UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
900 MARKET STREET, SUITE 504
PHILADELPHIA, PA 19107

Salaman/Henry P.C.
Henry, Devin
100 South Broad Street
Suite 650
Philadelphia, PA 19110

In the matter of [redacted] File A [redacted] & [redacted] DATE: Feb 3, 2020

__ Unable to forward - No address provided.
__ Attached is a copy of the decision of the Immigration Judge. This decision is final unless an appeal is filed with the Board of Immigration Appeals within 30 calendar days of the date of the mailing of this written decision. See the enclosed forms and instructions for properly preparing your appeal. Your notice of appeal, attached documents, and fee or fee waiver request must be mailed to: Board of Immigration Appeals
Office of the Clerk
5107 Leesburg Pike, Suite 2000
Falls Church, VA 22041

__ Attached is a copy of the decision of the immigration judge as the result of your Failure to Appear at your scheduled deportation or removal hearing. This decision is final unless a Motion to Reopen is filed in accordance with Section 242b(c)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1252b(c)(3) in deportation proceedings or section 240(b)(5)(C), 8 U.S.C. § 1229a(b)(5)(C) in removal proceedings. If you file a motion to reopen, your motion must be filed with this court:
IMMIGRATION COURT
900 MARKET STREET, SUITE 504
PHILADELPHIA, PA 19107

__ Attached is a copy of the decision of the immigration judge relating to a Reasonable Fear Review. This is a final order. Pursuant to 8 C.F.R. § 1208.31(g)(1), no administrative appeal is available. However, you may file a petition for review within 30 days with the appropriate Circuit Court of Appeals to appeal this decision pursuant to 8 U.S.C. § 1252; INA §242.

__ Attached is a copy of the decision of the immigration judge relating to a Credible Fear Review. This is a final order. No appeal is available.

__ Other: _____

COURT CLERK
IMMIGRATION COURT

FF

cc: DHS OFFICE OF THE CHIEF COUNSEL
900 MARKET STREET, SUITE 346
PHILADELPHIA, PA 19107

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
PHILADELPHIA, PENNSYLVANIA

IN THE MATTER OF: [redacted] **RESPONDENTS**	)	**IN REMOVAL PROCEEDINGS** **File Nos.:** A[redacted] A[redacted] A[redacted] **Date: February 03, 2020**

CHARGE: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA" or "Act"), as amended, in that Respondents are aliens present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

APPLICATIONS: Respondents' Motion to Reconsider

APPEARANCES

ON BEHALF OF RESPONDENT:
Michael Henry, Esq.
Salaman/Henry P.C.
100 S. Broad Street, Suite 650
Philadelphia, PA 19110

ON BEHALF OF THE GOVERNMENT:
Greg Mayer, Esq.
Assistant Chief Counsel, DHS/ICE
900 Market Street, Ste. 346
Philadelphia, PA 19107

INTERLOCUTORY DECISION AND ORDER OF THE IMMIGRATION JUDGE

I. Procedural History

On March 20, 2018, Manheim Township Patrol Officer Kyle Carner approached a parked car in Dillerville Square, Lancaster, Pennsylvania. Exh. 4, Tab 1. Respondent [redacted] was the driver of the vehicle, while Respondents [redacted] and [redacted] were passengers. *Id.* Officer Carner questioned Respondents about their immigration status and determined that they were unlawfully present in the United States. *Id.* Officer Carner contacted Immigration and Customs Enforcement's ("ICE") after hours call center and ICE Officer Wentland responded at the scene. Exh. 3, Tab A. Officer Wentland interviewed Respondents, who admitted to being unlawfully present Guatemalan citizens and nationals. *Id.*

The Department of Homeland Security ("DHS") initiated removal proceedings against Respondents through the service of a Notice to Appear ("NTA") on March 21, 2018. Exh. 1. The NTAs allege that: (1) Respondents are not citizens or nationals of the United States; (2) Respondents are natives and citizens of Guatemala; (3) Respondents arrived in the United States at or near an unknown location, on or about an unknown date; and (4) Respondents were not then admitted or paroled after inspection by an Immigration Officer. *Id.* Based on these allegations, DHS charged Respondents as removable pursuant to section 212(a)(6)(A)(i) of the Act. *Id.*

At a master calendar hearing held August 02, 2018, Respondents, through counsel, denied the NTA's factual allegations and contested the charge of removability. Respondents filed a motion to suppress on that date, seeking to suppress all physical and testimonial evidence obtained as a result of Officer Carner's March 20, 2018 questioning. Exh. 2. Respondents' cases were consolidated for the purpose of adjudicating this motion only. On May 17, 2019, an evidentiary hearing was held pursuant to *Matter of Barcenas*, 19 I&N Dec. 609 (BIA 1988) (holding that if the facts of an affidavit, if true, could support a basis for excluding evidence, the claim must also be supported by testimony). In granting the *Barcenas* hearing, the Court identified its concerns that the March traffic stop was either (1) an egregious, race-based stop or (2) part of a widespread pattern of misconduct. *See Oliva-Ramos v. Att'y Gen.*, 694 F.3d 529 (3d Cir. 2012); *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1051 (1984). Only the arresting municipal police officer, Officer Carner, testified at the *Barcenas* hearing.

