

No. 08-51128

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

UNITED STATES OF AMERICA

Plaintiff-Appellee,

v.

ALDO ANTONIO HERNANDEZ-MOYA,

Defendant-Appellant.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS**

BRIEF FOR THE UNITED STATES OF AMERICA

JOHN E. MURPHY
Acting United States Attorney

TRIAL ATTORNEY
KERRY A. FLECK
Assistant United States
Attorney

ANGELA S. RABA
Assistant United States Attorney
Western District of Texas
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216
(210) 384-7090

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RECOMMENDATION ON ORAL ARGUMENT

The United States of America suggests that the issue presented can be determined upon the briefs and record, and that oral argument would not aid significantly the decisional process. *See* FED. R. APP. P. 34(a)(3).

TABLE OF CONTENTS

	<u>Pages</u>
RECOMMENDATION ON ORAL ARGUMENT	ii
LIST OF AUTHORITIES	iv
JURISDICTION	1
STATEMENT OF THE ISSUE	2
STATEMENT OF THE CASE	2
A. Course of Proceedings and Disposition in the Court Below	2
B. Statement of Facts	3
SUMMARY OF THE ARGUMENT	7
ARGUMENT AND AUTHORITIES	8
THE DISTRICT COURT PROPERLY FOUND THAT THE VEHICLE STOP WAS SUPPORTED BY REASONABLE SUSPICION BASED UPON ARTICULABLE FACTS	8
CONCLUSION	20
CERTIFICATE OF SERVICE	21

LIST OF AUTHORITIES

<u>Cases</u>	<u>Pages</u>
<i>Terry v. Ohio</i> , 392 U.S. 1 (1970)	9
<i>United States v. Brignoni-Ponce</i> , 422 U.S. 873 (1975)	9, 10, 16, 20
<i>United States v. Cardona</i> , 955 F.2d 976 (5th Cir. 1992)	10-12, 14
<i>United States v. Casteneda</i> , 951 F.2d 44 (5th Cir. 1992)	11
<i>United States v. Cortez</i> , 449 U.S. 411 (1981)	9-11
<i>United States v. Garcia</i> , 732 F.2d 1221(5th Cir. 1984)	17
<i>United States v. Guerrero-Barajas</i> , 240 F.3d 428 (5th Cir. 2001)	14
<i>United States v. Inocencio</i> , 40 F.3d 716 (5th Cir. 1994)	9, 10
<i>United States v. Jacquinot</i> , 258 F.3d 423 (5th Cir. 2001)	10, 11, 13, 14, 15
<i>United States v. Lopez</i> , 911 F.2d 1006 (5th Cir. 1990)	11, 14
<i>United States v. Morales</i> , 191 F.3d 602 (5th Cir. 1999)	10, 18, 19
<i>United States v. Orona-Sanchez</i> , 648 F.2d 1039 (5th Cir. 1981)	18
<i>United States v. Orozco</i> , 191 F.3d 578 (5th Cir. 1999)	10, 18
<i>United States v. Salazar-Martinez</i> , 710 F.2d 1087 (5th Cir. 1983)	12
<i>United States v. Sokolow</i> , 490 U.S. 1 (1989)	11
<i>United States v. Villalobos</i> , 161 F.3d 285 (5th Cir. 1998)	14
<i>United States v. Villarreal</i> , 565 F.2d 932 (5th Cir. 1978)	17

LIST OF AUTHORITIES CONTINUED

Cases

Pages

United States v. Zapata-Ibarra, 212 F.3d 877 (5th Cir. 2000) 12

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JURISDICTION

This is a direct appeal from a final judgment of the district court in a criminal case. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1291.

STATEMENT OF THE ISSUE

Whether the district court properly found that the vehicle stop by Border Patrol agents was supported by reasonable suspicion based on articulable facts.

STATEMENT OF THE CASE

A. Course of Proceedings and Disposition in the Court Below

On or about May 28, 2008, a federal grand jury sitting in the Midland-Odessa division of the Western District of Texas, returned a two-count indictment charging Appellant Aldo Antonio Hernandez-Moya (hereinafter "Appellant") with one count of transporting illegal aliens for financial gain, in violation of 8 U.S.C. § 1324(a)(1)(A)(ii) and 1324(a)(1)(B)(i) (count one), and one count of possession of a counterfeit alien registration receipt card Form I-551, and a counterfeit Social Security Card as evidence of authorized stay or employment in the United States, in violation of 18 U.S.C. § 1546(a) (count two) (1 R. 42-43).¹ Appellant filed a motion to suppress evidence and statements and a hearing on the motion was held on July 24, 2008 (1 R. 24-27; 2 R. 86-128). After the hearing, the motion to suppress was denied by the district court (1 R. 63-71).

