2024 WL 1477401 (9th Cir. Apr. 5, 2024) (applying *Cabrera* to hold that an alien was permissibly interrogated during a *Terry*-stop despite the interrogation occurring in the back of a truck that had been converted into a cell on wheels). Those holdings directly conflict with this Court's cases that hold that "the Fifth Amendment's strictures, unlike the Fourth's, are not removed by showing reasonableness." *Fisher v. United States*, 425 U.S. 391, 400 (1976).

The reliance on Fourth Amendment reasonableness to avoid *Miranda* requirements—as the Fifth Circuit did here and in *Coulter* and the Ninth Circuit did in *Cabrera* and *Singh*—are just the latest iterations of a longstanding split that the government attempts to write around. Over thirty years ago, the Tenth Circuit identified the coming error of conflating Fourth Amendment reasonableness with the *Miranda* requirements. *United States v. Perdue*, 8 F.3d 1455, 1464-66 (10th Cir. 1993). As the Eighth Circuit explained, courts traditionally held that a temporary seizure short of arrest—a standard *Terry*-stop—did not place "the suspect in 'custody' for purposes of *Miranda*." *Id.* at 1464. But, "a multifaceted expansion of *Terry*," permitted officers to "use handcuffs, [place] suspects in police cruisers, [draw] weapons" and demand that suspects lie face down in the ground all without the probable cause necessary for an arrest—a *Terry* stop. *Id.* Those approved uses of force in a *Terry*-stop, however, "created the 'custodial' situation envisioned by *Miranda* and its progeny." *Id.* Thus, the Tenth Circuit concluded that *Perdue* "present[ed] the

precise scenario envisioned by the *Berkemer* Court when it indicated that *Miranda* warnings might be implicated in certain highly intrusive, 'non-arrest' encounters." *Id.* at 1466. Many courts have, using similar analysis, found that a custodial interrogation can occur during a non-custodial *Terry*-stop. *See, e.g., United States v. Foster*, 70 F. App'x 415, 417 (9th Cir. 2003); *People v. Polander*, 41 P.3d 698 (Colo. 2001) (en banc).

Other circuits, however, have taken the position that a *Terry*-stop cannot require full *Miranda* warnings until it ripens into a full arrest. For example, in *United States v. Leshuk*, the Fourth Circuit concluded "that drawing weapons, handcuffing a suspect, placing a suspect in a patrol car for questioning, or using or threatening to use force does not necessarily elevate a lawful stop into a custodial arrest for *Miranda* purposes." 65 F.3d 1105, 1109 (4th Cir. 1995). The government characterizes the Fourth Circuit as "separately analyzing whether the stop" was elevated into a custodial arrest from its *Terry*-stop analysis. Gov't. Br. at 27. But, the Fourth Circuit was clear, when it wrote, "Instead of being distinguished by the absence of any restriction of liberty, *Terry* stops differ from custodial interrogation in that they must last no longer than necessary to verify or dispel the officer's suspicion"—essentially what distinguishes a *Terry* stop from an arrest is that it ends with the suspect's release. *Leshuk*, 65 F.3d at 1109. Further, the district courts disagree with the government's interpretation of *Leshuk*. *See, e.g., United States v. McCullers*, 591 F. Supp. 3d 38, 51 (E.D. Va. Mar. 16, 2022) ("Other circuits recognize that a coercive *Terry* stop requires *Miranda* warnings. But in the Fourth Circuit, so called *Terry*

reasonableness means *Miranda* warnings are not required, even if the stop was coercive.").

The First Circuit has also relied on "officer safety" to hold that "prophylactic measures"—display of service weapon, use of handcuffs, and pat-frisk—can be employed, even in combination, without exceeding the constitutional limits of a *Terry* stop and, therefore, do not require officers to give *Miranda* warnings before questioning. *United States v. Rabbia*, 699 F.3d 85, 91-92 (1st Cir. 2012). The government seeks to reassure the Court that the First Circuit's acknowledgment, in *United States v. Trueber*, that a *Terry*-stop may escalate "into a de facto arrest necessitating . . . *Miranda* warnings" shows that the First Circuit appropriately applies *Miranda*. Gov't Br. at 26 (quoting *United States v. Trueber*, 238 F.3d 79, 92-93 (1st Cir. 2001)). In *Trueber*, the government prevailed in its argument that statements made in response to unwarned questions need not be suppressed because they were made during "a valid *Terry* stop." *Id.* at 91. The First Circuit concluded that "nothing the agents did or said sufficed to convert the investigatory stop into an arrest requiring the administration of *Miranda* warnings." *Id.* at 95. Regardless, the government does not deny that the First Circuit later, in *Rabbia*, approved unwarned interrogation based solely on Fourth Amendment reasonableness.

