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# THE FEDERAL LAW ENFORCEMENT - INFORMER -

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ENFORCEMENT OFFICERS AND AGENTS

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# CASE SUMMARIES

## Circuit Courts of Appeal

### **First Circuit**

#### **Alfano v. Lynch, 847 F.3d 71 (1st Cir. Mass. February 1, 2017)**

Alfano and his friends approached a security checkpoint at the entrance to a concert venue. Prior to approaching the checkpoint, Alfano consumed between six to eight beers over a span of four to six hours. Believing that Alfano might be incapacitated, the security guards removed Alfano from the line, escorted him to a holding area, and contacted a police officer who was working a security detail at the concert. To evaluate whether Alfano was incapacitated, the officer asked Alfano to perform a series of field sobriety tests. After conducting the field sobriety tests, the officer asked Alfano to take a Breathalyzer test. After Alfano refused, the officer handcuffed Alfano and placed him in protective custody. Alfano was shackled to a bench, and eventually transported to the police station, where he was detained in a holding cell. Approximately five hours, later Alfano was released.

Alfano sued the officer under *42 U.S.C. § 1983*, claiming that the officer violated the Fourth Amendment by taking him into protective custody without probable cause. The officer filed a motion for summary judgment based on qualified immunity.

The court held that the officer was not entitled to qualified immunity. First, the court found that at the time of the incident, it was clearly established that officers acting under a civil protection statute had to establish probable cause before taking an individual into custody that resembled an arrest.

Second, the court concluded it was not reasonable for the officer to believe that he had probable cause to take Alfano into protective custody under the Massachusetts statute. Massachusetts law allows police officers to take “incapacitated” persons into civil protective custody. The law provides in part, that an “incapacitated” person is one who is both intoxicated, and “by reason of the consumption of intoxicating liquor is . . . likely to suffer or cause physical harm or damage property.”

To establish probable cause to take Alfano into protective custody, the officer needed to reasonably believe that Alfano was both intoxicated and likely to harm himself, someone else, or to damage property. However, the officer only had reason to believe that Alfano had been drinking and was under the influence of alcohol. There were no facts indicating that Alfano was likely to harm himself, injure another person, or damage property. Consequently, the officer’s reasons for placing Alfano into protective custody did not extend beyond probable cause to think that Alfano was intoxicated, and intoxication, by itself, is not sufficient to support a finding of incapacitation.

For the court’s opinion: <http://cases.justia.com/federal/appellate-courts/ca1/16-1914/16-1914-2017-02-01.pdf?ts=1485982804>

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## **Fifth Circuit**

### **United States v. Monsivais, 848 F.3d 353 (5th Cir. Tex. Feb. 2, 2017)**

While on patrol in a marked police car, two officers saw Monsivais walking on the side of an interstate highway away from an apparently disabled truck. The officer stopped the patrol car in front of Monsivais and activated the car's emergency lights, planning to ask Monsivais if he needed assistance. As Monsivais approached, he ignored the officers and walked past their patrol car. At this point, the officers exited their vehicle, and asked Monsivais where he was going, where he had been and if he needed any help. Monsivais told the officers where he was going, and while he appeared to be nervous, he responded politely to all of the officers' questions. After approximately four-minutes, one of the officers told Monsivais that he was going to pat Monsivais down for weapons "because of his behavior" and for "officer safety reasons." Monsivais then told the officer that he had a firearm in his waistband. The officer seized the firearm and the government subsequently charged Monsivais with possession of a firearm while being unlawfully present in the United States.

Monsivais filed a motion to suppress the firearm. Monsivais argued that the officer violated the Fourth Amendment because he did not have reasonable suspicion to believe Monsivais was involved in criminal activity when he detained him.

The court agreed. First, the court determined that the officer seized Monsivais for Fourth Amendment purposes when he told Monsivais that he was going to pat him down. At this point, the officer had converted an offer for roadside assistance into an investigative detention or Terry stop.

