

No. _____

**In The
Supreme Court of the United States**

—————◆—————
JOSHUA COLEMAN,

Petitioner,

vs.

STATE OF LOUISIANA,

Respondent.

—————◆—————
**On Petition For Writ Of Certiorari To The
Louisiana First Circuit Court Of Appeal**

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PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

A traffic stop can be “unlawful if it is prolonged beyond the time reasonably required to complete the mission of issuing a traffic ticket.” *Illinois v. Caballes*, 543 U.S. 405, 125 S.Ct. 834, 160 L.Ed. 842 (2005). Even a *de minimis* detention to conduct on-scene investigation into other crimes, including a dog sniff, can violate the Fourth Amendment. *Rodriguez v. United States*, 575 U.S. 348, 135 S.Ct. 1609, 191 L.Ed.2d 492 (2015). Thus, the question becomes:

Does the Fourth Amendment protection against unreasonable seizures tolerate a dog sniff which prolongs a stop, which occurs after all purposes for the initial stop have concluded without citation, and which occurs in the absence of reasonable suspicion or probable cause?

PARTIES TO THE PROCEEDING

The parties to the proceeding are:

1. State of Louisiana, through the St. Tammany Parish District Attorney's Office.
2. Joshua Coleman, an individual who entered a conditional plea* of guilty to possession with intent to distribute Schedule II narcotics, 28 grams or more, La. R.S. 40:967(A); La. R.S. 40:967(B)(1)(b); and illegal carrying of a weapon while committing a crime, a drug offense under the Louisiana controlled dangerous substance statutes, La. R.S. 14:95(E).

CORPORATE DISCLOSURE

The state of Louisiana is a body politic. The St. Tammany Parish District Attorney's Office is a subdivision of the state of Louisiana.

LIST OF RELATED CASES

State v. Coleman, 2019-1458, Louisiana First Circuit Court of Appeal. Judgment entered June 12, 2020.

State v. Coleman, 2020-00868, Louisiana Supreme Court. Judgment entered October 20, 2020.

* *State v. Crosby*, 338 So.2d 584 (La. 1976); *State v. Rachal*, 53,398 (La. App. 2 Cir. 7/22/20), 300 So.3d 483 (A Crosby plea allows a fair and efficient way for a court of review to focus on a central issue which, if found erroneous, would mandate reversal of any resulting conviction.); *see* F.R.Cr.P. Rule 11(a)(2).

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OPINIONS BELOW

The Louisiana First Circuit Court of Appeal affirmed the denial of a motion to suppress, holding that a total 20-minute detention – during which time the officer who stopped Coleman determined he had a valid driver’s license, valid registration, lacked a criminal record, warrants, and detainers – did not violate the Fourth Amendment as interpreted in *Rodriguez v. United States*, 575 U.S. 348, 135 S.Ct. 1609, 191 L.Ed.2d 492 (2015). *State v. Coleman*, 2019-1458, 2020 WL 3108709 (La. App. 1 Cir. 6/12/2020). Appx. 1.

The Louisiana Supreme Court, in a 6-1 decision, denied Coleman’s writ of certiorari. *State v. Coleman*, 2020-00868 (La. 10/20/20), 303 So.3d 294. Justice Genovese dissented, stating in part: “This situation is precisely the one contemplated by the *Rodriguez* Court when it issued its ruling.” Appx. 9-10.



JURISDICTION

This court has jurisdiction under 28 U.S.C. §1257(a).



RELEVANT CONSTITUTION PROVISIONS

The Fourth Amendment to the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against

unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

. . . nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.



STATEMENT OF THE CASE¹

Louisiana State Police received an apparent anonymous tip that Joshua Coleman might be engaged in suspicious behavior. Based on that tip, Trooper Raymond Martinez used a license plate reader to track Coleman's vehicle as he drove through southeast Louisiana on November 12, 2018. Tpr. Martinez located and followed Coleman's vehicle. According to Tpr. Martinez, Coleman followed another vehicle too closely and may have had a license plate trim which blocked identifying information.

