No. 24-6091

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Pedro Pablo Fuentes - PETITIONER

vs.

United States - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATE COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

SEEK REVIEW FOR ORDER DENYING CERTIFICATE OF APPEALABILITY NO. 24-6094 (DD.C NO. 5:23-CV-00355-J (W.D.OKLA.) RULE 10. CONSIDERATIONS GOVERNING REVIEW ON CERTIORARI

Pedro Pablo Fuentes

8607 S.E. Flower Mound Rd.

Lawton, OK. 73501

QUESTION(S) PRESENTED

1). Why has The United State Court of Appeal For the Tenth Circuit entered a decision so far departed from the accepted and usual courts of judicial proceedings, based on an unreasonable determination of the facts, in light of the evidence presented in A Application For A Certificate of Appealability as to call for an exercise for this Court's supervisory power? What Petitioner, is stating is that the officers violated his Fourth Amendment rights because they lacked reasonable suspicion to extend the traffic stop after the issue of the ticket and the court is saying that Petitioner is argument is that the officers extend the traffic stop to issue a ticket. 2).Why has the The United State Court of Appeal For the Tenth Circuit entered a decision so far departed from the accepted and usual courts, of judicial proceedings, based on an unreasonable determination of the facts, in light of the evidence presented in A Application For A Certificate of Appealability as to call for an exercise for this Court 's supervisory. The argument of Petitioner is and has always being that Oklahoma Courts did not give me a full and fair opportunity to litigate those claims See 28 U.S.C § 2253 (c) (1)(A); Miller- El v. Cockrell, 537 U.S. 322, 335-36 (2003)

LIST OF PARTIES

The Unites State of America

Steven Harpe,

John M. O'Connor, Oklahoma Attorney General

Solicitor General

Harris Hartz, Circuit Judge

Bobby Baldock, Circuit Judge

Nancy L. Moritz, Circuit Judge

RELATED CASES

Fuentes v. state, 517 P.3d 971, 976 (Okla. Crim. App.2001)

Fuentes v. Steven Harpe D.C. No. 5:23-CV-355-J(W.D. Okla.)

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of Certiorari issues to review the judgment below.

Seeking review under Rule 10 of the Order Denying Certificate of Appealability by The United States Court of Appeals For the Tenth Circuit No. 24-6094 (D.C. No.5:23- CV-00355-J (W.D. Okla.)

OPINIONS BELOW

In the United State Court of Appeals For The Tenth Circuit, order Denying Certificate Of Appealability of Harris Hartz, Bobby Baldock, and Nancy L. Moritz, Circuit Judges

JURISDICTION

The jurisdiction of this Court is invoked under Rule 10(a) a United State court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter, has decided an important federal question in a was that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings or sanctioned such a departure by a lower court as to call for an exercise of this court ;s supervisory power;

On the date of June 17, 2024 Petitioner, file a Certificate of Appealability to challenged the district court's order denying his 28 U.S.C.§ 2254 petition. On the date of June 20, 2024 file a motion for a stay which was pending until further notice. On the date of September 30, 2024 the order of denying certificate of appealability. Which gives Petitioner, until the date of December 29, 2024 to file a Writ of Certiorari.

CONSTITUTIONAL AMD STATUTORY PROVISIONS INVOLED

4th Amendment of the United States Constitution, under Article ll, and Article II § 7

and § 20 of the Oklahoma Constitution.

Anti Terrorism and Effective Death Penalty Act. Under the Anti Terrorism and Effective Death Penalty Act Here In After Sections 2254 (d) and (e) (1):

STATEMENT OF THE CASE

On the date of June 17, 2024 Petitioner, file a Application for a Certificate of Appealability to challenged the district court's order denying his 28 U.S.C.§ 2254 petition. On the date of June 20, 2024 file a motion for a stay which was pending until further notice. On the date of September 30, 2024 the order of denying certificate of appealability. Which gives Petitioner, until the date of December 29, 2024 to file a Writ of Certiorari.

REASONS FOR GRANTING THE PETITION

The reason I should be granted the Petition is because, the United States Court of Appeal of the Tenth Circuit has made a decision so far departed from the accepted and usual courts of judicial proceedings, based on an unreasonable determination of the facts, in light of the evidence presented. I know that the United State Supreme Court is righteous and will do the right thing regardless of the amount of Methamphetamine found in my vehicle. Any body that reads my case can see that my rights were violated by the O.C.P.D when they gave me the citation for the reason that they pull me over and then they restrain me from walking away and put me the back seat of the patrol vehicle, just because I did not give consent to search my vehicle. Everybody in the United State of America has the right to deny consent to a Officer to search once vehicle, including me. That why I am asking this court to review my case, because this is the court that made the ruling on Rodriguez and what happen to him happen to me.