Second, the court noted that police officers may briefly detain a person for investigative purposes if they can point to "specific and articulable facts" that give rise to reasonable suspicion that the person has committed, is committing, or is about to commit a crime.

Third, the court concluded that while Monsivais' behavior might not have been typical of all stranded motorists, the officer could not point to any specific and articulable facts that Monsivais had committed, was committing, or was about to commit a crime before seizing him. The officer testified that he never suspected Monsivais was involved in criminal activity, but rather that Monsivais was acting "suspicious." As a result, the court found that the officer seized Monsivais without reasonable suspicion and that the firearm seized from Monsivais should have been suppressed.

For the court's opinion: <http://cases.justia.com/federal/appellate-courts/ca5/15-10357/15-10357-2017-02-02.pdf?ts=1486081834>

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### **Turner v. Driver, 848 F.3d 678 (5th Cir. Tex. Feb. 16, 2017)**

In September 2015, Turner was videotaping the Fort Worth Police Station from a public sidewalk across the street from the station. During this time, Fort Worth Police Officers Grinalds and Dyess pulled up in their patrol car and approached Turner. Officer Grinalds asked Turner if he had identification, but Turner continued videotaping. When Turner asked the officers if he was being detained, Officer Grinalds told Turner that he was being detained for investigation because the officers were concerned about who was videotaping their building. After Turner refused Officer

Grinalds' continued request for identification, the officers handcuffed Turner, took his video camera, and placed Turner in their patrol car.

A short time later a supervisor, Lieutenant Driver, arrived and spoke briefly with Turner as well as Officers Grinalds and Dyess. After Lieutenant Driver left, the officers went back to their patrol car, released Turner, and returned his video camera to him.

Turner sued Lieutenant Driver and Officers Grinalds and Dyess under *42 U.S.C. § 1983* claiming that they violated his rights under the First and Fourth Amendments. The officers filed a motion to dismiss Turner's suit, claiming they were entitled to qualified immunity.

First, the court found that at the time of the incident, in the Fifth Circuit<sup>1</sup>, there was no clearly established First Amendment right to record the police<sup>2</sup>. As a result, the court held that all three officers were entitled to qualified immunity as to Turner's First Amendment claim.

Although the right was not clearly established at the time of Turner's activities, the court held that going forward in the Fifth Circuit, a First Amendment right to record the police exists subject only to reasonable time, place, and manner restrictions. The court did not determine which specific time, place, and manner restrictions would be reasonable, but stated that restrictions must be "narrowly tailored to serve a significant governmental interest."

Concerning Turner's Fourth Amendment claims, the court held that the officers' initial questioning and detention of Turner, before he was handcuffed and placed in the patrol car was reasonable. The court noted that an objectively reasonable person in Officer Grinalds' or Dyess' position could have suspected that Turner was casing the station for an attack or stalking an officer. As a result, the officers could have found Turner's videotaping of the station sufficiently suspicious to warrant questioning and a brief detention.

However, the court held that Officers Grinalds and Dyess were not entitled to qualified immunity on Turner's claim that handcuffing him and placing him in the officers' patrol car amounted to an unlawful arrest. The court found that a reasonable person in Turner's position would have understood the officers' actions constituted a restraint on his freedom of movement to the degree associated with a formal arrest. The court commented that the officer's actions in this regard were disproportionate to any potential threat that Turner posed or to the investigative needs of the officers. Consequently, the court concluded that handcuffing Turner and placing him in the patrol car was not reasonable under the circumstances.

Finally, the court held that Lieutenant Driver was entitled to qualified immunity as to Turner's Fourth Amendment claims. First, under §1983, supervisors are not liable for the direct actions of their subordinates. Second, by the time Lieutenant Driver arrived, Turner had already been handcuffed and placed in the officers' patrol car. Third, after Lieutenant Driver arrived, he immediately investigated the situation by talking with Officers Grinalds and Dyess as well as Turner, and he then promptly ordered Turner's release.

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<sup>1</sup> The First and Eleventh Circuits have held that the First Amendment protects the rights of individuals to videotape police officers performing their duties.