The Court denied Respondents' motion to suppress and terminate proceedings on June 10, 2019. *See* Exh. 8 (unmarked). The Court's written decision found that Officer Carner violated the Fourth Amendment when he prolonged Respondents' stop by detaining them until ICE arrived. *Id.* However, the Court found that Officer Carner's conduct was neither egregious, as there was insufficient factual evidence demonstrating that his conduct was racially motivated, nor part of a widespread pattern of misconduct. *Id.* On October 25, 2019, the Court sustained the charges and designated Guatemala as the country of removability.

Respondents filed a motion to reconsider on November 25, 2019. *See* Exh. 9A (unmarked). Respondents' motion argues that several of the Court's findings in its June 10, 2019 decision are erroneous. *Id.* First, Respondents allege that the Court's conclusion that Respondents' traffic stop did not constitute a seizure at its inception is legally erroneous. *Id.* Second, Respondents contest the Court's finding regarding the point at which a Fourth Amendment violation occurred. *Id.* Third, Respondents seek that their motion be reassessed under the recent Third Circuit precedent

case *Yok-Us v. Att'y Gen*, 932 F.3d 98 (3d Cir. 2019), which addresses egregious Fourth Amendment violations by local law enforcement. *Id.* Fourth, Respondents request that the Court reconsider its finding concerning widespread constitutional violations by law enforcement following the release of a study addressing police and ICE cooperation. *Id.* DHS filed its opposition to Respondents' motion on November 25, 2019, articulating both procedural and substantive arguments against reconsideration. Exh. 10 (unmarked).

II. Exhibits List

Exhibit 1: Respondents' I-862, NTAs, all dated March 21, 2018

Exhibit 2: Respondents' Motion to Suppress and Terminate Proceedings, filed August 02, 2018

Tab A: Affidavit of Respondent [redacted]
Tab B: Affidavit of Respondent [redacted]
Tab C: Affidavit of Respondent [redacted]
Tab D: Traffic Citation issued March 20, 2018
Tabs E-T: Evidence in Support of Suppression and Termination

Exhibit 3, Tab A: DHS's Evidentiary Submission, Respondents' Forms I-213, Records of Inadmissible/Deportable Aliens

Exhibit 4: DHS's Evidentiary Submission, filed May 17, 2019

Tab 1: Manheim Township Police Department Incident Report, dated March 20, 2018
Tab 2: Judgement and Conviction for Respondent [redacted], dated March 23, 2018

Exhibit 5: Respondents' Evidentiary Submission, Pennsylvania State Police Protocol for the Arrest/Detention of Foreign Nationals, effective January 30, 2019

Exhibit 6: 42 Pa. Cons. Stat. § 8953 (concerning municipal police jurisdiction); 8 U.S.C. § 1357 (concerning immigration officer powers)

Exhibit 7: WHYY Article, dated February 2019

Exhibit 8 (unmarked): Judicial Opinion, issued June 10, 2019

Exhibit 9A (unmarked): Respondents' Motion to Reconsider, filed November 25, 2019, re-filed December 02, 2019

Exhibit 9B (unmarked): Sheller Center for Social Justice ("Sheller Center") Report, released June 25, 2019, filed November 25, 2019, re-filed December 02, 2019

Exhibit 10 (unmarked): DHS's Opposition to Respondents' Motion to Reconsider, filed November 25, 2019

III. Issue Presented

The primary issues presented by Respondents' motion are (1) whether Respondents' traffic stop was a seizure upon its inception; (2) whether Officer Carner violated Respondents' Fourth Amendment rights before they admitted to unlawful presence in the United States; (3) whether

Officer Carner's Fourth Amendment violation was egregious; and (4) whether Officer Carner's Fourth Amendment violation was part of a widespread pattern of misconduct.