Tpr. Martinez stopped Coleman and requested identification and proof of insurance. (19:10:50Z). The

¹ The entire stop – except when the troopers spoke to each other – was captured on dash cam. The times indicated are from that recording.

background check proved Coleman had a valid driver's license, valid registration, and, most notably, the lack of criminal history. (19:23:37) At that time the purpose for the initial stop was completed. Tpr. Martinez issued no traffic violations. Rather than release Coleman, Tpr. Martinez further detained Coleman, questioned him, and engaged in unrecorded conversation with a fellow trooper. (post-19:24Z)

Because Tpr. Martinez believed Coleman was nervous, his voice shaky, and his hand shaky – likely because Coleman was forced to stand in cold, raining weather outside his vehicle, and specifically based on his refusal to allow his vehicle to be searched – Tpr. Martinez told a co-trooper to perform a K-9 drug sniff.²

Thus, more than five minutes after learning that Coleman's driver's license, registration, and criminal history were clear, officers performed a K-9 sniff. The dog approached the vehicle (19:28:59Z) and, thereafter, alerted (19:29:21Z). Coleman was handcuffed and advised of his Miranda rights. His vehicle searched. The search yielded 1.8 pounds of cocaine, a firearm, and a mask in the vehicle's trunk.

District Court Proceedings

The State of Louisiana indicted Coleman for (1) possession with intent to distribute a schedule II

² The record is unclear if Tpr. Martinez called for the K-9 unit or if the unit responded as backup. Nonetheless, discussion between officers indicates the K-9 unit was on the scene at 19:27.41.

controlled dangerous substance 28 grams or more, and (2) illegal carrying of weapons while committing or attempting to commit a crime of violence or while possessing or distributing a controlled dangerous substance.

Coleman filed a motion to suppress, arguing Tpr. Martinez unnecessarily and unlawfully prolonged the traffic stop to conduct a roadside interrogation and dog sniff wholly unrelated to the purpose of the stop. The trial court denied the motion.

In oral reasons, the trial judge said that while the obstructed license plate was not sufficient for Tpr. Martinez to stop Coleman, the supposed following too closely provided grounds for a stop. The court found the information received from law enforcement in Lake Charles and Coleman's inconsistent statements created reasonable suspicion for an extended detention and dog sniff.

Coleman thereafter entered a conditional plea that allowed him to appeal the denied motion.

The Louisiana First Circuit Court of Appeal affirmed the trial court. Without much analysis, the court found that Coleman's lack of proof of insurance, nervous behavior, and alleged dishonesty about his travel history, along with what appeared to be loose marijuana residue, was sufficient reasonable suspicion to enlarge the scope of investigation, including a dog sniff. *Coleman*, 2019-1458, 2020 WL 3108709, p.5.

The Louisiana Supreme Court denied a supervisory writ of certiorari. *Coleman*, 2020-00868 (La. 10/20/20), 303 So.3d 294. Justice Genovese dissented:

Trooper Martinez . . . arguably initiated a lawful stop of defendant for following another vehicle too closely and having a partially obscured license plate. However, after the dispatcher informed him that defendant had a valid driver's licence, valid registration, and the lack of a criminal record (a five to 10 minute period), Trooper Martinez had no authority to further detain defendant. Ultimately, defendant was detained to a total of 20 minutes.

Trooper Martinez testified that he extended the stop because of defendant's nervousness, heavy breathing, trembling voice, inconsistencies in defendant's stories, and his questioning of an unknown substance on the driver's floorboard. However, defendant's alleged nervousness and shaking could be easily attributed to other factors, such as the cold November rain defendant stood in.

This situation is precisely the one contemplated by the *Rodriguez* Court when it issued its ruling. It is my view that Trooper Martinez prolonged the traffic stop in order to conduct a canine sniff without the requisite reasonable suspicion. (Appx. 10).

Coleman seeks the relief Judge Genovese said is required by *Rodriguez*.



