IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS AT TOPEKA

UNITED STATES OF AMERICA,

Plaintiff,

vs. Case No. 5:14-CR-XXXX

JOHN A. DOE,

Defendant.

MOTION TO SUPPRESS EVIDENCE

COMES NOW DEFENDANT, by and through his attorney of record Paul D. Cramm and moves this Court for an Order Suppressing Evidence in the above-captioned matter.

FACTUAL BACKGROUND

1. On February 14, 2014, at approximately 2:00 p.m., Kansas Highway Patrol Trooper Jerett Ranieri was stationary in the median on I-70 in the area of milepost 330. While so positioned, Trooper Ranieri observed a blue Chevrolet Malibu traveling eastbound on I-70. Trooper Ranieri reports that "the vehicle had a rear registration plate that was dirty, not clearly visible and was in a condition that the expiration decal was not clearly legible."

2. Additionally, Ranieri reports that "the rear registration plate also had a foreign material (tag cover) obscuring the bottom of the registration letters (E was displayed as F)." Ranieri reports that when checking the plate with the letter 'F' incorrectly substituted for the letter 'E,' the tag returned to a Porsche SUV. However, when submitted with the correct letter "E," the plate did return to the vehicle for which it was issued. Of note, a photograph of the tag taken by KHP after arrest depicts the width of the license plate frame. Although the lower portion of the frame does contact the bottom of the letters and numbers, the suspect letter "E" is reasonably legible as the letter "E."

3. Based on the foregoing, Trooper Ranieri activated his emergency equipment and initiated a traffic stop of the blue Malibu near milepost 333. (2:04) Ranieri made contact with the driver and sole occupant of the vehicle, Defendant John Alberto Doe, and informed him of the basis for the traffic stop. (2:48) Ranieri is heard telling Doe: "Hey, how's it goin? I'm just gonna' warn you about your tag. When you stop and get gas, you might try cleaning it off so you can see when it expires, your license plate. Cause it's hard to see that, when it expires."

4. Mr. Doe produced a valid California Driver's License and told Ranieri that he was traveling from Anaheim, California to Kansas to visit his aunt who lived in Kansas City. During the initial dialogue, Ranieri asked Mr. Doe if he was the owner of the vehicle. In response, Doe is heard telling Ranieri that the vehicle belonged to a family member (3:50) and Doe produced valid, current registration for the vehicle. The vehicle was registered to Servando Lopez of Chino, California and had not been reported stolen or missing. After collecting Doe's license and registration, Ranieri says "Just one second. I'll get you out of here." (4:38)

5. After confirming with dispatch that the automobile registration was valid and that there were no warrants for Doe's arrest, Ranieri decided that he would issue only a warning instead of a formal traffic citation to Mr. Doe. Before re-contacting Doe, Trooper Jimerson arrived to assist with the stop. Eleven minutes after initiating the traffic stop, Ranieri returned Doe's license and registration (13:14), and reports: "I told Doe that I appreciated his time." However, the exact verbiage Ranieri used to terminate the encounter is unknown. At 5 minutes, 58 seconds into the traffic stop, the audio portion of the field video is deactivated and is not reactivated for the remainder of the stop. Ranieri concedes in his written report: "body mic was muted when I made a phone call to my supervisor in the patrol vehicle (I forgot to unmute the body mic after the phone call was done)."

6. When Trooper Ranieri returned Mr. Doe's driver's license and registration, issued a warning for the tag display, and indicated verbally to Mr. Doe that he was free to leave by 'thanking him for his time,' the purpose of the initial traffic stop was satisfied. However, Ranieri reports: "I decided that I was going to attempt to engage Doe in a consensual encounter following the conclusion of the traffic stop due to the totality of the circumstances surrounding the stop, my professional training and almost 14 years of experience with the highway drug trafficking enforcement."

7. In his written narrative report, Ranieri lists the following factors as the basis for his suspicion: "Doe displayed a very nervous, shaky body language; noticed only one key on the vehicle's key ring (the normal motoring traffic will have several keys); traveling on a known drug trafficking interstate and coming from a known drug source area; heading to a large urban area (common distribution point for drugs); fast food wrappers on the front passenger seat (indicative of long stretches of over the road travel)."

8. At this point on the field video, (13:20) Mr. Doe exits his vehicle, walks to the rear of the vehicle and wipes off the allegedly dirty license plate. Because there is no audio accompanying this portion of the field video, it is unknown if Mr. Doe decided *sua sponte* to exit the vehicle and attempt to clean the license plate or if this action was at the direction of Trooper Ranieri. However, Ranieri had suggested at the inception of the traffic stop that Doe that wipe off the license plate. (2:48)

9. In Ranieri's written report, he writes: "While Doe was outside the vehicle, I asked if I could look in the trunk area for illegal guns or drugs. Doe consensually stated 'yeah' and he then popped open the trunk." Although the foregoing statement from Ranieri's narrative report suggests a near contemporaneous request for and offer of consent to search the trunk, the field

video documenting the actual timeline of this request and apparent consent confirms that the exchange was not contemporaneous.

10. After wiping the license plate (13:28), Doe walks back to the driver's door of the vehicle, gets in, and places his foot on the brake pedal, as evidenced by illumination of the brake lights (13:38). However, as Doe begins to close the driver's door, *Ranieri positions himself between the open door and the car in a manner that physically prevents Doe from closing the door*. Ranieri then converses with Doe for approximately 15 seconds when Ranieri is observed pointing back towards the trunk (13:55). Trooper Jimerson then comes into view along the passenger side of the patrol vehicle (13:57).

11. Ranieri again gestures toward the trunk and Mr. Doe steps back out of the vehicle. Ranieri then conducts a 'pat down' search of Doe (14:20) and continues to question him for an additional 25-30 seconds before Doe *again* returns to the driver's door – his second attempt to be on his way (14:46). *Trooper Ranieri again positions himself in a manner that physically prevents Doe from entering the vehicle and gestures to Doe to step away from the driver's door*.

12. During the continued dialogue, Ranieri is seen making a repeated circular gesture with his right hand in what appears to be an apparent demonstration of a canine circling the vehicle. Trooper Jimerson then joins the discussion. (15:44) Ranieri, Jimerson and Doe then move to the rear of Medna's vehicle and Doe is seen opening the trunk (16:32). This occurs more than 3 minutes after Ranieri stipulates to having concluded the initial traffic stop and almost 3 minutes after Mr. Doe's first attempt to be on his way.

13. Ranieri reports he observed a "small overnight bag in the trunk" and further reports that "Doe seemed to have an insufficient amount of luggage for the stated trip from

California to Kansas City." Of note, Ranieri observed no contraband of any kind in the trunk and detected no odors associated with narcotics emanating from the trunk. Ranieri then asked for Doe's consent to search the inside of the vehicle and reports that "*Doe stated he did not want me looking inside the vehicle*." Ranieri's written report continues: "Doe stated he was already searched by the police in Colby, KS at a motel and stated he did not need to be searched again."