¹ References to the Record on Appeal are designated by the number of the record volume followed by "R" and the pertinent page number(s).

On July 24, 2008, Appellant entered into a plea agreement with the Government wherein he agreed to plead guilty to both counts of the indictment, but he retained his right to appeal the motion to suppress (1 R. 56-58). On the same date, Appellant entered his conditional plea of guilty (1 R. 75; 2 R. 126-127). Appellant was sentenced on October 22, 2008, at which time the district court imposed a sentence of "time served" on each of counts one and two, to be served concurrently, followed by concurrent three year terms of supervised release (1 R. 75-77). A fine was waived as to each count, but Appellant was ordered to pay a special assessment of \$100 on each count (1 R. 80). Appellant filed his notice of appeal on October 23, 2008 (1 R. 81).

B. Statement of Facts

On April 21, 2008, at 6:00 a.m., Agent Michael Meyer of the U.S. Border Patrol, and his partner, were observing eastbound traffic on Interstate 20, just east of Midland, Texas (2 R. 90-91). Agent Meyer testified that they were specifically on the look out for illegal alien smuggling activity on the route to Dallas, Texas (2 R. 91). Both Meyer and his partner were in a single vehicle, which is a marked Border Patrol vehicle described as a Chevy Tahoe, with lights in the front of the vehicle (2 R. 91).

Meyer testified that their Border Patrol vehicle was facing the eastbound traffic on Interstate 20, at an angle in the median so that the headlights of their vehicle

would light up the interiors of the vehicles as they passed (2 R. 91-92). Agent Meyer stated that Interstate 20 is a direct route from the El Paso area, and leads to Dallas and beyond (2 R. 92).

At 6:00 a.m. on April 21, 2008, a dark-colored Chevy Tahoe passed the location where Agent Meyer and his partner were stationed in the Border Patrol vehicle in Midland, County, Texas (2 R. 92, 100). The vehicle did not appear to be speeding (2 R. 102), but it attracted the agents' attention because it contained at least six occupants (2 R. 92, 103). The vehicle was equipped with three rows of seating and the passengers were located two in the front, two in the middle and two in the back (2 R. 92, 101). The occupants of the vehicle appeared to be Hispanic (2 R. 93, 103). Agent Meyers and his partner proceeded to follow the vehicle to observe it and to run checks on it (2 R. 93).

As they followed the vehicle, the vehicle was still not speeding (2 R. 102), but the agents observed that it was swerving slightly from side to side, and it slowed down considerably below the posted speed limit (2 R. 93, 105). This pattern of driving occurred after the agents had pulled in closely behind the vehicle (2 R. 93). According to Meyer, it appeared that the driver of the vehicle wanted the Border Patrol vehicle to pass it up (2 R. 93-94). The vehicle, however, did not weave outside the marked lane and did not commit a traffic violation (2 R. 104).

Meyer also testified that, after the Border Patrol unit pulled in behind the vehicle, he and his partner were no longer able to see all of the passengers that they had initially seen in the vehicle (2 R. 94, 105). In this regard, Meyer testified that, when the vehicle first drove by the Border Patrol vehicle, it was clearly illuminated and the agents were able to see the outlines of the occupants (2 R. 94-95). After the agents proceeded to follow the vehicle, they could only see the two individuals in the very front of the vehicle, those being the driver and the front seat passenger (2 R. 94, 105). This caught the agents' attention (2 R. 94). Based on this observation, Meyer testified that they came to the conclusion that the rear passengers had ducked down (2 R. 95).

Based on their observations up to this point, Agent Meyer and his partner ran vehicle checks on the vehicle, and it came back registered to Garland, Texas, which is near Dallas (2 R. 95). Meyer did not recall the specific individual that the vehicle was registered to (2 R. 95). After they ran the vehicle check, the agents initiated a stop of the vehicle (2 R. 96). Agent Meyer testified that it was an immigration stop and they suspected that there was an immigration violation (2 R. 96). The stop of the vehicle was made in Martin County, Texas (2 R. 100).