My name is Pedro Pablo Fuentes, and I got mine Fourth Amendments violated by Sergeant Rickets. On the date of July 16, 2016 I was coming back from Arizona, while I was exiting on Morgan Rd. in Oklahoma City, I got pull-over by Sergeant Rickets. Which at inception he told me the reason I

got pull over was because I was speeding and tale gating. I did not want to chit-chat with him so he told me to "step out of my vehicle" and he told to "to stand in the back of my vehicle while he went to write the citation". Officer McDaniel, arrived at the scene and I ask him "way it was taking so long to write a citation". Which he respondent to " I just got here and don 't know what' s going on". At that time Sergeant Rickets, step out of his patrol vehicle and told me "that he had the writing citation". He went through the steps of how to pay for it or if I wanted to go to Court I had that right. After I sign the citation he told me " now that this is out the way do you mine if I ask you a few questions". I said "no I did not mine". He ask me if "I had any drugs in the vehicle" which I reply "that I did not have anything illegal in the vehicle". He ask me "if I mine if he search my vehicle". Which I reply " that he was not searching my vehicle" and I ask him "for my citation so I could leave". Which he said " that I could not leave and that I could either wait on the side of road until they ran a K-9 around my vehicle or I could wait in the back set of his patrol vehicle". I told him that "I was not doing neither and like he was not giving me the citation that he could mail me the citation" at that time Sergeant Rickets, started walking toward me and told me "like I did not want to wait on the side of the road that I could wait in the back seat of his patrol vehicle". He patted me down and give me my citation before he put me in the back seat of his patrol vehicle. (And as evidence that Sergeant Rickets gave Petitioner the citation before put him in the back seat of the patrol vehicle Petitioner offers page (75) of the court transcripts.) Sergeant Rickets, place Petitioner in the back seat of patrol vehicle under investigative detention restrains his freedom to walk away, and this was done while Petitioner Fuentes, protested that he did not want to stay after he was given the citation. (As evidence that Sergeant Rickets, put Petitioner Fuentes, under investigative detention after he gave him the citation he offers as appendices page (75) of the court transcripts.) Well they found drugs in my vehicle but it was done after my Fourth Amendments violated.

What we have here is that the United State Court of Appeal of the Tenth has so far departed

from the accepted and usual course of judicial proceedings they don't want to make the correct ruling on what Petitioner Fuentes, is arguing. The argument of Petitioner Fuentes, is that the citation was giving to him before he got place in the back seat of the patrol vehicle and the cases relevant to his case are Rodriguez v. United States, 135 S. ct 1609, 191 L. Ed. 2d. 492 (2015) and also with *Brendlin v. California 127, S.Ct. 2400, 168, L. Ed.2d. 132, 551, U. S. 249, 75 (2007)* which are United States Supreme Court relevant decisions of this court. The United States Court of Appeals for the Tenth Circuit, is stating and has a ruling on is that Petitioner Fuentes, arguing that the officers violated his Fourth Amendment rights because they lacked reasonable suspicion to extend the traffic stop.

STATE OF THE FACT

Around June 6, 2016, Oklahoma City Detective Chad Cook, with the Criminal Enterprise Task Force, learned information from a known reliable and well-vetted confidential informant (CI) that Fuentes and other members of his family were involved with drug trafficking. The CI gave Detective Cook, specific information about Fuentes, including a physical description of him, the car he was driving, and the residence from which he and other family members were trafficking drugs, and indicated this activity involved large sums of money and methamphetamine. Detective Cook opened an investigation and began attempting to corroborate this information. He got a break in this regard on June 13, 2016 when police were called to the scene of a domestic disturbance involving Fuentes at his mother's house. While there officers saw what they would later describe as "as a good amount of methamphetamine" and money in the kitchen.

Armed with this information, Detective Cook sought and obtained a search warrant authorizing the installation and use of an electronic tracking device on the car Fuentes drove. Pursuant to this warrant, the tracking device was installed on Fuentes's car on or about June 20, 2016.