ARGUMENT

The Fourth Amendment to the Constitution protects people from “unreasonable searches and seizures.” An officer violates that protection when he detains a person to check his license without any evidence that the person is engaged in a crime. *Delaware v. Prouse*, 440 U.S. 648, 663, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979); *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). The officer deepens the breach when he prolongs the detention just to fish further for evidence of wrongdoing. *Rodriguez*, supra. By prolonging an illegal stop to search for lawbreaking, the officer himself breaks the law. *Utah v. Strieff*, 136 S.Ct. 2056, 195 L.Ed.2d 400 (2016).

Moreover, detention of an alleged violator of any provision of the Louisiana motor vehicle code may not last longer than reasonably necessary for law enforcement to complete investigation of the violation and issue a citation for the violation, absent reasonable suspicion of criminal activity. *State v. Ellis*, 2019-0634 (La. 9/24/19), 279 So.3d 901 (deputy lacked reasonable suspicion to justify continued investigation to await female deputy for pat-down of defendant).

Joshua Coleman’s right to be free from an unconstitutional search and seizure was violated when law enforcement unnecessarily detained him beyond the time necessary to investigate its reason for a stop. Law enforcement engaged in discussion with Coleman only to convince him to consent to a search of his vehicle; Coleman refused. At that point the traffic stop was

complete, a brightline this Court should establish through this writ of certiorari.

Rather than release Coleman when the driving and arrest records warranted no citation or arrest, law enforcement unnecessarily continued Coleman's detention. Tpr. Martinez testified he had no reasonable suspicion until after the dog sniff.

In *Rodriguez*, the majority explained that “[a]n officer, in other words, may conduct certain unrelated checks during an otherwise lawful traffic stop. But . . . he may not do so in any way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual,” particularly in order to conduct a dog sniff. *Id.*, 135 S.Ct. at 1615. That is so because a dog sniff is not fairly characterized as part of the officer's traffic mission. *Id.* The “critical question, then, is not whether the dog sniff occurs before or after the officer issues a ticket . . . but whether conducting the sniff ‘prolongs’ – *i.e.*, adds time to – ‘the stop.’” *Id.*, 135 S.Ct. at 1616.

This Court has additionally held that searches and seizures conducted outside the judicial process – without prior approval by a judge or magistrate – are *per se* unreasonable under the Fourth Amendment, subject to only a few specially established and well delineated exceptions. *Minnesota v. Dickerson*, 508 U.S. 366, 113 S.Ct. 2130, 124 L.Ed.2d 334 (1993) (internal citations omitted); *Rodriguez*, 135 S.Ct. at 1615.

In Louisiana, the right to be free from a prolonged detention is so valued that it is codified: “During

detention of an alleged violator of any provision of the motor vehicle laws of this state, an officer may not detain a motorist for a period of time longer than reasonably necessary to complete the investigation of the violation and issuance of a citation for the violation, absent reasonable suspicion of additional criminal activity.” La. C.Cr.P. art. 215(D).

Yet, time and time again, individuals are stopped and detained for longer than is necessary so law enforcement can create reasonable suspicion to justify either an illegal search or a dog sniff. This is one of those times. While *Rodriguez* seemingly indicates law enforcement may detain for a *de minimis* time, the case does not answer whether the Fourth Amendment protection against unreasonable seizures tolerates a dog sniff which prolongs a stop, which occurs after all purposes for the initial stop have concluded without citation, and which occurs in the absence of reasonable suspicion or probable cause.

An automobile stop is subject to the constitutional imperative that it not be “unreasonable” under the circumstances. *Whren v. United States*, 517 U.S. 806, 810, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996). Even if brief and for limited purposes, such a stop constitutes a seizure under the Fourth Amendment. *Id.* Louisiana law similarly prohibits detention for a period of time longer than reasonably necessary to complete the investigation of the violation and issuance of a citation for the violation, absent reasonable suspicion of additional criminal activity. La. C.Cr.P. art. 215.1(D). *See also Rodriguez* (An officer may conduct certain unrelated

checks during an otherwise lawful traffic stop. But he may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual.).