IV. Legal Standards and Analysis

An Immigration Judge may upon his own motion, or upon motion of DHS or the alien, reopen or reconsider any case in which he has made a decision, provided jurisdiction has not vested with the Board of Immigration Appeals ("BIA" or "the Board"). 8 C.F.R. § 1003.23(b)(1). Post-decision motions to reopen and reconsider have distinct functions. *Id.* §§ (b)(2), (3). "A motion to reconsider contests the correctness of the original decision based on the previous factual record" whereas a motion to reopen "seeks a new hearing based on new or previously unavailable evidence." *O-S-G-*, 24 I&N Dec. 56, 57-58 (BIA 2006). Immigration Judges retain the flexibility to determine the type of motion submitted based on the motion's purpose rather than title. *Id.* at 60 (explaining that Respondent's motion to reconsider could have converted to a motion to reopen had he asserted new facts or evidence). Further, the functional distinction between a motion to reconsider and motion to reopen is inapplicable to motions made prior to an Immigration Judge's final decision. The regulations provide few requirements for pre-decision motions, stating that "motions submitted prior to the final order of an Immigration Judge shall be in writing and shall state, with particularity the grounds therefore, the relief sought, and the jurisdiction." 8 C.F.R. § 1003.23(a). Unlike post-decision motions, which have strict filing deadlines under the regulations, the Immigration Judge "may set and extend time limits" for pre-decision motions and replies. *Id.*

As a preliminary matter, the Court finds that Respondents' motion to reconsider constitutes a pre-decision motion under Section 1003.23(a) because the Court has not yet issued a final order. As such, the Court is permitted to consider any new evidence submitted with Respondents' motion because the distinction between a motion to reconsider and motion to reopen does not yet apply. *Cf. Godfrey v. Lynch*, 811 F.3d 1013 (8th Cir. 2016) (noting that Section 1003.23(a) grants Immigration Judges "broad discretion to reopen the record and consider [new] evidence" prior to the issuance of a final order); *O-S-G-*, 25 I&N Dec. at 60 (considering the conversion of a post-decision motion to reconsider into a motion to reopen). *Compare* 8 C.F.R. § 1003.23(a) (setting minimal requirements for pre-decision motions to reopen and reconsider) *with* §§ 1003.23(b)(2), (3) (distinguishing between purpose of post-order motions to reopen and reconsider). Respondents' motion is also timely, as it abided by the filing deadlines set by the Court. 8 C.F.R. § 1003.23(a).

As detailed below, the Court finds that Respondents' case merits reconsideration, suppression, and termination. First, Respondents' have met their burden in demonstrating that the Court's analysis of Officer Carner's Fourth Amendment violation was flawed. Second, the new evidence satisfactorily demonstrates that the type of Fourth Amendment violation perpetrated by Officer Carner is widespread throughout Pennsylvania. Therefore, the evidence addressing Respondents' alienage should be suppressed, resulting in the termination of proceedings. *Matter of Garcia*, 17 I&N Dec. 319, 321 (BIA 1980) (finding termination warranted following suppression of Respondent's coerced statements as DHS did not independently establish alienage).

A. Fourth Amendment Violation

Respondents request that the Court reconsider its findings regarding (1) the point at which Respondents were seized under the Fourth Amendment and (2) the point at which Officer Carner

committed a Fourth Amendment violation. Exh. 9A. Reviewing the relevant precedent, the Court first concedes that its prior conclusion regarding the point of Respondents' seizure is legally erroneous. Revisiting the record, the Court determines, second, that it overlooked evidence demonstrating that Officer Carner's Fourth Amendment violation occurred prior to Respondents' admission of unlawful presence, earlier than previously ruled.

1. Seizure under the Fourth Amendment

Reviewing the precedents advanced in Respondents' motion to reconsider, the Court accepts Respondents' argument that they were seized when Officer Carner approached their vehicle. *Contra* Exh. 8 (judicial opinion holding that Respondents were seized when Officer Carner contacted ICE). As identified by Respondent, "[t]he law is settled that in Fourth Amendment terms a traffic stop entails a seizure of the driver 'even though the purpose of the stop is limited and the resulting detention quite brief.' " *Brendlin v. California*, 551 U.S. 249, 255 (2007) (quoting *Delaware v. Prouse*, 440 U.S. 648, 953 (1979)); *see also Whren v. United States*, 517 U.S. 806, 809-10 (1996) ("temporary detention of individuals during the stop of an automobile by the police ... constitutes a 'seizure' "). A traffic stop also subjects the passengers in a stopped vehicle to a seizure, as a "traffic stop necessarily curtails the travel a passenger has chosen just as much as it halts the driver." 551 U.S. at 256-258. Determining whether a vehicle's occupants are seized, and thereby entitled to Fourth Amendment protections, employs the same analysis regardless of whether the vehicle is moving or parked at the time of law enforcement's approach. *See United States v. Johnson*, 874 F.3d 571, 574 (7th Cir. 2017) (applying *Whren* analysis where law enforcement approached parked car suspected to be engaged in traffic violation); *United States v. Choudhry*, 461 F.3d 1097, 1101 (9th Cir. 2006); *Flores v. Palacios*, 381 F.3d 391, 402-403 (5th Cir. 2004); *United States v. Copeland*, 321 F.3d 582, 594 (6th Cir. 2003).

