

No.

In the
Supreme Court of the United States

DAVID BRIAN LARCHE, JR,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition for a Writ of Certiorari
to the United States Court of Appeals
For the Eleventh Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

After a traffic stop for a misdemeanor traffic violation is complete, and a citation has been issued, does possession of cash alone satisfy this Court's reasonable-suspicion prerequisite under *Terry v. Ohio* to prolong warrantless detention?

INTERESTED PARTIES

There are no parties to the proceeding other than those named in the caption of the case.

RELATED PROCEEDINGS

United States v. David Brian Larche, Jr., No. 21-12352 (11th Cir. April 8, 2024)

TABLE OF CONTENTS

QUESTION PRESENTED	ii
INTERESTED PARTIES	ii
RELATED PROCEEDINGS.....	ii
TABLE OF AUTHORITIES	iv
PETITION.....	1
OPINION	1
JURISDICTION.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	1
STATEMENT	1
REASONS FOR GRANTING THE WRIT	5
CONCLUSION	15

APPENDIX

Decision of the Court of Appeals for the Eleventh Circuit, <i>United States v. Larche</i> , No. 21-12352 (April 8, 2024)	App. 1
Judgment of the United States District Court, Southern District of Alabama, <i>United States v. Larche</i> , No. 19-cr-00228 (June 24, 2021).....	App. 11

TABLE OF AUTHORITIES

Cases

<i>Illinois v. Caballes</i> , 543 U.S. 405, 407	7
<i>Indianapolis v. Edmond</i> , 531 U.S. 32, 40-41 (2000)	7
<i>Reid v. Georgia</i> , 448 U.S. 438, 441 (1980)	13
<i>Rodriguez v. United States</i> , 575 U.S. 348 (2015)	5, 6
<i>Terry v. Ohio</i> , 392 U.S. 1, 22 (1986)	14
<i>United States v. Arciga-Bustamante</i> , 276 Fed. App'x 715 (10th Cir. 2006).....	9
<i>United States v. Garcia</i> , 2018 WL 3407707, *4 (S.D.N.Y. June 5, 2018)	9
<i>United States v. Jenkins</i> , 452 F.3d 207, 214) (2nd Cir. 2006).....	9
<i>United States v. Larche</i> , 2024 WL 1508509, *3 (11th Cir. April 8, 2024)	1, 4
<i>United States v. Samuels</i> , 443 Fed. App'x 156, 160 (6th Cir. 2011)	8
<i>United States v. Sokolow</i> , 490 U.S. 1 (1989).....	5, 10
<i>United States v. Thomas</i> , 863 F.2d 622 (9th Cir. 1988)	8

<i>United States v. Uribe,</i> 709 F.3d 646 (7th Cir. 2013)	9
--	---

Statutes

18 U.S.C. § 3742.....	1
18 U.S.C. § 924(c)(1)(A)(i)	3
28 U.S.C. § 1254(1).....	1
28 U.S.C. § 1291.....	1

Other Authorities

ECB, <i>The role of cash</i> , available at https://www.ecb.europa.eu/euro/cash_strategy/cash_role/html/index.en.html	12
European Central Bank, <i>The role of cash</i> , available at https://www.ecb.europa.eu/euro/cash_strategy/cash_role/html/index.en.html (last accessed August 31, 2024)	11
Guillaume Lepecq, <i>Why Cash is Essential in the 21st Century</i> , Finance-Watch.Org (Dec. 8, 2022), available at https://www.finance-watch.org/blog/why-cash-is-essential-in-the-21st-century/ (last accessed August 31, 2024)	12
Hanna Horvath, <i>Experts: 8 Surprising Reasons Why You Should Always Carry Cash</i> , Nasdaq.com (Nov. 25, 2023), available at https://www.nasdaq.com/articles/experts:-8-surprising-reasons-why-you-should-always-carry-cash (last accessed August 31, 2024)	11

United States Customs and Border Protection, <i>Money and Other Monetary Instruments</i> , available at <a href="https://www.cbp.gov/travel/international-
visitors/kbyg/money">https://www.cbp.gov/travel/international- visitors/kbyg/money (last accessed Aug. 31, 2024).....	12
--	----

Constitutional Provisions

21 U.S.C. § 841(a)(1)	3
U.S. const. amend. IV	1, 4, 6

PETITION FOR A WRIT OF CERTIORARI

David Larche petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, entered in *United States v. Larche*, 2024 WL 1508509 (April 8, 2024).

OPINIONS BELOW

A copy of the decision is contained in the Appendix (A-1).

JURISDICTION

The decision of the Eleventh U.S. Circuit Court of Appeals was entered on April 8, 2024. The mandate issued on May 7, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1). The Eleventh Circuit had jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment provides, in relevant part: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.”

STATEMENT

Police in October of 2018 conducted a traffic stop of a vehicle driven by the petitioner, David Brian Larche Jr. The traffic stop was for a misdemeanor citation of a “switched tag”: the license plate on the vehicle did not match the vehicle’s registration.

