CASE NO.

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL ANGELO DELPRIORE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO REVIEW A JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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I.

PETITIONER'S ARREST AND THE ENSUING SEARCH AND SEIZURE VIOLATED THE FOURTH AMENDMENT AND THE COURT OF APPEALS CLEARLY ERRED IN UPHOLDING THE DISTRICT COURT'S RULING DENYING PETITIONER'S MOTION TO SUPPRESS

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I.

PETITIONER'S ARREST AND THE ENSUING SEARCH AND SEIZURE VIOLATED THE FOURTH AMENDMENT AND THE COURT OF APPEALS CLEARLY ERRED IN UPHOLDING THE DISTRICT COURT'S RULING DENYING PETITIONER'S MOTION TO SUPPRESS

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PETITION FOR WRIT OF CERTIORARI

Petitioner, **MICHAEL ANGELO DELPRIORE**, respectfully prays this Court issue a Writ of Certiorari to review the Judgment of the United States Court of Appeals for the Ninth Circuit entered in this case on January 13, 2025, affirming Petitioner's judgment of conviction and sentence, rehearing denied February 20, 2025.

OPINIONS RENDERED IN THE COURTS BELOW

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

United States of America v. Michael Angelo Delpriore, No. 23-481 (9th Cir., January 13, 2025), *rehearing denied*, February 20, 2025. [*United States v. Delpriore*, 2025 WL 80360 (9th Cir., January 13, 2025)].

STATEMENT OF JURISDICTION

On January 13, 2025, the United States Court of Appeals for the Ninth Circuit issued its opinion in *United States of America v. Michael Angelo Delpriore*, No. 23-481 (9th Cir., January 13, 2025)(rehearing denied on February 20, 2025)(mandate issued on February 28, 2025). The decision affirmed Petitioner's conviction and sentence. (*Appendix A*). [*United States v. Delpriore*, 2025 WL 80360 (9th Cir., January 13, 2025)].

The statutory provision which confers on this Court jurisdiction to review the above-described decision of the Court of Appeals for the Ninth Circuit by writ of certiorari is Section 1254(1) of Title 28, United States Code. (*Appendix B*).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The following constitutional and statutory provisions are quoted in *Appendix B*:

Section 1254 of Title 28, United States Code, 28 U.S.C. Section 1254.

STATEMENT OF THE CASE

FACTS MATERIAL TO THE CONSIDERATION OF THE QUESTION PRESENTED

COURSE OF PROCEEDINGS AND DISPOSITION IN THE DISTRICT COURT AND THE COURT OF APPEALS

Petitioner, Michael Delpriore, was a defendant in the district court and appellee, United States of America, was the prosecution. Record references will be made by referring to the Docket Entry [DE] and the Excerpts of Record (Volume and Page Number): Volume 1 [1-ER], Volume 2 [2-ER], Volume 3 [3-ER], Volume 4 [4-ER] and Volume 5 [5-ER]. The parties will be referred to as they appeared below. All emphasis is supplied unless otherwise indicated. The interested parties in this case are Defendant and the Government.

Petitioner was charged by a first superseding indictment alleging that on or about August 7, 2018, he knowingly and intentionally possessed with intent to distribute a 100 grams or more of a mixture and substance containing a detectable amount heroin, in violation of 21 U.S.C. §841(a)(1), (b)(1)(B) [Count 1]; he knowingly and intentionally possessed with intent to distribute methamphetamine, in violation of 21 U.S.C. §841(a)(1), (b)(1)(C) [Count 2]; he knowingly and intentionally possessed and carried a firearm during and in relation to and in furtherance of federal drug trafficking crime, in violation of 18 U.S.C. §924(c)(1)(A)(i) [Count 3]; and he knowing that he had been convicted of a crime

punishable by imprisonment for a term exceeding one year, knowingly possessed, in and affecting interstate commerce, a firearm, a semiautomatic pistol, in violation of 18 U.S.C. §922(g)(1) and 924(a)(2). [Count 4]. The indictment also alleged enhanced statutory penalties and two criminal forfeiture counts. (DE 28; 5-ER-1027).

The defense filed a motion to suppress all evidence obtained in violation of the Fourth Amendment, United States Constitution. (DE 45; 5-ER-996). After a series of hearings before the magistrate judge and the district court judge, the district court entered an order denying Petitioner's motion to suppress. (DE 197; 1-ER-19). The defense filed a motion to reconsider the order denying the motion to suppress. (DE 207; 5-ER-898). The Government filed a response. (DE 211; 5-ER-889). The district court entered an order denying the motion to reconsider. (DE 212; 1-ER-10).

The case proceeded to trial. The jury found Petitioner guilty on counts 1, 2, 3 and 4 the first superseding indictment. (DE 335: 7: DE 335: 28-29; 3-ER-605; 3-ER-626-627). The district court sentenced Petitioner to 132 months incarceration and five years of supervised release. (DE 379: 31). Judgment was entered. (DE 380; 1-ER-2). Defendant appealed to the Ninth Circuit Court of Appeals challenging the denial of his motion to suppress. The appellate court conducted an oral argument in the case on December 5, 2024. On January 13, 2025, the Ninth

Circuit issued an opinion affirming Defendant's conviction and sentence. (*Appendix A*). In its opinion, the Ninth Circuit found that the district court did not clearly err in its factual findings in its decision to deny Defendant's motion to suppress, which are supported by substantial evidence admitted at the suppression hearing. This evidence included a video taken by a dash camera onboard Officer Ryan Proegler's patrol car which recorded the initial portion of the encounter between Delpriore and officers from the Anchorage Police Department (App. A: 2). The Ninth Circuit also found that the district court did not err in ruling that Delpriore's arrest was supported by probable cause. A warrantless arrest of an individual in public committing a misdemeanor in an officer's presence comports with the strictures of the Fourth Amendment if the arrest is supported by probable cause. [citing *Maryland v. Pringle*, 540 U.S. 366, 370 (2003)]. (App. A: 2).

The Court of Appeals explained that when Delpriore was stopped in 2018, the Alaska Division of Motor Vehicles was required by law to issue two license plates to each registered passenger vehicle one of which was required to be displayed on the front of the automobile and the other on the rear. The failure to display license plates in the manner delineated under Alaska law is classified as a misdemeanor. Delpriore testified that immediately before he was stopped by Anchorage police officers, he was driving out of the parking lot with the intention of entering the public roadway. One of the officers, Off. Proegler, saw that

Delpriore's vehicle was missing a front license plate. Based on the foregoing, the circumstances of the stop gave rise to a sufficient probability that Delpriore violated, or was attempting to violate, Alaska statute, which is all that is required under the probable cause standard. [citing *Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001)]. Therefore, the stop of Delpriore's car, his arrest, and the subsequent searches and seizures were all supported by probable cause. (App. 2-4). In a footnote, the Court of Appeals rejected Delpriore's argument that the Alaska Supreme Court and the local Anchorage Municipal Code treated the failure to display a front license plate as a non-arrestable offense, noting that a state's decision to regulate arrests for particular crimes does not alter the scope of the Fourth Amendment's protections. [citing *Virginia v. Moore*, 553 U.S. 164, 137-76 (2008)]. (App. A: 3: n.3).