14. After closing the trunk, (17:04) Ranieri and Jimerson continue their dialogue with Doe at the rear of the vehicle. Ranieri again makes a circular gesture with his right hand (17:14) and Doe indicates 'no' by shaking his head from side to side (17:15). Doe begins to return to the driver's door of the vehicle (17:20) and *Ranieri again physically positions himself in a manner that blocks Doe's access to the vehicle*. A third Trooper appears and Doe is directed to stand at the front passenger side of Ranieri's patrol vehicle. The third Trooper then directs Doe to walk approximately 30 yards away from Doe's vehicle (18:15) and wait at that distance while Troopers conducted a canine search and physical search his vehicle (20:07). Although Ranieri writes in his written report that "the K-9 indicated on the front bumper of the vehicle for the odor of drugs," the dog and handler are entirely blocked from view by Doe's vehicle such that none of the activity or behavior at the front of the vehicle is documented by the field video. Later inspection and disassembly of the front bumper at the Highway Patrol Office revealed methamphetamine.

ARGUMENTS AND AUTHORITIES

15. Under the Fourth and Fourteenth Amendments to the United States Constitution, a search conducted without a warrant is "*per se* unreasonable... subject only to a few specifically

established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct. 507, 514 (1967); *State v. Strecker*, 230 Kan. 602, 604, 641 P.2d 379 (1982). Upon the hearing of a motion to suppress evidence, the government bears the burden of proving to the trial court the lawfulness of the search and seizure and the admissibility of the evidence obtained. *Mincey v. Arizona*, 437, U.S. 385, 390-91, 98 S.Ct. 2408, 2412-13 (1978).

16. A traffic stop is a seizure within the meaning of the Fourth Amendment, even though the purpose of the stop is limited and the resulting detention (occasionally) quite brief. See *United States v. Bradford*, 423 F.3d 1149, 1156 (10th Cir. 2005). However, an ordinary traffic stop is more analogous to an investigative detention than a custodial arrest. Therefore, analysis of such stops is based upon the principles pertaining to investigative detentions set forth in *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). See: *Berkemer v. McCarty*, 468 U.S. 420, 439, 82 L. Ed. 2d 317, 104 S.Ct. 3138 (1984).

17. The United States Supreme Court has held that "an investigative detention must last no longer than is necessary to effectuate the purpose of the stop, and the scope of the detention must be carefully tailored to its underlying justification." *Florida v. Royer*, 460 U.S. 491, 500, 103 S.Ct. 1319 (1983). To determine the reasonableness of an investigative detention, courts make a dual inquiry, asking first "whether the officer's action was justified at its inception," and second "whether it was reasonably related in scope to the circumstances which justified the interference in the first place." *United States v. Botero-Ospina*, 71 F.3d 783, 786 (10th Cir. 1995.)

18. Where the parties do not dispute the facts and details giving rise to the stop at its inception, the question of law is whether the stop and detention, considered in light of the totality of the circumstances, were reasonable. See *United States v. Dennison*, 410 F.3d 1203, 1207 (10th

Cir. 2005). Unless the officer has an objectively reasonable suspicion that illegal activity unrelated to the stop has occurred or the driver otherwise consents to the encounter, the resulting detention is reasonable only to the extent reasonably related in scope and duration to the circumstances which justified the initial stop. See *United States v. Williams*, 403 F.3d 1203, 1206 (10th Cir. 2005). Once the purpose of the stop is satisfied and any underlying reasonable suspicion dispelled, the driver's detention generally must end without undue delay. See: *United States v. Millan-Diaz*, 975 F.2d 720, 721-22 (10th Cir. 1992). Moreover, "[a] seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission." *Illinois v. Caballes*, 543 U.S. 405, 407, 125 S. Ct. 834, 160 L. Ed. 2d 842 (2005). Thus, where an officer elects to issue only a warning "[o]nce an officer returns the driver's license and registration, the traffic stop has ended and questioning must cease; at that point, the driver must be free to leave." *United States v. Villa*, 589 F.3d 1334, 1339 (10th Cir. 2009).

19. It is well established that during a routine traffic stop, a law enforcement officer may request a driver's license and vehicle registration, run a computer check, and issue a citation. *United States v. Elliott*, 107 F.3d 810, 813 (10th Cir. 1997); *United States v. Rosborough*, 366 F.3d 1145, 1148 (10th Cir. 2004). An officer may also ask the driver questions about matters both related and unrelated to the purpose of the stop, as long as those questions do not prolong the length of the detention. *United States v. Stewart*, 473 F.3d 1265, 1269 (10th Cir. 2007).

20. However, once the driver produces a valid license and registration and the officer has issued either a citation or a warning, the driver must be free to go on his way without the delay of further questioning. *Id.* See also: *United States v. Patterson*, 472 F.3d 767, 776 (10th

Cir. 2006). If the officer wants to detain the driver for further questioning he may do so if "(1) 'during the course of the traffic stop the officer acquires an objectively reasonable and articulable suspicion that the driver is engaged in illegal activity'; or (2) 'the driver voluntarily consents to the officer's additional questioning.'" *Id*. (quoting *United States v. Sandoval*, 29 F.3d 537, 540 (10th Cir. 1994)). If the officer continues to question the driver in the absence of valid consent or *articulable* reasonable suspicion, then "any evidence derived from that questioning (or a resulting search) is impermissibly tainted in Fourth Amendment terms." *Elliott*, 107 F.3d at 813 (internal quotations and citation omitted).

21. Reasonable suspicion may not be derived from inchoate suspicions and unparticularized hunches. *United States v. Sokolow*, 490 U.S. 1, 7, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989). Moreover, "[a]lthough the nature of the totality of the circumstances makes it possible for individually innocuous factors to add up to reasonable suspicion, it is impossible for a combination of wholly innocent factors to combine into a suspicious conglomeration unless there are concrete reasons for such an interpretation." *United States v. Salzano*, 158 F.3d 1107, 1114-15 (10th Cir. 1998) (internal citations and quotations omitted).

I. Ranieri Unlawfully Extended the Scope and Duration of the Traffic Stop.

22. Assuming *arguendo* that the initial basis for the stop – legibility of the rear license plate – was valid, it is clear that Trooper Ranieri unlawfully extended both the scope and duration of the traffic stop "beyond the circumstances which justified the interference in the first place" as prohibited by *United States v. Botero-Ospina*, supra. Here, Defendant Doe produced a valid driver's license and current, valid registration for the automobile he was driving. There were no warrants for Doe's arrest and the car he was driving was not reported stolen or missing. Doe explained that he was traveling from Anaheim, California to Kansas City, Kansas to visit his

aunt. Ranieri observed no contraband in plain view. Ranieri detected no odors of any kind emanating from the vehicle or from Doe's person associated with impairment (alcohol) or drug use (marijuana or air freshener). Doe provided no inconsistent or factually inaccurate responses to Ranieri's questions. Doe provided no implausible travel plans. Because Doe was traveling alone, Ranieri discovered no conflicting or inconsistent information.

