No. 25-588

In the Supreme Court of the United States

DONNA ELIZABETH SUMMERS,
Petitioner,

v.

STATE OF MONTANA,
Respondent.

On Petition for a Writ of Certiorari to the Montana Supreme Court

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether, despite this Court's settled totality-of-the-circumstances test for determining voluntary consent, a driver always remains seized after an officer concludes a traffic stop and returns the driver's documents based solely on the singular fact that the officer and the driver then engage in further conversation.

LIST OF PARTIES TO THE PROCEEDING

Petitioner Donna Elizabeth Summers was the defendant in the state trial court and the appellant in the Montana Supreme Court. The State of Montana was the plaintiff in the state trial court and the appellee in the Montana Supreme Court.

STATEMENT OF RELATED PROCEEDINGS

Supreme Court of the State of Montana

State of Montana v. *Donna Elizabeth Summers,*
Case No. DA 23-0365 (June 17, 2025)

Supreme Court of the State of Montana

State of Montana v. *Donna Elizabeth Summers,*
Case No. DA 23-0365 (May 27, 2025)

Montana Twenty-First Judicial District Court, Ravalli County

State of Montana v. *Donna Elizabeth Summers*,
Case No. DC 22-103 (Sept. 12, 2022)

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INTRODUCTION

This case involves a routine Fourth Amendment issue governed by settled Fourth Amendment rules. When a traffic stop ends, an officer's authority to detain the motorist ends with it. Any further interaction is lawful only if supported by independent reasonable suspicion or by the motorist's voluntary consent. And whether consent is truly voluntary turns on a well-settled, fact-intensive inquiry: considering the totality of the circumstances, would a reasonable person feel free to decline the officer's requests and go about her business? *See Ohio* v. *Robinette*, 519 U.S. 33, 39-40 (1996); *Florida* v. *Bostick*, 501 U.S. 429, 434 (1991); *Schneckloth* v. *Bustamonte*, 412 U.S. 218, 248-49 (1973).

The Montana courts applied that settled doctrine in a textbook fashion. After reviewing dash-camera footage and hearing live testimony, the trial court found that Petitioner Donna Summers was not subject to undue coercion or duress, and thus voluntarily agreed to answer additional questions after the traffic stop ended. The Montana Supreme Court affirmed, explaining that the encounter—viewed in its full context—would not have conveyed to a reasonable person that she was required to remain. Pet.App.13a-23a. That decision reflects a straightforward application of this Court's precedents and appropriate deference to the trial court's factfinding. *See Robinette*, 519 U.S. at 40.

Summers nonetheless asks this Court to intervene, insisting that the lower courts are divided over what happens when an officer proceeds to unrelated questioning "immediately" after a traffic stop ends. But Summers's supposed split is illusory. Every lower

court decision that Summers identifies applies the same standard that this Court has established: Under the totality of the circumstances, would a reasonable person have felt free to leave? Some courts, on particular facts, have concluded that an immediate transition to unrelated questioning conveyed continued restraint. Others, on different facts, have concluded that it did not. Those differing outcomes reflect different fact-bound records, not different legal rules.

In effect, Summers's petition urges this Court to adopt a new bright-line rule to govern the moments after a traffic stop. She seeks a rule that whenever an officer asks additional questions immediately after a traffic stop ends, the motorist necessarily remains seized. *See* Pet.35-36. But that invitation collides head-on with this Court's precedents. *Robinette* squarely rejected a near-identical attempt to manufacture a categorical rule for post-stop encounters. 519 U.S. at 39-40. The Court has maintained that the Fourth Amendment does not require magic words or "bright-line" formulas before an officer may seek consent to search. *Id.* Voluntariness should be assessed case by case under the totality of the circumstances—not by rigid per se commands.

The rule Summers seeks would do precisely what *Robinette* forbids. It would elevate one factor—temporal proximity—into a dispositive test and displace the context-sensitive inquiry this Court has repeatedly mandated. But a Fourth Amendment seizure does not depend on a stopwatch. It turns on whether police conduct, viewed as a whole, would cause a reasonable person to believe she must stay. *See Bostick*, 501 U.S. at 439; *see also United States* v. *Mendenhall*, 446 U.S. 544, 557 (1980) (opinion of Stewart, J.).

Even if Summers had identified a split or an unresolved legal question—and she has not—this case would be a poor vehicle for addressing it. The dispute here centers on a state trial court's factfinding reviewed only for clear error. Since Summers cannot point to an improper or missing legal rule, she wants nothing more than for this Court to reweigh the state trial court's factual determinations. That is not a proper or worthwhile use of this Court's limited resources.

This case presents no circuit split, no doctrinal confusion, and no suitable vehicle. It presents only the fact-bound, ordinary application of settled Fourth Amendment law. The Court should deny the petition.

OPINIONS BELOW

The Montana Supreme Court opinion (Pet.App.1a-27a) is published at 569 P.3d 542 (Mont. 2025). The Montana Supreme Court's decision denying rehearing (Pet. App.28a-30a) is unreported. The state trial court's order denying Summers's motion to suppress is unreported.

JURISDICTION

The Montana Supreme Court entered its judgment on May 27, 2025, Pet.App.2a, and denied rehearing on June 17, 2025, Pet.App.30a. Justice Kagan granted Summers's application for an extension and extended the time to file a petition through November 14, 2025.

Summers timely filed her petition. This Court has jurisdiction under 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISION INVOLVED

U.S. Const., amend. IV:

> 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 person or things to be seized.

STATEMENT OF THE CASE

1. In May 2022, Ravalli County Detective Nick Monaco observed Petitioner Donna Elizabeth Summers speeding on a highway in Montana and initiated a traffic stop. Pet.App.2a-3a. Summers had one passenger, Benjamin Ryan, in her vehicle. *Id.*

Summers did not slow down until about twenty-five seconds after Detective Monaco activated his emergency lights, and did not pull over for another twenty-five seconds after that. *Id.* at 3a. During that time, Detective Monaco observed what he described as "erratic movements" by Summers. Mont.Br.5. Once both vehicles were stopped, Detective Monaco approached Summers's vehicle and asked why she took so long to stop. Pet.App.3a. Summers answered that she had not noticed the flashing lights at first because she had been "singing" and dancing while driving, and then delayed stopping while looking for a safe place to pull over. *Id.*; Mont.Br.5-6, 8.

