No.

IN THE SUPREME COURT OF THE UNITED STATES

DELILAH COLARTE, PETITIONER

v.

STATE OF FLORIDA, RESPONDENT.

ON PETITION FOR A WRIT OF CERTIROARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether the "mission" of a routine traffic stop includes law enforcement requiring passengers in the vehicle to identify themselves, and to run checks such as warrant searches, on those passengers? Or whether such actions are not part of the "mission" of the stop and therefore violate the holding of *Rodriguez v. United States*, 575 U.S. 348 (2015), by extending the duration of the seizure beyond its constitutionally permissible limits?

RELATED PROCEEDINGS

The proceedings listed below are directly related to the above-captioned case in this Court:

State of Florida v. Delilah Ashbel Colarte, No. 56-2018-CF-000669-AXXXXX
(Fla. 19th Jud. Cir.).
Judgment entered December 20, 2019.

Colarte v. State, No. 4D20-0111, 316 So. 3d 358,
(Fla. 4th DCA Apr. 14, 2021).
Judgment entered April 14, 2021. Rehearing denied May 3, 2021.

Colarte v. State, No. SC21-839, 2021 WL 3264455
(Fla. July 30, 2021).
Judgment entered July 30, 2021.

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PETITION FOR A WRIT OF CERTIORARI

Delilah Colarte respectfully petitions for a writ of certiorari to review the judgment of the Fourth District Court of Appeal of Florida.

DECISIONS BELOW

The opinion of the Fourth District Court of Appeal is reported as *Colarte v. State*, 316 So. 3d 358 (Fla. 4th DCA Apr. 14, 2021), and is reprinted in the appendix. A1-A3.

The order of the Florida Supreme Court denying the discretionary petition for review is reported as *Colarte v. State*, No. SC21-839, 2021 WL 3264455 (Fla. July 30, 2021), and is reprinted in the appendix. A6-A7.

JURISDICTION

The Fourth District Court of Appeal affirmed the trial court judgment with respect to the question presented in this petition on April 14, 2021.[1] A1-A3. On this issue, the opinion stated only "We affirm on the first argument without discussion. The trial court's decision to deny Appellant's motion to suppress is supported by adequate factual findings and the applicable law." A1. Colarte timely moved for rehearing and related relief on April 27, 2021. A64-A69. The Fourth District denied that motion on May 3, 2021. A8. Colarte sought the discretionary jurisdiction of the Florida Supreme Court, which on July 30, 2021, declined to accept jurisdiction and denied Colarte's petition for review. A6-A7. This Court has jurisdiction under 28 U.S.C. § 1257(a).

[1] The Fourth District reversed on a separate issue that affected only the costs Colarte was required to pay as part of her sentence. A1-A3. Colarte's conviction, including the decision on the motion to suppress, was affirmed. A1-A3.

CONSTITUTIONAL PROVISIONS

I. 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.

II. Section 1 of the Fourteenth Amendment to the United States Constitution provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; 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 CASE AND FACTS

Petitioner Delilah Colarte was subjected to a traffic stop because of an inoperable license tag light. A4. Colarte was driving, and had two passengers in the vehicle. A4. During the course of the stop, the officer required all three occupants to identify themselves using their names and dates of birth. A15. The officer took the time to verify this information and checked two databases for outstanding warrants on any of the three. A4, A15-A16. While the officer was performing this verification, a separate K-9 unit arrived on scene. A4. The original officer finished his warrant search (revealing none) and began to write Colarte a warning for her tag light. A4-A5, A20. While the officer was writing that warrant, the K-9 unit performed a sniff search of the vehicle and alerted. A4. A subsequent search revealed items that led to charges of possession of cannabis resin and use or possession of drug paraphernalia. A4, A72. The total time of the stop was approximately 10 minutes. A5.

Colarte moved to suppress the evidence found during the stop. A9-A10. Her trial court motion contained multiple grounds for suppression, but over the course of the appellate process these have been whittled down to only the question presented in this Court. *See* A9-A63. Colarte argued that law enforcement unreasonably delayed her detention, thereby allowing time for the K-9 unit to arrive and alert, by obtaining the information from and running checks on her passengers. A34-A35, A48-A56.