23. Having developed no articulable basis for extending the scope and duration of the subject detention, Ranieri returned to Doe's vehicle 13 minutes after initiating the traffic stop, returned Doe's license and registration, and reports: "I told Doe that I appreciated his time." See: *United States v. Guerrero*, 472 F.3d 784, 789 (10th Cir. 2007) (the detention ended when the trooper handed back defendants' papers, thanked them for their time, and began walking away) See also: *United States v. Concepcion-Ledesma*, 447 F.3d 1307, 1315 (10th Cir. 2006) (use of the phrase 'thank you' signaled the end of detention); *United States v. Elliott*, 107 F.3d 810, 814 (10th Cir. 1997) (handing back of documents enough to end detention).

24. At that moment, Doe was entitled 'to be on his way without the delay of further questioning' as required by *United States v. Stewart* and *United States v. Patterson*, supra. However, knowing that he had no articulable basis for extending the detention, Ranieri reports: "I decided that I was going to attempt to engage Doe in a *consensual* encounter following the conclusion of the traffic stop due to the totality of the circumstances surrounding the stop, my professional training and almost 14 years of experience with the highway drug trafficking enforcement." (Emphasis added)

II. The Totality of the Circumstances Does Not Provide Reasonable Suspicion of Criminal Activity to Support Continued Detention.

25. Ranieri makes reference in his narrative report to 'the totality of the circumstances, his professional training and almost 14 years of experience.' Specifically,

Ranieri cites the following as factors: "Doe displayed a very nervous, shaky body language; noticed only one key on the vehicle's key ring; traveling on a known drug trafficking interstate and coming from a known drug source area; heading to a large urban area (common distribution point for drugs); fast food wrappers on the front seat (indicative of long stretches of over the road travel). Clearly, Ranieri realized that all of the forgoing did not provide 'reasonable suspicion' of criminal activity, hence his "attempt to engage Doe in a *consensual* encounter following the conclusion of the traffic stop." Analysis of each factor confirms that continued detention and evidentiary search was not supported by valid, objective reasonable suspicion.

1. "Doe displayed a very nervous, shaky body language"

26. Although "extreme" nervousness of a driver or passenger, in combination with other factors, can be a factor used to establish reasonable suspicion to continue a traffic stop beyond its initial purpose. *United States v. Salazar*, 609 F.3d 1059, 2010 WL 2473162 (10th Cir. 2010), this factor must be considered with other factors, and it may not be used as the sole factor to establish reasonable suspicion. The 10th Circuit has consistently held that "[n]ervousness alone cannot support reasonable suspicion of criminal activity," *United States v. Salzano*, 158 F.3d 1107, 1113 (10th Cir.1998) (citing *United States v. Fernandez*, 18 F.3d 874, 880 (10th Cir.1994)).

27. In *United States v. Simpson*, 609 F.3d 1140, 2010 (10th Cir. 2010), the Tenth Circuit stated:

> "We have held consistently that nervousness is 'of limited significance' in determining whether reasonable suspicion exists. Nervousness is of limited value in assessing reasonable suspicion for two reasons. First, it is common for most citizens, 'whether innocent or guilty-to exhibit signs of nervousness when confronted by a law enforcement officer.' Further, it is natural for a motorist to become more agitated as a stop is prolonged and particularly when the officer

> seems skeptical or suspicious. Second, unless the police officer has had significant knowledge of a person, it is difficult, even for a skilled police officer, to evaluate whether a person is acting normally for them or nervously."
> 609 F.3d 1140, Id. at 5 (internal citations omitted).

In *Simpson*, The Tenth Circuit also clarified that while "[e]xtreme and persistent nervousness … 'is entitled to somewhat more weight,'" a court may not rely solely on a police officer's subjective perception of nervousness and must find objective indicators of extreme nervousness. 609 F.3d 1140, *Id*. at 6.

28. In addition to Trooper Ranieri's generalized observation of a "shaky, nervous body language," Ranieri also reports: "Doe continued to be nervous despite being notified that of the warning offense only (From my experience, the normal motoring public appears relieved once they learn that they have been issued a warning instead of a ticket. The driver's nervousness did not seem to dissolve.)" The 10th Circuit Court of Appeals considered and disregarded this very observation in *United States v. Kaguras,* 183 Fed. Appx. 783, 2006 U.S. App. LEXIS 14479 (10th Cir. Wyo. 2006). Though unpublished, the 10th Circuit Court of Appeals is a 'permissive' circuit and does not restrict citation to its unpublished opinions. Specifically, 10th Cir. R. 32.1(A) provides "Unpublished decisions are not precedential, but may be cited for their persuasive value."

29. There, the trooper had testified during evidentiary hearing on defendant's motion to suppress evidence that Mr. Kaguras's failure to show sufficient relief after receiving a warning was indicative 'persistent' nervousness and provided reasonable suspicion of criminal activity. The government advanced this issue on appeal. In considering this argument, the Court stated: "We do not decide this dubious proposition because when the trooper observed this lack of relief, the trooper had already issued the warning and was detaining Mr. Kaguras after he had fulfilled the 'mission' of the original, justified stop." *Kaguras* at 788. The Court continued: "Observations

made during an illegal detention cannot be used to bootstrap reasonable suspicion. As such, we decline to even consider Mr. Kaguras' 'continued nervousness' in our analysis."

30. Because 'it is common for most citizens - whether innocent or guilty - to exhibit signs of nervousness when confronted by a law enforcement officer' and because 'it is natural for a motorist to become more agitated as a stop is prolonged and particularly when the officer seems skeptical or suspicious,' Ranieri's opinions of Doe's continued nervousness after receiving a warning do not rise to the level of articulable reasonable suspicion of criminal activity. Moreover, because this observation necessarily occurred after returning Doe's driver's license and registration and 'thanking him for his time' said observations necessarily occurred after Ranieri 'had fulfilled the mission of the original, justified stop.' Because 'observations made during an illegal detention cannot be used to bootstrap reasonable suspicion' this Court should decline to consider Mr. Doe's alleged 'continued nervousness' in its analysis.

