No. 14-209

In the

Supreme Court of the United States

ILLINOIS, PETITIONER,

v.

DERRICK A. CUMMINGS, RESPONDENT.

On Petition for a Writ of Certiorari

to the Illinois Supreme Court

BRIEF IN OPPOSITION

MICHAEL J. PELLETIER
State Appellate Defender

PETER A. CARUSONA
Deputy Defender
Counsel of Record

SEAN CONLEY
Assistant Appellate Defender
Office of the State Appellate Defender
Third Judicial District
770 E. Etna Road
Ottawa, IL 61350
(815) 434-5531
3rddistrict.eserve@osad.state.il.us

COUNSEL FOR RESPONDENT

QUESTIONS PRESENTED

1. Whether this Court should grant *certiorari* in this case in order to resolve a split of authority, when the cases cited in the petition for *certiorari* do not present a split on the question petitioner asks this Court to address, when this case is not implicated in the split actually presented by the petition, and when this case is a poor candidate for resolving the split actually presented because Illinois state law resolves that split against petitioner's position?

2. Whether this Court should grant *certiorari* when the Illinois Supreme Court applied this Court's well-established precedent to decide that, under the totality of the circumstances, prolonging this particular stop was unreasonable?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

TABLE OF AUTHORITIES - Continued

INTRODUCTION

Respondent Derrick Cummings respectfully submits that this case does not merit further review by this Honorable Court. Cummings, who is male, was seized for the purpose of executing an arrest warrant against Pearlene Chattic, who is female. Cummings is obviously not Chattic, and the arresting officer conceded that it was immediately apparent that Cummings was not Chattic. Instead of proceeding as a consensual encounter, the officer prolonged the Fourth Amendment seizure. This exceedingly narrow fact pattern is different from the majority of the cases petitioner cites to justify review. A straightforward application of existing Fourth Amendment law to these narrow facts indicates that, under the totality of the circumstances, continuing the Fourth Amendment seizure in this case was unreasonable. Consequently, this Honorable Court should deny the petition.

STATEMENT OF THE CASE

On January 27, 2011, respondent Derrick Cummings was driving a van belonging to Pearlene Chattic. Pet. at 2a, 29a. It appeared to Officer Shane Bland, who was traveling behind the van, that its registration had expired, so he ran the van's plates on his squad car's computer. Pet. at 2a, 29a-30a. He learned that the registration was valid, but that Chattic was wanted on an arrest warrant. Pet. at 2a, 30a. Officer Bland was aware that Chattic was female; he pulled up beside the van and attempted to identify the driver, but was unable to determine whether the driver

was male or female because Cummings sat pushed or "pinned" back in the seat. Pet. at 2a-3a, 30a.

Officer Bland pulled in behind the van and activated his emergency lights. Pet. at 3a, 30a. He had not witnessed any violations of the law – his only reason for initiating the stop was that Chattic was the subject of an active warrant. Pet. at 3a. As he approached, Officer Bland immediately recognized that Cummings was male and was not Chattic. Pet. at 3a, 30a. Instead of explaining the situation, ending the seizure, and proceeding consensually, Officer Bland began investigating Cummings by asking for his driver's license and proof of insurance. Pet. at 3a, 30a. Cummings did not have a valid driver's license, which resulted in his being charged with driving while license suspended. Pet. at 2a, 3a, 29a, 30a.

The trial court granted Cummings's motion to suppress evidence. Pet. at 3a, 30a. It found that, although the initial seizure was legitimate, the purpose of that seizure had been completed before Officer Bland asked for Cummings's documentation:

> [T]his was easy, *** this was not because [Officer Bland] *** saw a traffic violation, this was not because he thought that [the defendant] was somebody who was wanted. This was really simple. He was looking for Pearlene Chattic. And I commend him for not trying to sugar coat that at all *** because he just said, *** I could tell right away it wasn't her.
>
> *** [O]nce he makes that determination on a very simple reason for the stop, I think going anywhere further with that, without further explanation to an individual who *** clearly had to believe that he was not free to leave, I think that's going one step [beyond].

Pet. at 4a, 30a. The State of Illinois filed a motion to reconsider, which was denied. Pet. at 4a, 30a.

