

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

MICHAEL J. BANIEL — PETITIONER

VS.

UNITED STATES — RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE

UNITED STATES FIFTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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MICHAEL J. BANIEL,

DEFENDANT/APPELLANT/PETITIONER

QUESTION PRESENTED

Whether Trooper Colton Derrick unreasonably extended Mr. Michael J. Baniel's traffic stop, that was preceded by and subjugated to a narcotics investigation, in violation of the duty of a reasonable officer to "diligently pursue[] a means of investigation that was likely to confirm *or dispel* their suspicions quickly." *United States v. Sharpe*, 470 U.S. 675, 686, 105 S. Ct. 1568, 1575, 84 L. Ed. 2d 605, 615-616 (1985) (emphasis added)?

As set forth herein, Trooper Derrick unreasonably extended Mr. Baniel's roadside detention by focusing on a narcotics-related investigation. He did so instead of trying to complete a traffic investigation in a reasonable manner. This detention, for the sole purpose of conducting a criminal investigation, was without reasonable suspicion or probable cause.

Trooper Derrick must be held accountable for failing to consider evidence that weighed against his unwavering efforts to build "reasonable suspicion." Otherwise, the "or dispel" language will be all but read out of *Sharpe*. Until this Court addresses this issue, citizens will be subject to warrantless searches during roving narcotics investigations that are disguised as traffic stops. This Court should grant a writ of certiorari, correct this error, and provide guidance for a situation likely to recur and to further weaken the Fourth Amendment absent action by this Court.

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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(for the United States), and

AUSA T. Forrest Phillips and
AUSA Camille Ann Domingue
United States Attorney's Office
Western District of Louisiana
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(for the United States).

RELATED CASES

1. *United States v. Baniel*, United States District Court, Western District of Louisiana; 2023 U.S. Dist. LEXIS 73181, 2023 WL 3089153 (W.D. La. Feb. 2, 2023) (report and recommendation), *adopted by United States v. Baniel*, 2023 U.S. Dist. LEXIS 72358, 2023 WL 3085463 (W.D. La. Apr. 25, 2023)
2. *United States v. Baniel*, 2024 U.S. App. LEXIS 28203, 2024 WL 4689055 (5th Cir. Nov. 6, 2024)

TABLE OF CONTENTS

QUESTION PRESENTED	i
LIST OF PARTIES.....	ii
RELATED CASES	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES CITED	v
OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
A. Relevant Facts	4
B. Action before the District Court and the Court of Appeals.....	8
REASONS FOR GRANTING THE WRIT.....	11
A. Introduction	11
B. Trooper Derrick unreasonably extended Mr. Baniel's traffic stop. Specifically, this traffic stop was preceded by and subjugated to a narcotics investigation.	12
C. The Report and Recommendation omitted certain events from the "Relevant Facts" portion of the Report and Recommendation. ROA. 98-101 (R&R, 1-4). These omissions undermine the reliability of the Report and Recommendation's factual and legal analysis and conclusions.	14
D. Legal analysis.....	19
CONCLUSION.....	27

INDEX TO APPENDICES

APPENDIX A	Report and Recommendation to deny the motion to suppress and Order adopting Report and Recommendation, <i>United States v. Baniel</i> , United States District Court, Western District of Louisiana, 2023 U.S. Dist. LEXIS 73181, 2023 WL 3089153 (W.D. La. Feb. 2, 2023) (report and recommendation), <i>adopted by United States v. Baniel</i> , 2023 U.S. Dist. LEXIS 72358, 2023 WL 3085463 (W.D. La. Apr. 25, 2023)
APPENDIX B	Decision of the United States Fifth Circuit Court of Appeals, <i>United States v. Baniel</i> , 2024 U.S. App. LEXIS 28203, 2024 WL 4689055 (5th Cir. Nov. 6, 2024)

TABLE OF AUTHORITIES CITED

	PAGE NUMBER
CASES	
<i>Rodriguez v. United States</i> , 575 U.S. 348, 135 S. Ct. 1609, 191 L. Ed. 2d 492 (2015)	19-22
<i>United States v. Sharpe</i> , 470 U.S. 675, 105 S. Ct. 1568, 84 L. Ed. 2d 605 (1985)	i, 19
CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES	
21 U.S.C. § 841(a)(1)	8-9
21 U.S.C. § 841(b)(1)(A)	8-9
21 U.S.C. § 841(b)(1)(B)	9
28 U.S.C. § 1254(1)	2
United States Constitution, Fourth Amendment	i, 3, 11, 13, 19, 25-27

IN THE
SUPREME COURT
OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari be issued to review the judgment below.

OPINIONS BELOW

The opinion of the United States Fifth Circuit Court of Appeals appears at Appendix B to the petition and is reported at *United States v. Baniel*, 2024 U.S. App. LEXIS 28203, 2024 WL 4689055 (5th Cir. Nov. 6, 2024) .