The trial court denied Colarte's motion to suppress. A4-A5. The court recognized that "[t]he dispositive issue is whether the officers impermissibly

lengthened the stop." A4. The court then made the factual findings described above. A4-A5. In particular, the court found that the officer spent time "verifying the information on the three subjects (driver and two passengers)," and that the eventual dog sniff alert was made during the final writing-the-warning part of the stop. A4-A5. The court made the legal conclusion that "everything the officer did was legitimately part of the stop" and therefore denied the motion. A5.

Colarte subsequently entered an open plea, reserving her right to appeal the dispositive suppression issue. A77. The trial court accepted the plea and sentenced Colarte to six months of probation. A72-76, A81-86. Colarte then appealed to Florida's Fourth District Court of Appeal. *See* A1-A3.

In the Fourth District, Colarte continued to argue that the officer's decision to obtain her passengers' identifying information and run warrant checks on them was not a legitimate part of the mission of the traffic stop.[2] A48-A56. Her argument was that extending the length of the stop by performing this extraneous action violated her Fourth Amendment right to be free from unreasonable seizure. A48-A56.

The Fourth District Court of Appeal affirmed Colarte's conviction with little explanation. A1-A3. The opinion's entire analysis was simply "We affirm on the first argument without discussion. The trial court's decision to deny Appellant's motion to suppress is supported by adequate factual findings and the applicable law." A1. Although the Fourth District did reverse on the state-law cost issue, the upshot of the decision was that Colarte's conviction stands. A1-A3.

[2] Colarte also raised a state-law issue regarding her court costs. That claim is not raised as part of this petition.

Colarte sought two forms of post-opinion review. First, she moved the Fourth District for rehearing and related relief. A64-A69. The Fourth District denied that motion without explanation. A8. Next, Colarte invoked the discretionary jurisdiction of the Florida Supreme Court, which can but is not required to take cases that expressly construe a provision of the federal constitution. A6-A7. The Florida Supreme Court exercised its discretion and declined to accept review of the case. A6-A7.

This petition for a writ of certiorari follows.

REASONS FOR GRANTING THE PETITION

In *Rodriguez v. Unites States*, 575 U.S. 348 (2015), this Court held that "a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures." *Id.* at 350. Throughout *Rodriguez* and its predecessor case *Illinois v. Caballes*, 543 U.S. 405 (2005), this Court referred to the "mission" of the stop and those things that are "ordinary inquiries incident" to the stop. *E.g.*, *Rodriguez*, 575 U.S. at 355. If an action falls within the "mission" or the "ordinary inquiries," it is permissible; if it is outside those categories and extends the length of time the stop occurs, it is forbidden. *Id.*

This Court provided some examples of actions that are permissible, specifically listing "checking *the driver's* license, determining whether there are outstanding warrants *against the driver*, and inspecting the automobile's registration and proof of insurance." *Id.* (emphases added). But this Court did not proclaim this to be an exhaustive list.

Here, Colarte raises a Fourth and Fourteenth Amendment[3] argument that law enforcement's act of asking for *her passengers'* identifying information and running warrant checks against *them* was not part of the "mission" of the stop. This is an open question in this Court, and has created a split of authority around the country. This case provides this Court with the opportunity to resolve this split and to further delineate the contours of the Fourth Amendment's protections.

[3] The Fourth Amendment has been incorporated against the states through the Fourteenth Amendment. *Mapp v. Ohio*, 367 U.S. 643, 655 (1961).

I. The issue of checking passenger identifications and warrants has split the courts of this country.

When law enforcement pulls over a vehicle for a traffic infraction, and that vehicle has a passenger in addition to a driver, is it permissible for the officer to take the time (and thereby extend the time the parties are seized) to ask the passenger for their identifying information and to run a warrant check on them? Currently, it depends on where the stop took place.

In much of the country, including Florida, the answer would be "yes"—an officer is allowed to obtain identifications and run warrant checks on passengers. In Florida, this was most clearly stated in *Vangansbeke v. State*, 223 So. 3d 384 (Fla. 5th DCA 2017): "Running background checks on the vehicle, the driver, and the passengers are normal parts of a traffic stop and do not unreasonably prolong the stop." *Id.* at 387. And of course, the present case is an example of Florida's application of this rule.