During this same general time period, investigation detectives received information from a second reliable CI that Fuentes was going to travel west to pick up a load of drugs and bring them back

to Oklahoma. While monitoring the tracking device, Detective Cook saw the vehicle driven to Phoenix, Arizona, a city known to Detective Cook as a distribution hub for illegal drugs. A team of of task force members organized to follow the car back into Oklahoma City, Detective Cook alerted Oklahoma City Police, including Sergeant John Rickets, about the moving surveillance. Detective Cook advised the Oklahoma City officers of the make, model, and tag number of the car he was tracking and surveilling and that it was suspected to be involved in drug trafficking. **Detective Cook requested that an Oklahoma City officers stop the vehicle once it was in Oklahoma County if any traffic violations were observed.(Tr.17)**

On this day, July 16 2016, Oklahoma City Police Sergeant John Rickets, was working highway interdiction when he received information from officers with the Special Projects Unit that they "had a tracker on a vehicle that was coming in that would be carrying a load of dope". Besides being informed of the make, model, and color of the vehicle at issue, Sergeant Rickets was also told that the driver would be Pedro Fuentes and he was suspected of going out of state to pick up a load of drugs and was bringing it back. Sergeant Rickets was asked to stop Fuentes if he observed Fuentes commit a traffic-violation.

At around 9:00 P.M. that evening, as Petitioner Fuentes's vehicle approached Morgan Road in Canadian County, Oklahoma City Police Officer John Rickets observed it speeding, and changing lanes without signaling, (Tr.43; S. Exh. #2). At approximately 9:00 P.M. , Officer Rickets initiated a traffic stop of Petitioner Fuentes's, vehicle.

Officer Rickets, made contact with Petitioner Fuentes, asked him for his license, and informed him of the traffic violations for which he was being stopped. (Tr. 44) Officer Rickets thought Petitioner Fuentes, was nervous and agitated during the traffic stop. (Tr.45) Officer Rickets then directed Petitioner Fuentes, to exit his vehicle. (Tr.46) Petitioner Fuentes, was the only occupant of the vehicle. (Tr.58

As he and Petitioner Fuentes, stood outside the vehicle, Officer Rickets, issued a traffic citation. (Tr.47,) As Officer Rickets, was writing the ticket, he paused to ask that a k-9 unit be dispatched to the location of the Traffic stop. (Tr.47) Oklahoma County Sheriff's Deputy Cody McDaniel arrived on the scene with his drug dog approximately two minutes later. (Tr> 49, 80-83; See O.R. 67; S. Exh # 2) The dog alerted on the vehicle. (Tr.50) after Petitioner Fuentes, received the citation from Sergeant Rickets, Petitioner, was place in the back seat of patrol under investigative detention because Petitioner, denied permission to search the vehicle and Petitioner, was restrains from his freedom to walk away (Tr.70 & 75). The officers found a duffal bag containing multiple bundles of methamphetamine. (Tr. 50) The total weight of methamphetamine found, as agreed to in the stipulation, was approximately 4,441.51 grams. Rickets' testified the decision to call the drug dog and search the vehicle were based on information he learned prior to the traffic stop. Petitioner Fuentes, vehicle was being tracked by law enforcement, based on information received by a confidential informant. (Tr. 10-13) That information had being provided to a court in order to get approval for a GPS tracker on Petitioner Fuentes's, vehicle. (Tr. 13) Law enforcement, including Officer Rickets, were aware of the informant's claims regarding Petitioner Fuentes's, drug activity, and were aware when he was traveling from the west into Oklahoma City. (Tr 16-170 Rickets' testimony established that officers were on the lookout for Petitioner Fuentes, vehicle, looking for a reason to make a traffic stop and then search the search the vehicle if and only if they receive consent . (Tr. 47) Officer Rickets told Petitioner Fuentes, that a drug dog would be run around his vehicle because he was acting nervous. (S.Exh. #2) The evidence in the case shows that the decision to search his vehicle had already been made.

ARGUMENT

The order of the United State Court of Appeal For the Tenth Circuit, by Harris Hartz, Bobby Baldock, Nancy Moritz, Circuit Judges, error in there decision, because they claim that Petitioner Fuentes, argument is that Officers violated Petitioner Fuentes, Fourth Amendment rights because they

lacked reasonable suspicion to extend the traffic stop beyond the time needed to issue a ticket. That's not what Petitioner Fuentes, arguing, court transcripts, will show that the citation was written and it was sign and issue to Petitioner Fuentes, before he got place in the back seat of the patrol vehicle and violating his rights to walk away.

