No. _____

IN THE

# SUPREME COURT OF THE UNITED STATES

PATRICK JOSEPH DUNCAN, JR.
Petitioner,

v.

UNITED STATES,
Respondent.

**ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

# PETITION FOR WRIT OF CERTIORARI

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## QUESTION PRESENTED

When determining whether law enforcement's stop of a suspect was lawful under the Fourth Amendment, may federal courts use state law – in this case, California's definition of a completed offense that conflicts with the federal definition of a completed offense – to narrow an individual's Fourth Amendment rights?

## PARTIES TO THE PROCEEDING

The parties to the proceedings below were the defendant and petitioner, Patrick Duncan, Jr., and respondent, the United States of America.

## RELATED PROCEEDINGS

*United States v. Patrick Joseph Duncan*, Jr., No. 2:22-cr-00553-PA-1 (C.D.Cal., Sept. 18, 2023)

*United States v. Patrick Joseph Duncan*, Jr., No. 23-2374, 2024 WL 5001825 (9th Cir., Dec. 6, 2024)

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

### Cases



### Statutes



### Rules



### Constitutional Provisions

## INDEX TO APPENDIX

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Patrick Joseph Duncan, Jr., respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

## OPINION BELOW

The opinion of the Ninth Circuit was not published but is available online at 2024 WL 5001825 and is included as Appendix A.

## JURISDICTION

The Ninth Circuit denied Duncan's petition for panel rehearing and petition for rehearing en banc on March 18, 2025. App. B at 4. This Court's jurisdiction is timely invoked under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon a probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

## STATEMENT OF THE CASE

Petitioner/Appellant Patrick Joseph Duncan, Jr., committed a theft of a Bev-Mo. App. A at 2. After he drove out of the parking lot,

law enforcement, who were responding to a 911 call about the theft, initiated a stop of Duncan's vehicle based on the vehicle description given by the 911 caller. App. A at 2. Evidence seized from Duncan's vehicle was used to support a four-count indictment. App. A at 1-2; App. C at 1.

Duncan moved to suppress the evidence seized from his vehicle on grounds that the stop of his vehicle was unlawful under the Fourth Amendment. App. A at 1-2. The district court denied the motion. App. A at 1-2; App. D at 11; App. E at 43.

Duncan entered a plea to count 1 of the indictment – possession with intent to distribute methamphetamine (21 U.S.C. § 841(a)(1), (b)(1)(A)) – and to count 3 of the indictment – felon in possession of a firearm and ammunition (18 U.S.C. § 922(g)(1)). App. C at 5. He was sentenced on September 18, 2023, to 140 months on count 1 and a concurrent 120 months on count 3, to be followed by a five-year term of supervised release. App. C at 5.

Following his plea, Duncan appealed on grounds that the district court had erroneously denied his motion to suppress. App. A at 1.

The Ninth Circuit affirmed the judgment on December 6, 2024. App. A at 2-3. The Ninth Circuit held that the proper Fourth Amendment analysis was the analysis applicable to ongoing crimes,

as opposed to completed crimes, because under California law, a theft is considered ongoing until the perpetrator reaches a place of temporary safety. App. A at 2-3.

A petition for rehearing and a petition for rehearing en banc were denied on March 18, 2025. App. B at 4.

This petition now follows.

## REASONS FOR GRANTING THE PETITION

### I. The Petition Should Be Granted to Address Whether States May Limit a Suspect's Fourth Amendment Rights by Redefining a Completed Crime

The petition should be granted as the Ninth Circuit "decided an important question of federal law that has not been, but should be, settled by this Court" (Rule 10(b)) – whether states may limit a suspect's Fourth Amendment rights by redefining a completed crime – and because it "has decided an important federal question in a way that conflicts with relevant decisions of this Court." Rule 10(c).

Specifically, the Ninth Circuit's decision conflicts with *Virginia v. Moore*, 553 U.S. 164, 176 (2008), which held that "state restrictions do not alter the Fourth Amendment's protections."

The Ninth Circuit's decision also conflicts with *Denezpi v. United States*, 596 U.S. 591, 601 (2022), this Court defined a

completed offense as having occurred "when a person has carried out all of its elements."

The Fourth Amendment permits police to make an investigatory stop without a warrant or probable cause, but on reasonable suspicion that the person being stopped is involved in "ongoing or imminent crime, i.e., when a police officer 'observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot.'" *United States v. Grigg*, 498 F.3d 1070, 1075 (9th Cir. 2007) (quoting *Terry v. Ohio*, 392 U.S. 1, 30 (1968)).

When a stop is not based on reasonable suspicion of ongoing or imminent criminal activity, but rather on suspicion that the person was involved in past criminal conduct, a court must determine whether the stop was constitutionally reasonable by "balanc[ing] the nature and quality of the intrusion on personal security against the importance of the governmental interests alleged to justify the intrusion." *United States v. Hensley*, 469 U.S. 221, 228 (1985).

*Hensley*, however, expressly confined its holding to instances in which the person stopped was suspected of involvement in a "completed felony." *Hensley*, 469 U.S. at 229; *see Grigg*, 498 F.3d at 1075.