Upon stopping the vehicle, Agent Meyer personally made contact with the driver (2 R. 96). Meyer identified Appellant as the driver of the vehicle (2 R. 96).

After identifying himself as a Border Patrol agent, Meyer asked Appellant to state his citizenship (2 R. 96). Appellant did not respond (2 R. 96). Instead, he handed Agent Meyer a piece of paper which was the insurance paperwork for the vehicle (2 R. 96). Appellant appeared to be very nervous and had other paperwork that he was fumbling with (2 R. 97). Because Agent Meyer was not sure if Appellant had understood him, he asked Appellant in Spanish to state his country of citizenship (2 R. 97). Appellant appeared to understand that question and replied that he was Mexican (2 R. 97). Meyer then asked Appellant if he had immigration documents to be in the country and Appellant answered, "no." (2 R. 97). As a final question, Meyer asked Appellant if he was in the country illegally, at which time Appellant answered, "yes." (2 R. 97).

After learning that Appellant was in the country illegally, Agent Meyer conducted an inspection of the other passengers in the vehicle (2 R. 98). All of the passengers were in the United States illegally (2 R. 98). Including Appellant, there were six illegal aliens in the vehicle (2 R. 98).

Appellant was subsequently arrested and placed in the Border Patrol vehicle, at which time he was taken to the Border Patrol station in Midland, Texas (2 R. 98-99). At the station, Appellant was advised of his Miranda rights in Spanish (2 R. 99). Appellant indicated that he understood the rights that were read to him and agreed to

speak to Agent Meyer's partner (2 R. 99-100). Agent Meyer was not present during the interview (2 R. 100).

Immigration and Customs Enforcement ("ICE") subsequently assisted in the investigation (2 R. 100). Special Agent Stephen Pena testified that the Border Patrol agents who made the stop called ICE because they believed that commercial alien smuggling was involved (2 R. 107-108). Agent Pena responded to the Midland Border Patrol Office (2 R. 108). Agent Pena stated that he first interviewed the allegedly smuggled aliens to determine their story (3 R. 108). Pena further testified that all of the occupants of the vehicle were of Mexican descent (2 R. 108). Every one of them claimed to be natives and citizens of Mexico illegally in the United States (2 R. 109).

SUMMARY OF THE ARGUMENT

The district court properly found that the stop of Appellant's vehicle was supported by reasonable suspicion based on articulable facts. Because this case involves a roving Border Patrol stop, the analysis is governed by *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975) and *United States v. Cortez*, 449 U.S. 411 (1981). Although the stop of Appellant's vehicle was not made in close proximity to the border, the evidence showed that the stop was not based on a mere hunch that Appellant was involved in some type of illegal activity. Instead, the stop was based

on a combination of articulable factors, including: the combined experience of the agents, Appellant's behavior in slowing down and weaving when the agents began to follow his vehicle, the number of occupants initially observed by the agents, the Hispanic ethnicity of the occupants, the apparent attempt of some of the passengers to avoid detection by "ducking down" as the agents followed in the Border Patrol vehicle, the fact that the vehicle was driving in a direction which led away from the Mexican border, and the vehicle's registration in Garland, Texas, which indicated that the vehicle was not a local vehicle, but rather had traveled from and was returning to the Dallas, Texas area. Under the totality of the circumstances, and viewing the evidence in the light most favorable to the Government, the stop did not violate the Fourth Amendment. Accordingly, the district court properly denied Appellant's motion to suppress the evidence obtained as a result of the stop and his resulting arrest.

ARGUMENT AND AUTHORITIES

THE DISTRICT COURT PROPERLY FOUND THAT THE VEHICLE STOP WAS SUPPORTED BY REASONABLE SUSPICION BASED UPON ARTICULABLE FACTS

By his only issue on appeal, Appellant contends that the stop of his vehicle was unreasonable and made in violation of the Fourth Amendment. He therefore argues that the district court erred in denying his motion to suppress evidence obtained as a

result of the stop. Contrary to Appellant's contention, the evidence presented at the suppression hearing established reasonable suspicion to justify the stop.

