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

USCA 01-1034

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## **JURISDICTIONAL STATEMENT**





## **STATEMENT OF THE CASE**

Rodriguez adopts the Statement of the Case in the government's brief with the following exception: Rodriguez's suppression motion was filed October 24, 2000.

## **STATEMENT OF FACTS**

On September 14, 2000, South Dakota Highway Patrol Officer Koltz

While driving on Highway 4304, Officer Koltz saw a white pickup truck with a license plate number 4SA-1234. The truck was traveling in the northbound lane of the highway. Officer Koltz observed the truck's left turn signal flashing and the driver looking back over his shoulder. Officer Koltz stopped the truck and issued a citation for driving with a broken left turn signal.

was Manuel Rodriguez-Arreola).

3. There was “no debris, no trash, no food wrappers...no soft drinks”  
littering the inside of the vehicle. T 10.
4. There were coats or jackets on the back seat9g8 of ts, t drinks”

United States legally, the magistrate made no finding on that point. The video tape transcript is unclear whether the driver understood the question and what his response was to the question. VT 3-4; T 17; Mag. Rep. 2.

Ten minutes after stopping the car, the trooper had the driver sign the ticket, and asked him to stand in the ditch next to the highway. Mag. Rep. 2; T 16, 38-39. The paperwork on the speeding citation was completed, but the trooper did not

testified that Rodriguez admitted to being an illegal alien, contrary to the video tape



the government about Rodriguez's lack of standing and the legal impossibility of suppressing "identity" are inapposite and without merit.

### **STANDARD OF REVIEW**

This Court assumes a deferential posture toward the district court's factual determinations and they will not be overturned unless clearly erroneous.





determining whether the seizure and search were “unreasonable” our inquiry is a dual one - whether the officer’s action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place.

Amendment analysis.

B. THE SEIZURE OF RODRIGUEZ AND HIS  
INVESTIGATION OF THE IMMIGRATION STATUS  
EXCEEDED THE SCOPE OF THE TROOPER'S  
REASONABLE SUSPICION.

“[A] traffic violation - - however minor - - creates probable cause to stop  
the driver of a vehicle.” *U.S. v. Beck*

more or less suggestive of criminal activity than this Court found the presence of debris to be in *U.S. v. Beck*, 140 F.3d at 1139. The *Beck* opinion also disposed of out-of-state license plates and lack of luggage in the passenger compartment as providing reasonable suspicion for a seizure, either as a single factor or in combination with other facts. 140 F.3d at 1137-1139. “[N]ervousness” and “lack of eye contact” are frequently noted by officers as a basis for reasonable suspicion, but are as frequently discounted by courts that find the physical reactions not surprising in a stressful situation. See

retroactively justify the unwarranted intrusion. *U.S. v. Beck*, 140 F.3d at 1135 (citing *United States v. Hathcock*, 103 F.3d 715, 718 (8<sup>th</sup> Cir. 1997), *cert denied*, 521 U.S. 1127 (1997) and *United States v. Angell*, 11 F.3d 806, 809 (8<sup>th</sup> Cir. 1993), for the proposition that intimidating questioning and tone of voice is one factor in deciding whether seizure has occurred). What the trooper learned after seizing Rodriguez does not provide reasonable suspicion for initiating the seizure:

[T]he Government contends that the Magistrate Judge did not consider [the trooper's] statement that he did not become suspicious that Defendant was an illegal alien until Defendant could not produce identification. The fact that [trooper] became suspicious that there was



Whether a suspect is in custody depends on the totality of relevant circumstances showing whether the suspect is “deprived of his freedom of action in any significant way.” *United States v. Johnson*, 64 F.3d 1120, 1125 (8<sup>th</sup> Cir. 1995) (quoting *Miranda*, 384 U.S. at 444). “*Miranda* warnings are not necessary during ordinary *Terry* stops because they generally do not amount to custodial interrogation.” 64 F.3d at 1126; *Berkemer v. McCarty*, 468 U.S. 420, 439-440 (1984).

If an individual’s “freedom of action is curtailed to a degree associated with formal arrest,” then he is in custody. . . . Factors useful in considering whether custody is involved are whether the suspect was advised that he was free to go, whether he was restrained, whether he initiated contact with authorities, whether strong arm tactics or deceptive stratagems were used, whether the atmosphere was police dominated, and whether the suspect was placed under arrest at the termination of questioning.

*U.S. v. Johnson*, 64 F.3d at 1126 (citing *United States v. Griffin*, 922 F.2d 1343, 1348 (8<sup>th</sup> Cir. 1990)).

When he spoke to the Chicago INS agent over the trooper’s car phone,

questioned gegrrsrivlye

beside a busy interstate highway while the vehicle was first subjected to a dog sniff, and then to a “thorough search” by the trooper. He was not advised that he was free to go. He was taken to the Minnehaha County Jail directly from the scene of the stop. No reasonable person in Rodriguez’s position would have failed to “understand the nature of his situation.” *Johnson*, 64 F.3d at 1125.

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Border Patrol agents would be given license to seek incriminating evidence about

Dated this \_\_\_\_ day of March, 2001.

Respectfully submitted,

ROBERT VAN NORMAN

Federal Public Defender

By:

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## CERTIFICATE OF SERVICE

I certify that I have provided two copies of this brief and a 3 1/2-inch computer diskette containing the full document to Assistant United States Attorney Michelle G. Tapken, Attorney for Appellant, United States Attorney's Office, PO Box 5073, Sioux Falls, SD 57117-5073 on the \_\_\_\_ day of March, 2001. The diskette has been scanned for viruses using Norton Anti Virus Version 5.0, and that scan showed that the diskette is virus-free.

In addition, I certify that I have provided a copy of this brief to Appellee Manuel Rodriguez-Arreola, Lyon County Jail, 402 S. Boone, Rock Rapids, IA 51242 on the \_\_\_\_ day of March, 2001.

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Timothy J. Langley  
Assistant Federal Public Defender  
Attorney for Appellee

## **CERTIFICATE OF FILING**

I certify that I filed ten copies of this brief and a 3 1/2-inch computer diskette

## **ADDENDUM**