The Court of Appeals also found that the district court did not err in ruling that suppression of the evidence for purported outrageous police conduct was unwarranted. The Court agreed that in order to determine whether the officers' actions were reasonable, a court must balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake. [quoting *Graham v. Connor*, 490 U.S. 386, 396 (1989)]. (App. A: 4). The Court of Appeals found the district court had correctly concluded that it was Mr. Delpriore's continued refusal to obey the

officers' commands that escalated the situation and caused the standoff in the parking lot. The Court of Appeals noted that it was only after Delpriore had moved his car multiple times did an officer's vehicle make slight contact with his car. The Court also noted that while the officers drew their handguns, it was only after Delpriore's continued movement of his car and his failure to comply with instructions. The Court pointed out that Delpriore not only refused to exit his car he also frequently moved his hands where the officers could not see what he was doing. No shots were fired, and the officers never deployed the 40mm less-lethal impact launcher that they warned him about. (App. A: 5).

This Petition for Writ of Certiorari follows. Petitioner Delpriore is presently incarcerated.

STATEMENT OF FACTS

The defense filed a motion to suppress all evidence obtained in violation of the Fourth Amendment, United States Constitution. (DE 45; 5-ER-996). The Court conducted an evidentiary hearing on the motion. (DE 68; 4-ER-650). The magistrate judge issued a final report and recommendation to deny the motion to suppress. (DE 83; 1-ER-53). The defense filed a motion to supplement the record and/or reopen the evidence in support of Defendant's motion to suppress. (DE 124; 5-ER-940). A second evidentiary hearing was conducted where Defendant testified. (DE 149; 4-ER-798). The magistrate judge issued a report and

recommendation to deny Defendant's motion to suppress on reconsideration. (DE 164; 1-ER-33). The defense filed objections to the report and recommendation (DE 177; 5-ER-918) and a supplement to the objections to the report and recommendation. (DE 181; 5-ER-908). The district court conducted a hearing and entertained argument on Defendant's motion to suppress. (DE 390; 4-ER-866). The district entered an order accepting the report and recommendation in part. The district did not adopt the magistrate judge's analyses regarding reasonable suspicion of vehicle theft as a basis for a constitutional traffic stop. However, the district court found that the officers had probable cause of an arrestable offense (lack of a front license plate) when Defendant was arrested at the outset. Defendant's motion to suppress was denied. (DE 197: 13-14; 1-ER-19). Defendant filed motion to reconsider the order regarding the motion to suppress. (DE 207; 5-ER-898). The Government filed a motion in opposition to the motion for reconsideration. (DE 211; 5-ER-889). The district court denied the motion to reconsider. (DE 212; 1-ER-10).

The District Court Hearings and Orders

The magistrate judge conducted an initial evidentiary hearing on Defendant's motion to suppress. (DE 68; 4-ER-1]. The Government called **Officer Ryan Proegler**, Anchorage Police Department (APD), who testified that on August 7, 2018, he was dispatched to 5810 Rocky Mountain Court regarding a

possible chop shop. Proegler drove to the east side of Rocky Mountain Court near Boniface Parkway. (DE 68: 5-7; 4-ER-654-656).[1] Proegler planned to park a short distance away and approach on foot to determine what was going on. Officer Kollin Wallace was also dispatched to the scene. Wallace parked his car in front of Proegler's car. Proegler noticed several vehicles parked in front of the residence at 5810 Rocky Mountain Court, a four-plex apartment complex. He also saw another a maroon truck parked adjacent to the parking area directly on the street in front of the parking area for the apartments. The time was just after noon. (DE 68: 7-9; 4-ER-656-658). As Proegler approached on foot Officer Wallace informed him there was a possible stolen vehicle parked outside. At that time, Proegler noticed a red Mustang begin to leave the area. The Mustang had been parked perpendicular to the marron truck, facing toward it. Proegler stated the front plate was not visible on the Mustang. (DE 68: 9-10; 4-ER-658-659). Officer Wallace began pulling forward and Proegler pulled his firearm and gave the driver

[1] The call reported a male spray-painting vehicles in the driveway of 5810 and there were multiple pit bulls roaming around unrestrained. (DE 68: 24; 4-ER-673). There was no indication Defendant was involved in the spray-painting or that he matched any description of the male in the call. According to Proegler, Defendant was just in the "proximity" of the vehicles. (DE 68: 24; 4-ER-673). The call did not give a description of a Mustang and there was no information that the Mustang was associated with any of the apartment units or any of the vehicles. (DE 68: 24-25; 4-ER-673-674).

commands to stop.[2] The driver of the Mustang pulled in reverse briefly and rolled away from Wallace's patrol car and began to loudly argue with Proegler. Wallace car was now head-to-head with the Mustang. (DE 68: 10-11; 4-ER-659-660).[3] Proegler testified the driver told Proegler to put his gun away and that he did not have probable cause to talk to him. He said he was not getting out of the car. Proegler stated he was not pointing the gun at the driver. He pulled the gun because he was in a dangerous situation and gave commands to the driver before he had an opportunity to leave the scene. The driver did stop his car. Proegler was determined to find out the driver's involvement with the stolen vehicle and he planned to speak with him because he believed he was a potential suspect since he was trying to leave immediately as the police arrived. (DE 68: 11-12; 4-ER-660-661). Proegler loudly told the driver to get out of the car and keep his hands

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[2] Both officers pulled their guns. (DE 68: 28; 4-ER-677). Proegler wanted to detain Defendant. (DE 68: 28; 4-ER-677). According to Proegler, his decision to detain Defendant stemmed from his proximity to the stolen vehicle, his actions in attempting to leave the area as soon as the police arrived, and his steps to conceal his identify within the car such as the tinted windows and lack of a front plate. (DE 68: 36; 4-ER-685). Proegler noted Defendant was "not receptive" to a brief contact. (DE 68: 36; 4-ER-685). Proegler admitted neither the tinted windows nor not having a front license plate were arrestable offenses. (DE 68: 38; 4-ER-687). Proegler stated that failure to display a license plate is a municipal offense which is not arrestable. (DE 68: 39; DE 68: 41; DE 68: 42; 4-ER-688; 4-ER-690; 4-ER-691). Defendant was handcuffed for being a suspect for vehicle theft and arrested for obstruction. (DE 68: 42; DE 68: 43-44; 4-ER-691; 4-ER-692-693).

