

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

MAR 16 1999

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

RAFAEL NUNEZ-PULIDO
aka
MIGUEL AGUSTIN ALVAREZ,
Defendant-Appellant.

No. 98-4118
(Dist. of Utah)
(D.C. No. 97-CR-131-C)

ORDER AND JUDGMENT*

Before **TACHA, McKAY, and MURPHY**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The court, therefore, honors the parties' requests and orders the case submitted without oral argument.

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Raphael Nunez-Pulido (“Nunez”) entered a conditional plea of guilty pursuant to Fed. R. Crim. P. 11(a)(2) to one count of possession of methamphetamine with intent to distribute in violation of 21 U.S.C. § 841(a)(1). On appeal, Nunez challenges the district court’s denial of Nunez’s motion to suppress. This court exercises jurisdiction pursuant to 28 U.S.C. § 1291.

In reviewing a decision denying a motion to suppress, this court reviews a district court’s findings of fact for clear error and views the evidence in the light most favorable to the United States. *United States v. Baker*, 30 F.3d 1278, 1280 (10th Cir. 1994). The reasonableness of a search and seizure under the Fourth Amendment is a question of law to be reviewed *de novo*. *United States v. Martinez-Cigarroa*, 44 F.3d 908, 910 (10th Cir. 1995).

The court has undertaken a careful review of the magistrate judge’s Report and Recommendation, the district court order, the parties’ briefs and contentions, and the entire record on appeal. In light of that close review, this court concludes that given the totality of the circumstances surrounding the stop and detention, the district court did not err in concluding that the continued detention of Nunez was supported by reasonable, articulable suspicion of criminal activity. Accordingly, the district court’s denial of Nunez’s motion to suppress is **AFFIRMED** for

substantially those reasons set out in the magistrate judge's Report and Recommendation dated February 20, 1998.²

ENTERED FOR THE COURT

Michael R. Murphy
Circuit Judge

²In light of our conclusion that the continued detention of Nunez was supported by reasonable, articulable suspicion, this court need not address the waiver argument raised by the United States in its brief on appeal.