Police conducted the traffic stop at a local gas station and Mr. Larche was immediately placed in handcuffs “just for safety purposes,” because he had an active warrant for driving with a suspended license. Dist. Ct. Dkt. 161:19. A search incident to arrest revealed around \$5,000 in cash on Mr. Larche’s person. Dist. Ct. Dkt. 161:17. During the stop, police wrote Mr. Larche a ticket for the switched tag. Dist. Ct. Dkt. 161:20.

The arresting officer, Mobile County Sheriff’s Deputy Glenn Gazzier, was assigned to the K-9 unit and he had his drug detection dog with him when he conducted the stop. After patting down Mr. Larche and recovering the cash, Deputy Gazzier deployed his dog to conduct an “open-air” sniff of Mr. Larche’s vehicle; this process took a few minutes. Dist. Ct. Dkt. 161:21, 27. Deputy Gazzier and other officers then searched the vehicle—a black Chevy pickup truck—and recovered three guns and a toolbox. A subsequent search of the toolbox revealed roughly 101.1 grams of suspected crystal methamphetamine.

Police had previously been investigating Mr. Larche for narcotics trafficking—but, notably, had not obtained any search warrants targeting him in connection with this investigation. Prior to the traffic stop, Deputy Gazzier had been directed to be on the lookout for Mr. Larche driving a “jacked-up single-cab black Chevy pickup truck” that perhaps had been spray-painted and that had a mismatched plate. Dist Ct. Dkt. 161:12.

A federal grand jury indicted Mr. Larche in August of 2019. Among other counts, he was charged with possession of more than 50 grams of methamphetamine with intent to distribute, in violation of 21 U.S.C. § 841(a)(1); and possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A)(i).

Mr. Larche moved to suppress evidence, arguing that the stop was pretextual. Dist. Ct. Dkt. 39. The district court scheduled a hearing, but Mr. Larche’s attorney at the hearing asked to withdraw the motion to suppress. Dist. Ct. Dkt. 154:1. The district court granted the request to withdraw the motion. *Id*; Dist. Ct. Dkt. 50.

Mr. Larche’s attorney subsequently moved to withdraw from the case, and the district court granted that motion. Dist Ct. Dkt. 58, 60. New counsel was appointed, and Mr. Larche again moved to suppress, challenging among other things the search of the vehicle. Dist. Ct. Dkt. 69. The district court denied the second motion to suppress. Dist. Ct. Dkt. 98.

After the motion to suppress was denied, Mr. Larche pleaded guilty to one count of possession of 50 grams or more of methamphetamine with intent to distribute and one count of possession of a firearm in furtherance of a drug trafficking crime. Though he generally waived his right to file an appeal, the plea agreement he executed with the government preserved his right to appeal the Fourth Amendment issue related to the traffic stop. Dist. Ct. Dkt. 124. The district court imposed a sentence of 180 months' imprisonment. Dist. Ct. Dkt. 140.

Mr. Larche appealed, arguing that Deputy Gazzier unlawfully prolonged the *Terry* stop and seizure of his vehicle to conduct the dog sniff. The Eleventh Circuit affirmed the conviction in an unpublished opinion. App. 1. The court reasoned, App. 8, that Deputy Gazzier "knew that [Mr.] Larche was operating the truck with a license plate that did not belong to the vehicle" and Mr. Larche was "carrying over \$5,000 in cash." *United States v. Larche*, 2024 WL 1508509, *3 (11th Cir. April 8, 2024). These two facts alone, the Eleventh Circuit found, were "sufficient to give rise to reasonable suspicion that the truck was being used for criminal activity and supported extending the detention of the truck for a short period of time to conduct the dog sniff." *Id.*

The Eleventh Circuit's mandate issued on May 7, 2024.

REASONS FOR GRANTING THE WRIT

The Court should grant certiorari. The decision below is impossible to reconcile with this Court’s decision in *Rodriguez v. United States*. *Rodriguez* established that the completion of certain tasks must signal the end of a traffic stop unless police have reasonable suspicion of further criminal activity to justify prolonging the warrantless detention. Here, police stopped Mr. Larche based on a misdemeanor traffic violation of a switched tag. They wrote a ticket for that violation. And then they used that misdemeanor violation—the completion of which *Rodriguez* instructs must terminate the stop—to justify further extension of the stop.

The Eleventh Circuit held that the misdemeanor traffic violation combined only with Mr. Larche’s mere possession of cash was sufficient to create reasonable suspicion of other criminal activity afoot. But mere possession of cash alone is not enough for reasonable suspicion, as this Court held in *United States v. Sokolow*, 490 U.S. 1 (1989). By the same token, and pursuant to *Rodriguez*, nor is possession of cash enough to create reasonable suspicion to extend the traffic stop when paired only with the traffic violation that led to the stop in the first instance—the investigation into which was complete at the time police prolonged the warrantless detention to conduct the dog sniff.

Certiorari is warranted because the decision below renders meaningless the clear rule established by this Court in *Rodriguez*. The decision below transforms the

Fourth Amendment shield created by *Rodriguez* into a sword that police can use to justify perpetual extension of completed stops based on no more indication of wrong-doing than that which led to the stop in the first instance.