The Report and Recommendation to deny the motion to suppress and the Order adopting the Report and Recommendation by the United States District Court for the Western District of Louisiana appear at Appendix A and are published at *United States v. Baniel*, 2023 U.S. Dist. LEXIS 73181, 2023 WL 3089153 (W.D. La. Feb. 2, 2023) (report and recommendation), *adopted by United States v. Baniel*, 2023 U.S. Dist. LEXIS 72358, 2023 WL 3085463 (W.D. La. Apr. 25, 2023).

JURISDICTION

The United States Court of Appeals decided the case on November 6, 2024.

No petition for rehearing was filed timely in the case. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Fourth Amendment:

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.

STATEMENT OF THE CASE

A. Relevant Facts¹

Trooper Derrick initially noticed Mr. Baniel's vehicle because it slowed down. ROA. 167-69 (Motion to suppress hearing transcript ("MTS"), 10-12). Trooper Derrick believed it did so when Mr. Baniel first saw Trooper Derrick's vehicle. ROA. 167-69 (MTS, 10-12).

Trooper Derrick did not believe that Mr. Baniel's vehicle was speeding at the time it allegedly slowed down. ROA. 167-69 (MTS, 10-12). Trooper Derrick testified Mr. Baniel's vehicle, then, drove below the speed limit and twice crossed the white-dashed center line that divides the two lanes. Trooper Derrick, then, stopped Mr. Baniel's vehicle for a driving infraction, crossing the center line. ROA. 167-69 (MTS, 10-12).

Trooper Derrick also questioned the manner in which Mr. Baniel stopped his car alongside interstate. ROA. 171 (MTS, 14). None of these observations were indicative of criminal activity. ROA. 215-16 (MTS, 58-59).

Before Trooper Derrick stopped Mr. Baniel's car, Trooper Derrick ran the California license plate of Mr. Baniel's car and noted there were no alerts specific to the car. ROA. 171, 187, 210-11, 222-25 (MTS, 14, 30, 53-54, 65-68); *see* ROA. 334 (Defense Ex. 2 (Boss3 Audits Report) (indicates a license plate inquiry related to

¹ Mr. Baniel contests many of these facts. The inclusion of a fact herein is not a judicial admission. However, given the status of this case, Mr. Baniel is presenting any disputed facts in the light most favorable to the ruling on the motion to suppress.

Mr. Baniel's car at 1:11:52 a.m.)); Government Exhibit 2 (Trooper Derrick's body camera, indicates that the stop was initiated at approximately 1:12:30 a.m.).

As Trooper Derrick approached Mr. Baniel's car, he noticed a piece of "hard shell" luggage, which was consistent with interstate travel. ROA. 172, 229 (MTS, 15, 72). There also was some Febreze in Mr. Baniel's car. ROA. 206, 229-30 (MTS, 49, 72-73). None of these observations was indicative of criminal activity.

During the initial interaction between Trooper Derrick and Mr. Baniel, Trooper Derrick made sure Mr. Baniel was not intoxicated. *See* ROA. 179 (MTS, 22). During the initial interaction, Trooper Derrick noted Mr. Baniel had a commercial driver's license. Gov't Ex. 2, approximately 1:18:00 a.m.

The initial interaction between Mr. Baniel and Trooper Derrick began at approximately 1:13:20 a.m. and lasted until approximately 1:18:03 a.m. *See* Gov't Ex. 2. There was never any indication that Mr. Baniel's ability to drive safely was impaired in any way. Still, there was no clear indication of potential criminal activity involving Mr. Baniel.

Trooper Derrick testified Mr. Baniel was sweating and his hands were trembling during this interaction. However, it was impossible to see Mr. Baniel sweating or his hands shaking during this interaction as recorded on the body camera. ROA. 173 (MTS, 16); Gov't Ex. 2. When Mr. Baniel's face was first present outside his car and in Trooper Derrick's body camera video, Mr. Baniel did not appear to be sweating and his demeanor did not appear to be unduly nervous. Gov't Ex. 2, at approximately 1:22:20 a.m.

During the initial interaction, Mr. Baniel explained to Trooper Derrick that he recently had to break the window in his car. ROA. 173-74 (MTS, 16-17). Inexplicably and unreasonably, Trooper Derrick testified he did not believe Mr. Baniel's alleged nervousness and sweating could have been caused by the fact that a lone black male was stopped by a law enforcement officer at night in a car not titled to Mr. Baniel that had a broken window. ROA. 172-75, 212-17, 233 (MTS, 15-18, 55-60, 76).

Given the numerous events in which deadly force has been used in similar car stops, Mr. Baniel's nervousness easily could have been caused by this situation. Trooper Derrick did nothing to address, to investigate, or to alleviate any such concerns.