In the trial Court, Sergeant Rickets, testify that he stop Petitioner Fuentes, for traffic violations (Tr. 44) and that he had written the citation and gave it to Petitioner Fuentes, (Tr 75) before he place him the back seat of the patrol vehicle. He also testify that he place Petitioner Fuentes, in the back seat of patrol under investigative detention because Petitioner Fuentes, denied permission to search the vehicle and Petitioner, was restrains from his freedom to walk away (Tr.70 & 75). Sergeant Rickets, never told Petitioner Fuentes, at inception, that he was being pull over for suspicion for trafficking drug.

In the case of Rodriguez v. United States, 135 S. ct 1609, 191 L. Ed. 2d. 492 (2015) this what the Law states, On a more fundamental level, the majority's inquiry elides the distinction between traffic stops based on probable cause and those based on reasonable suspicion. Probable cause is the ``traditional justification" for the seizure of a person. Whren, 517 U. S., at 817, 116 S. Ct. 1769, 135 L. Ed. 2d 89 (emphasis deleted); see also Dunaway v. New York, 442 U. S. 200, 207-208, 99 S. Ct. 2248, 60 L. Ed. 2d 824 (1979). This Court created an exception to that rule in Terry v. Ohio, 392 U. S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), permitting ``police officers who suspect criminal activity to make limited intrusions on an individual's personal security based on less than probable cause," Michigan v. Summers, 452 U. S. 692, 698, 101 S. Ct. 2587, 69 L. Ed. 2d 340 (1981). Reasonable suspicion is the justification for such seizures. {135 S. Ct. 1621}Prado Navarette v. {135 S. Ct. 1621} California, 572 U. S. 393, 397, 134 S. Ct. 1683, 188 L. Ed. 2d 680 (2014). Traffic stops can be initiated based on probable cause or reasonable suspicion. Although the Court has commented that a routine traffic stop is ``more analogous to a so-called 'Terry{2015 U.S. LEXIS

27} stop' than to a formal arrest," it has rejected the notion ``that a traffic stop supported by probable cause may not exceed the bounds set by the Fourth Amendment on the scope of a Terry stop." Berkemer v. McCarty, 468 U. S. 420, 439, 104 S. Ct. 3138, 82 L. Ed. 2d 317, and n. 29 (1984) (citation omitted).The majority casually tosses this{2015 U.S. LEXIS 28} distinction aside. It asserts that the traffic stop in this case, which was undisputedly initiated on the basis of probable cause, can last no longer than is in fact necessary to effectuate the mission of the stop. Ante, at 357, 191 L. Ed. 2d, at 500. And, it assumes that the mission of the stop was merely to write a traffic ticket, rather than to consider making a custodial arrest. Ante, at 354, 191 L. Ed. 2d, at 498. In support of that durational requirement, it relies primarily on cases involving Terry stops. See ante, at 354-356, 191 L. Ed. 2d, at 498-500 (citing Arizona v. Johnson, 555 U. S. 323, 129 S. Ct. 781, 172 L. Ed. 2d 694 (2009) (analyzing ``stop and frisk" of passenger in a vehicle temporarily seized for a traffic violation); United States v. Sharpe, 470 U. S. 675, 105 S. Ct. 1568, 84 L. Ed. 2d 605 (1985) (analyzing seizure of individuals based on suspicion of marijuana trafficking); Florida v. Royer, 460 U. S. 491, 103 S. Ct. 1319, 75 L. Ed. 2d 229 (1983) (plurality opinion) (analyzing seizure of man walking through airport on suspicion of narcotics activity)).

The only case involving a traffic stop based on probable cause that the majority cites for its rule is Caballes. But, that decision provides no support for today's restructuring of our Fourth Amendment jurisprudence. In Caballes, the Court made clear that, in the context of a traffic stop supported by probable cause, ``a dog sniff would not change the character of a traffic stop that is lawful at its inception and otherwise executed{2015 U.S. LEXIS 29} in a reasonable manner." 543 U. S., at 408, 125 S. Ct. 834, 160 L. Ed. 2d 842. To be sure, the dissent in Caballes would have ``appl[ied] Terry's reasonable-relation test . . . to determine whether the canine sniff impermissibly expanded the scope of the initially valid seizure of Caballes." Id., at 420, 125 S. Ct. 834, 160 L. Ed. 2d 842 (opinion of Ginsburg, J.). But even it conceded that the Caballes majority had ``implicitly [rejected] the application