At least nine other states share Florida's position on this matter. *See State v. Ybarra*, 751 P.2d 591, 592 (Ariz. Ct. App. 1987); *People v. Vibanco*, 60 Cal. Rptr. 3d 1, 14 (Cal. Ct. App. 2007); *People v. Bowles*, 226 P.3d 1125, 1129 (Colo. Ct. App. 2009); *Loper v. State*, 8 A.3d 1169, 1173 (Del. 2010); *State v. Williams*, 590 S.E.2d 151, 202 (Ga. Ct. App. 2003); *Cade v. State*, 827 N.E.2d 186, 189 (Ind. Ct. App. 2007); *State v. Landry*, 588 So. 2d 345, 348 (La. 1991); *State v. Martinez*, 424 P.3d 83, 86 (Utah 2017); *State v. Griffith*, 613 N.W.2d 72, 85 (Wisc. 2000).

The federal courts of appeal agree with these nine states. Nine federal

courts—all who have considered it,[4] have held that identifying information of passengers can be demanded without any particularized suspicion. *United States v. Fernandez*, 600 F.3d 56, 57 (1st Cir. 2010); *United States v. Soriano-Jarquin*, 492 F.3d 495, 500 (4th Cir. 2007); *United States v. Pack*, 612 F.3d 341, 351-52 (5th Cir. 2010); *United States v. Smith*, 601 F.3d 530, 542 (6th Cir. 2010); *United States v. Sanford*, 806 F.3d 954, 956 (7th Cir. 2015); *United States v. Cloud*, 594 F.3d 1042, 1044 (8th Cir. 2010); *United States v. Diaz-Castaneda*, 494 F.3d 1146, 1152-53 (9th Cir. 2007), *continued validity questioned in United States v. Landeros*, 913 F.3d 862, 870 (9th Cir. 2019); *United States v. Rice*, 483 F.3d 1079, 1084 (10th Cir. 2007); *United States v. Purcell*, 236 F.3d 1274, 1276-79 (11th Cir. 2001).

On the other hand, a person who was a passenger in a stopped vehicle in Kansas could not be compelled to provide identification if doing so would extend the duration of the stop. *State v. Griffith*, 456 P.3d 232, at *10 (Kan. Ct. App. 2020) (unpublished opinion). Nevada appears similar. *Cortes v. State*, 260 P.3d 184 (Nev. 2011). In Illinois, identification can be requested but a warrant check cannot be run if doing so would extend the duration of the stop. *People v. Harris*, 886 N.E.2d 947, 957-58, 963-64 (Ill. 2008). In Washington state, a parking violation permits officers to obtain identification of the driver only, not passengers. *State v. Larson*, 611 P.2d 771, 774 (Wash. 1980) (en banc). In New Mexico, a "generalized concern about officer safety" is insufficient to make requesting a passenger's identification not a seizure, and performing a warrants check is a continued unlawful detention. *State*

[4] *See Perozzo v. State*, 493 P.3d 233, 239 (Alaska 2021).

v. Affsprung, 87 P.3d 1088, 1094-95 (N.M. Ct. App. 2004). Finally, in Minnesota, asking for identification and running warrant checks of passengers is impermissible. *State v. Johnson*, 645 N.W.2d 505, 511 (Minn. Ct. App. 2002) (recognizing minor exception when asking if the passenger has a license when doing so is necessary to determine whether driver was violating the law by driving with only a permit).

Other states have agreed with the general principle that passenger identification checks are impermissible, but have grounded their analysis in their own state constitutions. These jurisdictions would therefore not be directly implicated by this Court's ruling on the Fourth Amendment in particular, but this Court's opinion may still prove useful to those states if the state constitutional argument were ever reconsidered. *E.g.*, *Perozzo v. State*, 493 P.3d 233, 242 (Alaska 2021) (also noting that this Court has not addressed this issue at page 238); *Commonwealth v. Alvarez*, 692 N.E.2d 106, 109 (App. Ct. of Mass. 1998); *State v. Thompkin*, 143 P.3d 530, 534 (Ore. 2006).