A. Standard of Review.

The applicable standards are well established. This Court reviews the district court's factual findings under the clearly erroneous standard, viewing the evidence presented at the motion to suppress hearing in the light most favorable to the government. *See United States v. Inocencio*, 40 F.3d 716, 721 (5th Cir. 1994). This Court reviews the district court's conclusion that reasonable suspicion existed to stop the vehicle *de novo*. *Id.*

B. Applicable law.

Because this case involves a roving Border Patrol stop, the analysis is governed by *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975) and *United States v. Cortez*, 449 U.S. 411 (1981). *See United States v. Inocencio*, 40 F.3d at 722.² "A border

² Appellant argues that it was error for the trial court to apply the *Brignoni-Ponce* test. He contends that the district court should have applied the standard set forth in *Terry v. Ohio*, 392 U.S. 1 (1970). (Appellant's Brief at 8). In this regard, Appellant claims that the *Brignoni-Ponce* analysis should only be applied in cases involving close proximity to the border. (Appellant's Brief at 8). Additionally, he seems to argue that the application of the *Brignoni-Ponce* factors may violate the equal protection clause if a vehicle stop is based on the Hispanic ethnicity of the occupants. (Appellant's Brief at 9).

Contrary to Appellant's arguments, the district court properly applied the *Brignoni-Ponce* factors. The *Brignoni-Ponce* test does not authorize the detention of a vehicle merely because the occupants are Hispanic, but rather lists various factors which may be considered in determining the existence of reasonable suspicion in a roving Border Patrol stop, such as the stop in the instant case.

(continued...)

patrol agent conducting a roving patrol may make a temporary investigative stop of a vehicle only if the agent is aware of specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that the vehicle's occupant is engaged in criminal activity." *United States v. Jacquinot*, 258 F.3d 423, 427 (5th Cir. 2001), citing *Brignoni-Ponce*, 422 U.S. at 884 and *Cortez*, 449 U.S. at 417-18; see also *Inocencio*, 40 F.3d at 722; *United States v. Cardona*, 955 F.2d 976, 980 (5th Cir. 1992).

In determining whether border patrol agents conducting a roving patrol have reasonable suspicion to stop a vehicle, factors that may be considered include: (1) proximity to the border; (2) characteristics of the area; (3) unusual traffic patterns; (4) agents's previous experience in detecting illegal activity; (5) behavior of the driver; (6) particular aspects or characteristics of the vehicle; (7) information about recent illegal trafficking in aliens or narcotics in the area; and (8) the number, appearance, and behavior of the passengers. *Jacquinot*, 258 F.3d at 427; citing *Brignoni-Ponce*, 422 U.S. at 884-85; and *Inocencio*, 40 F.3d at 722. No single factor

²(...continued)

Moreover, this Court has applied the *Brignoni-Ponce* factors to cases involving border patrol officers on roving patrol, even if the stop occurred far from the border. See e.g. *United States v. Orozco*, 191 F.3d 578 (5th Cir. 1999)(stop took place 200-300 miles away from the border); *United States v. Morales*, 191 F.3d 602, 604 (5th Cir. 1999)(stop took place approximately 150 miles north of the border).

is controlling, and the absence of any particular factor is not determinative. *Cardona*, 955 F.2d at 980.

“The reasonable suspicion analysis is a fact-intensive test in which the court looks at all circumstances together to weigh not the individual layers, but the laminated total.” *Jacquinot*, 258 F.3d at 427 (citation omitted). “Factors that ordinarily constitute innocent behavior may provide a composite picture sufficient to raise reasonable suspicion in the minds of experienced officers.” *Id.*

The "totality of circumstances" is viewed in light of the agent's experience in evaluating the circumstances. *United States v. Casteneda*, 951 F.2d 44, 47 (5th Cir. 1992). The officer must be able to articulate something more than an “inchoate and unparticularized suspicion or hunch.” *United States v. Lopez*, 911 F.2d 1006, 1009 (5th Cir. 1990).

While reasonable suspicion may not be based on an isolated instance of innocent behavior, the Supreme Court has held when several innocent activities are considered together, they may amount to reasonable suspicion. *United States v. Sokolow*, 490 U.S. 1, 9 (1989). An officer may have reasonable suspicion to stop a vehicle based on facts that would elude an untrained person. *See Cortez*, 449 U.S. at 418. Moreover, this Court has stated that an officer need not eliminate all reasonable

possibility of innocent travel before conducting an investigatory stop. *United States v. Zapata-Ibarra*, 212 F.3d 877, 884 (5th Cir. 2000).