During this initial interaction, Trooper Derrick took issue with parts of Mr. Baniel's story of flying to California to buy a car and to drive it back to Alabama. ROA. 176-86, 218-22, 230-32, 244-51 (MTS, 19-29, 61-65, 73-75, 87-94). Trooper Derrick's doubts concerned, in part, the length of time Mr. Baniel stayed in California and the paperwork involved in the transaction. ROA. 176-86, 218-22, 230-32, 244-51 (MTS, 19-29, 61-65, 73-75, 87-94).

When asked about his trip, Mr. Baniel provided responses that were timely and appropriate. There was no clear misstatement of fact by Mr. Baniel that Trooper Derrick could identify, save for one question by the Government's attorney addressing whether a male or female sold the car. *See* ROA. 176-86, 217-18, 251 (MTS, 19-29, 60-61, 94); Gov't Ex. 2, at approximately 1:13:20 a.m. until

approximately 1:18:03 a.m. Still, there was no clear and reasonable indication of criminal activity.

In his testimony, Trooper Derrick mentioned the change in ownership and the eastern direction of travel as making him suspicious of criminal activity. ROA. 210 (MTS, 53), *but see*, ROA. 215 (MTS, 58). Trooper Derrick also testified that Mr. Baniel's smoking a cigarette was suspicious. ROA. 193-94, 233 (MTS, 36-37, 76). These were not clear and reasonable indications of criminal activity.

At approximately 1:18:30 a.m., while in his car, Trooper Derrick asked dispatch to check Mr. Baniel's driver's license information and his criminal history. *See* Gov't Ex. 2; ROA. 186-87 (MTS 29-30). Trooper Derrick, then, immediately began completing a consent to search form. *See* Gov't Ex. 2, 1:18:30 a.m.; ROA. 186-89 (MTS, 29-32).

Further, at some time, Trooper Derrick called for backup, because he was suspicious of criminal activity. Specifically, Trooper Derrick testified that he thought something illegal was in Mr. Baniel's vehicle. ROA. 189, 209-10 (MTS, 32, 52-53).

Before Trooper Derrick left his car, he was informed that Mr. Baniel's vehicle had made a straight shot from California to Louisiana, indicating little to no extra stops. ROA. 203-04, 218 (MTS, 46-47, 61). Again, at that time, Trooper Derrick knew Mr. Baniel had a CDL.

As a backup trooper arrived and Trooper Derrick finished the consent to search form, Trooper Derrick exited his vehicle, ordered Mr. Baniel out of his car,

and requested Mr. Baniel consent to a warrantless search of his car. ROA. 189-94 (MTS, 32-37); Gov't Ex. 2, 1:21:30 a.m. Mr. Baniel declined to consent to the warrantless search. Gov't Ex. 2, 1:22:35 a.m.

Trooper Derrick and his K-9, then, walked around Mr. Baniel's car. Gov't Ex. 2, 1:23:45 a.m. to 1:24:21 a.m. While there may have been some hard to note just noticeable differences, it was unclear that the K-9 ever sat, which was its signal that it had alerted for the potential presence of drugs. *See* ROA. 195-96, 242 (MTS, 38-39, 85). It was unclear whether the K-9's conduct provided reasonable suspicion let alone probable cause.

At approximately 1:23:17 a.m. to 1:23:30 a.m., dispatch returned Mr. Baniel's criminal history. ROA. 201-02 (MTS, 44-45). Trooper Derrick decided to start the K-9 search before this return.

B. Action before the District Court and the Court of Appeals

On April 13, 2022, Mr. Baniel was indicted and charged with possession with intent to distribute cocaine, possession with intent to distribute fentanyl, and possession with intent to distribute marijuana. ROA. 5, 27-29. The Government charged that, “[o]n or about March 14, 2022, in the Western District of Louisiana, the defendant, Michael J. Baniel, did knowingly and intentionally possess with intent to distribute (1) fifty (50) grams or more of methamphetamine, its salts, isomers, and salts of its isomers, a Schedule II controlled substance, all in violation of Title 21, United States Code, Sections 841(a)(l) and (b)(l)(A)[;]” (2) “400 grams or more of a mixture and substance containing a detectable amount of

N-phenyl-N-[1-(2-phenylethyl)-4- piperidinyl] propanamide, also known as fentanyl, a Schedule II controlled substance, all in violation of Title 21, United States Code, Sections 841(a)(l) and (b)(l)(A)[;]" and (3) "marijuana, a Schedule I controlled substance, all in violation of Title 21, United States Code, Sections 841(a)(l) and (b)(l)(B)." ROA. 27-29. Mr. Baniel entered a plea of not guilty on April 18, 2022. ROA. 5, 31-32.

On July 29, 2022, Mr. Baniel filed a motion to suppress the alleged contraband recovered and statements made after the warrantless search of the car he was driving. ROA. 7, 38-52. On August 12, 2022, the Government filed an opposition to Mr. Baniel's motion. ROA. 4, 54-64.