The time reasonably required to complete the mission of issuing a traffic ticket can include the time it takes to perform basic investigatory tasks (*e.g.*, inspect the driver's license, automobile registration, and proof of automobile insurance, run computer checks, determine whether there are outstanding warrants against the driver, and ask the purpose and itinerary of the trip). *Rodriguez*, 135 S.Ct. at 1615; *United States v. Spears*, 636 Fed.Appx. 893 (5th Cir. 2016) (internal citations omitted). But absent reasonable suspicion of additional criminal activity, waiting for, or conducting, a dog sniff cannot prolong a stop that is justified only by the amount of time reasonably required to complete the mission of issuing a traffic ticket and attending to related safety concerns. *Rodriguez* at 1614, 1616. A dog sniff is just *not* part of the mission of issuing a traffic ticket. *Id.* at 1615.

Authority for seizure ends when tasks tied to the traffic infraction are – or reasonably should have been – completed. *Id.*, 135 S.Ct. at 1614. For instance, if all the computer checks come back clean, then, as a general matter reasonable suspicion disappears; there is no legitimate reason for extending the stop. *United States v. Jenson*, 462 F.3d 399 (5th Cir. 2006).

Any traffic stop prolonged beyond that point is unlawful and violates a defendant's constitutional rights.

Rodriguez, 135 S.Ct. at 1616. Coleman’s prolonged detention violated his constitutional rights, and the lower courts’ decisions finding otherwise are erroneous interpretations of law which this court should reverse.

1. Tpr. Martinez’s prolonged detention of Coleman transformed an initially justified stop into an unreasonable seizure violative of Coleman’s Fourth Amendment rights.

The stop is not at issue. Trooper Martinez – although alerted by anonymous information that a gold, Chevrolet Malibu would be traveling through Louisiana on Interstate 12 on November 12, 2018 – stopped Coleman for allegedly having an illegal license plate trim and following a vehicle too closely under La. R.S. 32:81. Trooper Martinez had no other reason to justify stopping Coleman: “I don’t have anything else. No other probable cause to pull him over than what I just told you.”

A video introduced at the suppression hearing demonstrates that after ordering Coleman to exit his vehicle, and stand in cold, rainy, blustery weather, Tpr. Martinez learned that Coleman had a valid driver’s license, valid registration, no criminal history, and no open arrest warrants. According to the video time stamp, Tpr. Martinez called for a license plate check at 19:11:25Z. He thereafter advised Coleman his license and registration were sufficient while dismissing Coleman’s inability to locate proof of insurance. (19:15:21Z). Seven minutes after calling for vehicle

information, Tpr. Martinez transmitted via radio Coleman's driver's license number. (19:18:05Z).

Five minutes later (19:23:37Z), a dispatcher informed Tpr. Martinez that Coleman had a valid driver's license and no outstanding warrants or detainers. At that moment, Tpr. Martinez's investigation was legally complete under *Rodriguez* and Louisiana law. Coleman should have been allowed to leave and complete his trip.

2. Trooper Martinez's unreasonable seizure began the moment he completed the mission of the initial stop.

Tpr. Martinez did not issue a citation for the alleged traffic violations. Rather, he extended the stop by interrogating Coleman, who was further detained while Trooper Martinez drafted a consent form for Coleman's permission for a search of his vehicle. Tpr. Martinez testified he believed his investigation of the traffic stop was not complete, in part because of "indiscretions with his [Coleman's] stories." And while Tpr. Martinez asked Coleman about some unknown substance on the driver's floorboard, he dismissed the discovery, indicating Coleman should not "worry about a little bit shake." (19:27Z).

The lower court erroneously based its decision, in part, on the trooper "observ[ing] what appeared to be loose marijuana residue in the vehicle." Tpr. Martinez never even mentioned finding evidence of marijuana in his report; he did not collect or test any object in

Coleman's vehicle for marijuana because he "didn't smell marijuana." And in his testimony, Tpr. Martinez considered the alleged illegal material as inconsequential to the stop or reason for prolonged detention.

