# IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff, No. CR 16-2688 MV

vs.

CLAUDIA VILLA-MUNOZ,

Defendant.

# DEFENDANT’S REPLY TO THE GOVERNMENT’S RESPONSE TO THE DEFENDANT’S MOTION TO SUPPRESS

COMES NOW the Defendant Claudia Villa-Munoz – by and through her counsel of record Brian A. Pori – to respectfully submit this Reply to the Government’s Response (Doc. 27) to Ms. Villa’s Motion to Suppress (Doc. 20). Ms. Villas continues to respectfully submit that the evidence seized from her vehicle on April 6, 2016 should be suppressed because it was the product of an unduly prolonged detention which tainted her subsequent consent to search. In addition, Ms. Villa respectfully requests that the Court suppress her involuntary, custodial admissions because they were elicited by threats to the welfare of her children. Finally, Ms. Villa continues to seek to suppress the evidence of her identity which was only obtained after the unreasonable traffic stop.

# THE TRAFFIC STOP WAS UNREASONABLY PROLONGED.

When a police officer stops an automobile and detains the occupants briefly, the stop amounts to a seizure within the meaning of the Fourth Amendment.

*Whren v. United States*, 517 U.S. 806, 809-10. The seizure of an individual attendant to a traffic stop must be limited in both scope and duration. *Florida v. Royer,* 460 U.S. 491, 500 (1983); *United States v. Rice,* 483 F.3d 1079, 1083 (10th Cir. 2007). “The investigative methods employed should be the least intrusive means available to verify or dispel the officer’s suspicion in a short period of time.” *Id.* In addition, the police must diligently pursue a means of investigation that is likely to confirm or dispel their suspicions and the stop may not be unduly prolonged beyond the time reasonably required to complete the mission. *Illinois v. Caballes,* 543 U.S. 405, 407 (2005).

The Government bears the burden to “demonstrate that the seizure it seeks to justify was sufficiently limited in scope and duration to satisfy the conditions of the investigative seizure.” *Royer,* 460 U.S. at 500. A police officer may extend the length of a traffic stop for questioning beyond the initial purposes of the stop only if the office has an “objectively reasonable and articulable suspicion that illegal activity has occurred. *United States v. Ramirez,* 479 F.3d 1229, 1243 (10th

Cir. 2007). While an office may ask questions about a motorists’s travel plans and authority to operate the vehicle, such questions are permissible only if they do not extend the length of the traffic stop. *United States v. Alcaraz-Arellano,* 441 F.3d 1252, 1258.

The Government insists that “TFO Real did not delay or extend [the traffic stop] beyond how long a standard, routine traffic stop would take.” (Doc. 27, p. 7.) With all due respect to the Government, Ms. Villa disagrees. First, Ms. Villa contends that the scope of the stop became unreasonable as soon as the officer asked Ms. Villa to step out of her vehicle and separated her from her children.

Second, Ms. Villa respectfully submits that by questioning her not once, but twice, about her travel plans during the preparation of the citation, the officer unduly extended the time it took to issue a simple ticket for not having a driver’s license. In fact, Ms. Real contends that, compared to the average traffic stop, the 13 minutes required to complete the citation in this case was unduly prolonged and, therefore, constitutionally unreasonable. See, e.g, *United States v. Everett,* 601 F.3d 484, 494 (10th Cir. 2010) [some prolongation becomes “too much” when the “totality of the circumstances surrounding the stop indicates that the duration of the stop as a whole–including any prolongation due to suspicionless unrelated questioning–was unreasonable”]; *United States v. Macias*, 658 F.3d 509, 518-19

(5th Cir. 2011) (11 minutes of questioning was unreasonable).

# MS. VILLA’S CONSENT TO A SEARCH WAS TAINTED BY THE PRIOR ILLEGALITY.

Following the measurable extension of the time required to complete the traffic citation, Officer Real asked Ms. Villa if she would answer additional questions. Ms. Villa respectfully contends that the totality of the circumstances suggest that she did not freely and voluntarily consent to extend the investigation, but instead merely submitted to Officer Real’s increasing show of authority. More important, Ms. Villa contends that the written consent to search she executed during this continued detention was invalid because the Government cannot show that the taint of the unconstitutional seizure had dissipated. *United States v. Fox,* 600 F.3d 1253, 1259 (10th Cir. 2010).

Whether Ms. Villa freely and voluntarily consented to a search of her vehicle is a question of fact based on the totality of the circumstances. *United States v. Pena,* 143 F.3d 1363, 1366 (10th Cir. 1998). The Court must consider whether the officer’s conduct constituted a coercive show of authority, such that a reasonable person would believe she was not free to “decline the officer’s requests or otherwise terminate the encounter.” *United States v. West,* 219 F.3d 1171, 1176 (10th Cir. 2000). Factors tending to show that consent was coerced include the

presence of more than one officer, the display of weapons, physical touching and use of an aggressive tone.