2. "Only one key on the vehicle's key ring (the normal motoring traffic will have several keys);

31. Initially, this observation carries no weight whatsoever, as the presence of a single key on the key-ring is entirely consistent with Defendant Doe's statement to Ranieri that the car belonged to a family member. In fact, it would be unusual for a person to place their personal keys on a key-ring belonging to someone else while borrowing that person's automobile. Arguably, this observation may have contributed something to the reasonable suspicion analysis if the Defendant had claimed personal ownership of the car. However, where the Defendant tells the officer that the vehicle belongs to a family member and the vehicle registration verifies that information, the presence of only that vehicle's key on the key-ring is both reasonable and consistent with the Defendant's statement to the officer and provides no 'reasonable suspicion' of criminal activity.

32. The 10th Circuit Court of Appeals addressed this issue in *United States v. Guerrero*, 472 F.3d 784, (10th Cir. 2007). There, the arresting officer testified that the presence of only a single key on the key-ring contributed to his determination of 'reasonable suspicion' to extend the detention of the driver and search the vehicle. In its analysis, the Court properly limited the significance of said observation, stating: "[t]he lone key on a single ring similarly indicated, however weakly, that this was not a car that Mr. Guerrero drove regularly." 472 F.3d at 788. Thus, where the driver stipulates that the vehicle does ***not*** belong to him, the presence of the lone key corroborates the driver's statement along with the fact that the vehicle 'is not a car that the defendant drives regularly.' Said observation contributes nothing to the reasonable suspicion / probable cause analysis.

33. Similarly, in *United States v. Karguras*, supra., the arresting officer had proffered as a basis for reasonable suspicion the fact that defendant Karguras had ***additional*** keys on the key ring to the rental vehicle he was driving. Specifically, during the evidentiary hearing on the motion to suppress, the trooper stated: "[m]ost people I have stopped that drive rental cars don't have extra sets of keys on the key chain to the rental car. And me personally renting cars, I don't put my extra set of keys on there." The Court found the trooper's explanation to be inadequate, stating: "the trooper's testimony that he thought it was 'odd' that Mr. Kaguras had extra keys affixed to the rental car key chain contributes nothing to the reasonable suspicion analysis. No evidence appears as to why extra keys attached to the key chain are indicative of criminal activity."

34. The fact that Doe had only one key on the key ring for a vehicle that he told Ranieri belonged to a family member falls well within the litany of factors which "must be outrightly dismissed as so innocent or susceptible to varying interpretations as to be innocuous."

United States v. Lee, 73 F.3d 1034, 1039 (10th Cir. 1996); *Reid v. Georgia*, 448 U.S. 438, 441, 65 L. Ed. 2d 890, 100 S. Ct. 2752 (1980). Moreover, this type of observation – only one key on one's key-ring as opposed to several – amounts to the very type of 'flexible' analysis too easily conformed to the facts at hand that Justices Marshall and Brennen so eloquently cautioned against in their dissenting opinion in *U.S. v. Sokolow*, 490 U.S. 1, 13014 (1989).

> "This risk is enhanced by the profile's 'chameleon-like way of adapting to any particular set of observations.' 831 F. 2d 1413, 1418 (CA9 1987). Compare, e. g., *United States v. Moore*, 675 F. 2d 802, 803 (CA6 1982) (suspect was first to deplane), cert. denied, 460 U.S. 1068 (1983), with *United States v. Mendenhall*, 446 U.S. 544, 564 (1980) (last to deplane), with *United States v. Buenaventura-Ariza*, 615 F. 2d 29, 31 (CA2 1980) (deplaned from middle); *United States v. Sullivan*, 625 F. 2d 9, 12 (CA4 1980) (one-way tickets), with *United States v. Craemer*, 555 F. 2d 594, 595 (CA6 1977) (round-trip tickets), with *United States v. McCaleb*, 552 F. 2d 717, 720 (CA6 1977) (nonstop flight), with *United States v. Sokolow*, 808 F. 2d 1366, 1370 (CA9), vacated, 831 F. 2d 1413 [14] (1987) (case below) (changed planes); *Craemer*, supra, at 595 (no luggage), with *United States v. Sanford*, 658 F. 2d 342, 343 (CA5 1981) (gym bag), cert. denied, 455 U.S. 991 (1982), with *Sullivan*, supra, at 12 (new suitcases); *United States v. Smith*, 574 F. 2d 882, 883 (CA6 1978) (traveling alone), with *United States v. Fry*, 622 F. 2d 1218, 1219 (CA5 1980) (traveling with companion); *United States v. Andrews*, 600 F. 2d 563, 566 (CA6 1979) (acted nervously), cert. denied sub nom. *Brooks v. United States*, 444 U.S. 878 (1979), with *United States v. Himmelwright*, 551 F. 2d 991, 992 (CA5) (acted too calmly), cert. denied, 434 U.S. 902 (1977).

35. Here, Trooper Ranieri could have just as easily assigned suspicion to Defendant Doe placing his personal keys on the key-ring of the vehicle he had admittedly borrowed - and thus did not drive regularly - as to assign suspicion to the observation of the ***single*** key on the key-ring. This 'chameleon-like way of adapting to any particular set of observations' contributes nothing to this court's determination of reasonable suspicion to support continued detention of Mr. Doe and evidentiary search of his vehicle.

3. "Traveling on a known drug trafficking interstate and coming from a known drug source area heading to a large urban area (common distribution point for drugs);

36. The Tenth Circuit affords little or no weight to travel to or from a "source"

location in the reasonable suspicion analysis. See: *United States v. Lopez*, 518 F.3d 790, 799 (10th Cir. 2008). See also: *United States v. Guerrero*, 472 F.3d 784, 788 (10th Cir. 2007) ("The fact that the defendants were traveling from a drug source city . . . [or state] does little to add to the overall calculus of suspicion."); *United States v. Santos*, 403 F.3d 1120, 1132 (10th Cir. 2005) ("If travel between two of this country's largest population centers is a ground on which reasonable suspicion may be predicated, it is difficult to imagine an activity incapable of justifying police suspicion and an accompanying investigative detention.")

37. Moreover, because law enforcement officers among the Federal circuits have offered countless cities as drug source cities and countless others as distribution cities, the probative value of a particular defendant's route is minimal. See: *United States v. Beck*, 140 F.3d 1129, 1138 n.3 (8th Cir. 1998) (collecting cases in which law enforcement has declared nearly every large urban area to be a drug source city). See also: *United States v. Karam*, 496 F.3d 1157, 1163 (10th Cir. 2007); *United States v. Guerrero*, 472 F.3d 784, 787-88 (10th Cir. 2007); *Santos*, 403 F.3d at 1132; see also *Williams*, 271 F.3d at 1270 ("Standing alone, a vehicle that hails from a purported known drug source area is, at best, a weak factor in finding suspicion of criminal activity.")