While Summers looked for her registration and insurance, Detective Monaco asked: "You seem really nervous, is everything okay?" Pet.App.3a (cleaned up). Summers said yes and explained that she was doing work at her house. She also volunteered that her husband had passed away—which Detective Monaco found "a little out of context." Mont.Br.6. Detective Monaco also requested Ryan's identification. Pet.App.3a. Ryan did not have identification with him but provided Detective Monaco his full name and birthdate. *Id.*

Detective Monaco returned to his vehicle and contacted dispatch to verify the information on Summer and Ryan and to run routine checks. *Id.* Dispatch confirmed that Summers had a valid driver's license and no outstanding warrants. Dispatch also told Detective Monaco that Summers had a history of drug possession and drug-paraphernalia possession. *Id.* Detective Monaco then returned to Summers's vehicle, which he noted was parked at the highway's edge. Mont.Br.10. He asked Summers to exit the vehicle, both for safety purposes and since he couldn't hear her answers well. *See id.*; Pet.App.3a. Detective Monaco also asked whether Summers had an up-to-date insurance card and independently confirmed through dispatch that she had valid insurance on the vehicle. *Id.*

By this point, Summers was standing on the side of the highway between her vehicle and Detective Monaco. *Id.* at 17a. Detective Monaco then had the following exchange with Summers:

> MONACO: Here's everything that you gave me, okay, your license, registration,

> and insurance, okay. So, I'm gonna put you down for a warning for the speed.
>
> SUMMERS: Okay.
>
> MONACO: Okay, just be mindful [it's] 60 top-end on Eastside Highway, okay? Um, do you have any—
>
> SUMMERS: Yeah, 'cause I had my cruise on, so, I was like sixty-five, or—
>
> MONACO: Okay, you were dip, you would go dip from 62 up to about 71, so—
>
> SUMMERS: Well, I was serious I had my cruise on so maybe there is something messed up with that.
>
> MONACO: Okay. So, um, since I got you here, do you mind if I ask you a couple of questions?
>
> SUMMERS: Go ahead.

Id. Detective Monaco then asked Summers how she knew Ryan, since, as he later explained, former drug users "often associate with folks who they are not familiar with." Mont.Br.6. Summers responded that she did not know Ryan well and had hired him to help her with home repairs. Pet.App.4a. Detective Monaco also asked if there was anything illegal in the vehicle and whether Summers still used illegal drugs. Summers initially responded that she had not taken illegal drugs in the last "few years," but then changed her answer and said she had last used a few months earlier. *Id.*; Mont.Br.6-7.

After this, Detective Monaco asked Summers if he could search her vehicle. Pet.App.4a. Summers

responded: "[G]o ahead." *Id.* She also mentioned that she was on parole, so Detective Monaco called her parole officer and obtained permission to search Summers's vehicle. *Id.* During the vehicle search, Detective Monaco discovered a methamphetamine pipe and a small bag of methamphetamine. *Id.* Summers admitted that the pipe belonged to her. *Id.*

2. The State charged Summers with felony possession of illegal drugs and misdemeanor possession of drug paraphernalia. *Id.* Summers moved to suppress the evidence from the vehicle search, arguing that Detective Monaco lacked particularized suspicion to lawfully prolong the traffic stop, and also that her consent to search was invalid because it came during a coercive and unauthorized seizure. *Id.* The State responded that Detective Monaco had particularized suspicion to expand the traffic stop into a drug investigation based on his observations of Summers's behavior, Summers's nervous and inconsistent answers, and Summers's history of drug use. *Id.* The State also responded that there was no seizure after the traffic stop ended and the additional questioning occurred during a voluntary and consensual exchange.

The state trial court held an evidentiary hearing where it reviewed Detective Monaco's dash-camera footage and heard him testify. After that hearing, the trial court denied Summers's motion to suppress. *Id.* at 5a. Summers then pleaded no contest to the charges but reserved the right to appeal the suppression ruling. *Id.*

3. The Montana Supreme Court affirmed. The Court first ruled, unanimously, that Detective Monaco lacked particularized suspicion to expand the traffic

stop into a drug investigation. *Id.* at 12a, 23a, 25a. But the Court also ruled, by a 4–3 vote, that once the traffic stop ended, Summers voluntarily consented to continue the interaction and answer Detective Monaco's additional questions. *Id.* at 2a, 22a-23a. Detective Monaco's consent search was therefore lawful because Summers was not already seized when she gave consent. *Id.*

The majority opinion started with the settled Fourth Amendment rule that an officer's authority for a valid seizure relating to a traffic stop "ends when tasks related to the traffic infraction reasonably should have been completed," and that "[f]urther questioning" is justified in only "two circumstances"—when an officer acquires "reasonable ... suspicion," or when "the driver voluntarily consents to the officer's additional questioning." *Id.* at 6a (cleaned up). Voluntary consent, in turn, can be "tainted" if the individual is already "illegally detained" when the consent is given. *Id.* at 13a (citing *Florida* v. *Royer*, 460 U.S. 491, 507-08 (1983) (plurality)). So to determine whether consent was truly voluntary or had been obtained through a coercive seizure, the majority considered "the totality of the circumstances" and whether "an objectively reasonable person would believe" that they would not be "free to leave the officer's presence." *Id.* at 14a (cleaned up).

The majority recognized that this totality-based voluntariness inquiry is "dependent on the facts of each case, with no single fact being dispositive." *Id.* at 13a (cleaned up). To that end, courts look to factors such as: "the person's age, education, and intelligence; misrepresentation of the law by the officer (indicating coerciveness); whether the person was in custody or

under arrest; whether the person was informed of the right not to consent; whether they were threatened or coerced in any way; and whether the questioning was repeated and prolonged." *Id.* (cleaned up). The factual determinations on those factors, and on the threshold question of voluntariness, are reviewed only for "clear error." *Id.* at 5a (cleaned up).