Reviewing the evidence before the district court in terms of the above-referenced factors, the district court's denial of Appellant's motion to suppress should be affirmed.

C. Border Patrol Agents Had Reasonable Suspicion to Stop Appellant's Vehicle.

The evidence reflects that Appellant's vehicle was first observed by Agent Meyer and his partner at 6:00 a.m., on Interstate 20, "just east" of Midland, Texas (2 R. 91). Agent Meyer testified that Interstate 20 is a direct route from the El Paso area to Dallas and beyond (2 R. 92). Meyer also testified that the vehicle driven by Appellant was registered to Garland, Texas, and was traveling east when it was stopped (2 R. 91, 95).

Although Appellant's vehicle was not in close proximity to the border when it was stopped, this Court has stated that proximity to the border is not controlling "if other articulable facts give rise to the requisite reasonable suspicion." *United States v. Salazar-Martinez*, 710 F.2d 1087, 1088 (5th Cir. 1983). Moreover, the absence of any factor is not determinative in the reasonable suspicion analysis. *See Cardona*,

955 F.2d at 980. Consideration of the totality of the circumstances in the instant case support the district court's denial of Appellant's motion to suppress.

Agent Meyer testified that he had been with the Border Patrol in Presidio, Texas for five and a half years, and, at the time of the stop, had been stationed in Midland, Texas for three weeks (2 R. 90, 97-98). Meyer also testified that his partner had "a lot more experience" than he did (2 R. 94). Meyer was not permitted to testify about what his partner thought about the circumstances relating to Appellant's vehicle, but it is clear from Meyer's testimony that his partner was present at the time of the stop and that his partner had experience with alien smuggling in the area (2 R. 91, 94).³ Although the district court found that Agent Meyer's minimal experience in the area was not a significant factor, it is arguable that the years of experience that Meyer had as a Border Patrol agent, coupled with his partner's more extensive experience as a Border Patrol agent in the Midland area weighs in favor of reasonable suspicion. *See Jacquinot*, 258 F.3d at 429 (holding that the agents' previous experience in detecting illegal activity supported the stop where one agent testified that he had three years experience serving as a Border Patrol agent in the Alpine area

³ Meyer testified that his partner had "a lot more experience" and began to testify about his partner's experience with alien smuggling activity in the area (2 R. 94). A defense objection sustained by the court, however, precluded Meyer from testifying about what his partner thought (2 R. 94).

and that another agent had eleven years experience as a Border Patrol agent, with a few months of that experience in the Alpine area). Indeed, in assessing reasonable suspicion, the totality of the circumstances includes the “collective knowledge” of all officers. *Lopez*, 911 F.2d at 1009.

This Court has also recognized, as noted by the district court in its order denying the motion to suppress, that a driver’s behavior in slowing down and weaving when followed can be a significant factor in the reasonable suspicion analysis (1 R. 66). In *Cardona*, 955 F.2d at 981, for example, several factors were considered by this Court, one of which was the fact that the vehicle had slowed down considerably and began weaving shortly after the agents began following it. Similarly, in *United States v. Guerrero-Barajas*, 240 F.3d 428, 433 (5th Cir. 2001), this Court held that Border Patrol agents had reasonable suspicion to stop a vehicle which had tinted windows, was driving at 12:30 a.m. along a known alien smuggling route 35 miles north of the border, was riding low, and the driver slowed down and began to swerve within his lane once the agents began to follow his vehicle. Additionally, in *United States v. Villalobos*, 161 F.3d 285, 291 (5th Cir. 1998), this Court stated that deceleration in response to the approach of a patrol car may be one factor contributing to the reasonable suspicion justifying a stop. As stated by this Court in *Jacquinot*, “[a]lthough deceleration in the presence of a patrol car may be

completely innocent behavior this court has noted that such behavior may be suspicious if the driver was not speeding when first observed.” *Jacquinet*, 258 F.3d at 429 (citing *Villalobos*, 161 F.3d at 291).