[3] Proegler stated Defendant's vehicle was blocked in as Proegler was giving commands. (DE 68: 27-28; 4-ER-676; DE 68: 32; 4-ER-681).

visible. Both he and Wallace were in uniform and were in marked police cars. Proegler identified Defendant as the driver. (DE 68: 12-13; 4-ER-661-662). Proegler wanted to detain Defendant to speak with him about the vehicle. Defendant continued to argue with Proegler and kept rolling his window up and down as he spoke. Defendant refused to keep his hands visible and leaned forward multiple times as if to reach down near the floorboards. Proegler continued to give him commands to keep his hands visible. He deployed a 40mm impact weapon to potentially shatter the window if he continued to roll it up. Proegler warned Defendant they were going to have to knock out the window if he kept rolling it up. (DE 68: 13-15; 4-ER-662-664). Once additional officers arrived on the scene, Defendant complied with the commands and exited his car. Defendant removed his jacket before getting out of the car. (DE 68: 16; 4-ER-665). Defendant was handcuffed and placed in one of the patrol cars. (DE 68: 17; 4-ER-666). Proegler testified that as he was approaching Defendant's vehicle there was no front license plate visible on the Mustang. He did not see a dealer tag or temporary tag. (DE 68: 17; 4-ER-666). The officer did not write a ticket for no current license plate. (DE 68: 35; 4-ER-684). Proegler did not search the car but removed a dog from the vehicle. The vehicle was later searched after a search warrant was procured. (DE 68: 18; 4-ER-667). Defendant did not give consent to seize his car or open it. (DE 68: 31-32; 4-ER-680-681).

Officer Zachary Hughes, APD, testified he got involved in the investigation after the initial officers responded to the scene regarding a suspicious vehicle. Hughes learned the vehicle came back stolen. As the officers were approaching the vehicle, a red Mustang attempted to leave the area. The officers made contact with the driver, who tried to reverse out. The officers blocked him and started giving commands. When the driver refused to respond, more units were called. (DE 68: 45-46; 4-ER-694-695). Officer Hughes appeared at the scene to assist. He saw officers with both lethal firearms and long guns and non-lethal 40mm launchers giving commands. Hughes deployed a long gun and stood behind a patrol car which was in front of the Mustang. Eventually, the driver, Defendant, got out of the car and was placed in handcuffs. Hughes testified that while Defendant was in his car he could not see his hands but was moving his hands up and down. Defendant would roll his window down and up while talking to the officers. Off. Hughes grew concerned because he could not see Defendant's hands and the police did not know what was in the vehicle. All the officers were pointing their guns toward Defendant's vehicle. (DE 68: 46-49; 4-ER-695-698). After Defendant got out of the car, Defendant took off his jacket and left it in his car. He walked backward toward the officers. Hughes looked inside the car through the open door and saw knives, a tomahawk and a marijuana grinder in the area of the driver's front seat. In the backseat, Hughes saw numerous backpacks, numerous

electric drills and chisels and two cell phones. (DE 68: 49-51; 4-ER-698-700). Hughes felt the drills were significant because the stolen car that the Mustang was originally parked next to had the ignition drilled out and metal shavings were all over the floorboard. (DE 68: 51; 4-ER-700). Hughes applied for a search warrant, which he identified. (Exh. 2). The officers were initially looking for drills, drill bits and electronics. (DE 68: 51-52; 4-ER-700-701). The warrant was executed the following day. The vehicle was impounded in the APDs indoor secure storage. Hughes executed the warrant. The vehicle had an Alaska plate Kilo Charlie Romeo 113. (DE 68: 53-54; 4-ER-702-703). During the ensuing search, the officers recovered the jacket with two syringes loaded with clear fluid and a Mavic Pro drone in one of the backpacks, which was reported stolen. Additionally, the officers found numerous computers and tablets as well as a Springfield .45 handgun and presumptive heroin hidden underneath the dash. At that point, Hughes obtained an amended warrant because the initial warrant did not include the firearm, ammunition or firearm accessories. No new evidence was found after the execution of the second warrant. (DE 68: 54-55; 4-ER-703-704).

Officer Kollin Wallace, APD, testified that on August 7, 2018, he was dispatched to 5810 Rocky Mountain Court. (DE 68: 75-76; 4-ER-724-725). Officer Wallace testified that neighbors had called in regarding a suspected chop

shop or someone working on a stolen vehicle.[4] Upon arrival at the scene, Wallace saw a pick-up truck parked along the side of the road. Wallace ran the license plate. Wallace also saw two other cars adjacent to the residence and a red Mustang parked in close proximity to the pick-up truck. (DE 68: 77-78; 4-ER-726-727).[5] The license plate on the truck came back as a stolen vehicle. Wallace told Off. Proegler that the truck was stolen. As Proegler was walking beside Wallace's car, the red Mustang began to move. There was enough room for the Mustang to leave. Wallace decided to pull his car forward to prevent the Mustang from pulling out by squaring off the front of his vehicle with the Mustang. (DE 68: 79-80; 4-ER-728-729). Wallace activated his lights. Off. Proegler began giving commands to the driver of the Mustang to stop. Wallace saw the driver. Wallace testified he was detaining the driver as a possible suspect due to his close proximity to the stolen vehicle. At one point, the Mustang went into reverse. Wallace saw the driver looking left and right apparently looking for somewhere to move his vehicle to get around. Wallace kept his car in contact with the Mustang. Eventually, the Mustang drove up against a fence or some other car. (DE 68: 81-82; 4-ER-730-

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[4] On cross-examination, Wallace conceded that part of the call involved someone spray-painting vehicles and roaming pit bulls in the area. (DE 68: 95; 4-ER-744).

[5] On cross-examination, Wallace was asked if he ran the plate on the Mustang. Wallace testified he ran the plate at one point. The vehicle was not stolen. (DE 68: 99-100; 4-ER-748-749).