Reconsidering the facts presented under these precedents, the Court finds that Officer Carner conducted a traffic stop, and therefore seized Respondents, when he pulled behind them in the Dillerville Square parking lot. Officer Carner selected Respondents' moving vehicle as the subject of a registration check while he was driving behind it. Officer Carner approached Respondents after running the vehicles' plates and determining that it was registered to an individual with a suspended license. Officer Carner's initial questioning of Respondents went beyond an identification request, as he engaged with them for the purpose of determining whether the vehicle driver's had conducted a moving violation. *See Brendlin*, 551 U.S. 249; *Whren*, 517 U.S. 806. This constituted a traffic stop, despite the fact that Respondents had parked their car at the time of Officer Carner's approach. *See e.g. Johnson*, 874 F.3d 571. Therefore, Respondents were seized and entitled to Fourth Amendment protections at the time the traffic stop commenced.

2. Fourth Amendment Violation

The Court reconsiders the point at which Officer Carner's conduct violated the Fourth Amendment and finds that it overlooked facts demonstrating that the violation occurred prior to the officer's inquiry into Respondents' immigration status. The Court maintains its finding that Officer Carner's initial traffic stop was lawful, despite his lack of jurisdiction in Lancaster City under state law, because he had a reasonable, articulable suspicion that the vehicle's driver was operating under a suspended license. *See* Exhs. 5; 8; *Whren*, 517 U.S. at 810 (holding a seizure pursuant to a traffic stop is constitutionally "reasonable where the police have probable cause to believe a traffic violation has occurred"); *Virginia v. Moore*, 553 U.S. 164 (2008) (holding that

arrests made in violation of state law do not constitute a Fourth Amendment violation provided they are based on probable cause).

Officer Carner did not violate the Fourth Amendment during his initial questioning of Respondents. As noted in the Court's prior opinion, Officer Carner relied on a variety of factors to determine that Respondent [redacted] matched the demographics of the vehicle's registered driver, thereby permitting his initial questioning. *See* Exh. 8. Officer Carner's reasonable suspicion that Respondent [redacted] was operating the vehicle unlicensed was renewed when Respondent [redacted] produced a Guatemalan identification card upon the officer's request for a driver's license. Disclosing a national identification document, rather than a license, reasonably indicated that Respondent [redacted] was also unlicensed and driving in violation of the law. Officer Carner's request for identification from Respondents [redacted] and [redacted] was also permissible, as Officer Carner sought to determine whether they could lawfully drive the vehicle in place of Respondent. *See Rodriguez v. United States*, 575 U.S. 348, 355 (2015) (permitting officers to continue a seizure to engage in inquiries serving the same objective as enforcement of the traffic code: vehicular safety); *Prouse*, 440 U.S. 653 (1979).

However, Officer Carner violated the Fourth Amendment when he unnecessarily prolonged Respondents' traffic stop to continue interrogating them about their identification and immigration status. *See* 575 U.S. at 355. A traffic stop that is lawful at its inception may become unlawful if it is prolonged beyond the time reasonably required to issue a ticket and conduct ordinary inquiries incident to such a stop. *Illinois v. Caballes*, 534 U.S. 405, 407 (2005). "Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been completed." *Rodriguez*, 575 U.S. at 354. Typically, such ordinary tasks include checking the driver's license, determining whether there are any outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance. *Id.* at 653-64. A patrol officer "may conduct certain unrelated checks" but not "in a way that prolongs the stop," unless the officer obtains "reasonable suspicion ordinarily demanded to justify detaining an individual." *Id.*; *see also Arizona v. Johnson*, 555 U.S. 323, 333 (2009) (holding that seizure remains lawful so long as incident inquiries "do not measurably extend the duration of the stop."); *see also Muehler v. Mena*, 544 U.S. 93 (2005) (instructing that police officer needed reasonable suspicion to question petitioner about immigration status if that questioning prolonged the initial stop). The Supreme Court has noted that "[d]etaining individuals solely to verify their immigration status would raise constitutional concerns." *Arizona v. U.S.*, 567 U.S. 387, 413 (2012).