I. The decision below is wrong.

This Court should grant certiorari because the Eleventh Circuit's decision is wrong—and severely undermines this Court's prior traffic-stop decisions. A misdemeanor traffic violation that culminates in a ticket being issued prior to the dog sniff and search of the car, combined with a defendant's mere possession of cash, does not create reasonable suspicion that a crime is being committed. In considering the totality of the circumstances, the decision below relied on just these two factors: the mismatched license plate and the possession of cash. Neither one of those facts alone establishes reasonable suspicion, and nor do they combine to establish reasonable suspicion.

A. The “switched tag” citation should have marked the completion of the stop; it was not a proper basis to extend it.

The Eleventh Circuit's reliance on the misdemeanor traffic violation collapses the rule that this Court established in *Rodriguez v. United States*, 575 U.S. 348 (2015). *Rodriguez* made clear that in the traffic-stop context, “[a]uthority for the seizure . . . ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.” *Id.* at 348. Yet according to the decision below, such tasks, once

completed, can in turn be repackaged into facts supporting reasonable suspicion, thereby allowing police to extend the traffic stop for precisely the reason that *Rodriguez* instructs must end the stop.

“[A] traffic stop ‘can become unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission’ of issuing a warning ticket.” *Id.* at 354-55 (quoting *Illinois v. Caballes*, 543 U.S. 405, 407). The dog sniff here extended the stop. *Rodriguez* makes clear that a dog sniff is unlike “ordinary inquiries incident to the traffic stop,” 575 U.S. at 355, because it “is a measure aimed at ‘detecting evidence of criminal wrongdoing.’” *Id.* (citing *Indianapolis v. Edmond*, 531 U.S. 32, 40-41 (2000)). Because the investigative measures are different—and the dog sniff both intrudes more on Fourth Amendment liberties *and* is less tethered to roadway safety than ordinary traffic inquiries—the justifications to support these different investigative measures must be different as well.

If a switched tag were enough to create reasonable suspicion of criminal wrongdoing to extend the stop, then any traffic violation could likewise be framed as sufficient. Yet if that were the case, the clear distinction this Court in drew in *Rodriguez*—between dog sniffs and ordinary traffic inquiries—would dissolve entirely. “Lacking the same close connection to roadway safety as the ordinary inquiries, a dog sniff is not fairly characterized as part of the officer’s traffic mission.” *Id.* at 356.

The Eleventh Circuit’s decision in this case contradicts *Rodriguez*, because the traffic infraction that led to the stop was used as justification for the dog sniff without any additional evidence of wrongdoing other than possession of cash, which itself is innocuous. To be sure, the mismatched plate was sufficient to *initiate* the stop. But once police completed their investigation related to the traffic stop, they needed more than simple possession of cash to extend it. *Cf. United States v. Thomas*, 863 F.2d 622 (9th Cir. 1988) (“A lawful frisk does not always flow from a justified stop.”)

Indeed, when federal courts have cited a mismatched plate as present among other factors supporting reasonable suspicion, these courts have done so in cases where there were more facts indicating additional wrongdoing beyond innocuous conduct (cash) and conduct that led to the traffic stop in the first place (the mismatched plate). *See, e.g., United States v. Samuels*, 443 Fed. App’x 156, 160 (6th Cir. 2011) (reasonable suspicion to extend the stop where factors were (1) the defendant slowed down and fell behind in “a dramatic fashion, to the point where the trooper had to pull over and wait for him to basically catch up”; (2) the windows were heavily tinted; (3) the dashboard appeared to have unattached or falling out electric controls; (4) the interior was mismatched; (5) the interior had been repainted; (6) the VIN plate appeared to have been tampered with; (7) the FID number was partially painted over and did not match the VIN number; and (8) the defendant was nervous, breathing heavily, and sweating on a 50-degree day”); *United States v. Arciga-*

Bustamante, 276 Fed. App'x 715 (10th Cir. 2006) (noting no one factor was dispositive, court found reasonable suspicion to extend completed traffic stop for improper license display based on: [1] defendant's "extreme nervousness", [2] lack of proof of ownership of the vehicle, [3] lack of proof of authority to operate the vehicle, [4] inconsistent statements about destination, [5] the fact that driver's license had been issued in Washington and the car was tagged in Oregon; and [6] the fact that driver had obtained insurance on the vehicle days before the departure); *United States v. Garcia*, 2018 WL 3407707, *4 (S.D.N.Y. June 5, 2018) (reasonable suspicion in light of smell of marijuana, defendant's failure to produce registration or insurance information, and absence of conforming license plate, and noting that smell of marijuana alone provides an independent basis to extend the stop under Second Circuit law) (citing *United States v. Jenkins*, 452 F.3d 207, 214) (2nd Cir. 2006). Cf. *United States v. Uribe*, 709 F.3d 646 (7th Cir. 2013) (in case where reasonable suspicion was based on color discrepancy between car's color and color on registration, court found "we cannot conclude that a color discrepancy alone is probative of wrongdoing without the risk of subjecting a substantial number of innocent drivers and passengers to detention").