On October 5, 2022, the Trial Court held a hearing on Mr. Baniel's motion to suppress. ROA. 7, 70, 158-266.

On November 21, 2022, Mr. Baniel filed a supplemental memorandum in support of his motion to suppress. ROA. 8, 72-80. On December 14, 2022, the Government filed a supplemental opposition to Mr. Baniel's motion to suppress. ROA. 8, 84-97.

On February 2, 2023, the Magistrate Judge issued a Report and Recommendation, finding the District Court should deny the motion to suppress filed by Mr. Baniel. ROA. 8, 98-104. On February 16, 2023, Mr. Baniel filed objections to the Report and Recommendation. ROA. 8, 105-21. On March 3, 2023, the Government filed a response to Mr. Baniel's objections to the Report and Recommendation. ROA. 8, 122-28.

On April 25, 2023, the District Court adopted the Report and Recommendation and denied Mr. Baniel's motion to suppress. ROA. 8-9, 129.

On August 1, 2023, Mr. Baniel pled guilty to Count 1. ROA. 10, 143-44, 267-94, 335-52.

The PSI, determined that Mr. Baniel's total offense level was 35 and that his criminal history category was VI. ROA. 297-301, 416-21, 428. Mr. Baniel's guideline sentencing range was 292 to 365 months of imprisonment. ROA. 297-301, 428.

On February 20, 2024, the District Court sentenced Mr. Baniel to 292 months of imprisonment. ROA. 11, 145-53, 295-305. On March 5, 2024, a timely notice of appeal was filed from the February 21, 2024, judgment. ROA. 11, 148-55.

On November 6, 2024, the United States Fifth Circuit Court of Appeals affirmed Mr. Baniel's conviction and sentence. This timely petition follows.

REASONS FOR GRANTING THE PETITION

A. Introduction

Trooper Derrick unreasonably extended Mr. Baniel's roadside detention by focusing on a narcotics investigation. He did so instead of trying to complete a traffic investigation in a reasonable manner. Further, after the purpose of the traffic investigation ended, Trooper Derrick continued to detain Mr. Baniel. This detention, for the sole purpose of conducting a criminal investigation, was without reasonable suspicion or probable cause.

By unreasonably extending Mr. Baniel's traffic stop and/or by detaining Mr. Baniel after the purpose of the traffic investigation ended, Trooper Derrick violated the duty of a reasonable law enforcement officer to pursue a means of investigation likely to confirm or *to dispel* their suspicions quickly. For these reasons and those set forth below, Trooper Derrick violated Mr. Baniel's Fourth Amendment rights and all evidence and statements obtained in violation of those rights must be suppressed. As such, this Court should grant this writ, order full briefing and oral argument, and thereafter reverse Mr. Baniel's conviction, vacate his sentence, and remand this case for further proceedings consistent with this Court's decision.

B. Trooper Derrick unreasonably extended Mr. Baniel's traffic stop. Specifically, this traffic stop was preceded by and subjugated to a narcotics investigation.

The Report and Recommendation, which was adopted by the District Court, concluded that the traffic stop of Mr. Baniel was not unreasonably extended. *See, e.g.*, ROA. 98, 103-04 (R&R, 1, 6-7). Mr. Baniel objected to this conclusion and to the Report and Recommendation's legal and factual analysis of this traffic stop that was preceded by and subjugated to a narcotics investigation.

As Trooper Derrick's testimony at the hearing on the motion to suppress established, the instant traffic stop was never constitutional, because its mission was not to address the traffic violation that allegedly warranted the traffic stop or to attend to related safety concerns. Rather, the traffic stop was preceded by the tactical deployment of a roving narcotics-interdiction team.

Even before Trooper Derrick stopped Mr. Baniel's vehicle, Trooper Derrick had started a narcotics-interdiction investigation, by searching license-plate-reader databases. Then, before Trooper Derrick sought consent to search Mr. Baniel's vehicle, he and his team members were in position to undertake the sole purpose of this narcotics investigation masquerading as a traffic-infraction investigation, to search Mr. Baniel's vehicle.

Instead of investigating the more obvious potential crime, theft of a motor vehicle, Trooper Derrick decided to seek consent to search the vehicle, called his narcotic-interdiction team members to the stop, and decided to run a drug-sniffing K-9 around the vehicle. Indeed, neither Trooper Derrick nor his fellow team

members sought to investigate the possibility that Mr. Baniel had stolen the vehicle.

Trooper Derrick's focus on a narcotics investigation was so consuming that he either could not, or would not, recognize that Mr. Baniel, a black man in a vehicle not registered to him that had a broken window, might be nervous for non-criminal reasons. This was but one instance of Trooper Derrick abandoning any efforts to conduct a neutral investigation to confirm or to dispel his "suspicions." Instead, he ignored possible noncriminal indications so he could "justify" the inevitable search of Mr. Baniel's vehicle.