of Terry to a traffic stop converted, by calling {135 S. Ct. 1622} in a dog, to a drug search." Id., at 421, 125 S. Ct. 834, 160 L. Ed. 2d 842. {575 U.S. 367} By strictly limiting the tasks that define the durational scope of the traffic {191 L. Ed. 2d 507} stop, the majority accomplishes today what the Caballes dissent could not: strictly limiting the scope of an officer's activities during a traffic stop justified by probable cause. In doing so, it renders the difference between probable cause and reasonable suspicion virtually meaningless in this context. That shift is supported neither by the Fourth Amendment nor by our precedents interpreting it. And, it results in a constitutional framework that lacks predictability. Had Officer Struble arrested, handcuffed, and taken Rodriguez to the police station for his traffic violation, he would have complied with the Fourth Amendment. See Atwater, supra, at 354-355, 121 S. Ct. 1536, 149 L. Ed. 2d 549. But because he made Rodriguez wait for seven or eight extra{2015 U.S. LEXIS 30} minutes, he evidently committed a constitutional violation. Such a view of the Fourth Amendment makes little sense.

Our precedents made clear that all traffic stops justifies by reasonable suspicion are subject to additional limitations that those justify by probable cause are not. **A traffic stop based on reasonable suspicion like all {Terry} stop must be "justified at inception" and reasonably related in the scope to the circumstances which justified the interference in the first place** Hibel 542 U.S. At 185, 124 S. Ct. 2451 internal (quotation marks omitted) It also can not continue for an excessive period of time or resemble a traditional arrest, "Id at 185 186-124 S. Ct. 2451

Hibel 542 U.S at 185-186 It also "Can not continue for a excessive period of time United States v. Place, 462 U.S. 696, 103 S.Ct. 2637 77 L. Ed. 2d. 110 (1983) or resemble a traditional arrest." United states v. Place, 462 U.S. 696 103 S. Ct. 2637 77 L. Ed. 2d.110 (1983)

traditional arrest. Hiibel, 542 U. S., at 185, 124 S. Ct. 2451, 159 L. Ed. 2d 292

Search and Seizure ⊏ 11.5 - brief investigative stop - reasonability

Under Terry v Ohio (1968) 392 US 1, 20 L Ed 2d 889, 88 S Ct 1868, a law enforcement officer's reasonable suspicion that a person may be involved in criminal activity permits the officer to stop the person for a brief time and take additional steps to investigate further. To insure that the resulting seizure is reasonable for purposes of the Federal Constitution's Fourth Amendment, a Terry stop must be limited. Thus, the officer's action must be (1) justified at its inception, and (2) reasonably related in scope to the circumstances which justified the interference in the first place. For example, the seizure cannot continue for an excessive period of time or resemble a traditional arrest.

[542 US 186]

continue for an excessive period of time, see United States v Place, 462 US 696, 709, 77 L Ed 2d 110, 103 S Ct 2637 (1983), or resemble a traditional arrest

FOOTNOTES

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1 The "seizure" at issue in Terry v Ohio, was the actual physical restraint imposed on the suspect. 392 US, at 19, 20 L Ed 2d 889, 88 S Ct 1868, 44 Ohio Ops 2d 3831. The Court assumed that the officer's initial approach and questioning of the suspect did not amount to a "seizure." Id., at 19, n 16, 20 L Ed 2d 889, 88 S Ct 1868, 44 Ohio Ops 2d 3831. The Court acknowledged, however, that "seizures" may occur irrespective of the imposition of actual physical restraint. The Court stated that "[i]t must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person." Id., at 16, 20 L Ed 2d 889, 88 S Ct 1868, 44 Ohio Ops 2d 3831. See also id., at 19, n 16, 20 L Ed 2d 889, 88 S Ct 1868, 44 Ohio Ops 2d 3831. This standard, however, is easier to state than it is to apply. Compare United States v Mendenhall, 446 US 544, 550-557, 64 L Ed 2d 497, 100 S Ct 1870 (1980) (opinion of Stewart, J.), with Florida v Royer, 460 US 491, 511-512, 75 L Ed 2d 229, 103 S Ct 1319 (1983) (Brennan, J., concurring in result).

2 The stops " 'usually consume[d] no more than a minute.' " United States v Brignoni-Ponce, 422 US, at 880, 45 L Ed 2d 607, 95 S Ct 2574.