The majority then carefully analyzed the Montana Supreme Court's prior cases about when a post-stop encounter is voluntary and when it amounts to a continuing seizure. *See* Pet.App.14a-16a (citing *State* v. *Merrill*, 93 P.3d 1227 (Mont. 2004); *State* v. *Hill*, 94 P.3d 752 (Mont. 2004); *State* v. *Snell*, 99 P.3d 191 (Mont. 2004); *State* v. *Case*, 162 P.3d 849 (Mont. 2007)). In doing so, the majority explained that its task was not to apply any rigid formula, but to examine "the facts of each case, with no single fact being dispositive," and in light of the governing "reasonable person" standard. Pet.App.19a. The majority also explained that traffic stops, where a "person is under police authority ... and it may not be clear ... when the stop has ended," are "unlike" other interactions where a person is simply approached by police on the street. Pet.App.21a. The majority acknowledged that unrelated questioning after traffic stops may be inherently "cloud[ed]" by the potential for an inference of continuing seizure from the prior lawful seizure. *Id.*

Applying those prior cases here and "[c]onsidering the record as a whole," the majority concluded that the trial court's "factual findings"—that Summers voluntarily consented to the continued conversation—were not "clearly erroneous." *Id.* at 22a. The majority therefore affirmed the denial of Summers's motion to suppress. *Id.* at 23a.

4. Justice Shea, who joined the majority, concurred separately. He said that given the fact-intensive legal standard, other judges might "consider[] this same record in its entirety" in the first instance and "conclude[] that Summers's consent was *not* voluntary." Pet.App.24a. Yet because "voluntariness of consent is a question of fact" committed to the sound discretion of the trial court that "conduct[s] a hearing" and "t[akes] testimony," Justice Shea said the trial court's factual findings should never be "reversed unless the finding is clearly erroneous." *Id.* (cleaned up). Applying that standard of review, and given the fact-intensive nature of the voluntariness inquiry, Justice Shea agreed that the trial court's decision must be affirmed.

5. Justice Bidegaray, joined by Justices McKinnon and Gustafson, dissented in part. They agreed with the majority about which standard applies: "The voluntariness of consent is evaluated under the totality of circumstances." Pet.App.25a (citing *Schneckloth* v. *Bustamonte*, 412 U.S. 218, 225-27 (1973)); *compare id.* at 13a-14a (majority). But within that totality-of-the-circumstances calculus, the dissent thought the majority "insufficiently address[ed]" certain "factors" such as Detective Monaco's "positioning" and the "roadside environment." *Id.* at 26a. The dissent also said that the majority failed to place the proper weight on Detective Monaco's statement of "[s]ince I got you here, do you mind if I ask you a couple questions?" *Id.*

REASONS FOR DENYING THE PETITION

This Court's precedents already answer Summers's question presented. Settled rules already govern whether a person subject to a traffic stop remains

seized after that stop ends. The purported split Summers identifies amounts to nothing more than different fact-bound outcomes in cases applying those settled legal rules, which the Montana Supreme Court faithfully followed here. And this case is not a good vehicle for further considering this question. The Court should deny the petition.

I. No circuit split exists.

A. The Fourth Amendment rules for extending traffic stops are settled.

1. An officer's lawful authority to "seize" a motorist extends no further than the completion of the traffic stop itself. *See Illinois* v. *Caballes*, 543 U.S. 405, 407 (2005). A "seizure that is lawful at its inception" can "become unlawful if it is prolonged beyond the time reasonably required to complete that mission." *Id.* There is no "*de minimis*" exception that justifies continuing a seizure after the traffic stop is completed. *Rodriguez* v. *United States*, 575 U.S. 348, 353-58 (2015). An officer can ask about unrelated matters *while* conducting the traffic stop (so long as it does not unreasonably "prolong" the traffic stop itself), but the lawful "[a]uthority for the seizure ... ends when tasks tied to the traffic infraction are" done. *Id.* at 354.

After finishing those tasks, officers may still engage a motorist in further conversation. But any continued interaction must rest on a new and independent justification. If the officer has developed reasonable suspicion of another crime, that may warrant additional questioning. But when—as here—an officer continues to ask unrelated questions without independent reasonable suspicion after the traffic stop ends, one of two rules applies.

On one hand, if the motorist voluntarily continues the conversation and answers the officer's questions, the "encounter is consensual" and "does not constitute a seizure." *Florida* v. *Bostick*, 501 U.S. 429, 434 (1991). After all, "[t]he Fourth Amendment test for a valid consent to search is that the consent be voluntary." *Ohio* v. *Robinette*, 519 U.S. 33, 40 (1996). "'[V]oluntariness is a question of fact to be determined from all the circumstances.'" *Id.* at 40 (quoting *Schneckloth* v. *Bustamonte*, 412 U.S. 218, 248-49 (1973)).

On the other hand, if the motorist felt like she had no choice but to stay and answer the new questions due to some "duress or coercion, express or implied," the officer has extended the seizure without lawful authority. *Schneckloth*, 412 U.S. at 248; *United States* v. *Mendenhall*, 446 U.S. 544, 557 (1980) (opinion of Stewart, J.).

In other words, when a traffic stop ends and the officer asks additional unrelated questions, the interaction becomes *either* a consensual conversation *or* a coercive seizure. *See Robinette*, 519 U.S. at 40; *Schneckloth*, 412 U.S. at 248-49. And this Court has already repeatedly articulated the test that distinguishes a voluntary encounter from a coercive seizure: Did the officer's conduct convey to a reasonable person that he or she was not free to decline the officer's requests or otherwise terminate the encounter? *Bostick*, 501 U.S. at 439. This is a "fact-specific" inquiry that "examin[es] the totality of the circumstances." *Robinette*, 519 U.S. at 39; *see also Schneckloth*, 412 U.S. at 223.