In the instant case, the evidence shows that Appellant was driving on Interstate 20, which is a direct route from El Paso to Dallas, Texas, at 6:00 in the morning (2 R. 91-92). Agent Meyer testified that the vehicle did not appear to be speeding at that time (2 R. 102). As Meyer and his partner pulled behind Appellant’s vehicle in their marked Border Patrol unit, Appellant’s vehicle “swerved slightly from side to side” and “slowed down considerably below the posted speed limit” (2 R. 93). By the reduction in the speed of Appellant’s vehicle, it appeared to Meyer that Appellant wanted the Border Patrol vehicle to pass him (2 R. 93-94). Although, in isolation, this manner of driving may be consistent with innocent behavior, such behavior was suspicious since the vehicle did not appear to be speeding when it initially passed the Border Patrol unit. Moreover, this conduct by Appellant weighs in favor of reasonable suspicion when considered in conjunction with the appearance and behavior of the passengers, as discussed below.

The appearance and behavior of the occupants in Appellant’s vehicle support also support a finding of reasonable suspicion. Agent Meyer testified that the headlights of the Border Patrol vehicle illuminated the interior of the vehicles which

drove past them on I-20 (2 R. 91-93). When the Chevy Tahoe driven by Appellant drove past the Border Patrol vehicle, the interior was clearly illuminated and the agents were able to see the occupants (2 R. 92-95). At that time, Agent Meyer and his partner observed that there were at least six occupants in the Tahoe (2 R. 92, 103). The occupants of the vehicle appeared to be of Hispanic ethnicity, and were seated two in the front, two in the middle and two in the back of the vehicle (2 R. 92-93, 103). The large number of occupants caught the attention of Agent Meyer and his partner (2 R. 92). As the agents began to follow Appellant's vehicle, they noticed that they could no longer see all of the passengers that they had initially seen in the vehicle (2 R. 94, 105). Instead of the six occupants they had initially seen, they could only see the two persons at the front of the vehicle (2 R. 94-95, 105). Meyer testified that this led him to conclude that the four passengers in the middle and rear of the vehicle had "ducked down" (2 R. 95).

Although ethnicity of a vehicle's occupants does not alone justify a reasonable belief that they are aliens, the Supreme Court has stated that it is a relevant factor. As explained by the Supreme Court in *Brignoni-Ponce*, "[t]he likelihood that any given person of Mexican ancestry is an alien is high enough to make Mexican appearance a relevant factor, but standing alone it does not justify stopping all Mexican Americans to ask if they are aliens." *Brignoni-Ponce*, 422 U. S. at 886-87.

In the instant case, the Hispanic ethnicity of the occupants in Appellant's vehicle was a relevant consideration but was not the sole factor supporting a reasonable suspicion that Appellant's vehicle was involved in the transportation of illegal aliens. Indeed, the fact that four passengers in the vehicle appeared to simultaneously "duck down" after they were followed by the Border Patrol agents supported a reasonable conclusion that they were trying to avoid detection. This Court has recognized that the behavior of "ducking down" by passengers in a vehicle is a factor which supports reasonable suspicion. *See e.g., United States v. Garcia*, 732 F.2d 1221, 1225 n. 1(5th Cir. 1984)(Although noting that other factors were present, this Court stated that it considered "the clearly evasive actions of the passengers in Garcia's camper as a significant factor in justifying the stop."); *Cf. United States v. Villarreal*, 565 F.2d 932, 936-937 (5th Cir. 1978)(where sensors detected two vehicles traveling north from the border in close proximity for approximately an hour, and where a vehicle with a CB antenna approached the border patrol checkpoint and agents saw the passenger duck below the dashboard and noticed that the driver and passenger appeared to be of Mexican descent, this court stated that officers could have reasonably inferred that the vehicle was a scout vehicle

for the second vehicle engaged in the transportation of illegal aliens).⁴ In this case, Agent Meyer and his partner could reasonably suspect that the four passengers in the middle and rear of Appellant's vehicle had ducked down to hide when they saw that the Border Patrol vehicle was following them.