Hiibel, 542 U. S., at 185, 124 S. Ct. 2451, 159 L. Ed. 2d 292

[542 US 187]

traditional arrest. Brown v Texas, 443 US 47, 61 L Ed 2d 357, 99 S Ct 2637 (1979)
Search and Seizure ⊏ 2, 5, 11 - Fourth Amendment - application - detention short of arrest

4. The Fourth Amendment applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest; whenever a police officer accosts an individual and restrains his freedom to walk away, he has "seized" that person, and the Fourth Amendment requires that the seizure be reasonable.

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Subjecting it to the sniff test- no matter how brief-could not be justified on less then probable cause

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It's difficult to understand how this intrusion is knot more senere then a brief-stop for questioning of even a limited, on-the-spot-pat-down search for weapons.

First Explaintion

10).recommending a maximum of 20 minutes for a Terry stop

Second Explaintion

1). It must be recognized that when ever a police officer accost an individual and restrains his freedom to walk away, he has seized that person Id, at 16, 88, S Ct. at 1877 See also Id, at 19, n. 1688 S Ct. at 1879, n, 16 his standard, however, is easier to state than it is to apply compare United States v. Mendenhall , 446 U.S 544, 550,-557 100 S Ct. 1870, 1875, 64 L. Ed. 2d. 497 (1980) Opinion of Stewart J.) with Florida v. Royer U.S. 103, S. Ct. 1319, 1330, 75 L. ed. 2d. 229 (1983) (Brennon J. Concurring in result.)

Second Explaintion

2). The stop usually consumed no more than a minute United States v. Brignoni-Ponce, 422 U.S. 873, 880, 95 S. Ct. 2574, 4579, 45 L. Ed. 2d. 607 (19750

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Most importantly the suspect must be free to leave after a short time

This case states clearly that when a Police officer accost an individual and restrains his freedom to walk a away he has seized that person. And that's exactly what happen in the case of Petitioner Fuentes. He had the right to walk away when he was give the citation. But instead he got place in the back seat of patrol vehicle with the sign citation in his hand.

In the case *Brendlin v. California 127, S.Ct. 2400, 168, L.Ed.2d. 132, 551, U. S. 249, 75 (2007)* this what the law states.

A person is seize by police and thus entitled to challenge the Governments action under the fourth Amendment when an officer "by means of physical force or show of authority" terminates or restrains his freedom of movement *(Florida v. Bostick, 501, U.S. 429, 434, 111 S.Ct. 2382, 115, L.Ed.2d. 389 (1991) quoting (Terry v. Ohio 392, U.S. 1, 19, n 16, 18, S.Ct. 1868, 20 L.Ed.2d.628, (1989)* through means intentionally applied *(Browes v. County of Inyo, 489 us. 593, 597, 109, S.Ct. 1378, 103 L.Ed. 2d. 628 (1989)*(emphasis original) "Thus unintentional person,,, (May be) the object of the dentition" so long the detention is willfully and not merely the consequence of "an unknowing act" *Id, at 597, 109, S.Ct. 1378; Cf County of Sacramento v. Lewis, 523 U.S. 833, 844, 118, S.Ct. 1708, 140 L.Ed.2d. 1034 (1998)* (No seizure when the police officers accidentally struck and killed a motorcycle passenger during a high pursuit) A police officer may make a seizure by show of authority and with out actual submission other wise there is at most an attempted seizure, so far as the fourth amendment is concerned see *(California v. Hodar. D. 499, U.S. 621, 626, n. 2 111 S.Ct. 1547, 113, L.Ed.2d. 690 (1991) (Lewis, Supre, at 844, 845, n.7 118 S.Ct. 1708*

What this case is stating is that when a Officer by physical force or show of authority terminate or restrains his freedom of movement that Person is thus entitled to challenged the Government, even if the Thus unintentional person,, may be the object of the detention is willfully and not merely the consequence of " an unknowing act".

In the case of Petitioner Fuentes, he did not want to be place in the back seat of the Patrol vehicle he was protesting to the detention after the issue of the citation. Because Sergeant Rickets, did not have probable cause to put him under investigative detention because the only question that Sergeant Rickets, ask Petitioner Fuentes, was did he have any drugs in the vehicle and when Petitioner Fuentes, say no Sergeant Rickets, ask him if he could search the vehicle and Petitioner Fuentes, said no. Sergeant Rickets, put Petitioner Fuentes, under investigation detention after he gave Petitioner Fuentes, the citation.