Here, on the other hand, the Eleventh Circuit relied only on mere possession of cash. The cash did not add enough to the mismatched plate (itself a strict liability issue, the investigation into which was completed by the issuance of the ticket) to give rise to reasonable suspicion.

B. Carrying cash is innocuous and cannot form the only basis for extending the stop.

Police in this case did not develop any additional reasonable suspicion to justify extending the stop aside from observing the cash. This Court has previously found possession of cash to be innocent behavior and has done so in circumstances far more “out of the ordinary” than this one. In *United States v. Sokolow*, 490 U.S. 1 (1989), this Court observed that “[p]aying \$2,100 in cash for two airplane tickets is out of the ordinary, and it is even more out of the ordinary to pay that sum from a roll of \$20 bills containing nearly twice that amount of cash.” *Id.* at 8. Nevertheless, this Court held, that factor was not “by itself proof of any illegal conduct.” *Id.* at 9.

In *Sokolow*, there were significantly more factors that led this Court to find the cash could contribute to a totality finding of reasonable suspicion. In addition to possessing the cash as described above, the defendant traveled under a name that did not match the name under which his telephone number was listed; traveled to Miami, a source city for illicit drugs; stayed in Miami for 48 hours even though a round-trip flight from Honolulu takes 20 hours; appeared nervous; and checked none of his luggage. *Id.*

The numerous factors in *Sokolow* combined to establish reasonable suspicion. But the decision below relied on possession of cash as the only evidence of additional wrongdoing beyond the misdemeanor traffic violation. This contradicted *Sokolow*.

There are ample innocuous reasons, especially now, that people carry cash—and the mere fact that someone has cash is not evidence of criminal wrongdoing. Cash provides a more private, more secure and more accessible alternative to various forms of digital currency. This is important because “[i]n an era where concerns about online privacy and security are on the rise, cash provides a level of anonymity that digital transactions cannot offer.” Hanna Horvath, *Experts: 8 Surprising Reasons Why You Should Always Carry Cash*, Nasdaq.com (Nov. 25, 2023), available at <https://www.nasdaq.com/articles/experts:-8-surprising-reasons-why-you-should-always-carry-cash> (last accessed August 31, 2024). “Unlike digital transactions, which leave a trail of data that can potentially be hacked or stolen, cash transactions are anonymous and do not require providing sensitive account details.” *Id.* Cash “ensures your freedom and autonomy” as “[b]anknotes and coins are the only form of money that people can keep without involving a third party.” European Central Bank, *The role of cash*, available at https://www.ecb.europa.eu/euro/cash_strategy/cash_role/html/index.en.html (last accessed August 31, 2024).

Moreover, cash “provides payment and savings options for people with limited or no access to digital money, making it crucial for the inclusion of socially vulnerable citizens such as the elderly or lower-income groups.” *Id.* “Cash possesses a set of unique benefits. It is universal, non-discriminatory and available to all.” Guillaume Lepecq, *Why Cash is Essential in the 21st Century*, Finance-Watch.Org (Dec. 8, 2022),

available at <https://www.finance-watch.org/blog/why-cash-is-essential-in-the-21st-century/> (last accessed August 31, 2024).

And cash is fast. *See, e.g.*, “Banknotes and coins settle a payment instantly,” ECB, *The role of cash*, available at https://www.ecb.europa.eu/euro/cash_strategy/cash_role/html/index.en.html—including payments owed on traffic and license infractions, like those that Mr. Larche faced when he was pulled over.

The Eleventh Circuit decision is particularly problematic because the amount of cash that Mr. Larche was carrying was relatively minimal. It is roughly *half* the amount that must be reported to Customs and Border Protection when crossing the border. *See* United States Customs and Border Protection, *Money and Other Monetary Instruments*, available at <https://www.cbp.gov/travel/international-visitors/kbyg/money> (last accessed Aug. 31, 2024). It is also roughly half the amount that must be reported to the IRS on a Form 8300 (Report of Cash Payments Over \$10,000 Received in a Trade of Business). Mr. Larche would not have needed to declare the cash he had on his person at the border; he would not have needed to report it to the IRS if it formed the basis for any business transaction—yet the Eleventh Circuit found it alone suspicious enough to justify prolonging his warrantless detention. In other areas, the government does not deem the amount of cash that Mr. Larche had as potentially suspicious. In the Fourth Amendment

context—where violation of liberty is at stake—the mere presence of cash, without more factors supporting reasonable suspicion, is not suspicious either.

Cash was the only factor supporting reasonable suspicion developed over the course of the stop. This Court should grant certiorari, because the decision below reduces what is supposed to be a totality analysis down to a finding that Fourth Amendment rights may be restricted based on a single factor—possession of cash—that is entirely consistent with innocent behavior.

