

Nos. 24-5451 and 24-5501

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IN THE SUPREME COURT OF THE UNITED STATES

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MARTIN MONCADA-DE LA CRUZ, PETITIONER

v.

UNITED STATES OF AMERICA  
—————

VICTOR MANUEL CAMPOS-AYALA, PETITIONER

v.

UNITED STATES OF AMERICA  
—————

ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT  
—————

BRIEF FOR THE UNITED STATES IN OPPOSITION  
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QUESTIONS PRESENTED

1. Whether the evidence sufficiently demonstrated that petitioners possessed marijuana.

2. Whether petitioners' rights to present a complete defense and to compulsory process were violated by the government's good-faith removal of a potential witness.

3. Whether petitioner Campos was in custody for purposes of Miranda v. Arizona, 384 U.S. 436 (1966), when a U.S. Border Patrol agent asked him questions during a roadside stop.

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OPINIONS BELOW

The opinion of the en banc court of appeals (Moncada Pet. App. A1-A37; Campos Pet. App. A1-A31) is reported at 105 F.4th 235. The opinion of the court of appeals panel is reported at 70 F.4th 261.

#### JURISDICTION

The judgment of the en banc court of appeals was entered on June 7, 2024. The petitions for a writ of certiorari were filed

on August 29, 2024 (Moncada) and September 5, 2024 (Campos). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

#### STATEMENT

Following a jury trial in the United States District Court for the Western District of Texas, petitioners Martin Moncada-de la Cruz (Moncada) and Victor Campos-Ayala (Campos) were convicted on one count of possessing with intent to distribute 100 kilograms or more of marijuana, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(B). Moncada Judgment 1; Campos Judgment 1. Each petitioner was sentenced to 60 months of imprisonment, to be followed by five years of supervised release. Moncada Judgment 2-3; Campos Judgment 2-3. A court of appeals panel originally reversed their convictions, but the en banc court of appeals affirmed them. Moncada Pet. App. A1-A37.

1. On December 24, 2020, officers in Culberson County, Texas were advised that a motorist had seen large rectangular bundles being loaded into a gray or silver car in a roadside park. C.A. ROA 428-429, 441-442, 577. Texas State Troopers stopped a car matching the description provided by the motorist. Id. at 428-429, 506, 661. The troopers discovered five people in the car, crammed among several large bundles of marijuana totaling 283 pounds. Moncada Pet. App. A4; see id. at C1-C2 (images of car).

The driver of the car was a 17-year-old male. Moncada Pet. App. A10. The troopers removed him from the car, placed him in

handcuffs, and seated him on the ground behind the car away from the highway. C.A. ROA 363, 429-431. Karina Castro-Hernandez (Castro) sat in the front passenger seat with a bundle of marijuana on her lap, next to her six-year-old daughter who sat on the center console. Id. at 365, 430; see Moncada Pet. App. C2.

Petitioners were lying in the back of the car with four more bundles of marijuana. C.A. ROA 479, 497-498; see Moncada Pet. App. C1. One lay behind the driver's seat atop a bundle of marijuana; the other lay on his side on a marijuana bundle in the back passenger seat, resting against another bundle, with his legs hanging over the back seat and his boots resting on yet another bundle in the back storage area. C.A. ROA 366-367, 510, 1661-1662. The driver of the car was a U.S. citizen, but the four passengers (including petitioners) were not. Id. at 487.

Petitioners, Castro, and Castro's daughter remained in the car until Border Patrol agents arrived, about 20 to 30 minutes after the stop. See Moncada Pet. App. A11. Border Patrol agents removed Castro and her daughter from the car first. Ibid. Several minutes later, Border Patrol Agent Eric Ramos positioned himself by the open car door and asked petitioners: "That's marijuana?" C.A. ROA 366, 509-512. Campos replied "yes," and Moncada nodded in agreement. Ibid.

Agent Ramos removed Campos from the car, frisked him, and asked why he helped with the drugs. Moncada Pet. App. A12. Campos

replied, "I didn't." Ibid. While frisking Campos, Agent Ramos found two phones in Campos's possession, one in his front pocket and one in his back pocket. C.A. ROA 515. Moments later, while walking Campos to the transport van, Agent Ramos asked Campos, "why did you cross with the drugs?" Moncada Pet. App. A14. Campos replied, "I didn't cross. I just helped." Ibid. (citation omitted).