38. Moreover, "the mere fact that one hails from a state known for drug trafficking is not sufficient to support reasonable suspicion unless the detainee is attempting to conceal the fact that he had come from a drug source area." *United States v. Salzano*, 158 F.3d 1107, 1998 (10th Cir. 1998). Here, Doe readily acknowledged that he lived in California and that he was traveling from that state to visit family in Kansas City.

4. "Fast food wrappers on the front passenger seat (indicative of long stretches of over the road travel)."

39. In *United States v. Wood*, 106 F.3d 942, (10th Cir. 1997) the Court acknowledged that "remnants from fast-food restaurants can probably be found on the floor of many cars traveling the interstate highways, including many traveling eastbound on Interstate 70." 106 F.3d at 947. The Court also cited *Karnes v. Skrutski*, 62 F.3d 485, 496 (3d Cir. 1995) for the well accepted proposition that fast-food wrappers "have become ubiquitous in modern interstate travel and do not serve to separate the suspicious from the innocent traveler." The *Wood* court concluded that "the … vestiges of fast-food meals describes a very large category of presumably innocent travelers, *Reid v. Georgia*, 448 U.S. 438, 441, 65 L. Ed. 2d 890, 100 S. Ct. 2752 (1980), and any suspicion associated with these items is virtually nonexistent." 106 F.3d at 947. Here, 'fast food wrappers on the front passenger seat indicative of long stretches of over the road travel' are entirely consistent with Mr. Doe's voluntarily reported travel itinerary from California to Kansas City and offer no particularized basis for reasonable suspicion of criminal activity.

III. The Continued Encounter was Not Consensual

40. Courts recognize three categories of police-citizen encounters. *United States v. Madrid*, 30 F.3d 1269, 1275 (10th Cir. 1994). The first category "involves the voluntary cooperation of a citizen in response to non-coercive questioning." *Id*. "A consensual encounter is the *voluntary cooperation* of a private citizen in response to non-coercive questioning by a law enforcement officer." *United States v. West*, 219 F.3d 1171, 1176 (10th Cir. 2000) (emphasis added and quotation marks and citation omitted). Whether an encounter is consensual "depends on whether the police conduct would have conveyed to a reasonable person that he or she was not free to decline the officer's requests or otherwise terminate the encounter." *Id*. (quotation marks and citation omitted). Because Ranieri lacked objective reasonable suspicion to extend

Mr. Doe's detention for the time necessary to conduct a canine sniff of his vehicle, said detention can only be justified by valid consent.

41. The second category of police-citizen encounter is a Terry stop, "involving only a brief, non-intrusive detention and frisk for weapons when officers have a reasonable suspicion that the defendant has committed a crime or is about to do so." *Madrid*, 30 F.3d at 1275. The third category involves custodial arrest. In *Madrid*, the 10th Circuit Court of Appeals explained:

> "[I]n order to determine whether a particular encounter constitutes a seizure, a court must consider all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers' requests or otherwise terminate the encounter." *Id*. at 1276 (alteration in original) (quoting *United States v. Little*, 18 F.3d 1499, 1503 (10th Cir. 1994)).

The determination is based on the totality of the circumstances and the inquiry is objective in nature; the subjective perceptions of the suspect are not determinative. *United States v. Rogers*, 556 F.3d 1130, 1137-38 (10th Cir. 2009).

42. "[A]s a general rule any evidence obtained as a result of [an unlawful] detention must be excluded as fruit of the poisonous tree." *United States v. Santana-Garcia*, 264 F.3d 1188, 1191 (10th Cir. 2001); see also *United States v. Elliott*, 107 F.3d 810, 813 (10th Cir. 1997) (holding that after a traffic stop ends, and absent reasonable suspicion or voluntary consent to additional questioning, "any evidence derived from that questioning (or a resulting search) is impermissibly tainted in Fourth Amendment terms") (quotation omitted); *United States v. Maestas*, 2 F.3d 1485, 1493 (10th Cir. 1993) (noting that, despite defendant's consent to search, "the evidence obtained from the resulting search might be excludable if the consent was obtained during an illegal detention").

1. Doe's Repeated Attempts to Leave After the Conclusion of the Traffic Stop.

43. Field video of the subject traffic stop documents Doe's repeated attempts to be on

his way *after* Ranieri returned his documents and 'thanked him for his time.' After Ranieri concludes the traffic stop, Doe exits his vehicle to wipe the dirt from the rear license plate. Because there is no audio accompanying this portion of the field video, it is unknown if Mr. Doe decided *sua sponte* to exit the vehicle and attempt to clean the license plate or if this action was at the direction of Trooper Ranieri. However, Ranieri did suggest at the inception of the traffic stop that Doe clean the license plate.

44. Doe then returns to the driver's seat and attempts to start his vehicle, as demonstrated by illumination of the brake lights. However, Trooper Ranieri physically places his body within the area between the open driver's door and the vehicle effectively preventing Doe from closing the door. It is at this point that backing Trooper Jimerson arrives.

45. Trooper Ranieri directs Doe to step out of the vehicle and Ranieri conducts a pat-down search of Doe. No reasonable person would 'feel free to decline the officers' requests or otherwise terminate the encounter' while being directed to exit their vehicle and submit to pat down search. At this point, Ranieri had made no additional observations and developed no additional basis for continued detention beyond those observations made prior to concluding the traffic stop and 'thanking Doe for his time.' As set forth *supra.*, even when considered in the light most favorable to the government, said factors fail to rise to the level of particularized reasonable suspicion to justify continued detention.

46. After the pat down search, Doe *again* attempts to re-enter the vehicle, but Ranieri gestures to Doe not to get in the car and instead to return to the rear of the vehicle where Trooper Jimerson was standing. Again, no reasonable person would feel 'free to decline the officers' requests or otherwise terminate the encounter' while being directed not to get back into their vehicle and instead to stand at the rear of the vehicle with a backing officer.

47. Ranieri reports that in response to his request to look in the trunk of Doe's vehicle, "Doe consensually stated 'yeah' and he then popped open the trunk." However, based on the events occurring after Ranieri 'thanked Doe for his time' and Ranieri's request to see inside the trunk, it is clear that the interaction was not consensual. Doe made two overt attempts to get in his vehicle and be on his way *after* the conclusion of the traffic stop and *before* Ranieri's request to see in the trunk. However, Ranieri physically prevented each such attempt. For that reason, the continued interaction was not 'consensual' and any observations made after Doe's first attempt to be on his way are properly excluded from consideration in the 'reasonable suspicion' analysis.