731). At this point, Wallace placed his car in park and got out of the car. Wallace drew his gun and took cover behind his car. He also gave commands to the driver. Wallace hoped to detain the driver for identification purposes and further the investigation into the stolen vehicle. It was important to get the driver out of his car because of the inherent risk to the officers. The car had tinted windows. The police are taught never to approach a vehicle but have the driver come to them. (DE 68: 82-83; 4-ER-731-732). During the times that Defendant rolled down his window, Wallace could see Defendant reaching down towards the floorboard or the bottom of the vehicle. (DE 68: 87; 4-ER-736). Other officers arrived on the scene. Defendant was still in the driver's seat of his car. Another officer took over giving Defendant commands and Defendant finally got out of the car after threats of using a 40mm baton round on the car window. When he is getting out of the car, Defendant took off his jacket even though it was raining. Defendant was placed in handcuffs. The officers conducted a pat search for safety reasons. During this non-consensual search, Defendant told the officers he had a knife in one of his pockets. Wallace pulled out the knife as well as a scale. Officer Brown pulled out a handful of cash (about $1,000) and a wallet. (DE 68: 88-92; 4-ER-737-741). Wallace described the scale as a digital scale with apparent residue. In Wallace's opinion, such a scale is typical with drug cases and he has seen such scales mostly with larger quantities of drugs. A digital scale is used for measuring

the weights and quantity of drugs for repackaging and resale. (DE 68: 92-93; 4-ER-741-742). Wallace testified that walking by Defendant's car he saw a dog in the passenger seat and some backpacks and a random assortment of things in the back. Wallace could not remember seeing any tools. Wallace accompanied the car as it was towed for a search pursuant to a search warrant. (DE 68: 93-94; 4-ER-742-743). Wallace testified Defendant was arrested for resisting at the scene. He was not arrested on anything else. (DE 68: 110-111; 4-ER-759-760). The incident lasted about five to six minutes. (DE 68: 123; 4-ER-772). All six officers at the scene had their guns drawn. (DE 68: 124; 4-ER-773). After argument, the court asked for supplemental briefing by the parties. (DE 68: 147: 4-ER-796).

The parties filed supplemental briefings. (DE 69; DE 74; 5-ER-; 5-ER-). The magistrate judge recommended denial of the motion to suppress in a report and recommendation. (DE 79; 1-ER-101). The defense filed an objection (DE 82). The magistrate judge entered a final report and recommendation denying the motion to suppress. (DE 83; 1-ER-53). The defense filed objections to the final report and recommendation (DE 123; 5-ER-952) and moved to supplement the record and reopen the evidence. (DE 124; 5-ER-940). The court granted the motion to supplement the record and reopen the evidence to the extent that Defendant would be allowed to testify. (DE 139).

Thereafter, the magistrate judge conducted a second evidentiary hearing. At this hearing, Defendant testified. Defendant stated the reason he was at 5810 North Rocky Mountain Court on August 7, 2018, was to talk to his friend, Derek, about Derek's contact with a girl. (DE 149: 5-6; 4-ER-802-803). Defendant arrived at around 2AM and spoke with Derek. Derek told him he had to go someplace and asked Defendant to wait for him. While waiting, Defendant fell asleep in his car. (DE 149: 6-7; 4-ER-803-804). Defendant woke up around 11:30. He was cold so he started his car. Derek had not come back. Defendant decided to leave. As he pulled forward, Defendant saw a police officer's car by the dumpster. At that point, Defendant saw Off. Poegler come out from behind the dumpster. Defendant turned on his headlights. Officer Wallace pulls forward and hit his car causing it to go backward. Defendant's car started to roll downward. He lowered his window and asked Off. Wallace why he had hit his car. Off. Wallace stepped out of his car and told Defendant he was in a stolen vehicle. Defendant put his car in reverse and Wallace pulled forward so that the cars were now bumper to bumper. Defendant saw Off. Poegler pointing the gun at his windshield. (DE 149: 7-9; 4-ER-804-806). Defendant explained there was no place for him to go. (DE 149: 13; 4-ER-810). Defendant's car had backed up against a fence. (DE 149: 16; 4-ER-813). At that point, Off. Poegler came around the back of the car and pointed the gun directly at Defendant's face. Meanwhile, Off. Wallace was telling

Defendant to get out of the car. Defendant told the officers they were violating his rights and wanted a lawyer. Defendant testified that Poegler called him by name, telling Defendant: "Michael, get out of the car." (DE 149: 17; 4-ER-814). Defendant recalled that during the conversation with the officers, they started saying the truck was the stolen vehicle. Defendant protested he had nothing to do with the truck. The officers threatened him they were going to shoot him if he did not get out of the car. Defendant told the officers they had no right to order him out of his car. Eventually, however, Defendant did get out of his car after another officer spoke with him respectfully and told him they just wanted to talk to him. (DE 149: 18-19; 4-ER-815-816). As soon as he got out of the car, Defendant told the officers he had a pocketknife in his right pocket. The officers immediately removed the knife. Defendant was taken to the other side of the car and the officers conducted a pat search. Defendant was placed in handcuffs as soon as he got out of the car. (DE 149: 19-20; 4-ER-816-817). Defendant told the officers they could not go into his pockets. The officers ignored him. After they took the items out of his pockets, the police placed Defendant in a patrol car. (DE 149: 23-24; 4-ER-820-821). One of the officers told Defendant he was not being arrested. Rather, some people wanted to talk to him. (DE 149: 25-26; 4-ER-822-823). Defendant was taken to the police station. He was told the police were impounding his car and he was being arrested for resisting. (DE 149: 26; 4-ER-

823). Defendant admitted he had tools in his car. Defendant did custom audio electronics. The drills he had were not in plain sight. (DE 149: 29: 4-ER-826). The drills were behind the passenger seat inside a tote bag which was covered with bags. (DE 149: 30-31; 4-ER-827-828); (DE 149: 32-33; 4-ER-829-830); (DE 149: 34-35; 4-ER-831-832). Defendant explained his cell phone fell down when Off. Wallace impacted his car. (DE 149: 31; 4-ER-828).[6] On cross-examination, Defendant testified his car did not have a front license plate. (DE 149: 41; 4-ER-838). Defendant admitted he knew very early on the police wanted him to get out of his car. He remained in his car for about five minutes. He believed the police did not have a right to order him out of the car. (DE 149: 41-42; 4-ER-838-839).

The magistrate judge issued a report and recommendation recommending denial of the motion to suppress on reconsideration. (DE 164; 1-ER-33). The district court judge conducted a third and final hearing on the motion to suppress. (DE 390: 2-20; 4-ER-867-885). Subsequently, the district court issued its order denying the motion to suppress. (DE 197; 1-ER-19). The district court ruled it was disagreeing with the magistrate judge as to whether there was reasonable suspicion of criminal activity to justify a stop based on an alleged vehicle theft and as to when the arrest of Defendant occurred. (DE 197: 3-4; 1-ER-21-22). However, the

[6] Defendant claimed he reached down to get his phone during his interaction with the police. (DE 149: 55; 4-ER-852). The cell phone fell on the floor by his seat. (DE 149: 59; 4-ER-856).

district court concluded the officers had probable cause to arrest Defendant because his vehicle lacked a front license plate. The district court also agreed with the magistrate judge's conclusions regarding the search of Defendant, the plain view of his car, and the validity of the search warrant. (DE 197: 4; 1-ER-22).