Moreover, although the district court gave little weight to the characteristics of the area and to the characteristics of Appellant's vehicle, the record reflects that certain evidence relating to these factors also contribute to a finding of reasonable suspicion. Specifically, Agent Meyer testified that the vehicle was heading eastbound on I-20, just east of Midland, Texas, at the time it was observed by him and his partner (2 R. 91).⁵ Thus, it is clear that the vehicle was heading in a direction which

⁴ The Government notes that, in *United States v. Orona-Sanchez*, 648 F.2d 1039, 1041 (5th Cir. 1981), this Court stated that the fact that two passengers "sort of slouched down" while driving at night, after being startled by lights which suddenly flashed into the vehicle, did not lead to reasonable suspicion. As noted by the district court, however, the instant case is distinguishable from *Orona-Sanchez* because the passengers did more than merely "slouch" or "hunker down." Rather, the passengers in Appellant's vehicle, although initially visible, were no longer visible to Agent Meyer and his partner after the agents began to follow it in their Border Patrol unit (2 R. 94-95, 105). Such conduct demonstrates a clear attempt to avoid detection.

⁵ Although there was no evidence regarding the use of Interstate 20 for the transportation of illegal aliens or narcotics, the testimony of agents in prior cases decided by this Court have described I-20 as a route used for transporting illegal aliens and narcotics. *See, e.g., United States v. Morales*, 191 F.3d 602, 604 (5th Cir. 1999); *United States v. Orozco*, 191 F.3d 578, 582 (5th Cir. 1999). In *Morales*, for example, this Court summarized the testimony of a Border Patrol agent familiar with I-20 as follows:

The Agent testified that I-20 is "notorious for alien smuggling and narcotics." It has its western terminus at I-10, approximately 120 east of El Paso, Texas, and runs easterly cross-country through numerous heavily populated areas, including at least six with connecting north/south interstate highways; Dallas, Texas; Shreveport,

(continued...)

was leading away from the Mexican border. Agent Meyer also testified that the vehicle was registered to a person in Garland, Texas, which is near Dallas, Texas (2 R. 95). This demonstrates that the vehicle was not registered to anyone in the cities or towns located between the border and the location of the stop. The evidence therefore showed that the vehicle was not a local vehicle, but rather had traveled from and was returning to the Dallas, Texas area. Although this evidence is not inherently suspicious, it takes on more significance when considered in conjunction with the appearance and number of the occupants initially seen by the agents, the weaving and slowing down by Appellant when his vehicle was followed by the agents, and the apparent attempt by some of the passengers to avoid detection by ducking down.

Viewing the evidence in the light most favorable to the Government and considering the totality of the circumstances, the evidence establishes that Agent Meyer and his partner did not simply act on a hunch that something was afoot.

⁵(...continued)

Louisiana; Jackson, Mississippi; Birmingham, Alabama; Atlanta, Georgia; and Columbia, South Carolina (eastern terminus). I-10, the 1-20 western terminus, runs through El Paso, a heavily trafficked border crossing point. Moreover, southeast from El Paso for approximately 60 miles, I-10 runs very close to the border. And, the I-10 terminus for 1-20, approximately 30 minutes southwest of Pecos, Texas is approximately 100 miles north of the border. That area of Texas south of the I-10/I-20 intersection, which includes Big Bend National Park on the border, is frequently (*and then some*) used for illegal trafficking of aliens and drugs.

Morales, 191 F.3d at 604.

Instead, the stop of Appellant's vehicle was based a combination of factors leading to reasonable suspicion that the vehicle's occupants were engaged in illegal activity.

Once the vehicle was legally stopped for further investigation, the agents could question Appellant and the occupants of the vehicle regarding their citizenship. *See Brignoni-Ponce*, 422 U.S. at 881-82. In this regard, the district court found that, since "Agent Meyer possessed reasonable suspicion to detain Appellant's vehicle, the agent's investigative questioning of Appellant was not in violation of the Fourth or Fifth Amendment." (1 R. 71).

CONCLUSION

For the foregoing reasons, Appellant's conviction and sentence should be affirmed.

Respectfully submitted,

JOHN E. MURPHY
Acting United States Attorney

By: *Angela S. Raba*
ANGELA S. RABA
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief for the United States of America has been mailed to Appellant's attorney of record, Justin W. Low, Attorney-at-Law, 1400 North Grandview, Odessa, Texas 79761, on this the 15th day of May, 2009.

Angela S. Raba

ANGELA S. RABA
Assistant United States Attorney
Western District of Texas
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216
(210) 384-7090