Petitioners and Castro were taken to a station, where agents from the Drug Enforcement Agency (DEA) interviewed them. Moncada Pet. App. A4-A5. All three "gave the same basic story," claiming that the passengers were strangers who illegally crossed the border together, and then flagged down a ride from a random car in the hopes of traveling further into the United States. Ibid. They stated that there were no drugs in the car when they accepted the ride, but after they had been driving for some time, the driver dropped them off at a roadside park and then came back 30 or 40 minutes later with large bundles of marijuana. Id. at A5. Moncada said that when the driver returned with the marijuana, he helped to unload and rearrange the bundles inside the car so they could all fit inside. Ibid. And after an agent explained to Campos what he was charged with, Campos replied in Spanish, "Well, I guess that's how it goes. Yes, I was in possession of the marijuana." Ibid. (citation omitted).

2. A grand jury in the Western District of Texas charged petitioners with possessing with intent to distribute 100 kilograms or more of marijuana. C.A. ROA 23, 918. The government declined to prosecute Castro and instead referred her for expedited removal from the United States, in part so as not to separate mother and daughter. Id. at 500, 622, 650-651. Castro was removed from the United States before petitioners' trial. See id. at 403, 671.

Before trial, petitioners moved to dismiss the indictment based on the government's removal of Castro, asserting that she would have been an exculpatory witness. See C.A. Gov't Br. 12. The district court denied petitioners' motion. C.A. ROA 410-411. The court explained that it did "not find that the government deported the witness in bad faith," because, among other things, the government "was trying to remove and deport those who should be deported as quickly as possible because of COVID" and "space" issues at the detention facilities. Ibid. The court also determined that, based on the government's recounting of what Castro had told law enforcement, any testimony Castro may have provided "is merely cumulative and, therefore, is not going to be material." Ibid.

Petitioners also moved before trial to suppress statements they made to Agent Ramos while they were stopped on the side of the road, arguing that a warning should have been given under

Miranda v. Arizona, 384 U.S. 436 (1966). C.A. ROA 111-112. The district court denied the suppression motion on the ground that petitioners were "not in custody for Miranda purposes" during the questioning. Id. at 410. The court explained that although petitioners "were not free to leave," "no formal arrest was made," petitioners were not handcuffed, and petitioners were not "under arrest for Miranda purposes." Id. at 409-410.

3. Petitioners were tried before a jury. At the trial, DEA agents testified about what Castro had told them during her interview at the station house. C.A. ROA 651-653. The agents recounted Castro's statement that she and her daughter crossed from Mexico into Texas during the evening with petitioners, after which they spent the night under a bridge; in the morning, a phone rang and they flagged down a car and the driver took them to Van Horn, Texas; the driver left them at a roadside park and told them to wait; and the driver returned 35 to 40 minutes later with the bundles in the car. Ibid.

At the close of the government's case, petitioners moved for a judgment of acquittal. C.A. ROA 676-677. Petitioners contended that the government had not proved possession but instead relied on petitioners' "mere presence" near the drugs. Id. at 677. The district court denied the motion, explaining "that a reasonable and rational juror could find the defendants guilty beyond a

reasonable doubt of each of the elements set forth in the indictment." Ibid.

At the end of the two-day trial, the jury returned guilty verdicts for each petitioner, finding each of them responsible for possessing more than 100 kilograms of marijuana with intent to distribute. C.A. ROA 153-154, 754-755. Each petitioner was sentenced to 60 months of imprisonment, to be followed by five years of supervised release. Moncada Judgment 2-3; Campos Judgment 2-3.

4. A panel of the court of appeals reversed and vacated petitioners' convictions. 70 F.4th 261, reh'g en banc granted, opinion vacated, 81 F.4th 460, and on reh'g en banc, 105 F.4th 235. In the panel's view, the evidence was insufficient to show that petitioners had "ownership, dominion, or control over the marihuana" as required to establish possession. Id. at 268.

Judge Oldham dissented, Campos, 70 F.4th at 270-273, finding sufficient evidence that petitioners "had 'direct physical control' over the drugs they were literally holding, sitting on, and lying under." Id. at 270.

5. The court of appeals sua sponte vacated the panel opinion and ordered rehearing en banc. 81 F.4th 460, 461. On rehearing, the en banc court affirmed petitioners' convictions. Moncada Pet. App. A1-A37. In doing so, it rejected both the panel's sufficiency rationale and two other arguments raised by petitioner that the

panel's sufficiency rationale had obviated its need to reach: namely, that their due-process and compulsory-process rights were violated by Castro's removal and that the district court should have suppressed their roadside statements under Miranda. Id. at A4-A12.