In so doing, Trooper Derrick unreasonably extended Mr. Baniel's traffic-investigation roadside detention by focusing on a narcotics investigation that Trooper Derrick seemingly predetermined would end only after a K-9 search. Trooper Derrick so decided instead of trying to complete a traffic investigation in a reasonable manner.

Accordingly, Mr. Baniels' Fourth Amendment rights were violated. Therefore, the narcotics and all statements obtained after the violation of these rights must be suppressed.

C. The Report and Recommendation omitted certain events from the “Relevant Facts” portion of the Report and Recommendation. ROA. 98-101 (R&R, 1-4). These omissions undermine the reliability of the Report and Recommendation’s factual and legal analysis and conclusions.

While the facts reported in the Report and Recommendation are correct, those facts combined with the others detailed below (which were not addressed adequately in the Report and Recommendation), demonstrate that Trooper Derrick never reasonably investigated the traffic stop. Moreover, based on these additional facts, Mr. Baniel objected to the finding in the Report and Recommendation that Trooper Derrick had reasonable suspicion of criminal activity before the K-9 search of Mr. Baniel’s vehicle. ROA. 103-04 (R&R, 6-7).

Trooper Derrick initially noticed Mr. Baniel’s vehicle because it slowed down. ROA. 167-69 (MTS, 10-12). Trooper Derrick believed it did so when Mr. Baniel first saw Trooper Derrick’s vehicle. ROA. 167-69 (MTS, 10-12).

Trooper Derrick did not believe that Mr. Baniel’s vehicle was speeding at the time it allegedly slowed down. ROA. 167-69 (MTS, 10-12). Trooper Derrick testified Mr. Baniel’s vehicle, then, drove below the speed limit and twice crossed the white-dashed center line that divides the two lanes. Trooper Derrick, then, stopped Mr. Baniel’s vehicle for a driving infraction, crossing the center line. ROA. 167-69 (MTS, 10-12).

Trooper Derrick also questioned the manner in which Mr. Baniel stopped his vehicle alongside interstate. ROA. 171 (MTS, 14). None of these observations were indicative of criminal activity. ROA. 215-16 (MTS, 58-59).

Before Trooper Derrick stopped Mr. Baniel's vehicle, Trooper Derrick ran the California license plate of Mr. Baniel's vehicle and noted there were no alerts specific to the vehicle. ROA. 171, 187, 210-11, 222-25 (MTS, 14, 30, 53-54, 65-68); *see* ROA. 334 (Defense Ex. 2 (Boss3 Audits Report) (indicates a license plate inquiry related to Mr. Baniel's vehicle at 1:11:52 a.m.)); Gov't Ex. 2 (Trooper Derrick's body camera, indicates that the stop was initiated at approximately 1:12:30 a.m.).

As Trooper Derrick approached Mr. Baniel's vehicle, he noticed a piece of "hard shell" luggage, which was consistent with interstate travel. ROA. 172, 229 (MTS, 15, 72). There also was some Febreze in Mr. Baniel's vehicle. ROA. 206, 229-30 (MTS, 49, 72-73). None of these observations was indicative of criminal activity.

During the initial interaction between Trooper Derrick and Mr. Baniel, Trooper Derrick made sure Mr. Baniel was not intoxicated. *See* ROA. 179 (MTS, 22). During the initial interaction, Trooper Derrick also noted Mr. Baniel had a commercial driver's license. Gov't Ex. 2, approximately 1:18:00 a.m.

The initial interaction between Mr. Baniel and Trooper Derrick began at approximately 1:13:20 a.m. and lasted until approximately 1:18:03 a.m. *See* Gov't Ex. 2. There was never any indication that Mr. Baniel's ability to drive safely was impaired in any way. Still, there was no clear indication of potential criminal activity involving Mr. Baniel.

Trooper Derrick testified Mr. Baniel was sweating and his hands were trembling during this interaction. However, it is impossible to see if Mr. Baniel was

sweating or if his hands were trembling during this interaction as recorded on the body camera. ROA. 173 (MTS, 16); Gov't Ex. 2. When Mr. Baniel's face was first visible outside his vehicle and in Trooper Derrick's body camera video, Mr. Baniel did not appear to be sweating and his demeanor did not appear to be unduly nervous. Gov't Ex. 2, at approximately 1:22:20 a.m.

During the initial interaction, Mr. Baniel explained to Trooper Derrick that he recently had to break the window in his vehicle. ROA. 173-74 (MTS, 16-17). Inexplicably and unreasonably, Trooper Derrick testified that he did not believe Mr. Baniel's alleged trembling hands and sweating could have been caused by the fact that a lone black male was stopped by a law enforcement officer at night in a vehicle not titled to Mr. Baniel that had a broken window. ROA. 172-75, 212-17, 233 (MTS, 15-18, 55-60, 76).