The Illinois appellate court, with one justice dissenting, affirmed the trial court's order. Pet. at 34a. It held that the investigation into Cummings's driving credentials prolonged the seizure beyond the time reasonably necessary to complete its purpose when there were no longer any specific and articulable facts that Cummings had committed or was about to commit a crime. Pet. at 32a-34a. It also noted that Officer Bland could have ended the seizure and requested Cummings's license in the context of a consensual encounter. Pet. at 34a. The Illinois Supreme Court affirmed in a 5-to-2 decision expressly limited to these facts; it relied primarily on this Court's decisions in *Illinois v. Caballes*, 543 U.S. 405 (2005), *Florida v. Royer*, 460 U.S. 491 (1983), and *Terry v. Ohio*, 392 U.S. 1 (1968). Pet. at 1a-2a, 7a-11a, 15a-16a.

REASONS FOR DENYING THE PETITION

I. Petitioner's cases do not present a clear, entrenched split of authority, ready for resolution, on the question it claims is presented, and respondent's case is not implicated in the split of authority actually presented by the petition.

Petitioner's primary argument in favor of review is based on "a clear split among the federal appellate and state high courts" on the question presented. See Pet. at 7-15. Petitioner frames this question as "whether the Fourth Amendment categorically prohibits police from extending a traffic stop, however briefly, including by requesting a driver's license, after reasonable suspicion or probable cause has dissipated or the purpose of the stop has otherwise been fulfilled." Pet. at 7-8. Petitioner does not provide credible evidence of a split of authority on that question.

Petitioner cites thirteen cases as representing the split of authority justifying review.[1] Pet. at 8-10. The central issue in eight of the thirteen cases involved dog sniffs after a lawful seizure on the basis of suspicion of a traffic violation. In all eight cases, the dog sniff came after a ticket was issued, after the defendant was told a ticket or a warning would issue, or after the initial investigation was completed. Specifically, petitioner cites in support of its position: *United States v. Rodriguez*, 741 F.3d 905 (8th Cir. 2014); *United States v. Alexander*, 448 F.3d 1014 (8th Cir. 2006); *United States v. Martin*, 411 F.3d 998 (8th Cir. 2005); *State v. Overbey*, 790 N.W.2d 35 (S.D. 2010); and *State v. Box*, 73 P.3d 623 (Ariz. Ct. App. 2003). Petitioner cites in support of the decision below: *People v. Mason*, 310 P.3d 1003 (Colo. 2013); *State v. Howard*, 803 N.W.2d 450 (Neb. 2011); and *State v. Louthan*, 744 N.W.2d 454 (Neb. 2008).

Three of the remaining five cases involved the police's community caretaking role as it related to the operation of motor vehicles; petitioner cites all three as supporting its position. *State v. Reynolds*, 890 P.2d 1315 (N.M. 1995); *State v. Godwin*, 826 P.2d 452 (Id. 1992); *State v. Ellenbecker*, 464 N.W.2d 427 (Wis. Ct. App. 1990). Respondent's case does not involve the community caretaking role.

Only the final two cases involved, as in respondent's case, seizures based on mistaken identity. *United States v. De La Cruz*, 703 F.3d 1193 (10th Cir. 2013) (cited as supporting the decision below); *State v. Candelaria*, 245 P.3d 69 (N.M. Ct. App.

---

[1]Petitioner cites two additional cases in parenthetical statements as being "quot[ed]" by its primary cases. *United States v. $404,905.00 in U.S. Currency*, 182 F.3d 643 (8th Cir. 1999), quoted by *Rodriguez*, is discussed below. *United States v. Burleson*, 657 F.3d 1040 (10th Cir. 2011), quoted by *De La Cruz*, is not otherwise relevant to this case: it upheld a warrant check on a lawfully seized pedestrian when the warrant check was related to the purpose of the stop, the stop had not yet been completed at the time of the check, and there were objective and articulable officer-safety concerns at play. *Burleson*, 657 F.3d at 1047-52.

2010) (cited as supporting petitioner). Two cases cannot credibly be described as an entrenched split ready for resolution.

Petitioner's cases thus suggest an entrenched split of authority *on a different question*, the question of whether a seizure can be prolonged for the purpose of conducting a dog sniff on a vehicle lawfully stopped for a traffic violation, particularly after a citation has been issued. This Court recently granted a writ of *certiorari* on that question in *Rodriguez*. *See Rodriguez*, No. 13-9972, order entered October 2, 2014.