The en banc court of appeals first determined that the jury's finding that petitioners possessed the marijuana in the car was supported by sufficient evidence. Moncada Pet. App. A10. The court observed that "possession" under the Controlled Substances Act "'may be actual or constructive.'" Id. at A5 (citation omitted). The court explained that a person "has actual possession if he 'knowingly has direct physical control over a thing,'" and has "constructive possession by '(1) ownership, dominion or control over the item itself or (2) dominion or control over the premises.'" Ibid. (citation omitted).

Applying those standards, the court of appeals found "ample evidence from which the jury could find possession with intent to distribute." Moncada Pet. App. A9. That evidence included the fact that petitioners "voluntarily surrounded themselves with what was admittedly a controlled substance" and "repeatedly handled and rearranged the contraband"; the inference that petitioners had been recruited "to assist in loading, arranging, and unloading the contraband"; and Campos's admission that he "'possessed'" and "'helped with'" the marijuana. Ibid. The court also identified

evidence suggesting that petitioners' participation in the scheme was knowing, including that Campos suspiciously had two phones on him and that petitioners seemingly were not concerned when the car's driver abandoned them at the roadside park. Ibid.

The court of appeals next explained that the government's removal of Castro did not violate petitioners' due process right or right to compulsory process to obtain a witness for their defense. Moncada Pet. App. A10-A11. The court observed that under this Court's decision in United States v. Valenzuela-Bernal, 458 U.S. 858 (1982), petitioners "must 'make[] a plausible showing that the testimony of the deported witness[] would have been material and favorable \* \* \* , in ways not merely cumulative'" to succeed on such a claim. Pet. App. A11 (quoting Valenzuela-Bernal, 458 U.S. at 873). And it found that petitioners had not made such a showing here. Id. at A10-A11.

The court of appeals observed that the federal agents "testified in detail as to both the interview with Castro and [petitioners'] statements to law enforcement," which "were, for all practical and legal purposes, identical." Pet. App. A11. The court explained that Castro "reinforced [petitioners'] acknowledgments that they re-entered the vehicle knowing it was packed tight with marihuana," and did not contradict their admissions. Ibid. Accordingly, the court found "no reasonable likelihood that the jury would have reached a different verdict

just because Castro had testified in person.” Ibid. The court also agreed with the district court that the government did not act in bad faith in removing Castro. Ibid.

Finally, the court of appeals determined that the district court properly denied petitioners’ motion to suppress the statements they made to Border Patrol Agents during the roadside questioning. Moncada Pet. App. A12. While the court of appeals acknowledged that “Campos was not free to leave” the roadside stop, it agreed with the district court that the questioning “did not subject him to the type of police interrogation” that qualifies as “coercive.” Ibid. The court of appeals accordingly concurred in the district court’s determination that Campos was not “in custody” for purposes of Miranda during the questioning, and that no Miranda warning was required. Ibid.

Chief Judge Richman dissented, joined by four other judges. Moncada Pet. App. A12-A25. The dissent first took the view that the evidence did not establish that petitioners “possessed” the marijuana, merely that they touched the drug and were in its presence. Id. at A15-A16. The dissent also would have granted petitioners’ motion to dismiss the indictment based on the government’s deportation of Castro, on the theory that Castro could have provided testimony that the government agents had not. Id. at A24. And it would have suppressed Campos’s roadside statements, on the view that petitioners’ interaction with Border Patrol “may

have started as a traffic stop,” but it “evolved into Miranda custody” because the roadside environment exerted “coercive pressures” on Campos. Id. at A20, A22.

#### ARGUMENT

Petitioners claim (Moncada Pet. 12-24; Campos Pet. 23-35) that insufficient evidence supported the jury’s finding they possessed the marijuana in the car and that the government’s removal of Castro violated their rights to due process and compulsory process. Campos further claims (Campos Pet. 14-23) that he was questioned while in custody in violation of Miranda v. Arizona, 384 U.S. 436 (1966). The court of appeals correctly rejected petitioners’ claims, and its decision does not conflict with any decision of this Court or of another court of appeals. The petitions should be denied.