2. Observations Related to the Amount of Luggage in Doe's Trunk.

48. Ranieri reports "I observed a small overnight bag in the trunk, Doe seemed to have an insufficient amount of luggage for the stated trip from California to Kansas City." Because this observation occurred during a continued unlawful detention not supported by articulable reasonable suspicion or valid consent, said observation cannot be included in the 'reasonable suspicion' analysis. However, even if this observation were to be included in the 'reasonable suspicion' analysis, it would contribute nothing to support continued detention of Doe and evidentiary search of his vehicle. Here, Mr. Doe told Trooper Ranieri that he was traveling to visit his aunt in Kansas City, Kansas. While one may be reasonably expected to have a requisite amount of luggage while staying in hotels or motels as a tourist, said expectation does not reasonably apply to family visits during which one would likely have access to laundry facilities. Additionally, it would not be unusual or uncommon for people to keep limited personal effects at a relative's home such that they would not need to pack the same amount of luggage as would otherwise be necessary.

49. For the foregoing reasons, the 10th Circuit Court of Appeals attaches limited significance to the size or amount of luggage associated with a defendant's proffered travel plans as an indicator of reasonable suspicion. See: *United States v. Karam*, 496 F.3d 1157 (10th Cir. 2007). There, the Court stated: "[w]hile this court recognizes even seemingly innocent factors may be relevant to the reasonable suspicion determination, 'some facts are so innocuous and so susceptible to varying interpretations that they carry little or no weight.'" *Id.* at 1163 citing: *United States v. Mendez*, 118 F.3d 1426, 1431 (10th Cir. 1997) (internal quotation omitted). The *Karam* Court elaborated: "[b]ecause there are many reasons a person may choose to travel lightly, the size of the luggage in Karam's vehicle must be given only the slightest weight, if any. See *Reid v. Georgia*, 448 U.S. 438, 441, 100 S. Ct. 2752, 65 L. Ed. 2d 890 (1980) (characterizing a lack of luggage as a circumstance that could "describe a very large category of presumably innocent travelers"). *Id*.

3. Doe Specifically Denied Consent to Search the Interior of his Vehicle.

50. After Doe closed the trunk of his vehicle, Ranieri asked for consent to search inside the passenger compartment of the vehicle. In response to this request, Ranieri reports: "*Doe stated he did not want me looking inside the vehicle*." Ranieri further reports that "Doe stated he was already searched by the police in Colby, KS at a motel and stated he did not need to be searched again." Neither Doe's refusal to consent to further search nor Doe's statement regarding earlier search of the vehicle contribute to the 'reasonable suspicion' analysis.

51. The government cannot have it both ways. To the extent Ranieri had engaged Doe in a valid 'consensual' encounter at the time he requested permission to search the interior of the vehicle, then Doe necessarily must have been allowed to decline the request and be on his way, as the ability to 'decline the officer's requests or otherwise terminate the encounter' is the

very cornerstone of a legitimately 'consensual' encounter. To the extent Doe was deprived of the ability to 'decline the officer's requests or otherwise terminate the encounter' then he was necessarily subject to detention unsupported by valid, objective reasonable suspicion.

52. Moreover, refusal to consent to a search cannot itself form the basis for reasonable suspicion. See: *United States v. Santos*, 403 F.3d 1120 (10th Cir. 2005) H.N. 3. See also; *U.S. v. Williams*, 271 F.3d 1262 (10th Cir. 2001) H.N. 15. (Defendant's refusal to consent to search of his vehicle at conclusion of traffic stop could not be considered in determining whether reasonable suspicion supported his continued detention while officer called canine drug unit for sniff search of vehicle.) "It should go without saying that consideration of such a refusal would violate the Fourth Amendment." *Santos*, 413 F.3d at 1125., citing: *United States v. Wood*, 106 F.3d 942, 946 (10th Cir. 1997). See also: *United States v. Dozal*, 173 F.3d 787, 794 (10th Cir. 1999); *United States v. Hunnicutt*, 135 F.3d 1345, 1350-51 (10th Cir. 1998). "If refusal of consent were a basis for reasonable suspicion, nothing would be left of Fourth Amendment protections. … A motorist who consented to a search could be searched; and a motorist who refused consent could be searched, as well." *Santos*, 403 F.3d at 1126. "With considerable understatement, this Court has observed that the requirements of reasonable suspicion and probable cause for warrantless searches and seizures 'would be considerably less effective if citizens' insistence that searches and seizures be conducted in conformity with constitutional norms could create the suspicion or cause that renders their consent unnecessary.'" *Id*. citing *Hunnicutt*, 135 F.3d at 1351.

53. Finally, a person has the right to limit the scope of his consent, if given. See: *United States v. Marquez*, 337 F.3d 1203, 1207 (10th Cir. 2003). "However suspicious the tailoring of consent may be as a matter of common sense, it cannot be a basis for 'reasonable

suspicion' under the Fourth Amendment, lest the very idea of voluntary consent be rendered fictional." *Santos*, 403 F.3d at 1126. Thus, the fact that Doe allowed officers to look in the trunk of his vehicle but declined officer's request to search the passenger compartment cannot be considered as part of the reasonable suspicion analysis.

IV. Caselaw Analysis

54. The case at bar is directly analogous to *United States v. Wood*, 106 F.3d 942 (10th Cir. 1997). There, Kansas Highway Patrol Trooper Richard Jimerson – who participated in the search and arrest in the case at bar – stopped defendant Wood on Interstate 70 for speeding. Trooper Jimerson observed fast-food restaurant wrappers along with an open map in the car as he spoke with Mr. Wood at the driver's side window. Jimerson also reported that Mr. Wood was 'extremely nervous' during the traffic stop. When asked, Mr. Wood stated that he had rented the car in San Francisco, and produced the rental papers. Trooper Jimerson told Mr. Wood that he had been stopped for speeding, and then returned to the patrol car to fill out a warning citation.

55. A computer check on Mr. Wood's driver's license as well as a criminal history check confirmed that Wood's license was valid and that had no active warrants for his arrest. Upon examination of the rental documents, Trooper Jimerson found that Wood had rented the vehicle in Sacramento, not San Francisco. Based on this discrepancy, Jimerson asked Mr. Wood to join him in the patrol car. Mr. Wood promptly corrected his error, and confirmed that the car had indeed been rented in Sacramento. Although the rental papers indicated that the car was due back in Sacramento the following day, Mr. Wood explained that he was traveling in the car only one way, and that the rental company was aware of his plans.

56. Trooper Jimerson then completed the warning ticket, returned the driver's license

and rental papers to Mr. Wood, and told him he was free to go. However, as Mr. Wood began to exit the patrol car, the trooper inquired if he could ask him a few questions. Trooper Jimerson asked if Mr. Wood had any narcotics or weapons, which Wood denied. *The trooper asked Mr. Wood if he would consent to a search of his car, and Wood declined*. At this point, eight to ten minutes after the initial traffic stop, and after having failed to obtain voluntary consent to search, Trooper Jimerson told Mr. Wood that he was detaining the car and its contents in order to subject it to a canine sniff. A search of the vehicle following a positive alert by the canine unit resulted in the discovery of marijuana.