In *Rodriguez*, the defendant was pulled over by a K-9 officer after the officer observed the defendant veer onto the shoulder. *Rodriguez*, 741 F.3d at 906. The defendant explained that he had swerved to miss a pothole. *Id.* The officer gathered the defendant's driving credentials, returned to his patrol car, and completed a records check on the defendant. *Id.* at 906-07. Back at the defendant's vehicle, the officer questioned the defendant's passenger before returning to his patrol car a second time to do a records check on the passenger. *Id.* at 907. After issuing a warning ticket a little more than twenty minutes into the stop, the officer asked permission to run his dog around the vehicle. *Id.* The defendant refused consent, and the officer ordered him and the passenger out of the vehicle. *Id.* Backup arrived approximately five minutes later, the suspect sniff began approximately one minute later, and the dog alerted twenty-or-thirty seconds after that, resulting in the discovery of a large bag of methamphetamine. *Id.* The United States District Court for the District of Nebraska

denied the defendant's motion to suppress, and the Eighth Circuit affirmed.[2] *Id.* at 908.

Rodriguez is typical of the conflict actually set out in the petition. The Eighth Circuit acknowledged that "once an officer decides to let a routine traffic offender depart with a ticket, a warning, or an all clear[,] . . . the Fourth Amendment applies to limit any subsequent detention or search," yet paradoxically and in the same breath declared, "A brief delay to employ a dog does not unreasonably prolong the stop, however, and we have repeatedly upheld dog sniffs that were conducted minutes after the traffic stop concluded." *Id.* at 907 (internal quotations omitted). It cited to a line of its own cases traceable to *United States v. $404,905.00 in U.S. Currency*, 182 F.3d 643 (8th Cir. 1999). *See Rodriguez*, 741 F.3d at 907 (citing *Alexander*, 448 F.3d at 1017, *Martin*, 411 F.3d at 1002, *State v. Morgan*, 270 F.3d 625, 632 (8th Cir. 2001), and *$404,905*, 182 F.3d at 649). That case set out the same paradox, establishing the point during a traffic stop beyond which government action is further limited by the Fourth Amendment (the issuance of a ticket or other objective *indicia* of an "all clear"), but determining that crossing that point with a dog is constitutionally inconsequential. *$404,905*, 182 F.3d at 648-49. It justified this discrepancy with the government's strong interest in drug interdiction and the *sui generis* nature of dog sniffs: "When applied to the exterior of vehicles, the canine sniff is an investigative procedure uniquely suited to this purpose – it is so unintrusive as not to be a search, it takes very

[2]The Eighth Circuit based its decision on its own prior cases upholding dog sniffs occurring after a traffic stop has otherwise concluded, a line of cases discussed below. It explicitly declined to address whether the officer also had reasonable suspicion to prolong the seizure. *Rodriguez*, 741 F.3d at 907-08.

little time, and it discloses only the presence or absence of narcotics, a contraband item." *Id.* at 649 (internal quotations omitted).

Respondent's case clearly does not implicate the same issues as *Rodriguez* and its ilk. Critically, this Court has long held that the permissible length of a stop must be measured in relation to its initial purpose. *Royer*, 460 U.S. at 500; *Terry*, 392 U.S. at 20. In this case the purpose of the stop – to execute an arrest warrant – was substantially different than the purposes of the *Rodriguez* stop – traffic enforcement and drug interdiction. The timelines are important as well: in this case, the investigation and Fourth Amendment violation occurred before any citations were issued, whereas in *Rodriguez* the dog sniff came after the officer had signaled, by issuing the warning, that the initial investigation was complete. Indeed, the fact that this case did not involve a dog sniff, and therefore any of the factors that make dog sniffs *sui generis* in the first place, demonstrates that this case is vastly different than *Rodriguez*, *et al.* This decision, explicitly limited to these narrow facts, simply does not implicate the question *actually* presented by the petition, and does not present a good vehicle for resolving the split developed therein.[3]

---

[3]It is also worth noting that petitioner's analysis of the dog sniff cases is problematic. For example, in *Overbey*, the driver was told he would receive a warning ticket but was not free to leave until after a dog sniff; the sniff, however, occurred virtually simultaneously with the writing of that ticket, a fact that arguably legitimized the sniff under *Caballes*. *Overbey*, 790 N.W.2d at 38, 42-43; *see Caballes*, 543 U.S. at 410 (upholding suspicionless dog sniffs during lawful seizures). In *Box*, although there was a considerable amount of *dicta* about the short amount of time used to deploy the dog, the court's actual holding was that the dog sniff occurred within a consensual interaction, just as the Illinois appellate court argued the investigation in this case should have occurred. *Box*, 73 P.3d at 498-99. In *Howard*, although the court cited *Louthan*, a case petitioner believes supports the decision below, it ultimately found independent reasonable suspicion to prolong the seizure; *Louthan* was only relevant to the question of whether the delay in the sniff turned the seizure based on reasonable suspicion into a *de facto* arrest. *Howard*, 803 N.W.2d at 364-66. In light of this Court's granting review in *Rodriguez*, respondent accepts that there exists an entrenched split of authority on the important federal question