1. Petitioners contend (Moncada Pet. 13-17; Campos Pet. 23-30) that the evidence was insufficient to support their convictions for possessing marijuana with the intent to distribute. The court of appeals correctly rejected that claim. Petitioners’ factbound challenge to the jury’s finding that they possessed the marijuana lacks merit and does not warrant this Court’s review.

a. Petitioners were convicted of possessing marijuana with intent to distribute, in violation 21 U.S.C. 841(a)(1). One of the elements of that offense is possession of the relevant controlled substance. United States v. Lopez-Monzon, 850 F.3d

202, 206 (5th Cir. 2017); see McFadden v. United States, 576 U.S. 186, 192 (2015). Possession under the statute may be either actual or constructive. See National Safe Deposit Co. v. Stead, 232 U.S. 58, 67 (1914) (noting that the word "possession" is "interchangeably used to describe" both actual and constructive possession). In Henderson v. United States, 575 U.S. 622 (2015), a case involving another possession statute, this Court explained that control is the hallmark of both types of possession: "[a]ctual possession exists when a person has direct physical control over a thing," and "[c]onstructive possession" applies when a person "though lacking such physical custody, still has the power and intent to exercise control over the object." Id. at 626.

The court of appeals correctly understood the legal contours of possession and correctly applied them to the facts of this case. The court explained that a "defendant has actual possession if he knowingly has direct physical control over a thing," and that a defendant has constructive possession by "(1) ownership, dominion or control over the item itself or (2) dominion or control over the premises." Moncada Pet. App. A5 (citation and internal quotation marks omitted). And the court accepted that "[m]ere presence in the area where drugs are found is insufficient to support a finding of possession." Ibid. (citation omitted); see

id. at A8. That language tracks Henderson's explanation of the standards for possession.

The en banc court of appeals correctly recognized that the evidence here was sufficient for the jury to find possession under that standard. See Moncada Pet. App. A10. The evidence supporting a jury finding of guilt is sufficient when, "after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319 (1979). In this case, the court correctly identified "ample evidence from which the jury could find possession with intent to distribute." Moncada Pet. App. A9. And that evidence was not limited to the "mere touching of a controlled substance," as petitioners contend. Moncada Pet. 8; see pp. 14-16, infra.

The court of appeals instead identified a variety of pieces of evidence that, particularly when considered in combination, allowed the jury to infer that petitioners knowingly exercised some form of control over the drugs. See Moncada Pet. App. A9-A10. The court observed, for example, that the jury heard evidence that petitioners "voluntarily surrounded themselves with what was admittedly a controlled substance," that they "repeatedly handled and rearranged the contraband," and that it was doubtful that the teenage driver could have carried all the drugs himself without petitioners' assistance "in loading, arranging, and unloading the

contraband.” Id. at A9. And “[p]erhaps most importantly,” Campos had admitted that he “‘possessed’” and “‘helped with’” the marijuana. Ibid.

b. Petitioners err in asserting (Moncada Pet. 13-17; Campos Pet. 23-30) that the en banc court of appeals created a conflict in the circuits by purportedly abandoning the requirement that a defendant must have control over a controlled substance in order to possess it. The asserted conflict is illusory, and this Court’s review is not warranted.

Petitioners are incorrect in suggesting (Moncada Pet. 13-17; Campos Pet. 23-30) that the en banc court of appeals held that merely touching a drug, rather than controlling it, qualifies as possession. As explained above, the court recognized that both actual and constructive possession require “control.” See Moncada Pet. App. A5. The court determined that the government had proved that petitioners had the requisite control over the marijuana by showing that petitioners “repeatedly handled and rearranged the contraband.” Id. at A9. But the court never held (or even suggested) that “merely touching” a drug, without exercising control over it, qualified as possession as a matter of law.<sup>1</sup>

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<sup>1</sup> As support for their characterization of the decision below, petitioners note (Moncada Pet. 15-17; Campos Pet. 27-28) that the author of the en banc majority opinion in this case wrote a dissent in a different case several years earlier contending that mere touching is sufficient to establish actual possession. See United States v. Smith, 997 F.3d 215, 229 (5th Cir. 2021) (Smith, J.,