<sup>2</sup> While no circuit has held that the First Amendment does not extend to the video recording of police activity, the Third, Fourth and Tenth Circuits have held that the law in their circuits is not clearly established, without specifically determining whether such a right exists under the First Amendment.

For the court's opinion: <http://cases.justia.com/federal/appellate-courts/ca5/16-10312/16-10312-2017-02-16.pdf?ts=1487291433>

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## **Seventh Circuit**

### **United States v. Paxton, 848 F.3d 803 (7th Cir. Ill. Feb. 17, 2017)**

Paxton and four other men were arrested and placed inside the back of a marked police van for transport to a nearby Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) field office to be interviewed. The van's interior was divided into three compartments with the driver and passenger separated from the transport compartments by steel walls with plexiglass windows. During the drive, the defendants made incriminating statements that were captured by two recording devices that were concealed in the back of the van. The recording equipment also captured identifying information that each defendant was asked to provide before being seated in the van. The defendants' answers to the biographical questions were later used by the agents to identify who was speaking in the back of the van.

The defendants filed a motion to suppress their covertly recorded statements, claiming that they had a reasonable expectation of privacy in their conversation while in the back of the police van.

The court disagreed. The court emphasized that the police van was functioning as a mobile jail cell. The defendants had been arrested, placed in handcuffs, and were being transported to the ATF field office for processing and questioning. The court found that the arrest itself had already diminished the defendants' expectation of privacy, and as detainees, the defendants could not have reasonably believed the marked police van provided them a place to have a private conversation. The court added, the fact that the interior of the van was divided into separate, fully enclosed, compartments, did not change the nature of the vehicle. The metal dividing walls, with their thick plexiglass windows, were present to serve a security function rather than to provide an area for private conversations. Regardless of the particular layout, a police vehicle that is readily identifiable by its markings as such, and which is being used to transport detainees in restraints, does not support an objectively reasonable expectation of conversational privacy.

The court further held that the identification questions the agents asked the defendants as they entered the van, which were later used to identify the speakers in the recorded conversations, did not violate the Fifth Amendment. Although the defendants had not yet been given their Miranda warnings, the questions asked by the agents were similar to routine booking questions, which are not the type of questions that typically produce incriminating information.

For the court's opinion: <http://cases.justia.com/federal/appellate-courts/ca7/14-2913/14-2913-2017-02-17.pdf?ts=1487358046>

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## **Eighth Circuit**

### **United States v. Johnson, 848 F.3d 872 (8th Cir. Minn. Feb. 17, 2017)**

In September 2010, fifteen-year old girl, Jane Doe, wrote her mother a letter in which she stated that her mother's boyfriend, Johnson, had sexually abused her on multiple occasions at Doe's home. Doe's mother contacted law enforcement officers who interviewed Doe in November

2010. Doe told the officers that Johnson had sexually abused her on at least four occasions, beginning in December 2009. In addition, Doe told the officers that Johnson took pictures of her naked, which he downloaded onto his computers located at his mother's house in Woodbury, Minnesota.

A few days after Doe's interview, officers obtained a warrant to search the Woodbury residence that Johnson shared with his mother. During the search, the officers seized Johnson's computers, which contained a video file of Johnson sexually assaulting Doe.

The government charged Johnson with production of child pornography.

Johnson argued that the evidence discovered on his computers should have been suppressed because the information in the search warrant affidavit was based on stale evidence, and that it did not establish a nexus with his residence in Woodbury.

The court disagreed. A warrant becomes stale if so much time has elapsed between the information provided in the supporting affidavit and the subsequent search that probable cause does not exist at the time of the search. Factors to consider in determining whether probable cause no longer exists at the time of the search include, the lapse of time since the warrant was issued, the nature of the criminal activity, and the kind of property subject to the search. The court noted that a lapse in time is least important when the suspected criminal activity is continuing in nature and when the property is not likely to be destroyed.