Because the split of authority actually presented in the petition supports a different question, one not implicated in this case, this Honorable Court should deny the petition.

II. This case is a poor vehicle for resolving the split when Illinois state law holds that a seizure ends as a matter of law once a ticket is issued and the detainee's documents are returned.

Even if this Court believes that this case and *Rodriguez*, *et al.*, are similar, further review of this case would not resolve the question actually presented. The only entrenched split of authority established by the petition involves whether a seizure can be prolonged for the purpose of conducting a dog sniff of a vehicle lawfully stopped for a traffic violation, particularly after a citation has been issued. This case would be a poor vehicle for resolving that question, because that question has essentially been decided in Illinois as a matter of state law.

In *People v. Cosby*, 898 N.E.2d 603 (Ill. 2008), the Illinois Supreme Court, while resolving two unrelated cases presenting similar issues, discussed when a seizure during a traffic stop ends:

> The requests for consent to search in both of the instant [consolidated] cases followed the officers' returning of the defendants' paperwork. At that point, the traffic stops came to an end. The relevant question is whether the officers' actions after the initial traffic stops had concluded constituted a second seizure of either defendant.

---

of the limitations on dog sniffs. To the extent that petitioner's dog sniff cases might otherwise seem compelling here, petitioner has ignored a number of distinguishing facts that render many of its cases irrelevant.

Cosby, 898 N.E.2d at 612. The court did not cite any authority for this proposition, accepting it as a given. *See id.* at 618 ("*It is clear* that the traffic stop of Mendoza's car had come to an end prior to the questioning of Mendoza by Weber.") (emphasis added). The appellate court in one of the consolidated cases supported the same proposition with a "*see*" cite to *People v. Brownlee*, 713 N.E.2d 556 (Ill. 1999). *People v. Mendoza*, 846 N.E.2d 169, 177 (Ill. App. Ct. 2006), overruled on other grounds, 898 N.E.2d 603. *Brownlee*, in turn, also stated the proposition without citation, holding that the initial seizure of its defendant had ended when the arresting officers returned the defendant's driving credentials and explained that they would not be issuing tickets. *Brownlee*, 713 N.E.2d at 565. The defendant was then subjected to an illegal seizure when the officers remained at the vehicle's doors for several minutes, saying nothing, before continuing their questioning. *Id.* at 565-66.

It is apparent that this timing principle – that a traffic stop affirmatively ends upon issuance of a ticket or warning – cannot be traced to any federal constitutional authority.[4] Furthermore, Illinois state law is in so-called "limited lockstep" with the

[4]Although the Illinois rule is facially similar to the principle established in *$404,905*, discussed above, as well as in other jurisdictions, *see, e.g.*, *United States v. Villa*, 589 F.3d 1334, 1339-40 (10th Cir. 2009), the concurrence in *Brownlee* made it clear that the court was applying distinctly state-law principles in that case. *Brownlee*, 713 N.E.2d at 566-67 (arguing that the majority should have been more clear about the state-law basis of the decision). The lack of any citation to federal law and the variety of analytical treatments of the problem also support the premise that the Illinois Supreme Court has not adopted a federal constitutional standard to define the end of a traffic seizure. For example, the Eighth Circuit treats action after the issuance of a ticket as a part of the initial seizure, asking whether the action unreasonably prolonged the seizure. *See, e.g.*, *$404,905*, 182 F.3d at 649. In contrast, Illinois courts, applying Illinois state law, tend to analyze action after the issuance of a ticket as a potential subsequent Fourth Amendment event, *i.e.*, as a potential second seizure. *See, e.g.*, *People v. Davenport*, 910 N.E.2d 134, 138-41 (Ill. App. Ct. 2009) (applying *Cosby* and *Brownlee* to determine whether the arresting officer's "post-stop actions constituted a new seizure of the defendant" supported by reasonable suspicion). The law in Illinois was stated succinctly by the appellate court in one of the *Cosby* cases: "[H]ow can a traffic stop be impermissibly prolonged if it is already over?" *Mendoza*, 846 N.E.2d at 177.