As the Court can see, Harris Hartz, Bobby Baldock , and Nancy Moritz Circuit Judges of United State Court of Appeals For the Tenth Circuit, error when they entered a decision based on an unreasonable determination of the facts in light of the evidence presented in a certificate of appealability by ruling that Petitioner Fuentes, argument is that the officers violated his Fourth Amendment rights because they lacked reasonable suspicion to extend the traffic stop beyond the time needed to issue a ticket. Court transcript show that the testimony of Sergeant Rickets, was that he gave the citation to Petitioner Fuentes, before placing him in the back seat of the patrol vehicle restraint his freedom of movement. Regardless of what the officer was thinking at the moment evidence show that he gave the citation to Petitioner Fuentes, before place him in the back seat of patrol vehicle. And this what violated Petitioner Fuentes, Constitutions rights to be able to walk away when he was giving the citation. Just as it happen to Rodriguez v. United States, 135 S. ct 1609, 191 L. Ed. 2d. 492 (2015), and *Brendlin v. California 127, S.Ct. 2400, 168, L.Ed.2d. 132, 551, U. S. 249, 75 (2007) (*and as prove that the Circuit Judges has entered a decision based on an unreasonable determination of the facts

in light to the evidence presented in the Application for a Certificate of Appealability. Petitioner Fuentes, offers as appendices the Brief of Application for a Certificate of Appealability.)

2.)The United State Court of Appeals For the Tenth Circuit, has entered a decision based on an unreasonable determination of the facts in light of the evidence presented A Application For A Certificate of Appealability, and has it so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise for this court's Supervisory Power. The Circuit Judge, Harris Hartz, Bobby Baldock, and Nancy Moritz, have denied Petitioner Fuentes, Certificate Of Appealability, do to the fact that Fuentes does not dispute that the Oklahoma Courts gave him a full and fair opportunity to litigate those claims.

Petitioner Fuentes, argument has be from the being, that his rights were violated and that the Oklahoma Courts error in denying his appeals because in light of the evidence they have over rule him. Under Anti terrorism and Effective Death Penalty Act. Under the Anti terrorism and Effective Death Penalty Act here in after referred to as the AEDPA , a petition for writ of habeas corpus will not be granted with respect to any claim that was adjudicated on the merits in state court unless the adjudication of the claim:

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the Unites States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

Sections 2254 (d) and (e) (1):

In Miller- El v. Cockkrell, 537 U.S 322 (2003, seven members of the Court joined by Justice Scalia in a separate concurring opinion and over a solitary dissent by Justice Thomas rejected the 5th Circuit attempt to consolidate two separate provisions of AEDPA (sections 2254(d)(2 and (e) (10 to require habeas corpus petitioners to prove that the state court decision was objectively unreasonable by

clear and convincing evidence Id. At 341. This was too demanding a standard, the Court declared, on more than one level. It was incorrect for the Court of Appeals, when looking at the merits, to merge the independent requirements of §§ 2254(d) and (e) (1). AEDPA does not require petitioner to prove that a decision is objectively unreasonable by clear and convincing evidence. The clear and convincing evidence standard is found in § 2254(e)(1), but that subsection pertains only to state-court determinations of factual issues, [and does not apply to ultimate state court} decisions. Subsection (d) (2) contains the unreasonable requirement and applies to the granting of habeas relief. Id. At 341 42. The Court also took the opportunity in Miller- El to underscore the federal courts obligation on federal habeas corpus review to scrutinize state court judgments carefully and grant relief where appropriate. Addressing federal habeas corpus review of factual determinations by state court, where AEDPA Sections 2254(d)(2) and (e)(1) call for certain forms of deference to state determinations (see infra § 20. 2c), the Court instructed that deference does not imply. Abandonment of abdication of judicial review. Deference does not by definition preclude relief. A federal court can disagree with a state court credibility determination and when guided by AEDPA, conclude the decision was unreasonable or that the factual premises was incorrect by clear convincing evidence. Id. At 340

In Brumfield v. Cain, 135 S. Ct. 2269 (2015), the Court held under section 2254(d)(2) that a state court decision denying a death-row inmate an opportunity to prove he was intellectually disabled and thus exempt from capital punishment under Atkins v. Virginia,536 U.S. 304 (2002), was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding. Id. At 2273. The Court found that the state court had unreasonably views Brumfield IA test score 75 as belying the claim that Brumfield was intellectually disabled when in fact this evidence was entirely consistent with intellectual disability once the margin of error for IQ tests was considered, and there was no evidence of any higher IQ test score that could render the state court determination reasonable. Id. At 2277 78. The state court also unreasonably found that the record failed