Here, Officer Carner departed from the routine procedure of a traffic stop when he sought out a volunteer interpreter for the purpose of questioning Respondents about their immigration status. As noted above, Officer Carner reasonably requested the passenger Respondents' identification to determine whether they were licensed. However, rather than running a PennDOT check using Respondents [redacted] and [redacted] Guatemalan identification, as he had with Respondent [redacted] Officer Carner engaged in additional, unrelated questioning about Respondents' immigration status. To do so, Officer Carner purposely searched for a bystander who could assist him in communicating in Spanish. Officer Carner then used this bystander to interrogate Respondents about their documentation—including whether they had a visa or passport—and legal immigration status. Officer Carner relied on this information to phone ICE, continuing to hold Respondents for at least forty-five minutes until an ICE officer arrived. Officer Carner withheld the traffic citation until ICE concluded its investigation, despite his ability to issue

the citation at the time the infraction was determined to have occurred. This course of action is inconsistent with policing expert advice, which advises that citations be issued immediately to avoid infringing on individual's constitutional rights. *See* Exh. 2, Tab M at 68-70. The Court concurs that these actions—locating a civilian interpreter, questioning Respondents, and holding them for ICE—measurably extended Respondents' stop for reasons unrelated to their traffic violation. *Caballes*, 534 U.S. at 407; *Rodriguez*, 575 U.S. at 354.

Officer Carner's conduct violated the Fourth Amendment because he did not have legal authority to prolong Respondents' seizure. First, Officer Carner did not have the authority to independently enforce federal immigration law. *See Yoc-Us v. Att'y Gen.*, 932 F.3d 98, 102 (3d Cir. 2019). Under INA § 287(g), state and local law enforcement officers may enforce federal immigration laws as a deputized immigration officer, pursuant to an agreement between the Attorney General and state or municipal governments. INA § 287(g). These agreements permit local enforcement to briefly detain a person for questioning if an officer has "a reasonable suspicion, based on specific articulable facts, that the person being questioned ... is an alien illegally in the United States." 8 C.F.R. § 287.8(b)(2). Officer Carner was not acting as a deputized officer under § 287(g) because neither Pennsylvania nor any Pennsylvania municipality have entered into a § 287(g) agreement. See https://www.ice.gov/287(g). Indeed, Officer Carner conceded that he had no jurisdiction to engage in an investigation into Respondents' immigration status. Second, Officer Carner did not have an independent reasonable suspicion that Respondents were engaged in criminal activity that might justify their prolonged stop. *See Rodriguez*, 575 U.S. at 353-355; *Yoc-Us*, 932 F.3d at 102. This includes any suspected illegal entry under 8 U.S.C. § 1325, as Respondents' Guatemalan identification cards, without an admission regarding their manner of entry, are insufficient to create a reasonable suspicion that Respondents entered unlawfully, justifying a prolonged detention. Thus, the record indicates that Officer Carner prolonged the stop solely on the basis of Respondents' assumed civil immigration violation.

The Court is persuaded by Respondents' motion, which argues that Officer Carner's actions are analogous to the unconstitutional conduct identified in *Rodriguez*. In that case, a patrol officer issued a traffic warning, detained a driver and passenger until a second officer's arrival, and circled the vehicle with a K-9 dog. 575 U.S. at 351-352. Approximately seven to eight minutes elapsed between the issuance of the warning and the K-9 search. *Id.* The Supreme Court held that a Fourth Amendment violation had occurred, despite the minimal passage of time, because the K-9 search unnecessarily prolonged the traffic stop. *Id.* at 357. The Court explained that while officers may engage in additional inquiries related to the enforcement of the traffic code, "[o]n scene investigation into other crimes ... detours from that mission." *Id.* at 355-56. Here, Officer Carner initiated an investigation into an unrelated crime outside his jurisdiction– unlawful entry – when he sought out an interpreter to interrogate Respondents on their immigration status. Officer Carner testified that that, like the officer in *Rodriguez*, he could have issued a traffic citation without engaging in additional investigation. Nevertheless, Officer Carner detoured from the purpose of the traffic stop when he held Respondents for at least forty-five minutes for questioning on unrelated conduct. Under *Rodriguez*, such action violates the Fourth Amendment.

The present analysis is also consistent with the Third Circuit's recent holding in *Yoc-Us*. There, a Pennsylvania state trooper stopped a van for speeding and obtained the identification information of the lawfully present driver. 932 F.3d at 101. Rather than processing this information and issuing a traffic citation, the state trooper opened the van's rear door and

demanded the passengers' immigration papers. *Id.* He then detained the van's occupants for up to two hours while waiting for ICE's response. *Id.* at 102. The Third Circuit held that the state trooper unreasonably extended the traffic stop to investigate the passenger's immigration status, in violation of the Fourth Amendment. *Id.* at 105. Cautioning that law enforcement may not extend a stop to inquire about immigration status, the Court observed that "at least some of the time between the initial stop and the issuance of the citations was spent interrogating the passengers" on this issue. *Id.* This interrogation, coupled with the passengers' continued detention, "extended 'beyond the time reasonably required to complete the mission of issuing a ticket...' " *Id.* (quoting *Rodriguez*, 575 U.S. at 351). Similarly, Officer Carner's interrogation into Respondents' immigration status was impermissible because it was unrelated to the charged traffic violation and extended the stop beyond the time necessary to issue a citation.