57. In reversing the trial court's denial of Mr. Wood's motion to suppress evidence, the 10th Circuit Court of Appeals examined each of the factors cited by Trooper Jimerson in support of his finding 'reasonable suspicion' to detain Mr. Wood for a canine sniff of his vehicle. The first factor Jimerson relied upon was Mr. Wood's 'unusual' travel plans: specifically, Wood had flown one-way to California to visit family and was driving home to the Midwest. The Court acknowledged that while it is true that unusual travel plans may provide limited indicia of reasonable suspicion, Mr. Wood's travel plans were simply "not the sort of unusual plans which give rise to reasonable suspicion of criminal activity." 106 F.3d at 947. Wood told the trooper he was taking a vacation. The Court noted that Mr. Wood "had a valid driver's license and presented papers which proved his authority to operate the car, which had been rented in his own name." *Id*.

58. Jimerson also assigned suspicion to Mr. Wood's error in identifying the city where he had rented his car. The Court initially acknowledged that "inconsistencies in information provided to the officer during the traffic stop may give rise to reasonable suspicion of criminal activity. See *United States v. Kopp*, 45 F.3d 1450, 1453-54 (10th Cir.), cert. denied,

131 L. Ed. 2d 579, 115 S. Ct. 1721 (1995); *United States v. Sanchez-Valderuten*, 11 F.3d 985, 989 (10th Cir. 1993)." However, the Court found that Mr. Wood's error in identifying the city where he rented the car was not the sort of inconsistency that reasonably supports an inference of criminal activity. "Once Mr. Wood corrected his error, suspicious inconsistencies virtually evaporated and any justification his error yielded for further investigation dissipated." *Id*.

59. Trooper Jimerson also testified that the presence of fast food wrappers and open maps in the passenger compartment contributed to his 'reasonable suspicion' of criminal activity. The Court found that because Mr. Wood informed the trooper of his cross-country travel itinerary, "the presence of open maps in the passenger compartment is not only consistent with his explanation, but is entirely consistent with innocent travel such that, in the absence of contradictory information, it cannot reasonably be said to give rise to suspicion of criminal activity. See *Karnes v. Skrutski*, 62 F.3d 485, 495 (3d Cir. 1995)." The Court also noted that "Remnants from fast-food restaurants can probably be found on the floor of many cars traveling the interstate highways, including many traveling eastbound on Interstate 70. See *Karnes*, 62 F.3d at 496 (Fast-food wrappers 'have become ubiquitous in modern interstate travel and do not serve to separate the suspicious from the innocent traveler.)" Thus, the Court concluded: "The possession of open maps and the vestiges of fast-food meals describes a very large category of presumably innocent travelers, and any suspicion associated with these items is virtually nonexistent." *Id*. (Internal citation omitted)

60. Another factor upon which Trooper Jimerson relied heavily in his decision to detain Mr. Wood was Jimerson's own subjective assessment of Mr. Wood's nervousness during the traffic stop. The Court noted that "it is certainly not uncommon for most citizens - whether innocent or guilty - to exhibit signs of nervousness when confronted by a law enforcement

officer. See *Fernandez*, 18 F.3d at 879; *Lambert*, 46 F.3d at 1070-71; *United States v. Millan-Diaz*, 975 F.2d 720, 722 (10th Cir. 1992); *United States v. Hall*, 978 F.2d 616, 621 & n.4 (10th Cir. 1992)." The Court also noted that Trooper Jimerson had no prior acquaintance with Mr. Wood which enabled the trooper to contrast Mr. Wood's behavior during the traffic stop with his usual demeanor. See: *Hall*, 978 F.2d at 621. The Court concluded

> "We have repeatedly held that nervousness is of limited significance in determining reasonable suspicion and that the government's repetitive reliance on . . . nervousness . . . as a basis for reasonable suspicion . . . must be treated with caution." *Fernandez*, 18 F.3d at 879 (citation omitted). Thus, Mr. Wood's demeanor during the detention must be discounted given the generic claim of nervousness." 106 F.3d at 948.

61. The remaining factor upon which Trooper Jimerson relied was Mr. Wood's prior narcotics convictions. At the time he detained Mr. Wood, dispatch had informed Jimerson that Wood had a narcotics record. Jimerson inquired about that record, and Mr. Wood promptly and truthfully responded to the inquiries. In assessing this basis for continued detention, the Court stated: "We have previously cautioned that prior criminal involvement alone is insufficient to give rise to the necessary reasonable suspicion to justify shifting the focus of an investigative detention from a traffic stop to a narcotics or weapons investigation. If the law were otherwise, any person with any sort of criminal record . . . could be subjected to a Terry-type investigative stop by a law enforcement officer at any time without the need for any other justification at all." *Id*., (internal citations omitted). The Court concluded: "Given the near-complete absence of other factors which reasonably gave rise to suspicion, the fact that Mr. Wood had previously been convicted of narcotics violations adds little to the calculus." *Id*.

62. In reversing the district court's denial of Mr. Wood's motion to suppress evidence, the 10th Circuit held that "reliance on the mantra 'the totality of the circumstances' cannot metamorphose these facts into reasonable suspicion." *Id*. (Emphasis added) The Court

acknowledged that "although the nature of the totality of the circumstances test makes it possible for individually innocuous factors to add up to reasonable suspicion, it is 'impossible for a combination of wholly innocent factors to combine into a suspicious conglomeration unless there are concrete reasons for such an interpretation.'" *Id*., (citing *Karnes*, 62 F.3d at 496). (Emphasis added) The Court concluded: "To sanction a finding that the Fourth Amendment permits a seizure based on such a weak foundation would be tantamount to subjecting the traveling public to virtually random seizures, inquisitions to obtain information which could then be used to suggest reasonable suspicion, and arbitrary exercises of police power. *Reid*, 448 U.S. at 441; *United States v. Johnson*, 63 F.3d 242, 247 (3d Cir. 1995), cert. denied, 116 S. Ct. 2528 (1996)."

63. Equally analogous to the case at bar is *United States v. Kaguras*, 183 Fed. Appx. 783, 2006 U.S. App. LEXIS 14479 (10th Cir. Wyo. 2006). There, a Wyoming Highway Patrol Trooper initiated a traffic stop of the vehicle Mr. Kaguras was driving for failure to signal a lane change. Mr. Kaguras provided his valid driver's license and along with valid rental documentation for the vehicle. The trooper testified that Mr. Kaguras appeared "pale" and "nervous" during the traffic stop. The trooper also testified that he smelled a "strong odor" of air freshener while speaking with Mr. Kaguras and observed partially eaten food in the vehicle.