Given the numerous events in which deadly force has been used in similar car stops, Mr. Baniel's nervousness easily could have been caused by this situation. Trooper Derrick did nothing to address, to investigate, or to alleviate any such concerns by Mr. Baniel.

During this initial interaction, Trooper Derrick took issue with parts of Mr. Baniel's story of flying to California to buy a vehicle and to drive it back to Alabama. ROA. 176-86, 218-22, 230-32, 244-51 (MTS 19-29, 61-65, 73-75, 87-94). Trooper Derrick's doubts concerned, in part, the length of time Mr. Baniel stayed in California and the paperwork involved in the transaction. ROA. 176-86, 218-22, 230-32, 244-51 (MTS 19-29, 61-65, 73-75, 87-94).

When asked about his trip, Mr. Baniel provided responses that were timely and appropriate. There was no clear misstatement of fact by Mr. Baniel that Trooper Derrick could identify, save for one question by the Government's attorney addressing whether a male or female sold the vehicle. *See* ROA. 176-86, 217-18, 251 (MTS, 19-29, 60-61, 94); Gov't Ex. 2, at approximately 1:13:20 a.m. until approximately 1:18:03 a.m.

Still, there was no clear and reasonable indication of criminal activity. Further, to the extent it may have appeared that Mr. Baniel stole the vehicle, neither Trooper Derrick nor his fellow team members sought to investigate the possibility that Mr. Baniel had stolen the vehicle.

In his testimony, Trooper Derrick mentioned the change in ownership and the eastern direction of travel as making him suspicious of criminal activity. ROA. 210 (MTS, 53), *but see*, ROA. 215 (MTS, 58). Trooper Derrick also testified that Mr. Baniel's smoking a cigarette was suspicious. ROA. 193-94, 233 (MTS, 36-37, 76). These were not clear and reasonable indications of criminal activity.

At approximately 1:18:30 a.m., while in his vehicle, Trooper Derrick asked dispatch to check Mr. Baniel's driver's license information and his criminal history. *See* Gov't Ex. 2, ROA. 186-87 (MTS 29-30). Trooper Derrick, then, immediately began completing a consent to search form. *See* Gov't Ex. 2, 1:18:30 a.m.; ROA. 186-89 (MTS, 29-32).

Further, at some time, Trooper Derrick called for backup, because he was suspicious of criminal activity. Specifically, Trooper Derrick testified that he

thought something illegal was in Mr. Baniel's vehicle. ROA. 189, 209-10 (MTS, 32, 52-53).

Before Trooper Derrick left his vehicle, he was informed that Mr. Baniel's vehicle had made a straight shot from California to Louisiana, indicating little to no extra stops. ROA. 203-04, 218 (MTS, 46-47, 61). Again, at that time, Trooper Derrick knew Mr. Baniel had a CDL.

As a backup trooper arrived and Trooper Derrick finished the consent to search form, Trooper Derrick exited his vehicle, ordered Mr. Baniel out of his vehicle, and requested Mr. Baniel consent to a warrantless search of his vehicle. ROA. 189-94 (MTS, 32-37); Gov't Ex. 2, 1:21:30 a.m. Mr. Baniel declined to consent to the warrantless search. Gov't Ex. 2, 1:22:35 a.m.

Trooper Derrick and his K-9, then, walked around Mr. Baniel's vehicle. Gov't Ex. 2, 1:23:45 a.m. to 1:24:21 a.m. While there may have been some hard to note just noticeable differences, it was unclear that the K-9 ever sat, which was its signal that it had alerted for the potential presence of drugs. *See* ROA. 195-96, 242 (MTS, 38-39, 85).

It was unclear whether the K-9's conduct provided reasonable suspicion let alone probable cause. At approximately 1:23:17 a.m. to 1:23:30 a.m., dispatch returned Mr. Baniel's criminal history. ROA. 201-02 (MTS, 44-45). Trooper Derrick decided to start the K-9 search before this return.

D. Legal analysis

In *Rodriguez v. United States*, 575 U.S. 348, 354, 135 S. Ct. 1609, 1614 (2015) (internal quotation marks and citations omitted) (all but first alteration in original), this Court noted that “[a] seizure for a traffic violation justifies a police investigation of that violation. [A] relatively brief encounter, a routine traffic stop is more analogous to a so-called ‘*Terry stop*’ . . . than to a formal arrest.” The *Rodriguez* court recognized that, “[l]ike a *Terry* stop, the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure’s ‘mission’—to address the traffic violation that warranted the stop . . . and attend to related safety concerns[.]” *Id.*

The *Rodriguez* court stated that “[a]uthority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed. See *Sharpe*, 470 U. S., at 686, 105 S. Ct. 1568, 84 L. Ed. 2d 605 (in determining the reasonable duration of a stop, ‘it [is] appropriate to examine whether the police diligently pursued [the] investigation’).” *Rodriguez*, 575 U.S. at 354, 135 S. Ct. at 1614 (emphasis added). Given the constraints recognized by *Rodriguez*, Trooper Derrick’s conduct violated the duty of a reasonable law enforcement officer to “diligently pursue[] a means of investigation that was likely to confirm or dispel their suspicions quickly.” *Sharpe*, 470 U.S. at 686, 105 S. Ct. at 1575 (emphasis added).