In this case, the court concluded that the information used to establish probable cause to obtain the warrant to search Johnson's residence was not stale. First, the search warrant affidavit alleged a number of very detailed instances of sexual assault against a minor over a period of time with specific details regarding photographs. Second, the search warrant was issued approximately eleven months after the last sexual assault, and at most, three months after Doe told her mother about the sexual assaults. Given the nature of the crime and the type of evidence sought, the court held that the execution of the warrant in November 2010 did not render the warrant deficient based on stale information.

The court further held that there was a sufficient nexus between the sexual assaults, which allegedly occurred at Doe's home, and the search of Johnson's residence in Woodbury. The affidavit supporting the search warrant specifically included information that Johnson had taken nude pictures of Doe and then downloaded those pictures to his computer that was located at his mother's house in Woodbury. The court found these facts provided a substantial basis for the judge who issued the search warrant to conclude that there was a reasonable likelihood evidence of Johnson's sexual assault of Doe would be found in Johnson's Woodbury residence.

For the court's opinion: <http://cases.justia.com/federal/appellate-courts/ca8/16-2355/16-2355-2017-02-17.pdf?ts=1487349047>

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**United States v. Huyck, 2017 U.S. App. LEXIS 3114 (8th Cir. Neb. Feb. 22, 2017)**

In November 2012, agents with the Federal Bureau of Investigation (FBI) controlled and monitored computer servers that hosted the child pornography website, Pedoboard, on the Tor



network.<sup>1</sup> On November 21, 2012, an Internet Protocol (IP) address associated to Huyck's residence accessed the Tor network and browsed Pedoboard for at least nine minutes. No child pornography was downloaded during this visit.

On April 9, 2013, more than four months after the Pedoboard access date, agents obtained a warrant and searched Huyck's house. The agents seized a variety of computers, external hard drives, and thumb drives. A forensic analysis of the evidence seized from Huyck's house revealed images of child pornography. Based on this evidence, the government charged Huyck with several child-pornography-related offenses.

Huyck filed a motion to suppress the evidence seized by the agents, arguing the information contained in the search warrant affidavit was stale. Specifically, Huyck claimed the search warrant affidavit did not establish probable cause because briefly browsing a child pornography website is not sufficiently likely to result in evidence of child pornography possession four and one half months later.

The court disagreed. The court found that Huyck did not "simply and accidentally" navigate to Pedoboard for a few "meaningless" minutes. Instead, the evidence showed that Huyck accessed Pedoboard after taking several intermediate steps that indicated his knowledge that Pedoboard trafficked in child pornography. First, Pedoboard was not some random website that any Internet user could randomly stumble upon by chance. Pedoboard was located on the Tor network, and Huyck had to download specific software to access the Tor network. Second, accessing Pedoboard required knowledge of Pedoboard's exact Tor web address. According to the warrant affidavit, that Tor web address was not common information; users could only obtain the Pedoboard web address directly from other users or from Internet postings detailing the child pornography content available. Coupled with the fact that child pornographers generally retain their pornography for extended periods, the court concluded the agents established probable cause to believe that Huyck's home contained child pornography as well as evidence related to his visit to Pedoboard on November 21, 2012, when they obtained the search warrant.

For the court's opinion: <http://cases.justia.com/federal/appellate-courts/ca8/15-3652/15-3652-2017-02-22.pdf?ts=1487781050>

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<sup>1</sup> The Tor network is designed to allow users to surf the Internet anonymously and access otherwise hidden websites, including illegal websites like "Pedoboard," which was strictly devoted to child pornography. To access the Tor network, a user downloads special software that obscures a user's Internet Protocol ("IP") address, thereby evading traditional law enforcement IP identification techniques. Once on the Tor network, users must have a unique, sixteen-character web address to access the Pedoboard website. Unlike traditional web addresses, a Tor web address does not indicate the services or content available on the site. Thus, a Pedoboard user must obtain the web address from other users or from Internet postings describing Pedoboard's content. The most common way to find Pedoboard's web address was to access the "Hidden Wiki"-a directory of Tor hidden services providing the name of the hidden service, a description of its content, and the Tor web address. To identify people accessing Pedoboard, the FBI installed Network Investigative Technique ("NIT") software on the website, which revealed the true IP addresses of people accessing the site, the date and time the user accessed the content, and the user's computer operating system.