The upshot? A motorist has been "seized" by additional questioning after a traffic stop only when "all

the circumstances surrounding the incident" would have led "a reasonable person" to "believe[] that he was not free to leave." *Mendenhall*, 446 U.S. at 554 (opinion of Stewart, J.). If, considering all the facts and the totality of the circumstances, "a reasonable person would feel free to disregard the police and go about his business," then "the encounter is consensual" and is not a seizure. *Bostick*, 501 U.S. at 434 (cleaned up); *see also Brendlin* v. *California*, 551 U.S. 249, 255 (2007); *California* v. *Hodari D.*, 499 U.S. 621, 627-28 (1991); *Michigan* v. *Chesternut*, 486 U.S. 567, 572-73 (1988); *Florida* v. *Royer*, 460 U.S. 491, 502 (1983) (plurality).

2. Summers's petition asks this Court to answer whether a driver who was lawfully seized in a traffic stop remains seized after the traffic stop ends and the officer asks additional unrelated questions. Summers tries to frame that as an unanswered question by claiming that *Robinette* left a "gap" in the analytical framework for "traffic stops that evolve into consent requests." Pet.2. As Summers describes it, that "gap" has created "persistent disagreement" between courts that think a motorist "remains seized when police proceed immediately to unrelated questioning" and courts that "allow immediate, follow-on questioning" that "prolong[s]" the traffic stop. *Id.* at 3, 18, 23.

Summers is wrong. This Court's cases leave no such "gap." *Rodriguez* confirms that the lawful seizure ends at the completion of the traffic stop. *Robinette* confirms that whether continued questioning causes Fourth Amendment problems turns on the totality of the circumstances. Just earlier this term, this Court again affirmed that the post-stop questioning in *Robinette* represents one of the many "Fourth Amendment contexts" that is "evaluated by looking at the 'totality

of the circumstances.'" *Case* v. *Montana*, No. 24-624, slip op. at 10 (U.S. 2026). The lack of any analytical gap is reason enough to deny Summers's petition.

B. The circuits and state courts are not split.

Beyond that, no lower-court split exists on this question. Their decisions follow the Court's established rules: *First*, the lawful authority for a seizure in a traffic stop extends no further than the completion of the traffic stop. *Second*, any additional, unrelated conversations after the traffic stop ends are the product either of a voluntary, consensual encounter or of a coercive seizure. *Third*, courts determine whether a given scenario is a voluntary conversation or a coercive seizure through a fact-intensive "totality of the circumstances" inquiry that looks to whether "a reasonable person" would feel free to leave. Consider Summers's cited cases.

1. Summers contends that the Sixth and Third Circuits, and some state courts, have adopted a bright-line rule that "when an officer proceeds immediately to unrelated questioning upon concluding a traffic stop, it effects a detention." Pet.18. But the petition supports that contention with stray lines wrenched from context. The facts and holdings of each case confirm that those courts apply the same fact-based, totality-of-the-circumstances test from *Robinette*, *Bostick*, and *Schneckloth* to analyze whether a reasonable person would have felt free to leave.

a. Start with the Sixth Circuit. In *United States* v. *Richardson*, an officer observed a vehicle "recklessly swerving" between other vehicles on a highway. 385 F.3d 625, 627 (6th Cir. 2004). After issuing a citation and inspecting (and returning) the identification

documents of the driver and passengers, the officer asked the driver to "remain behind the vehicle," saying "just hang out right here for me, okay?" *Id.* at 630. The officer then asked the other occupants whether there were any guns in the vehicle. *Id.* at 628. After receiving an affirmative answer, the officer sought permission to search the vehicle, which ultimately led to the discovery that Richardson (a felon) had a gun in his possession. *Id.* Richardson moved to suppress the evidence from the search, arguing that the occupants of the vehicle had been unlawfully seized. *Id.* The district court granted the motion and suppressed the evidence, and the Sixth Circuit agreed. *Id.* at 627-28.

Richardson held that under these particular facts, the occupants of the vehicle had been unlawfully seized when the owner of the vehicle consented to the search. *Id.* at 629-30. The court grounded its decision in this Court's *Mendenhall* fact-bound test about whether "a reasonable person would not feel free to walk away and ignore the officer's requests." *Id.* at 629 (citing *Mendenhall*, 446 U.S. at 554). While considering "whether [the] particular encounter between an officer and a citizen constitutes a seizure," *id.*, *Richardson* never said that the mere act of asking more questions automatically rendered the continued interaction a seizure, *contra* Pet.18. Instead, while analyzing the totality of the circumstances, the court concluded that after the officer "handed" the driver "the citation and shook his hand," the driver "was then free to leave"—"*until*" the officer "asked him to remain behand the vehicle" and ordered him to "hang out right here for me." *Richardson*, 385 F.3d at 630 (emphasis added).

According to *Richardson*, that combination of directions and words sufficed to "make a reasonable person in [the driver's] shoes feel that he would not be free to walk away and ignore [the officer's] request." *Id.* Thus, *Richardson* did not apply any bright-line rule about traffic stops always turning into seizures when officers ask unrelated questions. It simply applied this Court's fact-based totality standard from *Robinette*, *Mendenhall*, and *Bostick*.