Trooper Derrick violated Mr. Baniel’s Fourth Amendment rights by focusing on a narcotics investigation during which he almost completely abandoned his

traffic investigation, which unreasonably extended Mr. Baniel's roadside detention. Moreover, before the illegal search of Mr. Baniel's vehicle, there was not probable cause or reasonable suspicion to believe that Mr. Baniel was engaged in, had engaged in, or was going to engage in criminal activity.²

Furthermore, a reasonable traffic investigation did not follow the traffic stop. Rather, even before the traffic stop, Trooper Derrick scoured license-plate-reader databases with one mission, to build reasonable suspicion or probable cause to continue the narcotics investigation that began before the traffic stop, while the traffic stop seized, subjected to questioning, and immobilized Mr. Baniel in an unconstitutional manner.

That is, Trooper Derrick was using the time constitutionally allowed to conduct a reasonable traffic investigation as a cover for a narcotics investigation that began before the stop and that was conducted without a warrant. As the *Rodriguez* court noted, “[a]n officer, in other words, may conduct certain unrelated checks during an otherwise lawful traffic stop. But contrary to Justice Alito’s suggestion, . . . he may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual.” 575 U.S. at 355, 135 S. Ct. at 1615 (internal citations omitted).

² It should be noted that neither Trooper Derrick nor his fellow team members sought to investigate the possibility that Mr. Baniel had stolen the vehicle.

In this case, Trooper Derrick did not reasonably engage in the activities allowed by *Rodriguez*, “determining whether to issue a traffic ticket, . . . checking the driver’s license, determining whether there are outstanding warrants against the driver, and inspecting the automobile’s vehicle registration and proof of insurance.” 575 U.S. at 355, 135 S. Ct. at 1615 (internal citation omitted). Similarly, none of the other troopers in Trooper Derrick’s narcotics- interdiction team took one step to assist in the traffic investigation.

This is a crucial failure because these checks, which the narcotics- interdiction team all but ignored, “serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly.” 575 at 355, 135 S. Ct. at 1615. Instead, Trooper Derrick and his team engaged in a concerted effort to detect narcotics activity, at the sake of forgoing all other reasonable investigations or considerations, such as the reasonable, noncriminal fear Mr. Baniel could have had.³

As the *Rodriguez* court recognized, detecting ordinary criminal wrongdoing, a dog sniff here and in *Rodriguez*, “is not an ordinary incident of a traffic stop” and “[l]acking the same close connection to roadway safety as the ordinary inquiries, . . . is not fairly characterized as part of the officer’s traffic mission.” 575 U.S. at 355-56, 135 S. Ct. at 1615. Moreover, “[o]n-scene investigation into other crimes . . . detours from that mission. . . . So too do safety precautions taken in order to

³ Again, neither Trooper Derrick nor his fellow team members sought to investigate the possibility that Mr. Baniel had stolen the vehicle.

facilitate such detours.” *Rodriguez*, 575 U.S. at 356, 135 S. Ct. at 1616 (internal citations omitted). As the *Rodriguez* court noted “[h]ighway and officer safety are interests different in kind from the Government’s endeavor to detect crime in general or drug trafficking in particular.” *Rodriguez*, 575 U.S. at 357, 135 S. Ct. at 1616.

One of the only reasonable traffic investigation efforts occurred when Trooper Derrick briefly approached Mr. Baniel’s vehicle for approximately five minutes after the initial stop. The Report and Recommendation found Trooper Derrick’s suspicion of criminal activity was reasonable in part because:

Trooper Derrick had reasonable suspicion to believe that Defendant was engaged in criminal activity. Derrick testified at the hearing that Defendant was shaking, sweating, and trembling at the beginning of the stop. Tr. 26. When Derrick inquired as to the reason for the trip or purchase of the vehicle, Defendants responses were long, rambling, and nonsensical. Tr. 26. Defendant state[d] that his reason for the trip was to purchase a vehicle because the transmission on his vehicle was broken. This required Defendant to pay for airfare, stay in California for a few days, then drive back to Alabama. Derrick found it suspicious that Defendant would do that rather than fix his transmission. Tr. 25. Defendant indicated that he was in California for a few days to complete the purchase of the vehicle, but he had not changed the vehicle registration to his name while there. Tr. 28. The title was still in the previous owner’s name, and the handwritten bill of sale was suspicious because it did not include the sale price. Tr. 24.