to raise any question as to Brumfield impairment in adaptive skill. Id. At 2279. As the Court explained, the evidence in the state court record provided substantial grounds to question Brumfield adaptive functioning Id. At 2280. Although other evidence in the record before the state court may have cut against Brumfield claim of intellectual disability needed only to raise a reasonable doubt as to his intellectual capacity to be entitled to an evidentiary hearing on his Atkins claim, and none of the countervailing evidence could be said to foreclose all reasonable doubt. Id. At 2280,81. Accordingly, the Court held, Brumfield was entitled to have his Atkins claim considered on the merits in federal court. Id. At 22733. The Court observed once again, as it had in Miller-El v. Cockrell, 537 U.S. at 340, that even in the context of federal habeas, deference does not imply abandonment or abdication of judicial reviews, and does nowt by definition preclude relief. Id. 2277.

§ 32.4. Rules for applying section 2254(d)(2)

AEDPA amended section 2254(d) provides that a state prisoner habeas corpus application shall not be granted with respect to any claim that was adjudicated on the merit in State court proceedings unless the adjudication of the claim

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.1

Petitioner Fuentes, made this argument to the United States Court For the Western District of Oklahoma, in the Response In Opposition To Respondent's Response, and this argument should being taking into account when they made a decision to The Applicant To The Certificate Of Appealability.

Do to the fact that it states in Miller- El v. Cockkrell, 537 U.S 322 (2003,**§ 32.4. Rules for applying section 2254(d)(2)** AEDPA amended section 2254(d) provides that a state prisoner Habeas corpus application shall not be granted with respect to any claim that was adjudicated on the merit in

State court proceedings unless the adjudication of the claim

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

Petitioner Fuentes, meet burden, on what Miller- El v. Cockkrell, 537 U.S 322 (2003), states. (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding. The Court transcripts show that the testimony of Sergeant Rickets, was that he gave the citation to Petitioner Fuentes, before he place him in the back seat of the patrol vehicle. And the Court of Oklahoma decisions have resulted in a decision that was contrary to, or involved an unreasonable applicant of , clearly established Federal law as determined by the Supreme Court of the United State; (Which is contrary to Rodriguez v. United States, 135 S. ct 1609, 191 L. Ed. 2d. 492 (2015), and *Brendlin v. California 127, S.Ct. 2400, 168, L.Ed.2d. 132, 551, U. S. 249, 75 (2007).* And also resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State Court proceeding. In the State-Court Sergeant Rickets, testimony was was that he gave the citation to Petitioner Fuentes, before he place him in the back seat of the patrol vehicle. Petitioner Fuentes, claim is that Stone v. Powell, 428 U.S. 465 (1976) because the Oklahoma Courts have not gave him a full and fair opportunities to litigate those claims because the Oklahoma Courts made a ruling so unfair by contradicting.

CONCLUSION

As the Court can see The United States Court Of Appeal For The Tenth Circuit, has made a decision based on an unreasonable determination of the fact in light of the evidence presented in a

Application For A Certificate Of Appealability, has it so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise for this court's supervisory power. Fact is that Sergeant Ricketts, gave the citation to Petitioner Fuentes, before he place in the back seat of the patrol vehicle just to run a K-9 sniff even though Petitioner Fuentes, protested of being detention. Is a fact that the Court of Oklahoma have not gave Petitioner Fuentes, a fair opportunity to litigate those claims, due to the fact that Petitioner Fuentes, has meet burden that the Court of Oklahoma decisions have resulted in a decision that was contrary to, or involved an unreasonable applicant of , clearly established Federal law as determined by the Supreme Court of the United State; to (Rodriguez v. United States, 135 S. ct 1609, 191 L. Ed. 2d. 492 (2015), and *Brendlin v. California 127, S.Ct. 2400,168, L.Ed.2d. 132, 551, U. S. 249, 75 (2007).* For these reason Petitioner Fuentes, is calling for exercise of The Supreme Court 's supervisory power.

Respectfully Submitted,

Pedro Fuentes

November 25 2024

Date

VERIFICATION

I state under penalty under the laws of Oklahoma that the foregoing is true and correct. Title 12 O.S. .Supp. 2004, § 426. Executed by the Applicant at the Lawton Correctional Rehabilitation Facility, 8607 S.E. Flower Mound Rd. Lawton, OK. 73501, on the date of September 25,2023.

Pedro P. Fuentes

(Print Name of Applicant)

Pedro Fuentes

(Applicant Signature)