Other Sixth Circuit decisions clarify that *Richardson* illustrates one way courts can properly resolve the fact-intensive inquiry. "Whether a person is seized is based on the totality of the circumstances," since "[s]imple police questioning is insufficient to constitute a seizure," even though "*[i]n certain circumstances* … 'words alone may be enough to make a reasonable person feel that he would not be free to leave.'" *United States* v. *Lewis*, 843 F. App'x 683, 689 (6th Cir. 2021) (quoting *Richardson*, 385 F.3d at 629-30) (emphasis added); *see also United States* v. *Brown*, 447 F. App'x 706, 709 (6th Cir. 2012). Contrary to Summers's claim, the Sixth Circuit applies this Court's test and looks to the totality of the circumstances to determine whether a reasonable person would feel free to leave.[1]

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[1] Summers also cites *United States* v. *Whitley*, 34 F.4th 522 (6th Cir. 2022). *See* Pet.18-19. But in *Whitley*, the officer asked the motorist *during* the traffic stop whether she had anything illegal in the vehicle—and the officer asked that question "immediately after" noticing "a scale in [the motorist's] lap." *Id.* at 530. Had the officer asked the same question after the traffic stop ended and without the reasonable suspicion from observing the drug scale, the threshold question would be the same as it is here: whether the conversation was voluntary or a coercive seizure.

b. So too in the Third Circuit. In *United States* v. *Clarke*, after an officer conducted a routine traffic stop, the officer returned to the vehicle and asked whether a passenger in the vehicle had a criminal record. 902 F.3d 404, 407 (3d Cir. 2018). This sparked a conversation that eventually led to searching the vehicle and discovering drugs and a firearm. *Id.* at 408. Clark successfully moved to suppress the evidence, and the Third Circuit affirmed. *Id.* at 406, 409. In doing so, the court reasoned that the questions about criminality were "not tied to the traffic stop's mission" and "therefore impermissibly extended the stop." *Id.* at 411.

That holding correctly applies *Rodriguez*; it does not support Summers's alleged split on *Robinette*. The improper questioning in *Clarke* occurred *during* the traffic stop, not after the officer had returned the driver's license or otherwise indicated that the traffic stop had ended. *Id.* at 406-07. *Clarke* thus offers no insight into what happens when an officer proceeds to "unrelated questioning upon *concluding* a traffic stop." Pet.18 (emphasis added).

Other Third Circuit decisions confirm that additional questioning after a traffic stop ends can be either "a consensual encounter *or* a second seizure," and to determine which, courts must examine "the totality of the circumstances" to see if there are "circumstances so intimidating that, in combination, they would have caused a reasonable person to perceive that he was not free to leave." *United States* v. *Wilson*, 413 F.3d 382, 384, 387 (3d. Cir. 2005) (emphasis added); *see also United States* v. *Lowe*, 791 F.3d 424, 431-32 (3d Cir. 2015). Even *United States* v. *Munoz-Villalba*, which Summers cites, stated that "a district

court must consider the 'totality of the circumstances'" when considering whether a motorist's consent to search "was freely and voluntarily given." 251 F. App'x 90, 92 (3d Cir. 2007).

c. State courts in Maryland, Ohio, Missouri, Utah, South Carolina, and Georgia all apply the same test.

Start with Maryland. In *Ferris* v. *State*, an officer completed a traffic stop and returned the motorist's "driver's license and registration[,] along with a copy of the citation," before asking the motorist "if he would mind stepping to the back of his vehicle to answer a couple of questions." 735 A.2d 491, 494 (Md. 1999). The court stated that what determined whether the additional questioning "constitute[d] a seizure, or ... was simply a 'consensual' non-constitutional event is whether a reasonable person would have felt free to leave." *Id.* at 501 (citing *Mendenhall*, 446 U.S. at 554). This "inquiry is a highly fact-specific one" that looks to the "totality of the circumstances." *Id.* at 502-03. And here, the Maryland court reasoned that the "cumulative effect" of all the facts meant "a reasonable person would not have felt free to" leave. *Id.* at 503. Even so, the court recognized that there is "no litmus-paper test" and the inquiry is "necessarily imprecise," even for "questioning following the conclusion of [a] traffic stop." *Id.* at 501-02 (cleaned up). Maryland thus does not adhere to the "drivers remain seized when police proceed immediately to unrelated questioning" bright-line rule that Summers imagines. Pet.18.

Neither does Ohio. In *State* v. *Robinette* ("*Robinette III*"), the Ohio Supreme Court reconsidered the *Robinette* case on remand from this Court. 685 N.E.2d 762 (Ohio 1997). Since this Court had just instructed that

the Fourth Amendment requires neither a "bright-line test or magic words," *id.* at 771 n.6, the Ohio court then applied a "totality-of-the-circumstances test" to determine whether "a reasonable person would believe that he or she had the freedom to refuse to answer further questions," *id.* at 771 (citing *Schneckloth*, 412 U.S. at 248-49). The Ohio court did place weight on the "troubling" "immediate transition" from the end of the traffic stop to the unrelated questions, but it never suggested that this single factor was determinative or displaced the normal totality-of-the-circumstances inquiry. *Id.* at 770-71.

Nor does Missouri precedent support Summers's supposed circuit split. In *State* v. *Barks*, an officer returned a motorist's driver's license and gave him a copy of a traffic citation, then asked about the motorist's nervous behavior and if there was anything illegal in the vehicle. 128 S.W.3d 513, 514-15 (Mo. 2004) (per curiam). The Missouri court acknowledged that "the mere fact that a law enforcement officer talks with someone or asks a question does not mean the person is seized or detained." *Id.* at 517. But considering a variety of factors, such as the officer's position, the ongoing emergency lights, and the nature of the officer's questions, the Missouri court concluded that under "the totality of the circumstances, a reasonable person in [the motorist's] position would have understood the situation to be one of custody." *Id.*

So too in Utah. In *State* v. *Hansen*, after an officer returned a motorist's license and registration and administered a verbal warning, the officer asked whether alcohol, drugs, or weapons were in the vehicle. 63 P.3d 650, 657 (Utah 2002). The Utah Supreme Court concluded that this additional questioning

constituted a continued seizure, but only after stating that the applicable standard is whether "a reasonable person would believe, based on the totality of the circumstances, that he or she is free to end the encounter and depart." *Id.* at 661 (citing *Mendenhall*, 446 U.S. at 554). It also acknowledged that "no single factor is dispositive," and it examined all present "factors in totality" before concluding that the motorist had been seized. *Id.* at 662.