In its Response, the Government concedes that Officer real asked to speak with Ms. Villa almost immediately after he returned her documents and without telling her that she was free to leave. (Doc. 27, p. 9.) However, the Government has to concede that Officer Real exercised a show of authority by an armed Sheriff’s deputy in front of a police cruiser with a K-9 officer. Defendant was questioned alone, by the side of the road, under circumstances where any reasonable person would not feel free to leave.

Even assuming for the sake of argument that Officer Real’s additional questioning of Ms. Villa was consensual, the Government still must bear the burden of demonstrating that Ms. Villa’s ultimate consent to search was not tainted by Officer Real’s earlier misconduct in measurably and unreasonably extending the duration of the traffic stop. Ms. Villa respectfully submits that the Government cannot meet its burden of proving that intervening circumstances purged the taint of the unconstitutional detention.

In determining whether, under the totality of the circumstance, a consent to search was given freely and voluntarily after an unlawful detention, three factors are accorded special weight: (1) the temporal proximity of the seizure and the

consent; (2) the presence of intervening circumstances; and (3) the purpose and flagrancy of the official misconduct.” *United States v. Sandoval,* 29 F.3d 537, 543 (1994), citing *Brown v. Illinois,* 422 U.S. 590, 603 (1975). A court should also consider “whether the driver was informed of his right to proceed on his way.” *Sandoval,* 29 F.3d at 544.

The Government cannot meet its burden to prove that Ms. Villa’s consent to search was obtained without exploiting the excessive detention during the traffic stop. Instead, after mensurably extending the stop, Officer Real questioned Ms.

Villa and then secured the Consent to Search. These actions followed one after the other in a matter of minutes with no break in the casual chain and with a purposefulness which did not purge the taint of the prior, underlying illegality.

# MS. VILLA’S CUSTODIAL STATEMENTS WERE COERCED

In the same vein, the Government argues in its Response that Ms. Villa’s waiver of her rights was knowing and voluntary and denies that HSI Agents’ questions, including the question “will you do anything for your daughters” constituted an impermissible threat or an implied promise of leniency. This issue presents a factual dispute for the Court’s resolution but Ms. Villa continues to insist that any questions that relies on an officer’s reference to an accused’s children is simply improper and should be condemned in the strongest possible

terms.

In *Lynumn v. Illinois,* 372 U.S. 528, 534 (1963) the Supreme Court considered a confession that had been made

“only after the police had told [the defendant] that state financial aid for her infant children would be cut off and her children taken from her if she did not ‘cooperate.’ These threats were made while she was encircled in her apartment by three police officers . . . There was no friend or adviser to whom she might turn. She had no previous experience with the criminal law, and had no reason not to believe that the police had ample power to carry out their threats.”

Even in cases where the threat is not as explicit, a confession will be suppressed where “the coercive purpose and effect are indistinguishable from that in Lynumn.” *United States v. Tingle,* 658 F.2d 1332, 1335 (9th Cir. 1981).

Here law enforcement suggestions and entreaties that Ms. Real needed to be mindful of her children was a form of psychological coercion which overbore Ms. Villa’s “rational intellect and free will.” See, *Townsend v. Sain*, 372 U.S. 293, 307 (1963). The express and implied suggestion that Ms. Real’s relationship with her children hung in the balance if she did not confess, both by the side of the road and again while in custody, was intended to cause Ms. Villa to fear that, if she failed to cooperate, she would not see her children for a long time. Ms. Villa insists, that “when law enforcement officers deliberately prey upon the maternal instinct and inculcate fear in a mother that she will not see her child in order to

elicit ‘cooperation,’ they exert the ‘improper influence,” which the Fifth Amendment condemns. *Tingle,* 658 F.2d at 1336.

# EVIDENCE OF MS. VILLA’S IDENTITY WAS IMPROPERLY OBTAINED.

In her Motion, Ms. Villa asserted that her “ identity as an immigrant who had previously been deported from the United States would not have been discovered but for the unreasonable traffic stop and coerced consent.” (Doc. 20, p. 18.) The Government did not specifically respond to this argument in its Response, but Ms. Villa continues to insist that the evidence of her identity must be suppressed because the Government cannot show that the discovery of the identity evidence was so attenuated from the primary illegality as to dissipate the taint of the unlawful conduct.

WHEREFORE, for all of the foregoing reasons, the Defendant Claudia Villa-Munoz continues to respectfully request that this Honorable Court suppress the nine millimeter pistol seized from her vehicle on April 6, 2016, prevent the Government from admitting her involuntary statements which were elicited by improper threats to her relationship with her children and suppress the evidence of her identity and the contents of her immigration “A’ file as the poisonous fruits of an unreasonable detention and search which violated the Fourth Amendment.

Respectfully Submitted,

/s/ *Brian Pori* – filed electronically 12/16/16 Brian A. Pori

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# CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of December, 2016, I filed the foregoing Defendant’s Motion to Suppress Evidence electronically through the CM/ECF system, which caused a copy of the pleading to be served electronically on opposing counsel of record addressed as follows:

Kimberly Brawley, Esq. Assistant United States Attorney

P.O. Box 607

Albuquerque, New Mexico 87103

/s/ *Brian Pori* filed electronically 12/16/16 Brian A. Pori