C. Cash and a misdemeanor traffic violation does not establish reasonable suspicion.

A misdemeanor traffic violation and a wad of cash are not enough to justify the prolonging of Mr. Larche’s detention that occurred here. This Court has cautioned against finding reasonable suspicion under circumstances that would subject a “very large category of presumably innocent travelers” to “virtually random seizures,” *Reid v. Georgia*, 448 U.S. 438, 441 (1980), which is precisely the effect of the decision below.

In *Reid*, a DEA agent had suspected the petitioner of wrongdoing based on the fact that, according to the agent, the petitioner fit “the so-called ‘drug courier profile,’ a somewhat informal compilation of characteristics believed to be typical of persons unlawfully carrying narcotics.” *Id.* at 440. The characteristics were as follows: “(1) the petitioner had arrived from Fort Lauderdale, which the agent testified is a principal place of origin of cocaine sold elsewhere in the country, (2) the petitioner arrived

early in the morning, when law enforcement activity is diminished, (3) he and his companion appeared to the agent to be trying to conceal the fact that they were traveling together, and (4) they apparently had no luggage other than their shoulder bags.” *Id.* at 441.

This Court concluded that “the agent could not as a matter of law, have reasonably suspected the petitioner of criminal activity on the basis of these observed circumstances.” *Id.* at 440. The same legal deficiencies in *Reid* exist in the decision below. By relying on just one factor other than the traffic violation that led to the stop, the decision below undermined this Court’s instructions on when the reasonable suspicion prerequisite under *Terry* is satisfied in the traffic stop context.

By approving prolonged detention based on substantially less than reasonable suspicion, the decision below allows for a substantial intrusion on Fourth Amendment Rights “based on nothing more substantial than inarticulate hunches, a result this Court has consistently refused to sanction.” *Terry v. Ohio*, 392 U.S. 1, 22 (1986). In determining the officer acted reasonably in this case, the Eleventh Circuit failed to give due weight to the lack of “specific reasonable inferences” and instead gave undue weight to Deputy Gazzier’s “inchoate and unparticularized suspicion.” *Id.* at 27. Certioari should be granted to correct this error.

II. This case presents a good vehicle for this Court to answer the question presented.

There is no benefit to letting the question presented percolate longer. This Court decided *Rodriguez* less than a decade ago, and the decision below cannot be squared with that holding. The decision below tears down the constitutional guardrails *Rodriguez* placed on officers who perform traffic stops, and it subjects innocent drivers who violate traffic laws and happen to carry cash to unjustified prolonged detention. The answer to the question presented is clear from this Court's own precedents, and certiorari should be granted to correct the errors in the decision below.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

RICHARD C. KLUGH, ESQ.
Counsel for Petitioner

Miami, Florida
September 2024

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 21-12352

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DAVID BRIAN LARCHE, JR.,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Alabama
D.C. Docket No. 1:19-cr-00228-KD-B-1

Before WILSON, JILL PRYOR, and LUCK, Circuit Judges.

PER CURIAM:

David Brian Larche, Jr., appeals his convictions for possessing with intent to distribute methamphetamine and for possessing a firearm in furtherance of a drug trafficking crime. He argues that the district court erred in denying his motion to suppress evidence. After careful consideration, we affirm.

I.

Narcotics officers with the Mobile County Sheriff's Office investigated Larche for distributing methamphetamine. They learned from a confidential informant that he kept his supply of drugs in a safe and never went anywhere without the safe.

Members of the narcotics team participating in the investigation asked Glenn Gazzier, an officer in the K-9 unit, for assistance in surveilling Larche. They told Gazzier that Larche was being surveilled for suspected narcotics activity and directed him to be on the lookout for Larche driving a "jacked-up single-cab black Chevy pickup truck" with spray-painted sides. Doc. 161 at 12.¹ And they told Gazzier that Larche had an outstanding warrant for his arrest and also that his truck had a "switched tag," meaning a license plate that belonged to another vehicle.

¹ "Doc." numbers refer to the district court's docket entries.

Before beginning surveillance, Gazzier searched the National Crime Information Center database and confirmed that Larche had an outstanding arrest warrant for driving with a suspended license. He also reviewed Larche's picture.

While performing surveillance, Gazzier spotted a truck that matched the description of Larche's vehicle pulling into a gas station. After confirming that the driver appeared to be Larche, Gazzier initiated a stop. At the time of the stop, a passenger was riding in the truck.

As Gazzier approached the driver's side of the truck, Larche exited. Gazzier placed him under arrest pursuant to the arrest warrant. When Gazzier patted down Larche, he found a black Crown Royal bag in Larche's pants pocket. Inside the bag was more than \$5,000 in cash. Other officers on the scene then took Larche aside for an interview.

Gazzier returned to Larche's truck. He had his trained and certified drug-detection dog, Lemmy, conduct an open-air sniff of the truck. Lemmy alerted for the presence of narcotics inside the vehicle. It took a "few minutes" for Lemmy to perform the open-air sniff. *Id.* at 27.

In addition, Gazzier ran the truck's license plate through a law enforcement database. The search showed that the license plate belonged to a different vehicle. Gazzier then issued Larche a citation for switching the tag on the vehicle.