Finally, both intermediate state courts Summers cites also apply a fact-bound totality-of-the-circumstances inquiry, rather than a bright-line rule about immediate questioning following a traffic stop. The South Carolina intermediate court stated that its test for distinguishing voluntary interactions from coercive seizures is "examining the totality of the circumstances," which is "highly fact-specific" and "no single factor" dominates. *State* v. *Pichardo*, 623 S.E.2d 840, 849 (S.C. Ct. App. 2005) (citing *Robinette*, 519 U.S. at 33). And the Georgia intermediate court held that "[t]he voluntariness of consent is determined by the totality of the circumstances" where "no single factor controls," and considered several other factors in addition to "the timing" of the additional questions. *Hill* v. *State*, 859 S.E.2d 891, 895-96 (Ga. Ct. App. 2021) (cleaned up).

2. Summers next contends that the Fourth, Fifth, Seventh, Tenth, and Eleventh Circuits (and some state courts) have adopted a bright-line rule that "allow[s] police to continue asking unrelated questions after the purpose of a traffic stop has concluded." Pet.23. Not so. These courts apply the *same test*—whether under a totality-of-the-circumstances review, a reasonable person would feel free to leave.

a. Start with the Fourth Circuit. In *United States* v. *Lattimore*, the court found that a motorist voluntarily consented to additional unrelated questions after the officer "issued the citations and returned [his] driver's license." 87 F.3d 647, 653 (4th Cir. 1996) (en banc). Lattimore argued that his consent to search had been tainted by a continuing coercive seizure, since Lattimore was sitting in the passenger's seat of the officer's patrol car while the officer wrote out the ticket and when the officer asked the unrelated questions. *Id.* at 650.

The Fourth Circuit stated that "whether a consent to a search was in fact 'voluntary' or was the product of duress or coercion," is "a question of fact to be determined from the totality of all the circumstances." *Id.* (quoting *Schneckloth*, 412 U.S. at 227). Weighing the context of where Lattimore was sitting when the traffic stop ended against other factors—including his "age, maturity, education, intelligence," the "officer's conduct," and "friendly conversation" during the encounter—the Fourth Circuit held that it was not "clearly erroneous" for the trial court to conclude that Lattimore voluntarily engaged in further conversation. *Id.* at 650-51. It did not rely on any single factor, but concluded that since a "reasonable person would have felt free to decline the officer['s] requests or otherwise terminate the encounter," the "[t]otality of the circumstances presented indicate that from this point forward the encounter was consensual." *Id.* at 653 (quoting *Bostick*, 501 U.S. at 438).

b. The Fifth Circuit applies the same test. Whether "consent was voluntary" or tainted by "coercive" police actions turns on a "multi-factor test" that is reviewed only for clear error. *United States* v.

Jenson, 462 F.3d 399, 406 (5th Cir. 2006) (cleaned up). Summers reads the Fifth Circuit to have adopted a rule that "when a motorist's documents are returned," the seizure "*necessarily*" evolves into a consensual encounter. Pet.26 (citing *United States* v. *Williams*, 784 F. App'x 876, 881 (5th Cir. 2019)) (emphasis added). But far from adopting that bright-line or absolute rule, in that case the Fifth Circuit examined a number of factors present and concluded that absent "some coercive step beyond what the officers did here," a reasonable person "should have felt free to leave" rather than stay and answer questions. *Williams*, 784 F. App'x at 881.

c. The Seventh Circuit likewise looks not to any single factor or "mechanical approach," but to the "totality of the circumstances" to determine whether a continuing interaction after a traffic stop ends is voluntary or a seizure. *United States* v. *Chan*, 136 F.3d 1158, 1159-60 (7th Cir. 1998); *compare United States* v. *Shields*, 789 F.3d 733, 744-45 (7th Cir. 2015). Summers tries to cast doubt on the Seventh Circuit's test by cherry-picking a stray line from one case about whether additional unrelated questions "only briefly extended the length of the stop." Pet.24 (quoting *United States* v. *Brown*, 355 F. App'x 36, 39 (7th Cir. 2009) (order)). But even in *Brown*, the motorist did "not explicitly argue that his consent" to the continuing encounter "was involuntary," nor did the Seventh Circuit think that there was a coercive seizure "under the totality of the circumstances." *Id.* at 39 n.3 (citing *Schneckloth*, 412 U.S. at 248-49).

d. The Eighth, Tenth, and Eleventh Circuits each sift post-traffic stop voluntary interactions from seizures using this Court's precedents on "totality of the

circumstances" and analyzing whether a "reasonable person" would feel free to leave.

In *United States* v. *White*, the Eighth Circuit held that there is "no litmus test" for distinguishing voluntary conversation from coercive seizure, but did outline a series of "factors" about "the characteristics of the accused and the details of the environment." 81 F.3d 775, 779-80 (8th Cir. 1996). Based on the relevant "circumstances" and seven different factors, the court found that "a reasonable person would feel free 'to disregard the police and go about his business.'" *Id.* at 779 (quoting *Bostick*, 501 U.S. at 434).

In *United States* v. *Bradford*, the Tenth Circuit likewise stated that whether a continued encounter is "consensual" depends on whether a "reasonable person" would believe that "she was not free to decline the officer's requests or otherwise terminate the encounter." 423 F.3d 1149, 1158 (10th Cir. 2005) (cleaned up). Contrary to Summers's suggestion, *see* Pet.25-26, the Tenth Circuit did not apply a bright-line rule that all conversations become consensual after an officer returns a motorist's documents. Instead, *Bradford* wrestled with factors that pointed in different directions—on one hand, the motorist remained seated "in the patrol car"; on the other, no other common "coercive" actions that might "indicat[e] that compliance might be compelled" were present. *Id.* at 1158-59. Considering all the facts, *Bradford* affirmed the district court's finding that after the traffic stop concluded, the officer and motorist "engaged in a consensual encounter." *Id.* at 1159.