There is thus no conflict between the decision below and the decisions that petitioners cite in which other courts of appeals found insufficient evidence of possession. See *Moncada Pet.* 14-15 (citing *United States v. Kitchen*, 57 F.3d 516 (7th Cir. 1995); *United States v. Kearns*, 61 F.3d 1422 (9th Cir. 1995); *United States v. Edwards*, 166 F.3d 1362 (11th Cir. 1999)); *Campos Pet.* 25-26 (same). The court of appeals below, like the courts in those other cases, recognized that possession of a thing entails control of it. See *Moncada Pet. App.* A5. In the decisions that petitioners cite, however, the defendants' interactions with the drugs were so fleeting that they did not suggest actual control. See *Kitchen*, 57 F.3d at 521 (defendant picked up cocaine for "2 or 3 seconds"); *Kearns*, 61 F.3d at 1425 (defendant's coconspirator "briefly touched and smelled the marijuana"); *Edwards*, 166 F.3d at 1363-1364 (defendant "picked up the manila envelope [containing cocaine] and briefly inspected its contents").

Here, in contrast, the jury heard evidence that petitioners interacted much more substantially with the marijuana in a manner suggesting control, including that petitioners "repeatedly handled" and manipulated the marijuana, drove nestled alongside it for hours, and were recruited to load and unload the marijuana from the car. See *Moncada Pet. App.* A9. Petitioners' challenge

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dissenting). But petitioners are challenging the decision below, not the Smith dissent. Whatever the Smith dissent may have said, the decision below recognized that control is necessary for both actual and constructive possession. See *Moncada Pet. App.* A5, A8.

thus boils down to a disagreement with the lower courts' determination that the government presented sufficient evidence of control to satisfy the possession element. Such a factbound contention does not warrant this Court's review. See Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."). This Court "do[es] not grant a certiorari to review evidence and discuss specific facts." United States v. Johnston, 268 U.S. 220, 227 (1925). And "under what [the Court] ha[s] called the 'two-court rule,' the policy has been applied with particular rigor when [the] district court and court of appeals are in agreement as to what conclusion the record requires." Kyles v. Whitley, 514 U.S. 419, 456-457 (1995) (Scalia, J., dissenting); see Graver Tank & Mfg. Co. v. Linde Air Products Co., 336 U.S. 271, 275 (1949).

2. Petitioners further contend (Moncada Pet. 19-24; Campos Pet. 30-35) that the government's removal of Castro violated their rights to due process under the Fifth Amendment and to compulsory process under the Sixth Amendment, on the theory Castro would have provided testimony that was material and favorable to petitioners' defense. That factbound claim likewise does not warrant this Court's review.

a. The Sixth Amendment's Compulsory Process Clause provides that "[i]n all criminal prosecutions, the accused shall enjoy the

right \* \* \* to have compulsory process for obtaining witnesses in his favor.” U.S. Const. Amend. VI. Together with the Due Process Clause, the Compulsory Process Clause “guarantees criminal defendants a meaningful opportunity to present a complete defense.” Holmes v. South Carolina, 547 U.S. 319, 324 (2006) (citation and internal quotation marks omitted).

In United States v. Valenzuela-Bernal, 458 U.S. 858 (1982), this Court addressed whether the government violates a criminal defendant’s right to due process and compulsory process by deporting potential witnesses before trial. The Court rejected the argument that the deportation of potential witnesses is a per se constitutional violation, recognizing that “the responsibility of the Executive Branch faithfully to execute the immigration policy adopted by Congress justifies the prompt deportation of illegal-alien witnesses upon the Executive’s good-faith determination that they possess no evidence favorable to the defendant in a criminal prosecution.” Id. at 872.

The Court explained that instead, “[a]s in other cases concerning the loss of material evidence, sanctions will be warranted for deportation of alien witnesses only if there is a reasonable likelihood that the testimony could have affected the judgment of the trier of fact.” Valenzuela-Bernal, 458 U.S. at 873-874. Thus, in order to establish that the deportation of a potential witness violates the Compulsory Process Clause, a

defendant must make a "plausible showing that the testimony of the [witness] would have been material and favorable to his defense, in ways not merely cumulative to the testimony of available witnesses." Id. at 873. That inquiry is a context-specific one, "best made in light of all of the evidence adduced at trial." Id. at 874.

b. The courts below correctly determined that petitioners failed to show a reasonable likelihood that Castro's proposed testimony could have affected the jury's verdict. As the court of appeals observed, DEA agents "testified in detail as to both the interview with Castro and [petitioners'] statements to law enforcement," and "Castro's and both [petitioners'] statements were, for all practical and legal purposes, identical." Moncada Pet. App. A11. The court further noted that "[n]othing in [Castro's] reported statements contradicted [petitioners'] admissions regarding (1) their knowledge of the presence of marihuana or (2) their rearranging the bundles in the car," and "[i]nstead, Castro reinforced [petitioners'] acknowledgements that they re-entered the vehicle knowing it was packed tight with marihuana." Ibid. The court thus correctly found, in light of all the relevant evidence, that "there is no reasonable likelihood that the jury would have reached a different verdict just because Castro had testified in person." Ibid.