Gazzier and other officers searched the truck. They found three guns inside the truck. They also uncovered a safe hidden

inside a gym bag. Ultimately, the officers had the truck towed. They later obtained a search warrant to open the safe and found approximately 100 grams of methamphetamine.

A grand jury indicted Larche, charging him with, among other crimes, one count of possession with intent to distribute more than 50 grams of methamphetamine and possessing a firearm in furtherance of a drug trafficking crime. Larche initially pled not guilty.

Larche filed a motion to suppress, arguing that his Fourth Amendment rights were violated during the stop. He asserted that the initial stop was pretextual and that the officers lacked any basis to search the vehicle. The government opposed the motion to suppress.

The district court held a hearing on the motion to suppress. At the hearing, Larche's attorney explained that Larche had wanted him to gather evidence from the officers' body cameras and vehicle cameras to show that the stop was pretextual, but the attorney had recently learned that no such videos existed. Larche's attorney then asked to withdraw the motion to suppress.

The court permitted Larche to withdraw the motion. It briefly addressed Larche's theory that the stop was pretextual and thus unlawful, stating, “[i]n a Fourth Amendment analysis, it doesn't matter if it was pretext.” Doc. 154 at 3. The court explained that the officers could legitimately stop Larche because they had a warrant for his arrest and had probable cause to believe that he was driving a vehicle with a switched tag in violation of Alabama law.

A few months later, Larche, through new counsel, filed a second motion to suppress, again arguing that his constitutional rights were violated during the stop.² The government opposed the motion.

The district court held a hearing on the second motion to suppress. The only witness to testify at the hearing was Gazzier, who described what occurred during the stop. At the conclusion of the hearing, the district court denied the second motion to suppress, concluding there was no Fourth Amendment violation. It explained that Gazzier had the authority to stop Larche and arrest him based on the outstanding warrant. The court further concluded that Gazzier had probable cause to search the vehicle based on Lemmy alerting to drugs in the car.

After the district court denied the motion to suppress, Larche entered into a written agreement to plead guilty to one count of possession with intent to distribute 50 grams or more of methamphetamine and one count of possession of a firearm in furtherance of a drug trafficking crime. As part of the plea agreement, Larche waived his right to file “any direct appeal or any collateral attack” subject to certain limited exceptions. Doc. 124 at 12. He reserved the right to bring an appeal “challeng[ing] the Fourth Amendment validity of the stop that formed the basis of his arrest

² After the motion-to-suppress hearing, Larche’s appointed attorney filed a motion to withdraw, citing a breakdown of the attorney-client relationship. A magistrate judge permitted him to withdraw and appointed replacement counsel to represent Larche.

and that was litigated at the suppression hearing in this case.” *Id.* (alterations adopted). The agreement specified that the issues litigated at the hearing included his “contention that the stop was pretextual, and thus, constituted an unlawful seizure.” *Id.* (alterations adopted). The agreement warned that “these are the only issue[s]” that Larche reserved the right to appeal. *Id.* (alterations adopted).

The district court ultimately accepted Larche’s guilty plea. It imposed a total sentence of 180 months’ imprisonment. This is Larche’s appeal.

II.

When we review the denial of a motion to suppress, we review the district court’s findings of fact for clear error and its application of the law to those facts *de novo*. *United States v. Gibson*, 708 F.3d 1256, 1274 (11th Cir. 2013). We accept the credibility determination of a factfinder unless it is “contrary to the laws of nature” or “so inconsistent or improbable on its face that no reasonable factfinder could accept it.” *United States v. Holt*, 777 F.3d 1234, 1255–56 (11th Cir. 2015) (internal quotation marks omitted).

III.

The Fourth Amendment prohibits “unreasonable searches and seizures.” U.S. Const. amend. IV. Evidence obtained in an encounter with police that violated the Fourth Amendment generally cannot be used against a defendant in a criminal trial. *See United States v. Perkins*, 348 F.3d 965, 969 (11th Cir. 2003).

21-12352

Opinion of the Court

7

On appeal, Larche does not dispute that Gazzier had reasonable suspicion to stop his vehicle. He also does not dispute that Gazzier had probable cause, based on the outstanding warrant, to arrest him. He nevertheless argues that a Fourth Amendment violation occurred when Gazzier unlawfully prolonged the seizure of his vehicle to conduct the dog sniff.³

Even when an officer had a lawful basis for an initial stop, a Fourth Amendment violation occurs if the officer “diverts from the stop’s purpose and adds time to the stop in order to investigate other crimes” without reasonable suspicion. *United States v. Campbell*, 26 F.4th 860, 884 (11th Cir. 2022) (en banc). For purposes of this appeal, we assume that Gazzier prolonged the seizure of the vehicle when he conducted the dog sniff. *See Rodriguez v. United States*, 575 U.S. 348, 357 (2015) (recognizing that a dog sniff must be supported by reasonable suspicion when it “adds time to . . . the stop” (internal quotation marks omitted)). We nevertheless conclude that the continued seizure of the vehicle for the time it took to complete the dog sniff was lawful because it was supported by reasonable suspicion.