federal Fourth Amendment. *People v. Caballes*, 851 N.E.2d 26, 44-45 (Ill. 2006) ("*Caballes II*"). Illinois courts will generally interpret Illinois constitutional provisions in conformity with federal decisions except when state tradition and values, as reflected by long-standing state precedent, demand otherwise. *Caballas II*, 851 N.E.2d at 43, 45. Even if this Court were to resolve respondent's case in petitioner's favor, and even if this Court affirms in *Rodriguez*, the timing principle will likely stand as an expression of Illinois tradition and values enshrined in long-standing case law.

Consequently, this case cannot resolve the split of authority developed in the petition. Had the cases establishing the split occurred in Illinois, they would continue to be analyzed through the lens of Illinois state law. For example, under Illinois law, the traffic stop in *Rodriguez* would have affirmatively ended when the officer issued the warning ticket, and once the officer ordered the defendant out of the vehicle, the defendant would have been subjected to a second seizure. Assuming that the officer did not have reasonable suspicion to support the second seizure, the evidence discovered as a result of the dog sniff would have been suppressed. *Brownlee*, 713 N.E.2d at at 565-66.

Put another way, if this Court were to resolve respondent's case in favor of petitioner, it would not resolve the tension petitioner alleges justifies further review. The next case to arise in Illinois featuring the *Rodriguez* fact pattern will be decided in defendant's favor, no matter what decision this Court makes in this case. The initial seizure will have affirmatively ended as a matter of state law before the dog sniff, making any effort to "prolong" the seizure a second, baseless seizure in violation of the Illinois constitution. And, were the Illinois Supreme Court to review this hypothetical

case, it would be justified in certifying the result as being adequately based on an independent state-law ground, likely rendering the decision unreviewable in this Court. *See Michigan v. Long*, 463 U.S. 1032, 1038-44 (1983) (standard for determining jurisdiction in this Court when decision is potentially based on an independent state-law ground).

In short, petitioner has provided no evidence of an important question of federal law that can actually be answered by respondent's case. This Honorable Court should therefore deny the petition.

III. There is no logical inconsistency between the cases petitioner suggests support the decision below and those cases governing permissible inquiries during a seizure.

Petitioner attempts to bolster its argument about a split of authority by positing that its respondent-friendly cases are inconsistent with the law governing the scope of inquiry during a stop, and that this inconsistency produces an incentive to artificially prolong seizures in order to avoid running afoul of this and similar cases. Pet. at 10-13.

On the first point, there simply is no inconsistency. In *Caballes* and *Muehler v. Mena*, 544 U.S. 93 (2005), this Court made it clear that actions unrelated to the purpose of a seizure do not violate the Fourth Amendment so long as they do not impermissibly prolong the seizure and are not themselves "Fourth Amendment events." *Muehler*, 544 U.S. at 100-02; *see also Caballes*, 543 U.S. at 408 ("In our view, conducting a dog sniff would not change the character of a traffic stop that is lawful at

its inception and otherwise executed in a reasonable manner, unless the dog sniff itself infringed respondent's constitutionally protected interest in privacy."). In *Muehler*, the challenged action was questioning unrelated to the seizure, which this Court explicitly held was not such an event. *Muehler*, 544 U.S. at 100-02. Thus, the state of the law is that the scope of inquiry during a lawful seizure is limitless, so long as the inquiry does not itself unreasonably prolong the seizure. *Caballes* and *Muehler* did not, however, overrule the principle set out in *Terry* and in *Royer* that a lawful seizure must last no longer than necessary to effectuate the purpose of the stop and must be carefully tailored to the underlying justification for the encounter. *Royer*, 460 U.S. at 500; *Terry*, 392 U.S. at 20.