On the issue of reasonable suspicion, the district court noted Defendant's proximity to the stolen vehicle had to be taken in context since other vehicles were also in adjacent parking lots. Additionally, Defendant's act of slowly pulling forward and then slowly backing up as the police car moved closer could not reasonably have been mistaken for evasion or "headlong flight" at the sight of the police. (DE 197: 6-7; 1-ER-24-25). Under the totality of the circumstances, the officers had no objective reasonable suspicion that Defendant was involved in vehicle theft or a "chop shop." (DE 197: 8; 1-ER-26). The district court also concluded that the officers' actions constituted an arrest because when they undertook those actions Defendant had merely slowly driven his car a few feet and then slowly backed up a few feet as the police car abruptly approached his bumper. There was no objectively serious threat to officer safety or uncooperative action by Defendant. The officers' action of pinning in Defendant's car, pulling a firearm and commanding Defendant to stop constituted an arrest. As such, Defendant was arrested within one minute of his encounter with the police. (DE 197: 10-11; 1-ER-28-29). The district court concluded, however, that Defendant's missing front

license plate provided probable cause for an arrest. The district court noted Off. Proeger had testified he did not see a front license plate on Defendant's car as he approached. Vehicles registered in Alaska are required to display a license plate on both the front and rear of the vehicle. Failure to attach both plates is a misdemeanor punishable by up to 90 days in custody and a $500 fine. The district court ruled that because Alaska has criminalized failing to have a front license plate, the officers had probable cause to arrest Defendant. (DE 197: 11-13; 1-ER-29-31). The defense filed a motion to reconsider the order denying the motion to suppress. (DE 207; 5-ER-898). The Government filed a response. (DE 211; 5-ER-889). The district court entered an order denying the motion to reconsider. (DE 212; 1-ER-10).

ARGUMENT

I.

PETITIONER'S ARREST AND THE ENSUING SEARCH AND SEIZURE VIOLATED THE FOURTH AMENDMENT AND THE COURT OF APPEALS CLEARLY ERRED IN UPHOLDING THE DISTRICT COURT'S RULING DENYING PETITIONER'S MOTION TO SUPPRESS

Petitioner's arrest and the ensuing search and seizure violated the Fourth Amendment and the Court of Appeals clearly erred in affirming the district court's orders denying Petitioner's motion to suppress. The appellate court's decision

should be reversed. Because Petitioner's motion to suppress is dispositive, Petitioner's conviction should be vacated and Petitioner released from custody.

The Fourth Amendment and Probable Cause

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." A warrantless arrest of an individual in a public place for a felony, or a misdemeanor committed in the officer's presence, is consistent with the Fourth Amendment if the arrest is supported by probable cause. *Maryland v. Pringle*, 540 U.S. 366, 370 (2003). Probable cause exists where the facts and circumstances within the officers' knowledge and of which they had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense had been or is being committed. *Brinegar v. United States*, 338 U.S. 160, 175 (1949). Searches conducted outside the judicial process are per se unreasonable under the Fourth Amendment subject only to a few specifically established and well-delineated exceptions. *Katz v. United States*, 389 U.S. 347, 357 (1967); *Mincey v. Arizona,* 437 U.S. 385, 390 (1978). The government bears the burden to show that a warrantless seizure does not violate the Fourth Amendment. *See Vale v. Louisiana*, 399 U.S. 30, 34 (1970); *Mincey v. Arizona, supra,* 437 U.S. at 390-391 (1978). An initial seizure cannot be justified by information obtained as a result of that seizure. Probable cause must exist from

facts and circumstances known to the officers *at the moment of arrest*. *Beck v. State of Ohio,* 379 U.S. 89, 91 (1964); *Adams v. Williams*, 407 U.S. 143, 148 (1972). The seizure must be justified at its inception. *United States v. Sharpe*, 470 U.S. 675, 682 (1985). A seizure begins when all the circumstances surrounding the incident are such that a reasonable person would have believed that he was not free to leave. *INS v. Delgado*, 466 U.S. 210, 215 (1984).

The Ninth Circuit found that the district court did not err in ruling that Delpriore's arrest was supported by probable cause. The Court of Appeals explained that when Delpriore was stopped in 2018, the Alaska Division of Motor Vehicles was required by law to issue two license plates to each registered passenger vehicle one of which was required to be displayed on the front of the automobile and the other on the rear. The failure to display license plates in the manner delineated under Alaska law is classified as a misdemeanor. The Court of Appeals noted Delpriore was driving out of the parking lot with the intention of entering the public roadway. Off. Proegler saw that Delpriore's vehicle was missing a front license plate. Based on the foregoing, the circumstances of the stop gave rise to a sufficient probability that Delpriore violated, or was attempting to violate, Alaska statute, which is all that is required under the probable cause standard. The Court of Appeals concluded, therefore, the stop of Delpriore's car,

his arrest, and the subsequent searches and seizures were all supported by probable cause. (App. 2-4).

Lack of Probable Cause

An analysis of the facts in this case does not support the district's court finding of probable cause and the Court of Appeals clearly erred in upholding the district court's ruling. The officers were dispatched in Anchorage regarding a complaint by a woman that one of her neighbors was spray-painting cars in the driveway and that people who appeared to be on drugs would bring cars to her neighbor who would spray-paint them. Based on the information relayed, Officer Proegler believed someone had been altering potentially stolen vehicles. However, the Government presented no evidence to support any of the allegations made in the complaint. In fact, the call reported a male spray-painting vehicles in the driveway of 5810 and there were multiple pit bulls roaming around unrestrained. There was no indication Defendant was involved in the spray-painting or that he matched any description of the male in the call. Defendant was just in the "proximity" of the vehicles. The record shows the call did not give a description of a Mustang and there was no information that the Mustang was associated with any of the apartment units or any of the vehicles. The record shows there is no indication that Defendant was driving toward the officers. Rather, Defendant moved forward only a short distance. It was Off. Wallace who approached

Defendant's vehicle with his patrol car. Wallace activated his lights. Off. Proegler drew his handgun to guard and commanded Defendant to stop. Proegler pulled his gun and demanded Defendant to stop before Defendant backed up from Officer Wallace. There was no "dangerousness" exhibited by Defendant or anyone else at the scene. Defendant's vehicle was blocked in by Off. Wallace and he was not going anywhere. Within minutes, other officers arrived on the scene. Altogether five or six officers showed up. Not only were Proegler and Wallace armed with handguns, but Proegler displayed a 40mm impact weapon to potentially shatter Defendant's driver's side window. Officer Hughes testified all the officers at the scene deployed lethal and non-lethal weapons. Most of the officers were pointing their guns at Defendant.