ROA. 103 (R&R, 6).⁴

⁴ Again, neither Trooper Derrick nor his fellow team members sought to investigate the possibility that Mr. Baniel had stolen the vehicle.

Further, the Report and Recommendation found that:

Derrick made these observations prior to running the routine checks associated with the traffic stop. Based on the totality of the circumstances, Derrick had reasonable suspicion to believe that Defendant was engaged in criminal activity. Thus, it was reasonable for Derrick to extend the traffic stop to investigate further, which led to the K-9 alert and the discovery of the drugs.

ROA. 103-04 (R&R, 6-7).

Simply put, there is no basis for any reasonable suspicion of criminal activity based on Trooper Derrick's approximately 5-minute conversation with Mr. Baniel. Rather, Trooper Derrick decided to focus on shoring up a narcotics investigation as opposed to pursuing a traffic investigation in a reasonable manner.

On the other hand, within minutes of Trooper Derrick stopping Mr. Baniel, at least one fellow trooper began investigating Mr. Baniel's vehicle's travel history across the United States using license-plate-reader databases, which bears no relation to the mission of a traffic stop, traffic safety. Then, within six minutes of the stop and without any articulated basis to believe Mr. Baniel was engaged in, had engaged in, or was going to engage in criminal activity, Trooper Derrick, a member of a narcotics-interdiction unit, had decided that Mr. Baniel's vehicle had to have something illegal in it. This also was not related to the traffic safety mission.

Without reasonable suspicion or probable cause, Trooper Derrick, continued with a narcotics investigation that started before any of the allegedly suspicious behavior found by the Report and Recommendation. Trooper Derrick did so without

attempting to resolve the traffic investigation. That is, he did not wait for the criminal history return and was uncertain of whether he waited from a return on Mr. Baniel's driver's license.

Instead, Trooper Derrick pursued a narcotics investigation. That is, he sought consent to search from Mr. Baniel, after ordering Mr. Baniel out of his vehicle without probable cause or reasonable suspicion. The unreasonableness of Trooper Derrick's conduct is seen, in part, in his unwillingness or inability to admit that Mr. Baniel's alleged trembling hands and sweating could have been caused by the fact that a lone black male was stopped by a law enforcement officer at night in a vehicle not titled to Mr. Baniel that had a broken window.

A simple reason seems to support Trooper Derrick's myopic focus, this was a narcotics investigation masquerading as a traffic investigation. Trooper Derrick neglected to investigate the traffic stop in a reasonable manner because he and his narcotics-interdiction unit were focused on pursuing a narcotics investigation.

Certainly, law enforcement can use the ruse of a car stop based on reasonable suspicion of a traffic infraction to investigate suspicions of narcotics-related activity. However, they can do so only during the time the traffic investigation reasonably should be ongoing, *i.e.*, while they are on a traffic-enforcement mission.

After interviewing Mr. Baniel for approximately five minutes, Trooper Derrick returned to his vehicle. He, then, almost immediately began filling out

a consent to search form. Indeed, when backup arrived, he exited his vehicle, ordered Mr. Baniel out of his vehicle, and asked for consent to search.

That is, Trooper Derrick never attempted to resolve the traffic stop. Trooper Derrick never attempted to cite or to warn Mr. Baniel in relation to the traffic stop. Thus, Trooper Derrick detained Mr. Baniel illegally when Trooper Derrick failed to conduct the traffic investigation in a reasonable manner. He did so because he was focused on the narcotics investigation.

Accordingly, the instant traffic stop was never constitutional, because its mission was not to address the traffic violation that allegedly warranted the traffic stop or to attend to related safety concerns. Rather, the traffic stop was preceded by the tactical deployment of a roving narcotics-interdiction team of which Trooper Derrick was one of three operators.

When Trooper Derrick focused on a narcotics investigation during which he abandoned any traffic investigation, Trooper Derrick unreasonably extended Mr. Baniel's roadside detention. For these reasons, Mr. Baniel's Fourth Amendment rights were violated, and all evidence and statements obtained in violation of these rights must be suppressed.

Accordingly, the District Court should not have adopted the Report and Recommendation. Instead, it should have found that Mr. Baniel's Fourth Amendment rights were violated. Therefore, it should have suppressed the narcotics and all statements obtained after the violation of these rights.

To address this violation of the Fourth Amendment, this Court should grant this writ, should reverse the District Court's decision to deny Mr. Baniels' motion to suppress, should grant Mr. Baniels' motion to suppress, should reverse Mr. Baniels' conviction, should vacate his sentence, and should remand this matter to the District Court for further proceedings consistent with this Court's ruling.

CONCLUSION

The petition for a writ of certiorari should be granted. To address this violation of the Fourth Amendment, Mr. Baniels' motion to suppress should be granted, his conviction should be reversed, his sentence should be vacated, and this matter should be remanded to the District Court for further proceedings consistent with this Court's ruling.

Respectfully submitted,
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Date:
February 4, 2025