Tpr. Martinez could only articulate the objective manifestation that Coleman was "nervous, breathing heavy, and his voice trembling when speaking." Nervousness – even appearing jittery and scared – is insufficient to establish reasonable suspicion of possible criminal conduct. *State v. Purvis*, 1996-787 (La. App. 3 Cir. 12/11/96), 684 So.2d 567; *State v. Parker*, 1997-1994 (La. App. 4 Cir. 12/9/98), 723 So.2d 1066. Even evasive behavior is not necessarily indicative of wrongdoing. *Illinois v. Wardlow*, 528 U.S. 119, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000); *see also United States v. Monsivais*, 848 F.3d 353, 359 (5th Cir. 2017) (It is common for most people to exhibit signs of nervousness when confronted by a law enforcement officer whether or the not person is currently engaged in criminal activity.).

Despite the lack of reasonable suspicion or separate reasonable suspicion, Tpr. Martinez continued to detain Coleman while speaking with other officers at the scene. Tpr. Martinez also continued to push Coleman for permission to search Coleman's vehicle. When Coleman refused, Tpr. Martinez ordered the dog sniff.

Tpr. Martinez used the dog sniff to illegally seize Coleman:

Q: Mr. Coleman did not sign that search.

A: Right, sir. Yes, sir.

Q: When you were asking Mr. Coleman for consent to search his vehicle you acknowledge you did not have the requisite level of suspicion to search Mr. Coleman's car without his permission; isn't that right?

A: I can't search it. That's why we have a dog, sir, to give us the probable cause to search the vehicle. I did not have probable cause to search the vehicle.

Tpr. Martinez admitted he impermissibly, and unconstitutionally, detained Coleman in order to create reasonable suspicion.

While the traffic violation provided initial justification for Tpr. Martinez to detain Coleman to perform the traditional incidents of a routine traffic stop, the traffic violation stop became unlawful when prolonged beyond the time necessary to complete the mission of performing the necessary checks on Coleman and issuing a warning or ticket. *Illinois v. Caballes*, 543 U.S. 405, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005).

In *Rodriguez*, the defendant was stopped for driving on the highway shoulder. After the officer conducted all steps necessary to complete the traffic stop (the driver was only issued a warning), the officer asked permission to walk his dog around the defendant's vehicle. *Id.*, 575 U.S. at 352. When Rodriguez refused, the officer called for a second officer. Thereafter,

the officer retrieved his dog and led him twice around the defendant's vehicle. The dog alerted to the presence of drugs halfway through the second pass. *Id.*

While this court in *Rodriguez* explained the mission of a traffic stop may be to address the traffic violation and to attend to related safety concerns, by measure, a dog sniff is aimed at detecting evidence of ordinary wrongdoing. *Rodriguez* at 1615, quoting *Indianapolis v. Edmond*, 531 U.S. 32, 121 S.Ct. 447, 148 L.Ed.2d 333 (2000). The “dog sniff” is not part of the officer's traffic mission. *Id.* Law enforcement *may not, therefore*, extend an otherwise completed traffic stop to conduct a dog sniff absent reasonable suspicion. *Id.* (Emphasis added).

In *Rodriguez*, this Court held that even a six-to-eight-minute delay following a traffic stop where the driver is detained is a violation of the defendant's Fourth Amendment rights; the detention is not merely “de minimis” when the detention is not supported by reasonable suspicion garnered before the traffic stop concluded. *Id.* at 1611. Coleman asserts the lower courts erred in failing to hold, under *Rodriguez*, that Tpr. Martinez's prolonged detention violated Coleman's Fourth Amendment rights.

In *Cabelles*, the Court made clear that in the context of a traffic stop supported by probable cause, “a dog sniff would not change the character of a traffic stop at its inception and otherwise executed in a reasonable manner.” 543 U.S. at 408, 125 S.Ct. 834. But without a clear indication of when the authority to

detain stops – ideally when the warning or citation is issued or when the officer has completed the mission of the stop – law enforcement can manipulate the sequence of events to justify reasonable suspicion.