## **Tenth Circuit**

### **United States v. Hernandez, 847 F.3d 1257 (10th Cir. Colo. February 9, 2017)**

Two uniformed police officers in a marked patrol car saw Hernandez, who was wearing two backpacks, walking next to a fenced construction site. It was dark out, the area was unlit, and the officers considered this part of town to be a high crime area. In addition, the officers noticed that Hernandez was dressed entirely in black clothing and was walking next to the construction site instead of on the sidewalk on the other side of the street. Finally, the officers were aware of recent thefts of materials from this particular construction site.

The officers pulled alongside Hernandez in their patrol car and one of the officers began to talk to Hernandez through the open window. Hernandez agreed to talk to the officers, but he continued to walk. The officers remained in their patrol car and continued driving in order to keep up with Hernandez during their conversation. After a few minutes, one of the officers asked Hernandez if he would stop so they could talk to him. Hernandez agreed and stopped walking. During this time, the officers discovered that Hernandez had an active warrant for his arrest. The officers exited their patrol car and approached Hernandez who began to walk away quickly. When Hernandez reached for his waistband, one of the officers asked Hernandez if he had a gun, and Hernandez replied, "Yes." When the officer grabbed Hernandez's arm, a black revolver fell to the ground, and the officers arrested Hernandez.

The government charged Hernandez with being a felon in possession of a firearm.

Hernandez filed a motion to suppress the firearm, arguing the officers did not have reasonable suspicion to detain him.

First, the district court determined that the officers seized Hernandez under the Fourth Amendment when Hernandez complied with the officer's request and stopped walking. The district court found that the officer's request that Hernandez stop walking was "a show of authority such that a reasonable person would not have felt free to decline the officer's request or terminate the encounter." To support its position, the district court noted that the officers were following Hernandez closely in a police car, in a dark area, outside the view of any other persons, and that the officers did not advise Hernandez that he had the right to terminate the encounter.

Second, the district court held that when the officers seized Hernandez, they did not have reasonable suspicion to believe that he was involved in criminal activity. As a result, the court granted Hernandez's motion and suppressed the firearm. The government appealed.

The Tenth Circuit Court of Appeals, in what it admitted was a "close case," agreed with the district court that the officers seized Hernandez when Hernandez complied with the officer's request and stopped to talk. The court added that a reasonable person would have believed that compliance with the officer's "request" was not optional.

The court also agreed with the district court's holding that when the officers seized Hernandez, they did not have reasonable suspicion to believe he was involved in criminal activity. While the construction site might have been the target of previous thefts, the court was not persuaded that Hernandez's all black clothing, two backpacks, or failure to use the sidewalk on the other side of the street established reasonable suspicion to believe that he was currently engaged in criminal activity.

For the court's opinion: <http://cases.justia.com/federal/appellate-courts/ca10/15-1116/15-1116-2017-02-09.pdf?ts=1486659668>

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**Estate of Redd v. Love, 848 F.3d 899 (10th Cir. Utah Feb. 13, 2017)**

Agents with the Federal Bureau of Investigation (FBI) and Bureau of Land Management (BLM) began an investigation into the taking of Native American artifacts from federal lands in southern Utah. As part of their investigation, the two agencies arranged controlled sales of illegally taken artifacts. With Agent Love serving as the lead BLM agent for the operation, the agents eventually obtained several arrest warrants as well as warrants to search twelve properties for artifacts. The warrants included arrest warrants for Dr. and Mrs. Redd and a warrant to search their house.

Twelve teams of BLM and FBI agents simultaneously executed the multiple search warrants. Each team was comprised of between eight and twenty-one federal agents and at least one cultural specialist. Upon completing their searches, agents reported to other search locations to help as needed. In addition, FBI and BLM policy required agents to wear soft body armor and to carry a firearm when executing warrants or when confronting potentially dangerous situations. Team members were concerned for their safety because some local citizens had previously acted hostilely toward federal officials.