Together, *Caballes*/*Muehler* and *Terry*/*Royer* establish a framework in which the duration of a seizure must be, in the words used by the Illinois Supreme Court, "tethered to, and justified by, the reason for the stop." Pet. at 10a. That framework necessarily treats government action occurring before the expiration of the time reasonably necessary to effectuate the purpose of the stop differently than government action occurring after the expiration of that period. Such treatment is justified. "The Fourth Amendment proceeds as much by limitations upon the scope of governmental action as by imposing preconditions upon its initiation." *Terry*, 392 U.S. at 28-29. It is not at all illogical that police can broadly investigate a defendant during a lawful seizure, but are limited in what they can do beyond the permissible duration of the seizure. The "inconsistency" cited by petitioner is really an attempt to articulate a policy preference. Petitioner would like to retain the virtually unfettered access it has to a suspect during a lawful seizure for some poorly defined period after it can no

longer justify the intrusion. This Court's cases have shown that such a position is not reasonable under the Fourth Amendment. There is no inconsistency.

The second point is easily refuted. It is difficult to see how police could artificially prolong a stop such as the one in respondent's case, as the time necessary to complete the sole justification for the seizure was exceedingly short. In any event, there is no such incentive, because artificially prolonging a seizure would be objectively unreasonable. On the petition's own terms, such an action would betray a lack of "diligence," *see* Pet. at 11 (citing *United States v. Guijon-Ortiz*, 660 F.3d 757 (4th Cir. 2011)), and would result in the suppression of evidence. Particularly in cases in which the time reasonably necessary to complete the purpose of the seizure is short, the only realistic way to avoid suppression after artificially prolonging the stop would be to engage in serious dishonesty at the suppression hearing, such as by testifying to reasonable suspicion that did not in fact exist at the relevant time. Respondent is not prepared to assume, and no reasonable person should assume, that police officers will react to a judicial decision by routinely testifying in bad faith.

These supposed logical inconsistencies do not in fact exist and do not justify further review of respondent's case. Consequently, this Honorable Court should deny the petition.

IV. Petitioner's second argument for review should be unpersuasive because it asks this Court to correct an error that does not exist.

Section II of the petition essentially attacks the merits of the case. Pet. at 16-22. However, petitioner's attack is ultimately a disagreement with the result and does not

justify review. Additionally, the case was correctly decided below. Therefore, this Honorable Court should deny the petition.

A. Petitioner is requesting error correction not amenable to review in this Court.

Having failed to establish a significant federal question ready for resolution, or at least one relevant to this case, petitioner attacks the correctness of the decision below. It sets out the applicable legal standard: "The touchstone of the Fourth Amendment is reasonableness . . . and reasonableness turns on the totality of the circumstances." Pet. at 16 (citations omitted). It then argues that what Officer Bland did here was reasonable under the circumstances. Pet. at 17-22. Petitioner's attempt to re-litigate the case cannot prevail over the fact that the Illinois Supreme Court applied a more complete iteration of the same standard in its decision below.

This Court has expressed a strong preference for granting review for the purpose of resolving conflicts or splits of authority on important questions of federal law. United States Supreme Court Rule 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*." *Id.* (emphasis added). That is, this Court does not generally engage in error correction.

The Illinois Supreme Court's decision acknowledged the central role reasonableness has in Fourth Amendment jurisprudence. *See* Pet. at 7a-8a, 10a. But it also acknowledged that this Court's precedent establishes a framework for evaluating reasonableness, particularly in terms of analyzing whether the duration of

a seizure is reasonable. *See* Pet. at 8a-10a. In a line of jurisprudence absent from the petition (despite being relied upon by the Illinois Supreme Court, Pet. at 7a), this Court has said that a seizure is reasonable if it was initially justified, and if it was "reasonablely related in scope to the circumstances which justified the interference in the first place." *Terry*, 392 U.S. at 20. "[A]n investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop." *Royer*, 460 U.S. at 500. A traffic stop that is initially justified can become unlawful if it is prolonged beyond the time reasonably required to complete the purpose of the stop. *Caballes*, 543 U.S. at 408.

Caballes is particularly instructive. In that case, the defendant was stopped for speeding. *Id.* at 406. As one officer wrote a ticket, a second officer conducted a dog sniff. *Id.* The dog alerted on the defendant's trunk and drugs were found in the ensuing search. *Id.* This Court reasoned that a seizure solely for the purpose of issuing a ticket can become unlawful if it is prolonged beyond the time reasonably required to complete that mission (*i.e.*, the mission of writing a ticket). *Id.* at 407. It accepted the Illinois Supreme Court's determination that the duration of the stop was justified by the traffic offense and the ordinary inquiries incident to such a stop and upheld the dog sniff. *Id.* at 408, 409-10. It opined, however, that had the dog sniff occurred during an unreasonably prolonged seizure – after the time reasonably required to write the ticket – the dog sniff would have been unlawful. *Id.* at 407-08.