In sum, an array of courts has held that Fourth Amendment reasonableness short of full arrest can negate the need for *Miranda* warnings prior to interrogation. *Rabbia*, 699 F.3d at 91-92; *Leshuk*, 65 F.3d at 1109; *Cabrera*, 83 F.4th at 735; *Coulter*, 41 F.4th at 460; *see also Foster*, 70 F. App'x at 419 (Thomas, J., dissenting) (finding

that "*Miranda* warnings were not required" because "the officers did not exceed the bounds of the questioning permitted by *Terry*."). The government does not attempt to defend that position as consistent with this Court's *Miranda* progeny. In this case, the en banc Fifth Circuit approved the unwarned questioning because it "was reasonabl[e]." *Campos-Ayala*, 105 F.4th at 249. That, in itself, is sufficient reason for the Court to grant certiorari because, in the Fifth Circuit "it is difficult to imagine when—if ever—a routine traffic stop may evolve into *Miranda* custody." *Id.* at 269 (Richman, C.J., dissenting).

B. This case presents an ideal vehicle to resolve this question.

The government urges the Court not to address the deepening split because it is "factbound" and because the Court has denied certiorari on a similar question. Gov't Br. at 22 n.3, 25.

This case presents the legal question of whether, and when, a stop can include such coercive procedures that *Miranda* warnings are required during interrogation that occurs prior to a full arrest. The facts of this case afford the Court the opportunity to give specific guidance and delineate precisely when warnings are required.

Law enforcement seized Campos for thirty minutes before an agent asked Campos and Moncada, while they were being held in the car, where they were coming from and whether they were citizens of the United States. ROA.487. Then, Agent Ramos asked them, "That's marijuana?" ROA.509. They answered yes. ROA.509. Then, Ramos removed Campos from the car and asked, "Why did you help with the drugs?" ROA.514. Campos replied that he did not. ROA.514. When Ramos found two cell phones in Campos's pocket, he asked, "Why do you need two phones? . . . You have

a lot of people that you have to call for the drugs?" ROA.515. Campos said no. ROA.515. Then, as he walked Campos to a secure transport van, Ramos asked, "Why did you cross with the drugs?" ROA.515. Campos replied, "I didn't cross. I just helped." ROA.515.

From their initial contact with Campos and Moncada to steps before Campos's arrival in a secure transport van, Border Patrol agents interrogated Campos about how he came to be on top of backpacks of marijuana. The *en banc* Fifth Circuit held that Campos was "never really arrested until [he] was taken to the transport vehicle," which was critical to its finding that his statement that "he helped"—made while being escorted to the transport vehicle—should not have been suppressed. *Campos-Ayala*, 105 F.4th at 249 (quoting the district court). Because Campos made statements from the Border Patrol's initial contact with him to just before his arrival in custody, this case gives the Court an excellent opportunity to clarify the bounds of *Miranda* in traffic stops.

In its opposition to certiorari, the government also refers to the Court's recent denial of certiorari in *Cabrera v. United States*, No.23-6976 (Jun. 10, 2024) and another pending petition in *Buta v. United States*, No. 24-5722 (filed Oct. 1, 2024). This case presents a better opportunity to clarify the reach of *Miranda* than *Cabrera* and *Buta*. Those cases both involved charges for illegal border crossings in violation of 8 U.S.C. §§ 1325, 1326. *Cabrera*, 83 F.4th at 733; *Singh*, 2024 WL 1477401, at *1. To obtain a conviction for an illegal crossing, the government need show only that an alien entered the United States at any time or place other than as designated by

immigration officers and, if it seeks a felony, that the alien was previously deported. 8 U.S.C. §§ 1325, 1326. Though the Ninth Circuit requires that the government show a specific intent to "go at large within the United States" and "mix with the population," *United States v. Castillo-Mendez*, 868 F.3d 830, 836 (9th Cir. 2017), "the majority of circuits [have concluded] that specific intent is not an element of the crime of attempted illegal reentry into the United States" or any other illegal crossing crime, *United States v. Morales-Palacios*, 369 F.3d 442, 443 (5th Cir. 2004).

Thus, this case presents a superior vehicle for deciding the *Miranda* issue because, in *Cabrera* and *Buta* the importance of the *Miranda* issue was contingent on another split—the specific intent required to commit an illegal-crossing crime. In contrast, here, the *Miranda* issue was critical to the outcome of Campos's case. In deciding that the evidence was sufficient to convict Campos of possession with intent to distribute marijuana, the *en banc* Fifth Circuit held that "perhaps" the "most important[ ]" factor was "Campos's admissions that he 'possessed' and 'helped with' the marihuana and of course knew it was marihuana." *Campos-Ayala*, 105 F.4th at 245. Because this case implicates a deepening split and presents it in a manner worthy of clarification by the Court, the Court should grant certiorari as to the *Miranda* issue.