And the Eleventh Circuit agrees "with [its] sister circuits" that there is "no bright-line 'litmus test'" to

determine between "a seizure" and "a consensual encounter." *United States* v. *Ramirez*, 476 F.3d 1231, 1240 (11th Cir. 2007). So, contrary to Summers's suggestion that the Eleventh Circuit applies a rule that "simultaneous" unrelated questioning is always a "consensual encounter," Pet.26, that court instead "examine[s] the 'totality of the circumstances' in each case" and "weigh[s] a range of factors." *Ramirez*, 476 F.3d at 1240. In fact, *Ramirez* stated that its "conclusion ... is based upon more than timing" and that it was *not* "creating a *per se* rule that once a person's documentation has been returned to him in a traffic stop, it has automatically converted into a consensual encounter." *Id.* Summers thus errs by arguing that the Eleventh Circuit applies some bright-line rule instead of this Court's totality-of-the-circumstances and reasonable-person standards.

e. Oklahoma, Nebraska, Alabama, North Carolina, and Arizona also apply this Court's totality-of-the-circumstances test rather than a bright-line rule favoring consensual encounters. In *State* v. *Strawn*, the Oklahoma court stated that it "consider[s] if a reasonable person would have felt free to leave considering the totality of the circumstances," and examined a variety of factors before concluding that the continued conversation was consensual. 419 P.3d 249, 255-56 (Okla. Crim. App. 2018) (cleaned up). Nebraska recognizes that "voluntariness" is "a question of fact to be determined from the totality of the circumstances surrounding the giving of consent." *State* v. *Ready*, 565 N.W.2d 728, 733 (Neb. 1997) (citing *Robinette*, 519 U.S. at 33). And the intermediate courts in Alabama, North Carolina, and Arizona *all* apply this Court's "totality-of-the-circumstances" test rather than the

bright-line rule that Summers claims. *See State* v. *Ellis*, 71 So.3d 41, 47-48 (Ala. Crim. App. 2010) (per curiam) (first citing *Robinette*, 519 U.S. at 39-40; then citing *Bostick*, 501 U.S. at 435-36); *State* v. *Outlaw*, 2022 WL 4075091, at *6 (N.C. Ct. App. 2022) (quoting *Lattimore*, 87 F.3d at 650); *State* v. *Rodriguez*, 2019 WL 1785298, at *3 (Ariz. Ct. App. 2019) (quoting *Bostick*, 501 U.S. at 439).

* * * * *

Carefully analyzing this caselaw from the Third, Fourth, Fifth, Sixth, Seventh, Eighth, Tenth, and Eleventh Circuits (and several states) exposes the fatal flaw in Summers's petition: There is no actual disagreement among the lower courts.

Every lower court applies the identical legal standard. Each finds an unlawful seizure when an officer asks questions after a traffic stop ends and, under the totality of the circumstances, a reasonable person would not have felt free to leave. *See Robinette*, 519 U.S. at 40; *Mendenhall*, 446 U.S. at 554. No court has adopted anything like a bright-line rule (or even a presumption) that immediate questioning after a traffic stop ends automatically triggers either a consensual encounter or a continuing seizure. On the contrary—every lower court Summers identifies agrees that "[v]oluntariness is a question of fact to be determined from all the circumstances." *Robinette*, 519 U.S. at 40 (quoting *Schneckloth*, 412 U.S. at 248-49).

What Summers calls a circuit split is nothing more than different fact-bound outcomes from applying the same fact-intensive legal test. Some courts have found that the immediate transition from a completed traffic stop to unrelated questioning makes a reasonable

person feel seized. Other have found that the same temporal proximity, alongside other facts, did not cause a seizure. This is not a conflict; it's precisely how fact-bound standards work.

At end of day, Summers's effort to manufacture a circuit split reduces to nothing more than differences on how much weight to give one factor among many. But differential weighing of one factor in a "totality-of-the-circumstances" analysis does not create a legal conflict that warrants this Court's review. Were it otherwise, nearly every fact-bound standard of review this Court announces would generate perpetual circuit splits.

The lower courts faithfully apply this Court's totality-of-the-circumstances and reasonable-person precedents. Unsurprisingly, they reach different conclusions as they confront different facts. That is a feature, not a bug, of this Court's framework from *Robinette*, *Bostick*, and *Schneckloth*. The Court should deny the petition.

II. The Montana Supreme Court applied the correct totality-of-the-circumstances standard.

In this case, the Montana Supreme Court did exactly what this Court's precedents require: It examined the totality of the circumstances and determined whether the trial court clearly erred in concluding that a reasonable person in Summers's position would have felt free to leave. Pet.App.14a, 19a, 22a. The court made no legal error. And the necessary factual findings have ample support in the lower court record. The mere fact that Summers disagrees with how the trial

court weighed those facts does not warrant this Court's review.

A. The majority applied the rules this Court has articulated for decades. It recognized that a lawful seizure for a traffic infraction "ends when tasks related to the traffic infraction reasonably should have been completed," and that additional questioning is justified only in "two circumstances"—when an officer develops reasonable suspicion or when the motorist "voluntarily consents" to further interaction. Pet.App.6a (cleaned up); *see also Rodriguez*, 575 U.S. at 354; *Caballes*, 543 U.S. at 407. It also acknowledged that consent obtained during an unlawful detention is "tainted," so courts must determine whether the motorist who gave consent was already seized when she consented. Pet.App.13a (citing *Royer*, 460 U.S. at 507-08 (plurality)).

From there, the court below applied the test this Court has prescribed: Whether, under the totality of the circumstances, "an objectively reasonable person" would have believed she was free to leave. Pet.App.14a; *see also Bostick*, 501 U.S. at 439; *Mendenhall*, 446 U.S. at 554 (opinion of Stewart, J.); *United States* v. *Drayton*, 536 U.S. 194, 200-01 (2002). The court emphasized that this inquiry is "dependent on the facts of each case," that "no single fact" controls, and that courts must examine all relevant circumstances rather than rely on any bright-line rule. Pet.App.13a-14a, 19a; *Robinette*, 519 U.S. at 39 (rejecting "litmus-paper tests" and per se rules).