Following the guidance provided by *Yoc-Us* and *Rodriguez*, the Court finds that Officer Carner violated the Fourth Amendment by questioning Respondents about their immigration status. This constitutional violation occurred at the point Officer Carner first began his unrelated inquiries: when he sought out a civilian interpreter to question Respondents' on their immigration status. Thus, Respondents' admissions regarding their unlawful presence occurred subsequent to an unlawful search and search, and are eligible for suppression. *See Lopez-Mendoza*, 468 U.S. 1032; *Oliva-Ramos*, 694 F.3d 259.

B. Egregious or Widespread Fourth Amendment Violation

To justify the suppression of evidence in immigration proceedings, the constitutional violation must have been the result of law enforcement's egregious or widespread conduct. *Lopez-Mendoza*, 468 U.S. at 1050-51; *Oliva-Ramos*, 694 F.3d at 272. Respondents request that the Court reconsider its prior findings that neither of these conditions were met in Respondents' case. *See* Exhs. 8; 9. First, Respondents allege that Officer Carner's Fourth Amendment violation was intentional and, therefore, egregious. Exh. 9A; *Oliva-Ramos*, 694 F.3d at 278 (providing intentional violations of the Fourth Amendment as an egregious characteristic). Second, Respondents assert that the recently issued decision in *Yoc-Us* supports their contention that Officer Carner's conduct was egregious because it was racially motivated. Exh. 9A; *Oliva-Ramos*, 694 F.3d at 278 (identifying race-based violations as egregious). Third, Respondents allege that a newly published report demonstrates that Office Carner's violation was committed as a part of a pattern of widespread Fourth Amendment violations. Reviewing these allegations below, the Court finds that the supplemented record satisfactorily demonstrates a pattern of misconduct meriting the suppression of Respondents' statements.

1. Egregious Violation

The Court maintains its prior finding that Officer Carner did not engage in an intentional violation of Respondents' Fourth Amendment rights. *See* Exh. 8. Officer Carner received training on Fourth and Fifth Amendment protections while attending police academy in early 2014, but this instruction did not directly address the implications of questioning individuals about their immigration status. Officer Carner has not received additional instruction on these constitutional protections since the conclusion of his training. However, Officer Carner's police department supervisors have subsequently advised him to immediately call immigration authorities upon encountering a suspected unlawful alien during the course of enforcement proceedings. Thus, Officer Carner's conduct on March 20, 2018 was consistent with the instruction he had received

from local law enforcement supervisors. The record lacks evidence permitting the Court to infer that Officer Carner was aware that this instruction was impermissible under the Fourth Amendment. Without such awareness, the Court is unwilling to find that Officer Carner held the requisite scienter for an intentional violation of Respondents' constitutional rights.

Additionally, the Third Circuit's decision in *Yoc-Us* does not require that the Court change its finding on potential racial motivations for Respondents' stop. In *Yoc-Us*, described *supra*, the Court found that the record "could support the conclusion that the illegal extension of the stop was solely 'based on race or perceived ethnicity.' " 932 F. 3d at 112 (quoting *Oliva-Ramos*, 694 F.3d at 279). In making this determination, the Court found it notable that the state trooper demanded immigration documents "prior to *any* interaction with the passengers," showing an assumption that they were not United States citizens. *Id.* at 113. Such a conclusion, the Court observed, "could have only come to [the state trooper] based on their appearance." *Id.* Contrary to *Yoc-Us*, the circumstances of Respondents' traffic stop involved outside factors that could have led Officer Carner to conclude that Respondents were unlawfully present. Unlike *Yoc-Us*, Respondents produced their foreign identification documents in response to Officer Carner's general request for identification, rather than an initial demand for immigration papers. Accordingly, the Court finds that these documents, and not Respondents' Hispanic appearance, were the impetus for Officer Carner's inquiry into Respondents' immigration status and prolonged stop.

Further, as explained in the Court's previous opinion, the record does not support Respondents' allegation that Officer Carner initiated the stop due to their Hispanic race. *See* Exh. 8. Officer Carner credibly testified that he did not view the vehicle's occupants before running its registration, as is routine during the officer's patrol. Officer Carner also selected Respondents' vehicle for a random registration check before it stopped in front of the El Pueblito Hispanic grocery. Upon determining that the vehicle was operating under a suspended license, Officer Carner lawfully approached Respondents to investigate the traffic citation. The officer reasonably concluded that Respondent [redacted] was the car's registered owner because of shared demographics beyond race or ethnicity. Thus, the Court finds that Officer Carner neither initiated nor prolonged Respondents' traffic stop on account of their Hispanic race.