Petitioners acknowledge (Moncada Pet. 21; Campos Pet. 32) their burden to show that Castro's testimony is material "in ways not merely cumulative," Valenzuela-Bernal, 458 U.S. at 873, but they contend that Castro's testimony met that standard. They speculate that Castro could have "testified about what she observed when the driver returned with the marijuana," as well as "how [petitioners] looked when they saw the driver's load" of marijuana. Moncada Pet. 22-23. Petitioners also argue that the court below was wrong to treat the DEA agents' summary of Castro's statement as an adequate substitute for her live testimony, especially given that the government urged the jury to discount other aspects of the agents' statements. Ibid. But those factbound criticisms of the decision below do not warrant this Court's review. See Sup. Ct. R. 10; Johnson, 268 U.S. at 227 ("We do not grant a certiorari to review evidence and discuss specific facts."). And petitioners do not even attempt to identify any decision of another courts of appeals in conflict with that decision.

c. In any event, this case would be an unsuitable vehicle for reviewing petitioners' compulsory-process claim, because the decision below could be affirmed on the alternative ground that the government deported Castro in good faith.

In Valenzuela-Bernal, this Court recognized that "the responsibility of the Executive Branch faithfully to execute the immigration policy adopted by Congress justifies the prompt

deportation of illegal-alien witnesses upon the Executive's good-faith determination that they possess no evidence favorable to the defendant in a criminal prosecution." 458 U.S. at 872. A few years later in Arizona v. Youngblood, 488 U.S. 51 (1988), the Court considered another question in the "area of constitutionally guaranteed access to evidence": whether the government's destruction of DNA evidence that had not yet been tested violated the defendant's due process rights. Id. at 55, 58 (citation omitted). Relying on Valenzuela-Bernal's discussion of good faith, the Court held that "unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law." Id. at 58. Although Youngblood was a due-process case, every court to have squarely addressed the issue has determined that Youngblood's bad-faith requirement also applies to claims under the Compulsory Process Clause.<sup>2</sup>

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<sup>2</sup> See United States v. Damra, 621 F.3d 474 (6th Cir. 2010) ("[I]n order to demonstrate that the government has violated his right of compulsory process, a defendant must first make an initial showing that the government has acted in bad faith."), cert. denied, 563 U.S. 1021 (2011); United States v. Chaparro-Alcantara, 226 F.3d 616, 624 (7th Cir.) ("[I]n Youngblood, the Court \* \* \* point[ed] to Valenzuela-Bernal as an example of a case in which the defendant was required to show bad faith."), cert. denied, 531 U.S. 1026 (2000); United States v. Dring, 930 F.2d 687, 693-694 (9th Cir. 1991) (stating that "[i]n cases of constitutionally guaranteed access to evidence, wherein the Government loses potentially exculpatory evidence, the Supreme Court applies a two-pronged test of bad faith and prejudice"), cert. denied, 506 U.S. 836 (1992); United States v. Iribe-Perez, 129 F.3d 1167, 1173 (10th

The courts below both found that the government removed Castro as a legitimate exercise of its immigration-enforcement authority, and not as a bad-faith effort to deprive petitioners of a potential witness. Moncada Pet. App. A11; C.A. ROA 410-411. While the Fifth Circuit has not yet decided whether a defendant must show bad faith by the government to establish a compulsory-process claim and had no occasion to resolve that question here, see Moncada Pet. App. A26 n.11, the government may “defend a judgment on any ground which the law and the record permit that would not expand the relief it has been granted.” United States v. New York Tel. Co., 434 U.S. 159, 166 n.8 (1977). That alternative ground for affirming the judgment below underscores that the application of the Valenzuela-Bernal standard to the facts of this case does not warrant this Court’s review.