II. THE COURT SHOULD GRANT THE PETITION TO RESOLVE THE SUFFICIENCY ISSUE.

The government convicted Campos and Moncada of possession with intent to distribute marijuana because it found them riding on top of burlap sacks containing more than 100 kilograms of marijuana in a car. The only coherent, reasonable

explanation of what happened was given by Campos, Moncada, and a third, uncharged passenger Castro: after illegally-crossing the United States-Mexico border, Campos, Moncada, Castro, and Castro's minor daughter were transported by the car's driver, a seventeen year old, to a roadside park, where he told them to wait. When he arrived to retrieve them, the car was full of marijuana, and the passengers rearranged it to ride in the car. Campos and Moncada were wedged between the car and the marijuana. Those statements were introduced by the government.

Evidence is sufficient when "after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson*, 443 U.S. at 319. The government recognizes this standard, Gov't Br. at 13, but ignores the plain language of the Fifth Circuit's opinion. The Fifth Circuit listed twelve bullet-pointed facts about this case, and held, explicitly, that "any one of [them] is enough to establish sufficiency of the evidence." *Campos-Ayala*, 105 F.4th at 245. Those facts included "that the defendants voluntarily surrounded themselves with what was admittedly a controlled substance" and, independently, "Campos's possession of two cell phones." *Id.* The government cannot now credibly claim that the en banc court of appeals did not hold "that merely touching a drug, rather than controlling it, qualifies as possession." Gov't Br. at 14.

Of course, the government does not attempt to defend the idea that a person's possession of two cell phones is sufficient to show he commits the crime of possession with intent to distribute marijuana. 21 U.S.C. § 841(a). But, that is what the opinion

says. This Court should grant the petition to bring the Fifth Circuit's law back in line with the plain language of the statute and this Court's holdings.

Further, the Fifth Circuit's opinion holds that "the defendants voluntarily surrounded themselves with what was admittedly a controlled substance and made no effort to exit the car or thwart the enterprise" and "this evidence alone is enough to establish possession." *Id.* at 254 ((Richman, C.J., dissenting) (citing *id.* at 245)). That holding splits with every other circuit to consider the issue of whether merely touching, instead of controlling, a drug is sufficient to show possession. *United States v. Lane*, 267 F.3d 715, 718 (7th Cir. 2001); *United States v. Edwards*, 166 F.3d 1262, 1364 (11th Cir. 1999), and *United States v. Kearns*, 61 F.3d 1422, 1425 (9th Cir. 1995). The Court should grant the petition to bring the Fifth Circuit's law back in line with the other circuits to consider the issue as well as the plain meaning of the statute.

III. THE COURT SHOULD GRANT THE PETITION TO RESOLVE THE DUE PROCESS ISSUE.

The government attempts to reassure the Court that it should not take up the permissibility of the inferences that the Fifth Circuit has allowed because the Fifth Circuit's opinion is limited to consideration of those facts "when considered in combination" with one another. Gov't Br. at 13. As argued above, the government misreads the Fifth Circuit's opinion. But, even if the government were correct, all those facts taken together still required the Fifth Circuit to permit the jury to reasonably infer counter to statements that it sponsored, not out of charity, but to avoid the district court granting Campos's motion to dismiss.

The government deported Castro without deposing her to secure her testimony. The *en banc* Fifth Circuit held "that because the Executive Branch must faithfully execute immigration policy, the government could deport the only material witness in this case even though she possessed information favorable to the defendants." *Campos-Ayala*, 105 F.4th at 268 (Richman, C.J., dissenting). In *Valenzuela-Bernal*, this Court held that the government may deport illegal-alien witnesses after determining "they possess no evidence favorable to the defendant in a criminal prosecution" and that a criminal defendant can show that a deportation violated his Compulsory Process rights, U.S. Const. amend. VI and Due Process rights, U.S. Const. amend V, by "showing that the evidence lost would be both material and favorable to the defense." 458 U.S. 858, 873 (1982).

The government sought to nullify its deportation of a favorable witness by assuring the district court that it would nonetheless introduce her statement into evidence. Campos Pet. App. 44. In its sufficiency review, however, the Fifth Circuit permitted the government to benefit from its deportation of a favorable witness by holding that the jury could have rationally inferred contrary to Castro's statement, as urged by the government in its closing argument to the jury. *Campos-Ayala*, 105 F.4th at 243-46. In effect, the *en banc* Fifth Circuit permitted the government to "have its cake and eat it too." *Id.* at 271 (Richman, C.J., dissenting). In the Fifth Circuit, the government can deport a material, favorable witness, introduce her statement through its witnesses, cast doubt on the veracity of those statements, and urge the

jury to infer contrary to them—all without violating a defendant's Fifth and Sixth Amendment rights.

Conclusion

FOR THESE REASONS, Petitioner asks this Honorable Court to grant a writ of certiorari and review the judgment of the court of appeals.

/s/ SHANE O'NEAL
Counsel of Record for Petitioner

DATED: December 26, 2024.