That methodology hews perfectly to this Court's precedents. The Court has repeatedly held that "law enforcement officers do not violate the Fourth

Amendment by merely approaching an individual" and asking questions, so long as their conduct does not objectively convey the impression that compliance is required. *Bostick*, 501 U.S. at 434; *Drayton*, 536 U.S. at 200-01. Conversely, a seizure occurs when police conduct, either expressly or by implication, would cause a reasonable person to believe she is not free to terminate the encounter and walk away. *Mendenhall*, 446 U.S. at 554 (opinion of Stewart, J.); *see also Schneckloth*, 412 U.S. at 248-49. The Montana court's decision faithfully implemented those principles.

B. After articulating the correct legal standard, the majority conducted a precedent-by-precedent analysis of its own post-stop cases, explaining why some facts supported a finding of voluntariness and others supported a finding of continued detention. Pet.App.13a-16a. It then returned to the record here and applied the identified legal framework to this case's facts.

The majority first noted how Detective Monaco completed the traffic stop's purpose. Pet.App.17a. He returned Summers's driver's license, registration, and insurance card; told her that she would receive only a warning; and told her to "be mindful" of the speed limit. *Id.* Those acts—returning documents and concluding the citation process—are the kind of signals that ordinarily mark the end of a traffic stop. *See Rodriguez*, 575 U.S. at 354. Only after that point did Detective Monaco ask, a single time, whether Summers would "mind" answering a few more questions. Pet.App.17a ("So, um, since I got you here, do you mind if I ask you a couple of questions?"). Summers replied: "Go ahead." *Id.* Detective Monaco did not retain her identification, did not issue commands, did

not move his position to block her ability to return to her vehicle, and did not suggest that she was required to remain. Nor did he engage in prolonged or repetitive questioning. *See* Pet.App.13a-14a.

The majority evaluated those facts in light of its own precedents. Pet.App.13a-16a. It compared cases where officers expressly told motorists they were "free to go," returned documents, and asked permission before each additional step—circumstances that supported findings of consensual encounters. Pet.App.13a-15a (discussing *Merrill*, *Hill*, and *Snell*). It contrasted that against a case where officers directed the motorist to again exit the vehicle, positioned multiple officers in a way that restricted movement, or otherwise conveyed continued authority—circumstances that combined to support findings of continued detention. Pet.App.16a (discussing *Case*).

This precedent-by-precedent analysis demonstrates the opposite of what Summers (and the dissent) claimed. Rather than adopting a categorical rule keyed to "immediacy," the majority treated the additional questions' temporal proximity to the traffic stop's conclusion as just one factor among many—just what a totality inquiry demands. Pet.App.13a ("no single fact being dispositive"). That approach tracks this Court's repeated admonition that Fourth Amendment encounters involve "endless variations" and therefore should not be decided with bright-line rules that focus on one fact over all others. *Robinette*, 519 U.S. at 39; *Royer*, 460 U.S. at 506-07 (plurality).

C. The Montana Supreme Court's decision is a paradigmatic application of this Court's settled doctrine. The traffic-stop seizure ends when the traffic

stop's purpose ends. *Rodriguez*, 575 U.S. at 354. Further interaction is permissible only by independent justification or voluntary consent. *Robinette*, 519 U.S. at 39-40. Voluntariness turns on the totality of the circumstances and the reasonable-person inquiry. *Schneckloth*, 412 U.S. at 227, 248-49; *Bostick*, 501 U.S. at 439. And appellate review respects trial-court fact-finding absent clear error. Pet.App.5a, 23a-25a. Nothing about this straightforward application of settled Fourth Amendment principles warrants plenary review.

III. Summers's petition is a poor vehicle for answering the question presented.

This case would a poor vehicle for further review of the splitless question presented in any event. Summers wants this Court to decide not a pure question of law, but a record-bound challenge to the Montana courts' factual determination that her post-stop interaction with Detective Monaco was voluntary. This Court routinely declines to conduct that kind of fact-bound, clear-error review of a state court's judgment.

Clear error review applies here. Voluntariness is not a pure question of law. It is "a question of fact to be determined from all the circumstances." *Robinette*, 519 U.S. at 40 (quoting *Schneckloth*, 412 U.S. at 248-49). Whether a reasonable person in Summers's position would have felt free to leave (and thus, engaged in a voluntary conversation or was coercively seized) turns on the "endless variations" of real-world encounters—tone, phrasing, positioning, timing, and context. *Id.* at 39 (quoting *Royer*, 460 U.S. at 506). Those are factual determinations entrusted to the trial court. For that reason, the Montana Supreme Court properly

reviewed the trial court's finding of voluntariness only for "clear error." Pet.App.5a, 23a-25a.

That procedural posture alone makes this case a poor candidate for certiorari. This Court does not grant certiorari to reweigh evidence or correct fact-bound applications of settled law—particularly from state courts—nor does it sit to reweigh competing inferences drawn from a particular traffic stop. *See* Sup. Ct. R. 10 (review is "rarely granted" where the asserted error consists of "the misapplication of a properly stated rule of law"). Summers asks this Court to second-guess the Montana courts' evaluation of the facts and substitute its own view of how a reasonable person might have perceived the encounter. That it should not do.

This Court regularly declines similar invitations. In Fourth Amendment cases especially, the Court has emphasized that "a reviewing court should take care both to review findings of historical fact only for clear error and to give due weight to inferences drawn from those facts by resident judges." *Ornelas v. United States*, 517 U.S. 690, 699 (1996). It does not matter if this Court thinks that "it would have weighed the evidence differently" had it been "the trier of fact"; "[w]here there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." *Anderson v. Bessemer City*, 470 U.S. 564, 573-74 (1985). Put simply, the Court does not sit to reexamine case-by-case nuances of fact-dependent encounters.

Justice Shea's concurrence below illustrates the point. He acknowledged that reasonable judges could see the facts differently, but stressed that the clearly

erroneous standard by itself bars reversal. *See* Pet.App.24a-25a. The dissent is of a piece. It accepted the governing standard and argued only that the majority should have placed greater weight on certain factors. *See* Pet.App.25a-27a. This Court is ill suited to reweighing whether particular facts found by a state trial court within a totality-of-the-circumstances analysis constitute clear error.

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted.

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