3. Petitioner Campos separately contends (Pet. 14-23) that he was in custody for purposes of Miranda v. Arizona, 384 U.S. 486 (1966), when questioned by Agent Ramos on the side of the road. The en banc court of appeals correctly rejected that contention, and the court’s factbound resolution of that claim -- like its

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Cir. 1997) (citing Valenzuela-Bernal and Youngblood for proposition that defendant must show bad faith to establish compulsory process violation); Buie v. Sullivan, 923 F.2d 10, 11-12 (2d Cir. 1990) (same); United States v. De La Cruz Suarez, 601 F.3d 1202, 1212-1213 (11th Cir.) (citing Valenzuela-Bernal), cert. denied, 561 U.S. 1036, and 562 U.S. 902 (2010); see also United States v. Bianchi, 386 Fed. Appx. 156, 160 (3d Cir. 2010) (suggesting that bad faith may be required), cert. denied, 562 U.S. 1200 (2011).

factbound resolution of petitioners' other claims -- does not conflict with any decision of this Court or of another court of appeals. No further review is warranted.<sup>3</sup>

a. Under Miranda, statements made in custodial interrogation generally must be preceded by specified warnings in order to be admissible in the government's case-in-chief. See, e.g., Dickerson v. United States, 530 U.S. 428, 431-432 (2000). Miranda warnings, however, are not required in every instance of official interrogation; they are necessary only where there has been such a restriction on a person's freedom as to render him "in custody." Oregon v. Mathiason, 429 U.S. 492, 495 (1977) (per curiam). "As used in [the Court's] Miranda case law, 'custody' is a term of art that specifies circumstances that are thought generally to present a serious danger of coercion." Howes v. Fields, 565 U.S. 499, 508-509 (2012).

To determine whether a person is in custody, "the initial step is to ascertain whether \* \* \* a 'reasonable person would have felt he or she was not at liberty to terminate the interrogation and leave.'" Howes, 565 U.S. at 509 (brackets and citations omitted). "Determining whether an individual's freedom of movement was curtailed, however, is simply the first step in the analysis, not the last." Ibid. The Court's "cases make clear

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<sup>3</sup> This Court recently denied certiorari in Cabrera v. United States, No. 23-6976 (Jun. 10, 2024), which presented a similar claim. A claim like the one in Cabrera is also raised in Buta v. United States, No. 24-2722 (filed Oct. 1, 2024).

that the freedom-of-movement test identifies only a necessary and not a sufficient condition for Miranda custody." Ibid. (quoting Maryland v. Shatzer, 559 U.S. 98, 112 (2010)); see ibid. (recognizing that not all restraints on freedom of movement amount to custody).

Where a reasonable person would not feel free to leave, a court must ask the additional question whether, based on all of the circumstances, "the relevant environment presents the same inherently coercive pressures as the type of station house questioning at issue in Miranda." Howes, 565 U.S. at 509. As this Court repeatedly has explained, "the ultimate inquiry" is whether there is a "'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." California v. Beheler, 463 U.S. 1121, 1125 (1983) (per curiam) (quoting Mathiason, 429 U.S. at 495); accord Thompson v. Keohane, 516 U.S. 99, 112 (1995); Stansbury v. California, 511 U.S. 318, 322 (1994) (per curiam); Berkemer v. McCarty, 468 U.S. 420, 440 (1984); see Howes, 565 U.S. at 511 (comparing facts to the "paradigmatic Miranda situation" in which "a person is arrested \* \* \* and whisked to a police station for questioning").

Applying that test, this Court held in Berkemer v. McCarty, supra, that a traffic stop does not necessarily constitute custody for purposes of Miranda. 468 U.S. at 440. The Court acknowledged that few motorists would feel free either to disobey a directive

to pull over or to leave the scene of a traffic stop without being told they might do so. Id. at 436. It is “[p]artly for [that] reason[.]” that a traffic stop “constitute[s] a ‘seizure’ within the meaning of the Fourth Amendment.” Id. at 436-437 (brackets omitted). But even though “a traffic stop significantly curtails the ‘freedom of action’ of the driver and the passengers, if any, of the detained vehicle,” id. at 436, “persons temporarily detained pursuant to such stops are not ‘in custody’ for the purposes of Miranda,” id. at 440.

b. In this case, the en banc court of appeals correctly affirmed the district court’s rejection of petitioners’ motion to suppress because -- as is often the case with traffic stops -- petitioner was “not ‘in custody’ for the purposes of Miranda.” Berkemer, 468 U.S. at 440. As the en banc court of appeals explained, “[t]he initial command to remain in the car was a routine detention to investigate whether there was a crime, not custody or a formal arrest.” Moncada Pet. App. A12. And during the questioning that followed, Agent Ramos “was calm and respectful instead of threatening,” and “Campos was not placed into a patrol car, handcuffed, or removed from the scene before [the agent’s] questioning.” Ibid. After reviewing all of the circumstances, the court determined that although Campos “was not free to leave” the scene, his roadside questioning was not “the type of police interrogation that we have described as coercive.” Ibid.