In addition to the split across the country, the federal nature of the court system means that there are also splits within a single state depending on whether the prosecution is heard in state or federal court. All of the states listed above as prohibiting identification and warrant checks of passengers lie within the circuits listed as having decided such checks are permissible. Therefore, and for example, whether a Minnesota officer's decision to run a warrant check on a passenger is constitutional will depend on whether a resulting criminal case is considered in the

Minnesota court system or in the federal District of Minnesota. The constitutionality of government action should not depend on post hoc decisions by prosecuting authorities.

The question presented in this case is one that divides the country both between jurisdictions and within the borders of individual states. This Court should grant this petition for a writ of certiorari to resolve this conflict and promote uniformity in the application of the Fourth Amendment throughout the nation.

II. This case presents this Court with the opportunity to speak on an issue of great importance.

This Court's rule from *Rodriguez* requires courts to know what constitutes part of the "mission" of the stop, what constitutes an "ordinary inquir[y] incident" to the stop, and what falls outside either of those categories. *Rodriguez v. United States*, 575 U.S. 348, 355-56 (2015). This case presents the question of which category contains an officer's obtaining of a passenger's identifying information and the subsequent running of that information through warrant check databases. It is important for courts to know which police actions fall outside the "mission" of the stop or the "ordinary inquiries incident" to a stop because those actions run afoul of *Rodriguez* and are therefore unconstitutional if they extend the duration of the seizure.

Additionally, this issue is *particularly* important because of the sheer number of police/citizen interactions it would apply to. According to the U.S. Department of

Justice, approximately 18.6 million drivers were stopped by police in 2018.[5] Within those stops, there were approximately 5.7 million passengers. *Id.* These numbers mean that in 2018 somewhere between 7.1 million and 11.4 million people were in a vehicle subjected to a traffic stop with a passenger inside.[6] A decision on the question presented by this case would affect the lives and constitutional rights of each of those 7 to 11 million people each year.

This case presents an open question directly relevant to one of this Court's recent holdings. The scope of a decision would sound far beyond the limits of this case, affecting millions of people. And the question presented relates to a key Constitutional protection from tyranny—the right to be free from unreasonable seizures by government agents. This case provides this Court the opportunity to speak on this highly important issue and resolve the conflict.

III. This case provides an ideal vehicle for this Court to consider the important question raised.

This case squarely presents its question to this Court; the issue is both legally clear and free of any procedural stumbling blocks. A decision can be reached without any difficult record-sifting or factual disputes. And the resolution will directly affect Colarte herself. This case is the ideal vehicle for this Court to

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[5] ERIKA HARRELL & ELIZABETH DAVIS, U.S. DEP'T OF JUSTICE, CONTACTS BETWEEN POLICE AND THE PUBLIC, 2018 – STATISTICAL TABLES, at 4 (December 2020), *available at* https://bjs.ojp.gov/content/pub/pdf/cbpp18st.pdf (last visited October 25, 2021).

[6] Assuming one passenger per vehicle gives 5.7 million passengers plus 5.7 million drivers = 11.4 million. Assuming an unbelievable average of four passengers per vehicle gives (5.7 / 4) = 1.4 million drivers plus the 5.7 million passengers = 7.1 million.

consider this important issue and resolve the conflict.

The legal issue in this case is a simple one to state: whether the checking of passengers' identifying and warrant information during a routine traffic stop is part of the mission of that stop or whether doing so unconstitutionally extends the seizure of all involved. Similarly, this question has been presented to every court at every stage of these proceedings. In the written motion to suppress, Colarte argued that she "was unreasonably detained while the officer waited for the K-9 unit to arrive." A9. At the suppression hearing, Colarte argued that it was inappropriate for the officer to ask for the identification of the passengers "because there was no reasonable suspicion or probable cause to believe that the passengers had committed any traffic violation or committed any violation of the law." A34. In the Fourth District Court of Appeal, Colarte argued that her seizure "was improperly extended when the officer demanded identification from her passengers and proceeded to run that identification for warrants." A47. And in the Florida Supreme Court, Colarte sought review of the Fourth District's decision. A6. Throughout the process, this issue has been repeatedly raised and preserved. It is therefore cleanly presented for this Court's review.