When deciding whether reasonable suspicion existed, we “look at the totality of the circumstances . . . to see whether the . . . officer [had] a particularized and objective basis for suspecting legal

³ The government argues that we should review this issue for plain error because Larche did not raise it below. We need not resolve whether plain error review applies because, even assuming that Larche adequately raised this issue below, he is not entitled to relief.

wrongdoing.” *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (internal quotation marks omitted); *see Whren v. United States*, 517 U.S. 806, 813 (1996) (explaining that officer’s subjective motivations are immaterial). The reasonable-suspicion standard requires “considerably less than proof of wrongdoing by a preponderance of the evidence” and is “obviously less demanding” than the probable-cause standard. *United States v. Sokolow*, 490 U.S. 1, 7 (1989). It does not require officers to observe a crime being committed and instead “may be formed by observing exclusively legal activity.” *United States v. Acosta*, 363 F.3d 1141, 1145 (11th Cir. 2004) (internal quotation marks omitted). But “an inchoate and unparticularized suspicion or hunch of criminal activity does not satisfy the reasonable suspicion standard.” *United States v. Braddy*, 11 F.4th 1298, 1311 (11th Cir. 2021) (internal quotation marks omitted).

After looking at the totality of the circumstances in this case, we conclude that Gazzier had reasonable suspicion to believe that there was contraband inside the truck. At the time of the stop, he knew that Larche was operating the truck with a license plate that did not belong to the vehicle. And from the pat down he discovered that Larche was carrying over \$5,000 in cash. These facts taken together were sufficient to give rise to reasonable suspicion that the truck was being used for criminal activity and supported extending the detention of the truck for a short period of time to conduct the dog sniff. *See Holt*, 777 F.3d at 1256 (“Once an officer develops reasonable suspicion, he has a duty to investigate more.”).

On appeal, Larche argues that the fact that he was carrying a large amount of cash did not create a reasonable suspicion that the truck was being used for criminal activity. But Larche frames the issue too narrowly. We are not saying that Gazzier had reasonable suspicion simply because Larche was carrying a large amount of cash. Instead, we conclude that this fact together with the fact that Larche was driving a truck with a switched license plate, which could suggest he was trying to hide that the truck belonged to him, was sufficient to give rise to reasonable suspicion. We thus conclude that no constitutional violation occurred when the seizure of the vehicle continued while Gazzier conducted the dog sniff.

We also conclude that no Fourth Amendment violation occurred when officers searched the truck. After Gazzier conducted the dog sniff and Lemmy alerted to contraband in the vehicle, the officers had probable cause to search the vehicle. *See United States v. Tamari*, 454 F.3d 1259, 1264–65 (11th Cir. 2006) (recognizing that probable cause existed when credentialed drug detection dog

alerted to vehicle).⁴ Accordingly, we affirm the district court's denial of the motion to suppress.⁵

AFFIRMED.

⁴ At the suppression hearing, the government argued that regardless of whether there was probable cause to search the truck, officers could search it as part of an inventory search because they were having it towed. There is indeed an exception to the Fourth Amendment's warrant requirement when police conduct "an inventory search of an arrestee's personal property to itemize its contents pursuant to standard inventory procedures." *United States v. Cohen*, 38 F.4th 1364, 1371 (11th Cir. 2022) (internal quotation marks omitted). Under the inventory-search exception, officers may search an impounded car when they "have the authority to impound the car and follow department procedures governing inventory searches." *Id.* Because we conclude that Gazzier had reasonable suspicion to prolong the seizure of the vehicle while Lemmy conducted an open-air sniff and Lemmy's alert created probable cause to search the vehicle, we do not address whether the government carried its burden to establish that the inventory-search exception to the warrant requirement applied.

⁵ The government moved to dismiss the appeal based on the plea agreement's appeal waiver. We previously carried the government's motion with the case. Given our conclusion that the district court did not err in denying the motion to suppress, we do not decide the appeal-waiver issue. Accordingly, the government's motion to dismiss is DENIED as moot.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA

UNITED STATES OF AMERICA

v.

DAVID BRIAN LARCHE, JR.

§ **JUDGMENT IN A CRIMINAL CASE**
 §
 §
 § Case Number: **1:19-CR-00228-KD-B(1)**
 § USM Number: **17802-003**
 § **Gordon G. Armstrong, III**
 § Defendant's Attorney

THE DEFENDANT:

<input checked="" type="checkbox"/>	pleaded guilty to Counts 2 & 3 on 10/23/2020	
<input type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offenses:

Title & Section / Nature of Offense	Offense Ended	Count
21:841B=Cp.F Controlled Substance - Possession With Intent To Distribute Methamphetamine	10/18/2018	2s
18:924C.F Possession Of A Firearm In Furtherance Of A Drug Trafficking Crime	10/18/2018	3s

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s)
 Count(s) 1 & 4 is are dismissed on the motion of the United States

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

June 24, 2021

Date of Imposition of Judgment

s/ Kristi K. DuBoise
 Signature of Judge

KRISTI K. DUBOSE
CHIEF UNITED STATES DISTRICT JUDGE
 Name and Title of Judge

June 24, 2021
 Date

AO 245B (ALSD 09/19) Judgment in a Criminal Case

Judgment -- Page 2 of 7

DEFENDANT: DAVID BRIAN LARCHE, JR.
CASE NUMBER: 1:19-CR-00228-KD-B(1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

180 months. Said term consists of 120 months as to count 2 and 60 months as to Count 3; said term to run consecutively to the custody sentence imposed in Count 2.