This Court’s jurisprudence has incrementally sought to limit tolerable duration of police inquiries in the traffic-stop context to address the traffic violation that warranted the stop and to attend to related safety concerns. *Florida v. Royer*, 460 U.S. 491, 500, 103 S.Ct. 1319, 1325, 75 L.Ed.2d 229 (1983) (Because addressing the infraction is the purpose of the stop, it may last no longer than is necessary to effectuate that purpose.); *Cabelles*, 543 U.S. at 408 (“An officer [. . .] may conduct certain unrelated checks during an otherwise lawful traffic stop. But . . . he may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual.”).

Lower courts, however, struggle. Law enforcement can go to great lengths to control a stop. This case affords this Court the opportunity to answer the unanswered question in *Rodriguez* and designate the point at which the Fourth Amendment forbids detention simply for detention’s sake. Especially, where here, Tpr. Martinez admitted he needed the dog sniff to extend Coleman’s detention.

The Tenth Circuit, for example, has wrestled with pinning down what precisely constitutes an unconstitutional extension of a traffic stop. *See, e.g., United States v. Torres*, 2017 WL 3149395, fn. 10 (U.S.D.C. N.

Mex. 2017) (extensively discussing the tension between cases which are fairly lenient toward law enforcement personnel with regards to expanding a traffic violation’s scope with Justice Ginsberg’s statement in *Rodriguez* that a traffic stop “may last no longer than is necessary to effectuate the stop’s purpose.” 135 S.Ct. at 1614).

Louisiana courts, too, have failed to fully understand *Rodriguez* and Fourth Amendment limitations on law enforcement which should exist in practice to prevent expansion of the typical stop. *Cf. State v. Antoine*, 2019-0047 (La. 2/25/19), 264 So.3d 443 (Genovese, J., would grant for following reasons, in part: “Officers stopped a vehicle ostensibly for a traffic violation. Over the course of 15 minutes, officers vetted both the driver and passenger and found no outstanding warrants or other cause to detain the occupants. Officers denied smelling marijuana or other drug odors. Nevertheless, one officer asked to search the vehicle. The driver refused. The officer thereafter requested a K-9 officer to conduct a dog sniff. The K-9 unit arrived approximately 22 minutes later. In my view, officers articulated no reasonable suspicion to justify extending the already-completed stop to conduct the drug sniff.”); *State v. Spearman*, 2019-0065, fn. 6 (La. App. 1 Cir. 5/31/19) (unreported) (noting this Court declined to address in *Rodriguez* whether reasonable suspicion developed during the stop to justify prolonging detention, remanding for further proceedings on the issue).

The uncertainty of whether a detention beyond a warning, issuance of a ticket, or completion of the mission for which the stop was executed is an unreasonably prolonged stop in violation of the Fourth Amendment is well illustrated in both the federal and state cases against Brandon Bell-Brayboy. The defendant was initially indicted in federal court. Stopped for speeding, Bell-Brayboy was accused of typical law enforcement grounds for detention: speeding, nervousness or sleepiness, vehicle registered in another person's name, and objection to search of the vehicle. Officers failed to issue a citation for the speeding, rather calling for a K-9 unit. *United States v. Bell-Brayboy*, 2017 WL 5078400 (W.D. La. 2017) (unreported). The K-9 search revealed illegal narcotics. In response to Bell-Brayboy's motion to suppress, the district court concluded the continued detention beyond the time reasonably required to complete the mission of issuing a traffic ticket, without reasonable suspicion and for more than 20 minutes while waiting for a K-9 to arrive, violated defendant's constitutional shield against an unreasonable seizure.