2. Widespread Fourth Amendment Violations

The Court finds that the supplemented record containing the recently released Sheller Center report adequately demonstrates that Officer Carner's Fourth Amendment violation occurred among a pattern of similar law enforcement misconduct. *See* Exh. 9B. The Court's previous decision hinged, in part, on the qualification the ProPublica investigation gave to this issue. In discussing immigration enforcement, the investigation reported that law enforcement—specifically ICE— "occasionally stepped over the legal line." Exh. 2, Tab K at 45. The report addressed the cooperation between state law enforcement and ICE, providing a handful of examples in which state and municipal police officers "in their eagerness to collaborate … took it upon themselves to question drivers and passengers about their immigration status during traffic stops" and detain individuals for ICE. *See id.*, Tabs K at 33-34; M at 57, 65, 68. The report identified "two dozen cases in which state and local police served as conduits into deportation proceedings," *id.* at 67, but gave only one example involving a local law enforcement officer interrogating individuals under conditions similar to this case, *see id.*, Tab M at 68. The Court found that the single ProPublica report, while concerning, provided insufficient, objective proof of widespread constitutional violations. Exh. 8.

The subsequently issued Sheller Center Report, entitled *Interlocking Systems: How Pennsylvania Counties and Local Police Are Assisting ICE to Deport Immigrants*, allows the Court to reconsider its previous finding by demonstrating ICE's concerted effort to encourage local law enforcement's unconstitutional collaboration. This report confirms ProPublica's prior finding that ICE officers "took advantage of state and local officials' willingness to conduct their own immigration investigations, call ICE and detain immigrants for hours ... despite the questionable legality of these practices." Exh. 2, Tab L at 45; *see also id.*, Tab M at 77 (discussing ICE's newfound eagerness to coordinate enforcement with local police precincts). Surveying eighteen local police departments, the Sheller Report concludes that "ICE is proactively seeking the assistance of local [police] departments in its enforcement operations." Exh. 9B at 21. Specifically, ICE has reached out to local police chief's associations and law enforcement networking groups advertising itself as a helpful resource and encouraging communication. *Id.* at 22. One e-mail from ICE to local officers describes methods of collaboration: "[l]ocal police are asked to forward demographic and identifying information directly to ICE after any encounter with an immigrant. Further, local police are encouraged to call an individual ICE agent *directly during the stop itself* [so that ICE] can conduct a field interview directly with the detained individual." *Id.* at 22-23 (emphasis added); *see also* Exh. 2, Tab L at 57 (describing ICE's active effort to engage local police as 'force multipliers'). Thus, ICE is actively encouraging Pennsylvania police officers like Officer Carner to prolong otherwise lawful stops for the purpose of investing an individual's immigration status, a violation of the Fourth Amendment. *See Rodriguez*, 575 U.S. at 354.

In soliciting cooperation, ICE actively capitalizes on the absence of municipal police policies that address officers' ability to engage in immigration enforcement. Exh. 9B at 19. Most of the municipal police departments surveyed in the Sheller Report lacked formal or written policies on policing immigration, thereby allowing local officers to engage with ICE on an ad hoc basis. *Id.* at 19-20; 23. Some police departments have actively cultivated relationships with individual ICE officers; at least one municipal department kept ICE officer contact information on file for direct communication upon encountering undocumented individuals. Exh. 9B at 23. This is in contrast with the state police force, which is only permitted to contact ICE *after* a police investigation has concluded—in other words, after a person has departed the scene of a basic traffic citation. Exh. 7 at 2; *see also* Exh. 6. This policy was enacted recently, in response to findings that the "state police were acting as an informal arm of immigration enforcement." Exh. 7 at 2. Upon reconsideration, the Court finds this policy persuasive evidence that Pennsylvania state law enforcement is unlawfully detaining suspected unlawful aliens at a widespread rate, as occasional violations would be more appropriately handled through individual reprimand rather than state-wide change. The failure for local police to adopt similar policies permits the Court to infer that this unlawful practice has occurred regularly at the municipal level.

Further, the Court notes that ICE's recruitment of local police departments impermissibly bypasses the cooperation scheme established under Section 287(g) of the Act. As noted by the Third Circuit in *Yoc-Us*, " 'Congress has put in place a system in which state officers may not make warrantless arrests of aliens based on possible removability except in specific, limited circumstances' " such as the 287(g) program. 932 F.3d at 105 (quoting *Arizona*, 567 U.S. at 413). Thus, local officers are discouraged from engaging in immigration matters in the absence of a 287(g) agreement, as "detention based only on removability 'would disrupt the federal framework' established by Congress." *Id.* (quoting 567 U.S. 413). In Pennsylvania, ICE has described its

efforts to invite police collaboration as a " 'sales pitch' " about something other than 287(g). Exh. 9B at 22. However, by recruiting local officers to engage in the same activities permitted by a 287(g) agreement, ICE is effectively encouraging local police precincts like Manheim Township to circumvent the federal framework Congress created under Section 287 of the Act. Such action is impermissible as it violates Congress's intentions regarding the conditions under which local law enforcement and ICE may cooperate. *See* 932 F.3d at 105. Thus, in addition to promoting widespread constitutional violations, ICE and local law enforcement are also violating the purpose of the federal immigration statute.