The Court of Appeals agreed that probable cause arose since Defendant's vehicle did not have a visible front license plate. It should be noted Defendant was not even ticketed for failure to have a front license plate. The Court of Appeals relied on *Atwater v. City of Lago-Vista*, 532 U.S. 318 (2001), which noted that when an officer has probable cause that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender. *Id*., at 354. (App. A: 3-4).

First, it is questionable whether there was probable cause to believe there was a violation of Alaska Statute §28.10.171. Off. Proegler testified the front plate

was not visible, not that it did not exist. (DE 68: 9-10; 4-ER-658-659; DE 68: 17; 4-ER-666). Indeed, Defendant was neither ticketed nor arrested for lack of front license plate or for overly tinted windows. Rather, Defendant was handcuffed for being a suspect for vehicle theft and arrested for obstruction. (DE 68: 42: DE 68: 43-44; 4-ER-691; 4-ER-692-693). As Officer Wallace cogently testified: "I was detaining him [Defendant] as a possible suspect in the stolen car… in relation to the stolen car." (DE 68: 81; 4-ER-730). He further testified: "…[O]ur objective is to detain the driver for identification purposes and to further our investigations as to whether or not – what their relation is to the stolen vehicle." (DE 68: 82-83; 4-ER-731-732). Second, the *Atwater* case is distinguishable. In *Atwater*, the defendant was actually *arrested on* the seatbelt violations observed by the arresting officer. *See also Whren v. United States*, 517 U.S. 806, 808 (1996)(officer stopped the defendant's car *based on* traffic violations). *See also Virginia v. Moore*, 553 U.S. 164, 166 (2008)(defendant *arrested for* traffic misdemeanor). The front license plate issue was clearly used as an after-the-fact justification for the illegal stop. Indeed, the lack of a front license plate appears nowhere on the search warrant affidavit rendition of facts. (DE 45-1:1-4; 5-ER-1014-1017).

Lack of Front License Plate-Not A Misdemeanor

The Ninth Circuit cited Alaska Statute §28.10.171(a)-(b) and *Hamilton v. State*, 59 P.3d 760, 765 (Alaska Ct.App. 2002), to conclude that failure to display

license plates in the manner prescribed is classified as a misdemeanor under Alaska law. (App. A: 3). In a footnote, the Ninth Circuit found that although Petitioner argued that the Alaska Supreme Court and the local Anchorage Municipal Code treated the failure to display a front license plate as a non-arrestable offense, a state's decision to regulate arrests for particular crimes does not alter the scope of the Fourth Amendment's protections, citing *Virginia v. Moore*, 553 U.S. 164, 173-176 (2008). (App. A: 3, n. 3).

In his testimony, Off. Proelger candidly admitted that failure to have a front license plate was not an arrestable offense. (DE 68: 38; 4-ER-687). Proegler stated that failure to display a license plate is a municipal offense which is not arrestable. (DE 68: 39; DE 68: 41; DE 68: 42; 4-ER-688; 4-ER-690; 4-ER-691). Defendant was handcuffed for being a suspect for vehicle theft and arrested for obstruction. (DE 68: 42; DE 68: 43-44; 4-ER-691; 4-ER-692-693). When questioned by the magistrate judge, the officer repeated that failure to have a front license plate was not an arrestable offense. (DE 68: 39; 4-ER-688). Off. Kollin Wallace testified Defendant was arrested for resisting at the scene. He was not arrested for anything else. (DE 68: 110-111; 4-ER-759-760).

In *Hamilton, supra*, a police officer noted two vehicles, a snow grader and a sedan, driving away from a murder scene. The officer wanted to record the sedan's license plate number but he was unable to see the plate. Other officers

began to follow the sedan. One of the officers got behind the sedan and noticed the license plate was covered with snow making it unreadable. After the sedan was stopped, the police brushed away the snow covering the plate. The officer approached the driver's side and noticed that the driver's hands were covered with blood. The appellate court ruled that Alaska Stat. §28.10.171(b), requires that drivers maintain their license plates in a location and condition so as to be clearly legible. A violation of this section is a misdemeanor. The court concluded that the officers had probable cause to stop the vehicle. *Hamilton, supra* at 765. The court in *Hamilton* dealt with subsection (b) of the statute, not subsection (a), which is the section on which the district court relied in its decision. In any event, the court in *Hamilton* rested its decision on an alternative basis: the legality of the stop was justified as part of the police investigation of the murder. *Id*., at 766-767. This holding was without regard to Alaska Stat. §28.10.171(b). *Id.*, at 767. In *Hamilton*, the facts involved a rear license plate which was obscured, not the failure to have a front license plate.

The court in *Hamilton* did not address the impact of the Uniform Minor Offense Table (UMOT), which treats violations of Alaska Stat. §28.10.171 as a minor (non-arrestable) offense. UMOT is available at https://public.courts.alaska.gov/web/scheduled/docs/UMOT_Title28.pdf. The UMOT makes clear that improper display of plates is not an offense that carries

jail time, rather, it is punishable by either a $75 or $300 fine. (DE 74: 3-4; ER.: pp.). Further, the Alaska Supreme Court has issued a Vehicle and Traffic Offenses Booklet, Version A, and a Vehicle and Traffic Offenses Booklet, Version B. In Version A, the Court lists Alaska Stat. §28.10.171(b) as an infraction at page 9. https://public.courts.alaska.gov/web/forms/docs/pub-131.pdf. (Version A). The Court makes clear that defendants do not have a right to a jury or to a court-appointed lawyer for traffic infractions. (Version A, p. 3). Version B refers to the minor offenses listed in UMOT (p. 7) and likewise lists Alaska Stat. §28.10.171(b) as an infraction. (p. 27). https://public.courts.alaska.gov/web/forms/docs/pub-132.pdf. (Version B).[7] There is no Fourth Amendment exception for a search incident to citation. *See Knowles v. Iowa*, 525 U.S. 113, 118, 119 S.Ct. 484, 142 L.Ed.2d 492 (1998). The district court referred to the statute in isolation without regard to how the statute is being, or was intended to be, enforced. Both the district court and the Court of Appeals disregarded the Alaska Supreme Court's conclusion that lack of a front license plate was an infraction. At a very minimum, UMOT and the Alaska Vehicle and Traffic Offenses Booklets A and B create an ambiguity in the law. This Court has made clear that any ambiguity or confusion