Unfazed with the federal court suppression and case dismissal, the Louisiana Webster Parish District Attorney indicted Bell-Brayboy for the illegal possession of the same narcotics.³ In the course of the

³ The prosecution of Bell-Brayboy in state court for the same criminal activity after the dismissal of charges in federal court does not violate double jeopardy due to the dual-sovereignty doctrine. That rule provides that a crime under one sovereign's laws is not the same offense as a crime under the laws of another

proceedings, the state presented evidence from the same trooper, who presented a more detailed explanation for his suspicion the defendant was transporting narcotics. Finding the trooper acted in “good faith” in detaining Bell-Brayboy for a K-9 sniff – while not issuing the ticket for the speeding violation for which the stop was instituted – the trial court denied the defendant’s motion to suppress.

Bell-Brayboy, like Coleman herein, entered a *Crosby* plea and appealed the suppression issue. The Louisiana Second Circuit initially reversed the conviction, holding that Bell-Brayboy was illegally detained based upon *innocuous explanations* for the facts the trooper claimed provided reasonable suspicion. *State v. Bell-Brayboy*, 53,413, 2020 WL 1035939, p. 12 (La. App. 2 Cir. 3/4/20), ___ So.3d ___. (Emphasis added). On rehearing, the court reversed its position, apparently finding *Rodriguez* inapplicable since the officer articulated reasonable suspicion for a detention and had yet to issue the traffic citation. The court found the 35-minute total detention was not too long or unconstitutional. *Id.* at 27.⁴

sovereign. See *Gamble v. United States*, ___ U.S. ___, 139 S.Ct. 1960, 204 L.Ed.2d 322 (2019).

⁴ See, e.g., in contrast: *United States v. Rodriguez-Escalera*, 884 F.3d 661 (7th Cir. 2018) (Vehicle stopped for abruptly switching lanes; driver’s license suspended; nearly twenty-two minutes to issue routine traffic citations and additional ten minute detention waiting for K-9 unit was unreasonable).

United States v. Harris, 347 F.Supp.3d 1233 (S.D. Fla. 2018) (Sixteen minutes between time officer stopped vehicle and time dog alerted to order of drugs unreasonable based on (1)

Bell-Brayboy’s certiorari writ application to the Louisiana Supreme Court was denied. *State v. Bell-Brayboy*, 2020-01061, 2020 WL 7224282 (La. 12/8/20), ___ So.3d ___. Chief Justice Johnson, writing in support of granting certiorari, explained that the state offered no additional circumstances to justify the officer’s suspicion beyond those already considered, and found insufficient, by the federal court. Chief Justice Johnson relied upon *Rodriguez* to support her position that “[a]uthority for the seizure thus ends when tasks tied to the traffic infraction are – or reasonably should have been – completed.” *Bell-Brayboy*, supra at 1. The chief justice also found the officer’s hunch that Bell-Brayboy was participating in an illegal activity could not be grounds for contrived suspicious activities where none existed. “It is of no moment that [n]one of the trooper’s suspicions were shown to be incorrect. It is axiomatic that no Fourth Amendment violation is justified by the ends reached.” *Id.* at 2, citing *Bell-Brayboy*, 53,413 at 4.

defendant’s drug history; (2) his nervousness when asked about drug history; and (3) presence in a high drug trafficking area).

United States v. Callison, 436 F.Supp.3d 1218 (S.D. Iowa 2020) (Questions regarding defendant’s travel-plan and contraband lacked rational relationship to roadway safety or observed violation and was unreasonable detention).

United States v. Landeros, 913 F.3d 862 (9th Cir. 2019) (Several minutes of additional questioning to ascertain identity of driver stopped for speeding not part of mission of traffic stop, making detention unreasonable and seizure of narcotics unconstitutional).

Bell-Brayboy demonstrates the struggle lower courts have in (1) appreciating the difference between the certain line that completes the traffic mission between (2) law enforcement's apparent ability to articulate sufficient grounds in an effort to show prolonged detention was necessary. The *Bell-Brayboy* decision, along with Coleman's herein, shows the need for this Court to articulate precisely what remains unanswered following *Rodriguez*: what constitutes reasonable suspicion to detain a defendant for a K-9 dog sniff.