Like the procedural history, the facts of this case are clear. The trial court in this case helpfully reduced its factual findings to writing and directly addressed its legal analysis to those findings. The trial court's order begins by recognizing the issue raised as the question presented here: "whether the officers impermissibly lengthened the stop in order to allow the K-9 unit to arrive and perform a 'sniff'

search." A4. It then makes its factual findings over the course of two paragraphs, including finding (1) the stop was because of an inoperable tag light; (2) the officer spent time "verifying the information on the three suspects (driver and two passengers)," during which time the K-9 unit arrived; and (3) the sniff and alert was conducted during the final writing-the-warning phase of the stop. A4-A5. Although the remainder of the record, including the hearing transcript, can be used to flesh out the details of what the court is referring to, this is all that is needed. This case is factually simple and Colarte does not dispute the trial court's findings—only its legal conclusion. The factual simplicity will allow this Court to tackle the more meaningful legal issue of the question presented without worry of confusion or lack of record development.

Finally, Colarte's life will be directly affected by this case. This is her only criminal record, meaning reversal will have a real impact despite her sentence being over. She also has standing despite not being the passenger because her constitutional harm came from the increased length of time she was seized—something specific to her despite the reason for the extended seizure being a separate constitutional violation for her passengers.

The issue raised is clear, the facts are neatly presented, and the case is brought by a person with a true stake in the outcome. This case is the ideal vehicle for this Court to consider this important issue and resolve the conflict.

IV. The Florida courts have reached the wrong result.

Florida has determined that it was permissible under the Fourth Amendment for the officer who stopped her to extend the length of that stop in

order to check the identities and warrant statuses of her passengers. This is an incorrect conclusion.

Should this Court grant this petition and the case proceeds to a merits stage, undersigned counsel will argue in the merits brief that the act of checking passenger information is an "unrelated check" that, in this case, "prolong[ed] the stop." *Rodriguez v. United States*, 575 U.S. 348, 355 (2015).

Checking passenger information cannot be said to be related to the mission of "address[ing] the traffic violation that warranted the stop." *Id.* at 354. Colarte was stopped because of an inoperable license tag light. A4. Resolving that traffic violation required only informing Colarte of the problem, potentially writing a citation, and instructing her to get it fixed. Nothing about the light implicated the passengers in any way.

Nor does checking passenger information fit the pattern of the "ordinary inquiries incident to [the traffic] stop" listed by this Court in *Rodriguez*, 575 U.S. at 355 (alteration in original). "[C]hecking the *driver's* license, determining whether there are outstanding warrants *against the driver*, and inspecting the automobile's registration and proof of insurance" all serve to "ensur[e] that vehicles on the road are operated safely and responsibly." *Id.* (emphases added). But again, the passengers' identities and warrant status has nothing to do with the operation of the vehicle on the road. Asking for their identifying information and running warrant checks are like a dog sniff—they "[lack] the same close connection to roadway safety as the ordinary inquiries." *Id.* at 356. Such actions are therefore "not

fairly characterized as part of the officer's traffic mission." *Id.* at 356.

Finally, although officers may engage in certain behavior during traffic stops in order to ensure their own safety, that argument does not support the identity and warrant checks in this case. This case involves no factual findings involving a need for heightened actions to ensure officer safety. And as described by the Supreme Court of Iowa in *State v. Coleman*, 890 N.W.2d 284 (Iowa 2017), additional time taken to perform license and warrant checks on the passengers would likely actually *decrease* officer safety. *Id.* at 301 ("[A]ny increased officer danger arises from continuing the detention of the driver while the license and warrant checks are conducted."). An officer may control the scene for their safety, but making a traffic stop longer than it needs to be does not contribute to that goal.

Florida's result in this case was wrong. The Fourth Amendment does not permit officers to conduct identity and warrant checks on passengers in vehicles when doing so extends the total time the driver and vehicle are detained.

This Court should grant this petition for a writ of certiorari in this case because it presents the ideal vehicle for this Court both to correct Florida's incorrect interpretation of the Fourth Amendment and to resolve the split on this important and far-reaching question.

CONCLUSION

For these reasons, this Court should grant this petition for a writ of certiorari.

Respectfully submitted,

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OCTOBER 28, 2021