[7] In addition, the Alaska Supreme Court has adopted Rules for Minor Offenses, which makes direct reference to the Uniform Table of Minor Offenses maintained by the court system. *See* Rule 3, Alaska Rules of Minor Offense Procedure.

in the law should be interpreted in a defendant's favor. *Liparota v. United States*, 471 U.S. 419, 427, 105 S.Ct. 2084, 85 L.Ed.2d 434 (1985); *Skilling v. United States*, 561 U.S. 358, 410-411, 130 S.Ct. 2896, 177 L.Ed.2d 619 (2010). In this respect, any ambiguity could have been easily dispelled by certifying the question to the Alaska Supreme Court. The appellate court did not make use of the readily available procedure in Rule 407, Alaska Rules of Appellate Procedure, which permits the Alaska Supreme Court to answer questions of law certified to it by a federal court of appeals.

More importantly, nowhere does Alaska Stat. §28.10.171 state that violation of the statute is a misdemeanor. The Court of Appeals referred to Alaska Statute §28.90.010(a)-(b) in determining the offense in this matter was a misdemeanor. Alaska Stat. §28.90.010, states in subsection (a) that other law may declare a provision of the title a felony or an infraction. Subsection (c): "Unless otherwise specified by law a person convicted of a violation of a regulation adopted under this title, or a municipal ordinance regulating vehicles or traffic when the municipal ordinance does not correspond to a provision of this title, is guilty of an infraction and is punishable by a fine not to exceed $300." Further, subsection (d) makes clear that an infraction is not considered a criminal offense. Anchorage Municipal Code (AMC) §9.30.155 addresses the failure to display license plates and categorizes the offense as a non-criminal infraction. It is therefore apparent

that Defendant's case fell under subsections (c) and (d) of Alaska Statute §28.90.010, not subsections (a) and (b) as noted by the Court of Appeals.

In this case, there was no evidence that the officers had probable cause to believe Defendant intended to commit the offense outlined in Alaska Stat. §28.10.171 by driving out of the parking lot. The district court premised its decision on what the officers surmised Defendant was going to do. The court's conclusion was plainly erroneous because a court should not consider the subjective thought process of law enforcement officers when assessing the existence of probable cause. *See Devenpeck v. Alford*, 543 U.S. 146, 153 (2004). Thus, the Court of Appeals clearly erred in upholding the district court's conclusion based on the subjective thought process of the officers.

A plain reading of Alaska Stat. §28.10.171 shows that the two-plate requirement applies only when two registration plates are issued for a vehicle. In this case, the officers did not testify, the Government did not prove, and the district court did not find, that two registration plates were issued for Defendant's vehicle thereby triggering the requirement that plates be affixed to both the front and back of the vehicle. Consequently, the officers did not have probable cause to believe that a criminal offense has been or is being committed as provided by Alaska Stat. §28.10.171. Officer Proegler's testimony that he did not see a front license plate on Defendant's vehicle, without more, did not satisfy the statute's requirements.

He did not have probable cause to arrest Defendant under the statute. The Government did not meet its burden to show that a warrantless seizure did not violate the Fourth Amendment. *See Vale v. Louisiana*, supra, 399 U.S. at 34; *Mincey v. Arizona, supra,* 437 U.S. at 390-391 (1978).

As previously noted, Alaska Statute §28.10.171 is considered a minor offense (non-arrestable) under the Uniform Minor Offense Table. (UMOT) and both Versions A and B, Vehicle and Traffic Offenses Booklet. The offense is listed as an infraction. The City of Anchorage municipal ordinance regarding violations of failure to display a license plate is an infraction. Anchorage Municipal Code (AMC) §9.52.030. Anchorage Municipal Code (AMC) §9.30.155 addresses the failure to display license plates and categorizes the offense as a non-criminal infraction. This explains why Off. Proegler testified it was a non-arrestable offense. (DE 68: 39; 4-ER-688). The appellate panel noted in a footnote that although Petitioner argued that the Alaska Supreme Court and the local Anchorage Municipal Code treated the failure to display a front license plate as a non-arrestable offense, a state's decision to regulate arrests for particular crimes does not alter the scope of the Fourth Amendment's protections, citing *Virginia v. Moore*, 553 U.S. 164, 173-176 (2008). (App. A: 3, n. 3). This conclusion is premised on the finding that a violation of Alaska Statute §28.10.171 is an arrestable misdemeanor, as provided in Alaska Statute §28.90.010. The panel

decision disregarded Petitioner's position in this respect because Petitioner's argument was not solely limited to Alaska's regulation of arrests. Rather, Petitioner also made clear that the statutory framework, as provided in subsections (c) and (d) of Alaska Statute §28.90.010, rendered Petitioner's failure to display a front license plate an infraction which does not subject an offender to arrest. The panel decision cannot be upheld solely based on Alaska's regulation of arrests. Moreover, the holding in *Virginia v. Moore*, *supra*, is inapposite since that case dealt with an arrestable misdemeanor (driving with a suspended license) not an infraction. *Id*., 553 U.S. at 166. Moreover, *Moore* simply rejected state-law arrest limitations into the Fourth Amendment. *Id*., at 175-176. There must still be a determination whether an arrestable crime was committed in the officer's presence. In *Moore*, the defendant was actually arrested for a traffic misdemeanor. *Id*., at 166. As previously stated, Defendant did not commit a traffic misdemeanor and was not charged or arrested for one. Alaska Statute §28.10.171, Alaska Statute §28.90.010, Uniform Minor Offense Table (UMOT), Anchorage Municipal Code (AMC) §9.30.155 and Anchorage Municipal Code (AMC) §9.52.030.

Outrageous Police Misconduct

The Court of Appeals acknowledged that to determine whether the officers' actions were reasonable, a court must balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the

countervailing governmental interests at stake, quoting *Graham v. Connor*, 490 U.S. 386, 396 (1989). (App. A: 4). The Ninth Circuit panel agreed with the district court that Petitioner continued to disobey the officers' commands and escalated the situation causing a standoff in the parking lot. Only after Petitioner moved his car multiple times did an officer's vehicle make slight contact with Petitioner's Mustang. Additionally, while the officers drew their handguns, it was only after Petitioner's continued movement of his car and his failure to comply with instructions. During the standoff, Petitioner not only refused to exit his car but also frequently moved his hands where the officers could not see what was going on. The appellate court panel pointed out that no shots were fired and the officers never deployed the 40mm less-lethal impact launcher that they warned him about. (App. A: 5).