By measure, a dog sniff is aimed at detecting evidence of ordinary wrongdoing. *Rodriguez* at 1615, quoting *Indianapolis v. Edmond*, 531 U.S. 32, 121 S.Ct. 447, 148 L.Ed.2d 333 (2000). This court determined a "dog sniff" is not part of the officer's traffic mission. *Id.* This Court held that law enforcement *may not* extend an otherwise completed traffic stop to conduct a dog sniff absent reasonable suspicion. *Id.* (Emphasis added).

Suspicion must be more than just a hunch. The government must be able to legally articulate why a particular behavior is suspicious. Or, the government must logically demonstrate, given the surrounding circumstances, that the behavior is likely to be indicative of some more sinister activity than may appear at first glance. *United States v. Foster*, 634 F.3d 243, 243 (4th Cir. 2011).

Even before *Rodriguez*, courts treated the extended detention of an individual in order to conduct a dog sniff unreasonable because "a detention must be

temporary and last no longer than is necessary to effectuate the purpose of the stop.” *United States v. Brigham*, 382 F.3d 500, 507 (5th Cir. 2004). Indeed, a three-minute delay, or a delay of “moments,” or a “trivial delay” between the completion of a computer check and a later search or dog sniff can be unreasonable. See *United States v. Jones*, 234 F.3d 234, 241 (5th Cir. 2000).

In *United States v. Spears*, 636 Fed.Appx. 893 (5th Cir. 2016), for example, almost 40 minutes elapsed from the time the defendant was initially stopped until the time the search began. The search was commenced upon receipt of information that a large amount of money had been found in a suspected drug dealer’s vehicle whose home Spears had visited earlier that day. Approximately sixteen and a half minutes after Spears was stopped, he was placed in the back of the patrol vehicle, all questioning had been completed, he had been patted down, and all computer checks had been fully completed. *Id.* at 901.

The Fifth Circuit found the activities involving the mission of issuing a traffic ticket and attending to related safety concerns were completed, with Spears detained for almost an additional twenty three and a half minutes – just sitting in the back of the patrol car – while officers tried to obtain a drug-sniffing dog. *Spears* at 901. Ultimately, the court found the circumstances that existed before the stop and during the initial sixteen and a half minutes of the stop “did not create a reasonable suspicion of criminal activity.” *Id.* at 905. Because law enforcement officers detained

Spears longer than the time reasonably required to issue a ticket for a traffic violation and attend to related safety concerns, without reasonable suspicion of additional criminal activity, his prolonged detention violated the Fourth Amendment. *Id.* The court reversed the district court's grant of the motion to suppress and vacated Spears' conviction and sentence. *Spears* at 905.

Thus, everything outside the "mission" amounted to an improper delay in the absence of probable cause or a reasonable basis for suspicion of narcotics. But without a defining point, law enforcement continues to pursue an inquiry unrelated to the traffic stop; it runs afoot of *Rodriguez's* intent that the detention remain "de minimis" unless there exists clear reasonable suspicion for further inquiry. What that reasonable suspicion is, and at what point that reasonable suspicion arises, remains unclear.

Left unanswered, this court's *Rodriguez* decision also allows for an officer to stop and detain a motorist for whatever reason the officer can pretextually justify after the fact and for state courts to issue decisions "contrary to" this Court's clearly established precedents. *See Williams v. Taylor*, 529 U.S. 362, 120 S.Ct. 1495, 146 L.Ed.2d 389 (2000) (A state-court decision is contrary to this Court's precedent if the state court arrives at a conclusion opposite to that reached by this Court on a question of law. Second, a state-court decision is also contrary to this Court's precedent if the state court confronts facts that are materially indistinguishable from a relevant Supreme Court

precedent and arrives as a result opposite to one of this Court.).



CONCLUSION

In light of the uncertainty in what constitutes a *de minimis* detention, this court should grant this writ of certiorari to decide whether the Fourth Amendment protection against unreasonable seizures tolerates a dog sniff which prolongs a stop, which occurs after all purposes for the initial stop have concluded without citation, and which occurs in the absence of reasonable suspicion or probable cause.

Respectfully submitted,

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