For completed misdemeanors, the Ninth Circuit adopted in *Grigg* the rule that, when considering whether it is reasonable to stop a person on suspicion of involvement in a completed misdemeanor, "a reviewing court must consider the nature of the misdemeanor offense in question, with particular attention to the potential for ongoing or repeated danger (e.g., drunken and/or reckless driving), and any risk of escalation (e.g., disorderly conduct, assault, domestic violence)," and must also account for "the possibility that the police may have alternative means to identify the suspect or achieve the investigative purpose of the stop." *Grigg*, 498 F.3d at 1081.

Here, however, the Ninth Circuit found that application of a *Grigg* analysis was unnecessary because, in light of California case law holding that a theft is not completed until the suspect has arrived at a place of temporary safety, the misdemeanor crime was not completed but was still ongoing at the time of the stop. App. A at 2-3; *see People v. Gomez*, 179 P.3d 917, 921 (Cal. 2008); *People v. Debose*, 326 P.3d 213, 233 (Cal. 2014).

The Ninth Circuit, however, failed to justify its reliance on a state's interpretation of when a crime is completed, as opposed to the definition of a completed crime under this Court's law, for purposes of applying Fourth Amendment law.

Under this Court's law, an offense "is complete when a person has carried out all of its elements. [Citations.]" *Denezpi*, 596 U.S. at 601. This definition of a completed offense is at odds with the California case law relied upon by this Court, which holds that a theft is not complete until the offender has reached a place of temporary safety (*Gomez*, 179 P.3d at 921),[1] regardless of the fact that all elements of the offense have already been satisfied when the offender leaves the scene of the offense with the stolen property.

Moreover, the Ninth Circuit has previously found an offense of misdemeanor battery to be completed prior to detention by law enforcement, despite an attempt to evade law enforcement when law enforcement first approached. *Johnson v. Bay Area Rapid Transit Dist.*, 724 F.3d 1159, 1174-76 (9th Cir. 2013). In *Johnson*, the Ninth Circuit was determining whether an officer was entitled to qualified immunity for conducting an investigatory stop of a group suspected of being involved in a misdemeanor battery. *Id.* at 1174. The group attempted to evade the officer as the officer approached. *Id.* The Ninth Circuit held that the officer was not entitled to qualified immunity because "the Fourth Amendment constrains officers who

[1] It is worth noting that, even under California law, receipt of stolen property is complete at the moment that possession is taken of the stolen property. *People v. Boyce*, 110 Cal. App. 3d 726, 733 (Cal. Ct. App. 1980).

conduct stops to investigate completed misdemeanors." *Id.* at 1175, citing *Grigg*, 498 F.3d at 1079-81.

The Ninth Circuit has emphasized that low-level theft, while " 'not to be taken lightly ... is not inherently dangerous[,]' " and does not permit police to easily brush aside an individual's Fourth Amendment rights. *Lyall v. City of Los Angeles*, 807 F.3d 1178, 1182, 1189 (9th Cir. 2015) (lack of dangerousness associated with "petty theft" of beer bottles " 'militates against a finding of exigent circumstances' " supporting warrantless entry of building) (quoting *United States v. Struckman*, 603 F.3d 731, 745 (9th Cir. 2010)) (overruled on other grounds as noted in *Freeman v. Mata*, No. EDCV 22-1732 JGB (KKx), 2023 WL 4291850, at *15 (C.D.Cal. 2023).

Because the ultimate question here is whether or not a Fourth Amendment violation occurred, and because that question turns on whether or not the misdemeanor shoplifting was "completed" at the time of the initial stop of Duncan's vehicle, the Supremacy Clause of the federal Constitution required the Ninth Circuit to apply this Court's definition of a completed offense in performing that analysis rather than applying California's definition of a completed offense. *See* U.S. Const., art. VI, cl. 2 [supremacy clause]; *Virginia v. Moore*, 553 U.S. at 176 ("state restrictions do not alter the Fourth

Amendment's protections"); *Pennekamp v. State of Fla.*, 328 U.S. 331, 336 (1946) ("The Constitution has imposed upon [the United States Supreme Court] final authority to determine the meaning and application of those words of that instrument which require interpretation to resolve judicial issues.

Accordingly, certiorari should be granted to address the important federal question of whether states may limit a suspect's Fourth Amendment rights by redefining a completed crime and because the Ninth Circuit's decision conflicts with relevant decisions of this Court. Rule 10(b), (c).

## II. The Petition Should Be Granted Because This Case Squarely Presents the Issue

Because the Ninth Circuit expressly relied upon California's definition of an ongoing offense, this case squarely presents the issue of whether federal courts rely on state law – in this case, California's definition of a completed offense that conflicts with the federal definition of a completed offense – to narrow an individual's Fourth Amendment rights.

## CONCLUSION

For the foregoing reasons, it is respectfully requested that the petition for a writ of certiorari be granted.

Respectfully submitted,

Dated: June 10, 2025

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PATRICK DUNCAN, JR.