Campos asserts (Pet. 18-19) that several circumstances made the roadside questioning a "de facto arrest." But restrictions on movement and the presence of law enforcement are inherent in traffic stops and other seizures that do not rise to the level of a de facto arrest. And factbound disagreement with the court of appeals' decision does not warrant this Court's review.

c. Campos asserts (Pet. 15-16) that the decision below implicates a disagreement in the circuits regarding whether a defendant can be "in custody" during a "Terry-like" stop (a reference to Terry v. Ohio, 392 U.S. 1 (1968), which recognizes the permissibility of investigatory detention on reasonable suspicion of criminal activity). He contends (Campos Pet. 15) that the court of appeals joined the First, Fourth, and Eighth Circuits in adopting a blanket rule that a suspect can never be deemed "in custody" if the officers conducting a Terry stop behaved reasonably. Ibid. (citation omitted). But the court below did not adopt that rule, and neither did the other courts that Campos invokes. Campos's assertion of a conflict is accordingly misplaced.

The court of appeals did not collapse the custody question under Miranda with reasonableness under Terry, as Campos suggests it did. Instead, the court correctly acknowledged that a person can be "in custody" even if they have not been "placed under formal arrest" -- namely, "when a reasonable person in the suspect's

position would have understood the situation to constitute a restraint on freedom of movement of the degree which the law associates with formal arrest." Moncada Pet. App. A12 (citation omitted). The court observed that "generally, Miranda warnings are not required when officers question occupants during a routine traffic stop," ibid. -- a proposition consistent with Berkemer's holding that "persons temporarily detained pursuant to such stops are not 'in custody' for the purposes of Miranda." 468 U.S. at 440. But the court did not hold that a reasonable Terry stop could never escalate to a custodial interrogation -- it simply found that the stop here had not.

The other cases that Campos cites (Pet. 15, 17) likewise do not adopt the blanket rule that Campos imputes to them. In United States v. Trueber, 238 F.3d 79, 92-93 (2001), the First Circuit expressly acknowledged that "[d]etermining that an investigative Terry stop was justified at its inception is only the first step," and that the "central issue" is "whether an otherwise valid Terry stop escalated into a de facto arrest necessitating the administration of Miranda warnings." The other decisions take the same approach. See United States v. Pelayo-Ruelas, 345 F.3d 589, 590, 593 (8th Cir. 2003) (explaining that a suspect is not "in custody" under Miranda if the officer's "conduct [during] the Terry stop did not curtail [the suspect's] freedom to the degree associated with a formal arrest"); United States v. Leshuk, 65

F.3d 1105, 1109, 1110 (4th Cir. 1995) (noting “initially” that officers acted reasonably in conducting “an investigatory Terry stop,” then separately analyzing whether the stop had been “elevate[d] \* \* \* into a custodial arrest for Miranda purposes”).

Campos also contends that the decision below conflicts with state and federal decisions that “have held that a traffic stop ripens into a custodial interrogation on far less coercive facts than were present here.” Campos Pet. 20; see id. at 20-22. Only one of those decisions is a precedential decision from a court of appeals or a State’s highest court. See Campos Pet. 21 (citing People v. Polander, 41 P.3d 698 (Colo. 2001) (en banc)). Petitioner does not suggest that those decisions disagree with the court below about the correct legal standard for determining whether a suspect is “in custody.”

Those decisions instead reflect the application of the universally recognized standard, as prescribed by this Court, to the specific facts. Compare, e.g., Polander, 41 P.3d at 705 (finding that the defendant was “seized and subjected to a question about the ownership of contraband, under circumstances in which it was apparent to all that the police had grounds to arrest the occupants of the vehicle”), with Moncada Pet. App. A12 (finding, inter alia, no error in district court’s determination that petitioners “were being detained much like an ordinary traffic stop would happen”). Petitioner presents no sound reason to

conclude that either the decision below or any other decision he cites reflects a meaningful difference in courts' approaches to the Miranda inquiry in the context of traffic stops.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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