Considering this landscape, the Court finds that Officer Carner's acts fit into a widespread pattern of unconstitutional collaboration between local police officers and federal immigration enforcement. Like most police departments in Pennsylvania, Manheim Township lacks written policies addressing an officer's duties during encounters with individuals whom he suspects are unlawfully present. However, Officer Carner testified that the department's informal policy, as communicated by supervising officers, was to contact immigration enforcement for advice from the scene of a stop. This informal policy aligns with the procedures that ICE has promoted, which both the Sheller Report and ProPublica investigation have found implemented across Pennsylvania. *See* Exh. 2, Tabs K-M; 9B. The record demonstrates that other officers within Manheim Township abide by this policy. Respondent submitted affidavits discussing a similar traffic stop from May 14, 2018, in which Manheim Township police interrogated the vehicle's occupants about their immigration status and detained them for an hour while waiting for ICE. Exh. 2, Tabs N-P. This incident, occurring merely two months after Respondents' traffic stop, demonstrates that Officer Carner's conduct was neither anomalous nor isolated. Rather, Officer Carner's Fourth Amendment violation occurred pursuant to an informal Manheim Township policy followed by other officers within his department. The Sheller Report shows that this policy was one of many across the state that promoted ad hoc collaboration between local law enforcement and ICE. *See* Exh. 9B. The record high number of 'at-large,' non-criminal arrests for the Pennsylvania ICE field office indicates the prolific nature of this collaboration. *See* Exh. 2, Tab M at 65.

In sum, the Court finds that Officer Carner's Fourth Amendment violation occurred as part of widespread pattern of misconduct. Specifically, the Court finds that ICE has encouraged municipal and state officers across Pennsylvania to hold suspected unlawful aliens beyond the time permitted by Fourth Amendment jurisprudence and without the authorization provided by statute, such as 287(g). Police officers, including Officer Carner, have eagerly engaged in this collaboration, resulting in widespread Fourth Amendment violations. Therefore, the Court finds that Respondents' admissions, made as the result of this unlawful conduct, and any evidence gathered thereafter merit suppression under *Oliva-Ramos*, 694 F.3d at 272.

VIII. Conclusion

Officer Carner violated the Fourth Amendment when he began questioning Respondents on their immigration status, unlawfully prolonging their traffic stop beyond the time necessary to complete its mission. *See Rodriguez*, 575 U.S. at 354. The record does not demonstrate that Officer Carner engaged in this violation due to Respondents' race. However, it does show that Officer Carner's conduct was part of a pattern of widespread Fourth Amendment violations occurring statewide. *See* Exhs. 2, Tabs K-P; 9B. Accordingly, Respondent's admissions, given after the Fourth Amendment violation occurred, merit suppression under the exclusionary rule.

Oliva-Ramos, 694 F.3d at 272. Respondents' I-213's and police incident report, obtained as the fruit of a widespread Fourth Amendment violation, are also excluded. *See Wong Sun v. United States*, 371 U.S. 471, 484 (1963) (stating that evidence obtained as the result of an unlawful seizure is to be excluded as the fruits of the unlawful action); *Yoc-Us*, 932 F.3d at 104 (applying 'fruits' doctrine to immigration proceedings). DHS has not established Respondents' alienage by any means independent of this excluded evidence. Therefore, the Court finds it appropriate to terminate proceedings. *Garcia*, 17 I&N Dec. at 321.

Accordingly, the Court enters the following orders:

ORDERS

ORDER: IT IS HEREBY ORDERED that Respondent [redacted] Motion to Suppress Evidence is **GRANTED**.

ORDER: IT IS HEREBY ORDERED that Respondent [redacted] Motion to Terminate Proceedings is **GRANTED**.

ORDER: IT IS HEREBY ORDERED that Respondent [redacted] Motion to Suppress Evidence is **GRANTED**.

ORDER: IT IS HEREBY ORDERED that Respondent [redacted] Motion to Terminate Proceedings is **GRANTED**.

ORDER: IT IS HEREBY ORDERED that Respondent [redacted] Motion to Suppress Evidence in **GRANTED**.

ORDER: IT IS HEREBY ORDERED that Respondent [redacted] Motion to Terminate Proceedings is **GRANTED**.

Feb. 3, 2020
Date

Steven A. Morley
Immigration Judge
Philadelphia, Pennsylvania