64. The Trooper informed Mr. Kaguras of the reason for the stop and inquired about his travel plans. Mr. Kaguras told the trooper that he was heading to Chicago from Seattle, where he would be visiting his girlfriend. The trooper observed two large plastic containers in the back of the suburban, as well as a large suitcase and red duffel bag.

65. The trooper returned to his patrol car, called in Mr. Kaguras' license information and also summoned canine backup. When dispatch reported that Mr. Kaguras' license was valid, the trooper prepared a warning ticket and returned to speak to Mr. Kaguras. The trooper gave

Mr. Kaguras the warning and his driver's license, but retained the rental contract. He continued to question Mr. Kaguras about his travel plans before ultimately returning the rental contract to Mr. Kaguras.

66. After returning the rental documents, the trooper asked Mr. Kaguras if he would be willing to answer additional questions. *Mr. Kaguras said no*, and asked if they were done. The trooper again indicated that he would like to ask some more questions and *Mr. Kaguras twice stated that he would like to continue on his way*. The trooper told Mr. Kaguras to 'hold on' and informed Mr. Kaguras that they were going to allow the canine to conduct an exterior sniff of the vehicle. The canine alerted, and officers found 110 pounds of marijuana.

67. The district court denied Mr. Kaguras' motion to suppress, finding that the trooper had developed reasonable suspicion by the time he returned Mr. Kaguras' documents, thereby justifying continued detention. Specifically the district court relied on the following factors as providing reasonable suspicion for the continued detention: (1) Mr. Kaguras' travel plans were inconsistent with the rental contract's requirement that the vehicle be returned to Seattle; (2) the strong scent of air freshener; (3) Mr. Kaguras was so nervous that his left leg shook; (4) travel from a known drug source to a known drug destination; (5) Seattle's proximity to British Columbia; (6) partially eaten food in the car as evidenced by food wrappers; and (7) large luggage, 'the very size of which would make an officer suspicious.' However, on appeal, the government elected not to rely on factors (4), (5), and (6), conceding that said factors are deemed to be so weak that they did not provide suspicion of criminal activity.

68. In reversing the district court's denial of Mr. Kaguras' motion to suppress, the 10th Circuit Court of Appeals initially noted: "If the trooper in this case detained Mr. Kaguras after the purpose of the traffic stop was accomplished, with neither consent nor reasonable

suspicion, then the fruits of that detention are inadmissible. See: *Wong Sun v. United States*, 371 U.S. 471, 484, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963)." While both the Trooper and the government argued that Mr. Kaguras' nervousness was the strongest factor for finding valid reasonable suspicion, the Court dismissed the significance of this observation, noting "nervousness is a sufficiently common - indeed natural - reaction to confrontation with the police," and is of 'limited significance' in our reasonable suspicion analysis. *United States v. Santos*, 403 F.3d 1120, 1127 (10th Cir. 2005)"

69. The government also argued that Mr. Kaguras' failure to show sufficient relief after receiving a warning also was indicative of continued nervousness and reasonable suspicion. However, the Court noted that when the trooper observed this lack of relief, the trooper had already issued the warning and was detaining Mr. Kaguras after he had fulfilled the "mission" of the original, justified stop. The Court held that "observations made during an illegal detention cannot be used to bootstrap reasonable suspicion" and declined to consider Mr. Kaguras' alleged 'continued nervousness' in its analysis.

70. The Court cited the following language from *Santos*, supra., in its consideration of Mr. Kagura's travel from a source state to a distribution center for narcotics: "If travel between two of this country's largest population centers is a ground on which reasonable suspicion may be predicated, it is difficult to imagine an activity incapable of justifying police suspicion and an accompanying investigative detention." *Santos*, 403 F.3d at 1132. The Court noted that "travel between major cities is perhaps the weakest factor in the totality of circumstances analysis, and is entitled to practically no weight."

71. Similarly, the Court discounted the observation of fast food wrappers in Mr. Kagura's vehicle. Also unavailing is the trooper's observations of food wrappers in the car, and

the district court's reliance thereon. Citing *United States v. Bradford*, 423 F.3d 1149, 1157 (10th Cir. 2005), the Court noted: "[F]ast food wrappers have become ubiquitous in modern interstate travel and do not serve to separate the suspicious from the innocent traveler.") The Court determined that "the suspicion associated with fast food wrappers is 'virtually nonexistent.'" *United States v. Wood*, 106 F.3d 942, 947 (10th Cir. 1997).

72. The Court ultimately held:

> "As a whole, in totality, these factors do not give rise to objective, reasonable suspicion. Although we will consider factors that could have an innocent explanation, there must be something to indicate that criminal activity is afoot. While state troopers' training and experience are important, suspicions and hunches like those proffered here are insufficient as a matter of law. *Wood*, 106 F.3d at 946. The trooper did not have a proper basis for reasonable suspicion and his detention of Mr. Kaguras after he issued the warning was in violation of the Fourth Amendment. Accordingly, the district court should have granted the motion to suppress."

CONCLUSION

73. In the case at bar, the basis for the traffic stop was Ranieri's proffered inability to read the license plate on Mr. Doe's vehicle. After initiating the traffic stop, Doe produced a valid driver's license and valid registration for the vehicle. Ranieri determined that the license plate was properly assigned to the vehicle and further determined that the vehicle had not been reported missing or stolen. Mr. Doe was free of any warrants for his arrest. Ranieri observed no contraband in plain view and detected no odors associated with impairment (alcohol) or contraband (marijuana).

74. Ranieri issued a warning citation and indicated to Doe that he was free to leave by

'thanking him for his time.' However, when Doe attempted to 'be on his way, free from further detention,' Ranieri physically prevented Doe from leaving by positioning himself in such a manner that Doe was unable to close the driver's door to the vehicle. Ranieri physically prevented Doe from leaving on 3 separate occasions after the purpose of the stop was satisfied. Although Doe ultimately opened the trunk of his vehicle, it cannot be said that he did so consensually. Observation of the contents of the trunk contributed nothing to the 'reasonable suspicion' analysis. Doe specifically declined Ranieri's request to continue searching after looking in the trunk of the vehicle. The 10th Circuit Court of Appeals has specifically discounted each of the factors Ranieri cites for his 'suspicion' of Doe. Ranieri's continued detention of Doe was wholly unsupported by probable cause an equally unsupported by valid consent.

WHEREFORE the Defendant moves this Court for an Order suppressing all evidence unlawfully obtained in the above captioned matter.

Respectfully submitted,

BY /S/ Paul D. Cramm

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CERTIFICATE OF SERVICE

I certify that on this 9th day of May, 2014 a copy of the above and foregoing was filed

with the clerk of court utilizing the ECF system with a copy delivered electronically to Assistant United States Attorney Randy M. Hendershot, U.S. Attorney's Office - Topeka, 444 S.E. Quincy, Ste. 290, Topeka, KS 66683.

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