Thus, in the context of analyzing the reasonableness of the duration of a seizure, "reasonableness under the totality of the circumstances" is a term of art defined by the ordinary inquiries incident to the stop. More simply: the reasonable duration of a

seizure, absent independent reasonable suspicion, is determined by the initial purpose of the seizure. For this reason, the language below criticized by petitioner, that "a request for identification must be tethered to, and justified by, the reason for the stop," though inartfully worded, is a correct statement of law. In context, including the citations to *Terry* and *Royer* that accompany that language, the Illinois Supreme Court was proposing that the reasonableness of any police action during a seizure, including the type of investigation that occurred in this case, depends in part on how much time was reasonably necessary to complete the initial purpose of the stop. This proposition is well established and of the highest pedigree.

Petitioner's reluctance to engage the part of this Court's jurisprudence that defines reasonableness under the totality of the circumstances is telling, in that it shows that petitioner's position here is essentially disappointment with the result below. For example, instead of analyzing the amount of time reasonably necessary to determine whether respondent was Chattic, petitioner suggests that Officer Bland's testimony that he was acting pursuant to "standard operating procedure . . . as a matter of routine . . . contributes to the reasonableness of the license request." Pet. at 21-22. But, as a long-held matter of law, the fact that a practice is pursuant to an established procedure is irrelevant to the question of whether that practice is constitutionally reasonable (at least outside the context of an inventory search). *See, e.g.*, *Whren v. United States*, 517 U.S. 806, 811-15 (1996) (citing *United States v. Caceres*, 440 U.S. 741, 755-56 (1979), and *Gustafson v. Florida*, 414 U.S. 260, 265 (1973)). Petitioner, avoiding a critical aspect of the analysis, has simply disagreed that the investigation in respondent's case was unreasonable.

The Illinois Supreme Court applied a properly stated rule of law to the facts of this case, and while petitioner might be disappointed with the result the Illinois Supreme Court reached, this Court does not generally engage in error correction. Therefore, this Honorable Court should deny the petition.

B. Petitioner fails to appreciate that, under the totality of the circumstances of these narrow facts, the suspicionless prolonging of this particular seizure was not reasonable under this Court's precedent.

Ultimately, further review of respondent's case is unnecessary because the Illinois Supreme Court reached the correct result below.

Initially, it is important to recognize that the Illinois Supreme Court "limited [its holding] to the facts of this case." Pet. at 15a. It is equally important to recognize just how narrow those facts are. By way of illustration, consider *People v. Safunwa*, 701 N.E.2d 1202 (Ill. App. Ct. 1998), a close-but-distinguishable Illinois case discussed in both the Illinois Supreme Court decision and the appellate court dissent. Pet. at 12a-13a, 35a-36a. In *Safunwa*, the defendant and the subject of a warrant fit the same general description, including the same hair style and style of mustache, and the defendant was first seen at the other man's house. *Safunwa*, 701 N.E.2d at 1203. It was only on "close inspection" of the photo used by the arresting officers to identify the other man that it became clear the photo was not of the defendant. *Id.* When seized on the warrant, the defendant gave officers a traffic ticket in lieu of a driver's license. *Id.* While verifying the defendant's identity, the officers discovered that his driving privileges had been suspended. *Id.* As the Illinois Supreme Court noted, the appellate

court "correctly reasoned that the similarity between the driver and the fugitive rendered the request in that case constitutionally permissible." Pet. at 13a; *Safunwa*, 701 N.E.2d at 1204, 1206. Respondent, in contrast, "bore no superficial resemblance to the subject of the arrest warrant." Pet. at 13a.

In other words, the critical fact in this case was how immediately obvious it was that the sole justification for the seizure did not apply to respondent. Had there been any ambiguity as to whether the warrant applied to respondent, it clearly would have been reasonable for Officer Bland to prolong the seizure in order to investigate respondent's identity. And, although similar fact patterns do occur, *see, e.g.*, *De La Cruz*, 703 F.3d at 1194-95, petitioner's failure to even attempt to demonstrate an entrenched conflict on the relevant questions suggests that such cases are likely rare.

It is also important to understand that this was not a routine traffic stop. The sole justification for the initial seizure was Officer Bland's reasonable suspicion that the driver of the vehicle might be a specific woman wanted on a specific warrant. That is, this seizure was for the purpose of executing an arrest warrant against Chattic.