Upon arrival at Dr. Redd's house, the agents arrested Mrs. Redd. Dr. Redd was not present, but when he arrived home at 6:55 a.m., agents arrested him in his driveway and detained him in the garage until 10:34 a.m., when the agents drove the Redds to jail. The Redds were released on bond and returned home at 5:00 p.m. The next day, Dr. Redd committed suicide.

Dr. Redd's Estate sued sixteen named FBI and BLM agents and twenty-one unnamed agents under Bivens, claiming that the agents violated Dr. Redd's Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendment rights. The district court dismissed all of the Estate's claims and granted Agent Love qualified immunity on the Estate's Fourth Amendment excessive use of force claim. The Estate appealed, arguing that Agent Love was not entitled to qualified immunity.

The Estate claimed that Agent Love violated Dr. Redd's Fourth Amendment rights by using excessive force in executing his arrest warrant. Specifically, the Estate argued that Agent Love used excessive force by deploying more than fifty agents wearing bulletproof vests and carrying guns to execute the warrants.

The Tenth Circuit Court of Appeals disagreed. First, the court found that the Estate offered no proof that Dr. Redd saw fifty agents before being transported to jail. Second, the Estate did not claim that the agents used excessive force by physically abusing Dr. Redd or pointing firearms at him. Instead, everyone agreed that when Dr. Redd arrived home at 6:55 a.m., he was arrested in his driveway and taken to the garage. During this time, there were twelve agents and a cultural specialist at Dr. Redd's residence; however, Dr. Redd encountered fewer than twelve agents, as some of the agents were already inside the house when Dr. Redd arrived home. Third, the sign-in log maintained by the agents revealed that there were no more than twenty-two agents at the residence between 6:55 am and 10:34 a.m. While the court left open the possibility that sending a large number of agents to execute a search warrant and arrest for a nonviolent crime might amount to excessive force, that was not the case here. The court concluded that the need to search an expansive home for small artifacts, as well as legitimate concern for officer safety justified the number of agents executing the search and arrest warrants at the Redd's house.

The court further held that Agent Love did not act with excessive force toward Dr. Redd in deploying the agents in SWAT-like gear. First, this decision rested outside Agent Love's authority, as BLM and FBI policy required the agents to carry a firearm and wear soft body armor when executing warrants such as the ones executed in this case. Consequently, the court held that Agent Love's conduct, deploying twenty-two agents, wearing soft body armor and carrying firearms in compliance with agency policy, was objectively reasonable under the circumstances.

For the court's opinion: <http://cases.justia.com/federal/appellate-courts/ca10/16-4010/16-4010-2017-02-13.pdf?ts=1487005256>

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**United States v. Lopez, 2017 U.S. App. LEXIS 3475 (10th Cir. Kan. Feb. 27, 2017)**

Angela and Adrienne Lopez were stopped for speeding in Kansas. During the stop, the officer discovered the women had travelled from California the day before, driving a rental car that was due back in California the next day. The women stated that they were travelling to either Kansas City or Nebraska to rescue Adrienne's sister who was in an abusive relationship. When the officer looked into the backseat of the car, Adrienne said, "Don't look back there, it's a mess," although there were only a few bags and a blue cooler on the back seat. The officer noticed that throughout the encounter, Adrienne, rather than Angela, the driver, did almost all of the talking, which the officer believed to be a sign of nervousness.

After the officer issued Angela a warning and returned her paperwork, the officer told the women to have a safe trip and turned to walk away. The officer took a few steps, turned around and walked back to the women's car, and asked Angela if she would answer a few more questions. Angela consented. The officer eventually asked the women if they would consent to a search of their vehicle, telling the women that drugs were frequently trafficked on this particular highway and that he was suspicious of their two-day car rental. After the women refused to consent, the officer detained them for approximately twenty-minutes until another officer arrived with a drug dog. The dog sniffed around the exterior of the car, then jumped through the open front passenger window and alerted on Adrienne's purse. The officer searched the purse and found a small amount of marijuana. The officer then searched the rest of the car where he found approximately four pounds of methamphetamine inside the blue cooler.