In *Graham*, this Court noted that an officer's evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force, nor will an officer's good intentions make an objectively unreasonable use of force constitutional. *Id.*, at 397. Under *Graham*, the reasonableness of the officer's conduct is based on consideration of three factors: (1) the severity of the crime at issue; (2) whether the suspect posed a threat to the police or others; and (3) whether the suspect is fleeing or resisting arrest. *Id*., at 396. It is noteworthy that the Court of Appeals *did not engage* in an analysis of, or weigh, the *Graham*

factors, even though required to do so. *Graham, supra* at 396. Additionally, the appellate panel did not mention the district court's consideration of the officers' subjective beliefs that Petitioner was engaged in vehicle theft. This is in direct conflict with this Court's precedent. A claim of excessive force is analyzed under the Fourth Amendment's "objective reasonableness" standard. *Scott v. Harris*, 550 U.S. 372, 381 (2007); *Graham, supra,* 490 U.S. at 397.

The record shows the misconduct of the police was truly extraordinary. The dispatch call on which the police responded involved spray-painting of vehicles, roaming pit bulls, and a possible "chop-shop." When police arrived on the scene, Defendant was sitting quietly in this car on private property. There was no indication that Defendant was involved in spray-painting or that he matched the description of the male mentioned in the call. The dispatch did not give a description of Defendant's Mustang or any information that the Mustang was associated with any of the apartment units or any of the vehicles at the scene. There was absolutely no basis for officers to demand that Defendant exit his car. The officers, however, did more than make loud demands. Off. Wallace pinned Defendant's car with his patrol car, causing damage to Defendant's vehicle in the process. Wallace activated his lights. Both officers, Proegler and Wallace pulled their guns. According to Off. Hughes, the officers had brought out long-guns. Off. Hughes also stated all police officers arriving on the scene pointed their guns at the

Mustang. Off. Wallace confirmed that he and Proegler pointed their guns at Defendant's car. Off. Proegler deployed a 40mm impact launcher and threatened to use it to shatter the Mustang's window. Immediately after exiting his car, Defendant was handcuffed. The police conducted a pat down search. Defendant was placed in a patrol car, leaving his unattended dog in his vehicle. He was taken away from the scene. All the while, Defendant insisted his rights were being violated. The police ignored his complaints. Even the district court noted that the officers' methods of arresting Defendant were "somewhat aggressive." The facts show the police were engaged in 1) making loud demands; 2) pinning Defendant's car with a patrol car; 3) causing damage to Defendant's car; 4) pulling firearms by not one but five or six officers; 5) threatening to use a glass shattering device; 6) handcuffing and searching Defendant; and 7) transporting Defendant from the scene leaving his unattended dog behind.

The Court of Appeals pointed out that Petitioner moved his hands where the officers could not see what was going on. However, Off. Hughes was asked if he could see Defendant while he was still in the vehicle and he answered, "Yes." (4-ER-697). Officer Wallace also testified he could see the driver when he was facing him. (4-ER-730).

The sole basis for the officers' approach to Petitioner's car and their demands that he exit the car was suspicion that Petitioner was involved in auto

theft. However, there was no reasonable basis to believe that Defendant had anything to do with vehicle theft. In fact, the district court so found in its earlier order. (DE 197: 6; DE 197: 10; 1-ER-24; 1-ER-28). The Court of Appeals agreed with the district court that Defendant escalated the situation by refusing to obey the officers' commands. However, the record shows that the officers' use of force was not in any way justified since Defendant neither posed an immediate threat to the officers' safety nor actively resisted the officers by headlong flight at the officers' approach. The district court, in fact, made such findings in its earlier order. (DE 197: 6-7; DE 197: 10; 1-ER-24-25; 1-ER-28). Further, there is no indication in the record that Defendant posed a threat to the officers or that he had access to any weapons. *See, e.g., Gant v. Arizona*, 556 U.S. 332, 346-347 (2009)(citing *Michigan v. Long*, 463 U.S. 1032, 1049 (1983)(an officer may search a vehicle's passenger compartment when he has reasonable suspicion that the individual is dangerous and might access the vehicle to gain immediate control of weapons). Defendant was arrested by the officers once they took the actions of pinning his car and making demands for Defendant to exit his car at gunpoint. The district court found: "There was no objectively serious threat to officer safety or uncooperative action by Mr. Delpriore; nor was there any reasonable suspicion of vehicle theft or a violent crime, and thus the officers' actions of pinning the vehicle, pulling a

firearm to guard position, and commanding Mr. Delpriore to stop constituted an arrest of Mr. Delpriore." (DE 197: 10-11; 1-ER-28-29).

The Exclusionary Rule and Fruit of the Poisonous Tree

In *Nix v. United States*, 467 U.S. 431, 442-443 (1984), this Court explained that the exclusionary rule is needed to deter police misconduct. The facts in this case amply justify the full application of the exclusionary rule to the evidence seized in this case. The "fruit of the poisonous tree" doctrine compels suppression in this case. Where evidence is obtained from an unlawful search or seizure, the exclusionary rule renders inadmissible both primary evidence obtained as a direct result of an illegal search and seizure and evidence later discovered and found to be derivative of an illegality, known as fruit of the poisonous tree. *See Utah v. Strieff*, 579 U.S. 232, 237 (2016)(quoting *Segura v. United States*, 468 U.S. 796, 804 (1984)); *Wong Sun v. United States*, 371 U.S. 471, 488 (1963).

The Government has the burden to show that the evidence is not "the fruit of the poisonous tree." *See Brown v. Illinois*, 422 U.S. 590, 604 (1975). All the evidence was obtained as a direct result of an illegal search and seizure following an unlawful arrest. Consequently, the district court should have granted the motion to suppress as the evidence was a "fruit of the poisonous tree." The Court of Appeals clearly erred in affirming the district court's order denying Petitioner's motion to suppress.

CONCLUSION

This petition presents an ideal opportunity for this Court to clarify issues concerning the appropriate reach and applicability of the protections guaranteed by the Fourth Amendment. There exist conflicts with decisions of this Court on these issues which only this Court can resolve.

WHEREFORE, MICHAEL ANGELO DELPRIORE, respectfully prays that this Court issue its Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted this 15th day of May, 2025.

s/ J. Rafael Rodriguez
J. RAFAEL RODRÍGUEZ
FLA. BAR NO. 0302007

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, pursuant to Rule 29.5, Rules of Supreme Court, that a true and correct copy of Petitioner's Petition for Writ of Certiorari was mailed on this 15th day of May, 2025, to the Solicitor General of the United States, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530-0001.

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