With those observations in mind, the standards set out in the previous subsection are easy to apply. The reasonableness of a seizure must be evaluated with reference to the amount of time reasonably necessary to complete the initial purpose of the stop. In this case, the totality of the circumstances show that the amount of time reasonably necessary to complete the initial purpose of the stop was exceedingly short when the physical characteristics of the defendant immediately and definitively eliminated him as the subject of the warrant. Based on that exceedingly short period, a reasonable person could rationally find the continued investigation entirely arbitrary

and unjustified, particularly considering that Officer Bland could have asked the same questions in the context of a consensual encounter. In the words of another Illinois case, while it may be reasonable for one to expect a minor intrusion such as a license check when an officer conducts even a cursory traffic investigation, "it may be unreasonable for a motorist to expect an officer to run a computer check on his driver's license where . . . [the officer] realizes as soon as he stops the vehicle that there is no need for further investigation . . . ." *People v. Grove*,792 N.E.2d 819, 824 (Ill. App. Ct. 2003). Under the totality of the circumstances, it was objectively unreasonable to prolong the seizure under these very narrow facts, even if the amount of time the seizure was prolonged was objectively short.

Because the Illinois Supreme Court was ultimately correct in deciding that the seizure here was unreasonably prolonged beyond the exceedingly short period of time reasonably necessary to complete its initial purpose, this Honorable Court should deny the petition.

CONCLUSION

A close review of the cases petitioner cites as evidence of a split of authority justifying review reveals that the split presents a different question than the one petitioner asks this Court to resolve. Because this case is not implicated in the split actually presented, and because this case is not a good vehicle for resolving that split, petitioner has not met its burden of demonstrating an important question of federal law capable of being answered by this case. Additionally, because the Illinois Supreme Court applied a properly stated rule of law, one substantially more complete than the one set out in the petition, to the facts of this case, petitioner's plea is essentially for this Court to engage in error correction, something this Court generally will not do. Besides, the Illinois Supreme Court was correct in determining that the investigation in this case unreasonably prolonged the seizure when the time reasonably necessary to complete the initial purpose of the seizure was exceedingly short, and when the arresting officer could have conducted the same investigation as a consensual encounter. For all of these reasons, further review is neither warranted nor necessary. This Honorable Court should therefore deny the petition.

Respectfully submitted,

_____

PETER A. CARUSONA
Deputy Defender
Counsel of Record

SEAN CONLEY
Assistant Appellate Defender
Office of the State Appellate Defender
Third Judicial District
770 E. Etna Road
Ottawa, IL 61350
(815) 434-5531
3rddistrict.eserve@osad.state.il.us

COUNSEL FOR RESPONDENT

No. 14-209

IN THE

SUPREME COURT OF THE UNITED STATES

ILLINOIS, PETITIONER,

-vs-

DERRICK A. CUMMINGS, RESPONDENT.

On Petition for Writ of Certiorari to the Illinois Supreme Court

---

BRIEF IN OPPOSITION

NOTICE AND PROOF OF SERVICE

TO: Honorable William K. Suter, Clerk of the Supreme Court of the United States, One 1st St. NE, Washington, D.C. 20543;

Lisa Madigan, Attorney General, 100 W. Randolph St., 12th Floor, Chicago, IL 60601;

Mr. Terry A. Mertel, Deputy Director, State's Attorneys Appellate Prosecutor, 628 Columbus, Suite 300, Ottawa, IL 61350;

Mr. Trish Joyce, Whiteside County State's Attorney, Whiteside County Courthouse, 200 E. Knox Street, Morrison, IL 61270

Derrick A. Cummings, 202 Wilson Avenue NE, Apt. 24, St. Cloud, MN 56304

Please take notice that we have mailed the original and ten copies of the enclosed Motion for Leave to Proceed *In Forma Pauperis* and Brief in Opposition to the Clerk of the above Court. We have also mailed three copies to the Attorney General of Illinois, one copy to the to the State's Attorneys Appellate Prosecutor, three copies to the State's Attorney, and one copy to the Respondent in an envelope deposited in a U.S. mail box in Ottawa, Illinois on November 7, 2014.

PETER A. CARUSONA
ARDC No.0406414
Deputy Defender
Office of the State Appellate Defender
770 E. Etna Road
Ottawa, IL 61350
(815) 434-5531

COUNSEL OF RECORD FOR RESPONDENT