The court makes the following recommendations to the Bureau of Prisons:

- **Defendant be allowed to participate in residential, comprehensive, substance abuse treatment and mental health treatment, both while incarcerated.**

The defendant is remanded to the custody of the United States Marshal.
 The defendant shall surrender to the United States Marshal for this district:

at a.m. p.m. on

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

- before 2 p.m. on
- as notified by the United States Marshal.
- as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: DAVID BRIAN LARCHE, JR.
CASE NUMBER: 1:19-CR-00228-KD-B(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of : **five (5) years as to Count 2 and three (3) years as to Count 3; said terms to run concurrently.**

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

Special Conditions:

- 1) **the defendant shall submit to periodic urine surveillance and/or breath, saliva and skin tests for the detection of drug abuse as directed by the probation officer. The defendant may incur costs associated with such detection efforts, based upon ability to pay as determined by the probation officer.**
- 2) **the defendant shall participate in an assessment or a program, inpatient or outpatient, for the treatment of drug and/or alcohol addiction, dependency or abuse which may include, but not be limited to urine, breath, saliva and skin testing to determine whether the defendant has reverted to the use of drugs and/or alcohol. Further, the defendant shall participate as instructed by the probation officer and shall comply with all rules and regulations of the treatment agency until discharged by the Program Director with the approval of the probation officer. The defendant shall further submit to such drug-detection techniques, in addition to those performed by the treatment agency, as directed by the probation officer. The defendant may incur costs associated with such drug/alcohol detection and treatment, based upon the ability to pay, as determined by the probation officer.**
- 3) **the defendant shall participate in a mental health evaluation and comply with any treatment consistent with the findings of said evaluation, as directed by the Probation Office. The defendant may incur costs associated with such program, based on ability to pay as determined by the probation officer.**
- 4) **the defendant shall submit his person, house, residence, vehicle(s), papers, [computers (as defined by 18 U.S.C. Section 1030(e)(1)) or other electronic communications or data storage devices of media], business or place of employment, and any other property under the defendant's control to a search, conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search in accordance with this condition may be grounds for revocation. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition.**

No fine was imposed, as the defendant is unable to pay. A \$100 special monetary assessment was imposed, as to each of Counts Two and Three, for a total SMA of \$200.

DEFENDANT: DAVID BRIAN LARCHE, JR.
CASE NUMBER: 1:19-CR-00228-KD-B(1)

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon.
4. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests, thereafter, as determined by the court.

The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*

5. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
6. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
7. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
8. You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

See Page 5 for the
"STANDARD CONDITIONS OF SUPERVISION"

DEFENDANT: DAVID BRIAN LARCHE, JR.
 CASE NUMBER: 1:19-CR-00228-KD-B(1)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. The defendant must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. The defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer.
3. The defendant must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. The defendant must answer truthfully the questions asked by your probation officer.
5. The defendant must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. The defendant must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. The defendant must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. The defendant must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
10. The defendant must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. The defendant must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. The defendant must follow the instructions of the probation officer related to the conditions of supervision.
14. The defendant shall support his or her dependents and meet other family responsibilities.
15. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
16. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer.

DEFENDANT: DAVID BRIAN LARCHE, JR.
 CASE NUMBER: 1:19-CR-00228-KD-B(1)

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Page 6.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	\$200.00	\$0.00	\$0.00	\$0.00	\$0.00

The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.

The defendant shall make restitution (including community restitution) to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below. (or see attached). However, pursuant to 18 U.S.C. § 3644(i), all non-federal victims must be paid in full prior to the United States receiving payment.

If applicable, restitution amount ordered pursuant to plea agreement \$ _____

The defendant must pay interest on any fine or restitution of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Page 6 may be subject to penalties for default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

<input type="checkbox"/> the interest requirement is waived for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution
<input type="checkbox"/> the interest requirement for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: DAVID BRIAN LARCHE, JR.
 CASE NUMBER: 1:19-CR-00228-KD-B(1)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- A** Lump sum payments of \$200.00, due immediately, balance due not later than _____, or
 in accordance with C, D, E, or F below; or
- B** Payment to begin immediately (may be combined with C, D, or F below); or
- C** Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D** Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E** Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F** Special instructions regarding the payment of criminal monetary penalties:
It is ordered that the Defendant shall pay to the United States a special assessment of \$200.00 for Counts 2s and 3s , which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court, unless otherwise directed by the court, the probation officer, or the United States Attorney.

The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several
 - Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
 - The defendant shall pay the cost of prosecution.
 - The defendant shall pay the following court cost(s):
 - The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.