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ORDER

The opinion filed on April 20, 2001, and reported at 247 F.3d 943, is withdrawn and replaced by the amended opinion filed concurrently with this order. With these amendments, the petition for a writ of habeas corpus is denied.

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seat was missing. He did not, however, see anything inside of the camper.

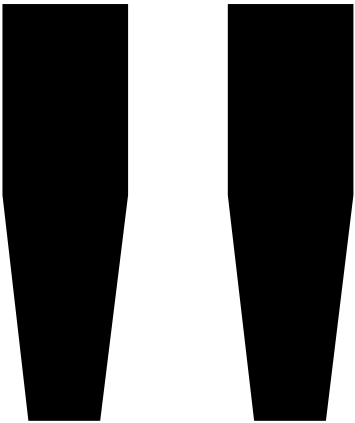
When Wright pulled up to the front of the passenger compartment of Defendant's truck, with his alley lights still on, he noticed that Defendant once again placed his hand between the light and his face, in what Wright characterized as an attempt to "conceal[] his face again. " Wright then slowed down and pulled behind Defendant's truck so as to run Defendant's license plate number. As he moved behind Defendant's truck, however, Defendant pulled off onto the shoulder. At that moment, Wright activated his emergency lights. Defendant slowed down, and eventually pulled off the highway by making a right turn into a small dirt road and stopping his vehicle almost immediately thereafter. Wright exited his vehicle and upon approaching Defendant's truck, noticed approximately eighteen individuals lying on a blanket in the rear area of the truck's cab. After confirming the presence of several undocumented aliens, Defendant was arguing 2n, and eventually claiming that Wright lacked reasonable suspicion to stop him.

The district court ruled his income, concluding that: The Court considered if it is among the factors . . . might well be fi p

a vehicle stopped at that time when the used stop-fiscis commercial. We have--which is disputed by any testimony--a driver that's attempting to obscure the view of his face. The agent's reasoning

behavior, Defendant could have reacted in one of three ways: He could have done nothing, he could have sped up, or he could have yielded by changing lanes and ultimately pulling off the road. Given the limited options available to him, it is difficult to imagine a more rational reaction than Defendant's.³ See Calif. Dep't of Motor Vehicles, Calif. Driver Handbook 65 (2000) (instructing drivers to " `lose' the tailgater as soon as you can by changing lanes. If you can't change lanes, slow down enough to encourage the tailgater to go around you. If this does not work, pull off the road when it is safe and let the tailgater pass."), available at

It was trying to evade (inf.) Ill. v. Wardlow 2012 IL 106012 -041 Tw. Sea Illinois ve Wardlow s i v e a c t i o



restricted.

C. Notoriety of the Route for Smuggling

The government asserts that "Highway 86 is a route notorious for alien smuggling, particularly when the [] checkpoint is closed." The evidence presented by the government, how-

D. Type of Vehicle

The government also argues that the vehicle driven by Defendant "is a vehicle type commonly used by alien smugglers." Once again, the government overstates Wright's testimony. At the suppression hearing, the government asked: "Have you seen, in your experience as a border patrol agent,

traffic in the area is not common at 4:20 a.m." in his reasonable suspicion analysis. The government, however, presented no evidence whatsoever that smuggling intensified at that time of day.⁶ Nor did the government offer any evidence indi-

silent. Wright only testified that his vehicle was parked seven miles south of the checkpoint. The record does not reflect

Wright considered the missing rear seat as an indicium of smuggling activity. Cf. Arvizu, 122 S. Ct. at 750-51 (stating that officers may draw on their experience to make inferences about the circumstances); Hernandez-Alvarado, 891 F.2d at 1416 ("Permissible deductions or rational inferences must be grounded in objective facts and be capable of rational expla-

were the Court to conclude that as little foundation as there