The government charged the defendants with two drug offenses, and both defendants filed a motion to suppress the evidence seized from their car. The defendants did not challenge the initial stop, and the government did not contest that the officer extended the stop beyond its initial purpose, enforcing traffic laws, without the defendant's consent. The sole issue before the court was whether the officer had reasonable suspicion to detain the defendants after completing the stop to wait for the drug dog to arrive.

The court held that the officer did not have reasonable suspicion to prolong the traffic stop to await the arrival of the drug dog. First, while Adrienne might have appeared to be nervous, the Tenth Circuit has consistently held that a person's nervousness is given little significance as it is very subjective and innocent people can vary widely in how they respond to an encounter with the police. The court added that only a person's "extreme" nervousness could substantially contribute to reasonable suspicion.

Second, the court held that Adrienne's comment about the backseat did little to support a finding of reasonable suspicion. In hindsight, the comment was significant, as the methamphetamine was

concealed inside the blue cooler; however, the court found that at the time Adrienne made the comment, there was nothing incriminating in view on the backseat. In addition, her comment did not prevent the officer from talking a closer look through the back window.

Finally, the court concluded that the defendant's implausible travel plans did not establish reasonable suspicion to prolong the duration of the stop. The court stated that it has been reluctant to give weight in the reasonable suspicion analysis to unusual travel plans, unless an officer discovers a lie or some inconsistency. Here, the court concluded that the defendants' travel plans were consistent with the trip's purported purpose of rescuing Adrienne's sister who was in danger.

For the court's opinion: <http://cases.justia.com/federal/appellate-courts/ca10/15-3130/15-3130-2017-02-27.pdf?ts=1488214859>

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## **Eleventh Circuit**

### **United States v. Vargas, 848 F.3d 971 (11th Cir. Ala. Feb. 16, 2017)**

A police officer stopped a vehicle for tailgating and failure to maintain its lane. The driver, Castro, immediately told the officer that he did not have a valid driver's license. After speaking with Castro for approximately three-minutes, the officer told Castro that he was going to issue Castro a warning ticket. After filling out the warning ticket, the officer asked Vargas, the passenger, if he could legally operate the vehicle. Vargas told the officer that he did not have a driver's license either. For approximately the next twelve minutes, the officer worked with Castro and Vargas in an attempt to determine how to legally move the vehicle, as the officer could not lawfully allow either man to drive the vehicle without a valid driver's license. Approximately fifteen minutes after telling Castro that he was going to issue a warning ticket, the officer asked Castro for consent to search the vehicle. Castro consented and the officer discovered cocaine and methamphetamine hidden in the vehicle.

The government charged Vargas with two drug-related offenses.

Vargas filed a motion to suppress the evidence, arguing that the officer violated the Fourth Amendment by unlawfully extending the duration of the stop after the officer told Castro that he was issuing him a warning.

The court disagreed. The court recognized a traffic stop that exceeds the time needed to handle the matter for which the stop was made constitutes an unreasonable Fourth Amendment seizure. However, in this case, the court concluded that the officer did not complete his duties related to the traffic stop before Castro consented to the search of the vehicle. The fact that the officer had earlier told Castro that he was issuing a warning was irrelevant. Under state law, the officer had a duty not to allow Castro or Vargas, who were not licensed, to drive the vehicle. The court noted that preventing Castro and Vargas from driving without a license was valid enforcement of the law, not an unlawful detention. The court found that what prolonged the duration of the stop was the fact that neither Castro nor Vargas could lawfully drive the vehicle, not the officer's desire to search it. Consequently, the court held that the duration of the traffic stop was reasonable.

For the court's opinion: <http://cases.justia.com/federal/appellate-courts/ca11/16-14714/16-14714-2017-02-16.pdf?ts=1487277057>

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