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 SUPREME COURT OF THE STATE OF MONTANA

REPLY BRIEF FOR PETITIONER

ELIZABETH NIELSON
Wilson Sonsini Goodrich & Rosati, P.C.
95 S. State St., Ste 1000
Salt Lake City, UT 84111

KELSEY C. CATINA
Wilson Sonsini Goodrich & Rosati, P.C.
701 Fifth Ave., Ste 5100
Seattle, WA 98104

PETE WOOD
1604 N. 30th St.
Boise, ID 83703

FRED A. ROWLEY, JR.
Counsel of Record
MARK R. YOHALEM
MADELYN CHEN
Wilson Sonsini Goodrich & Rosati, P.C.
953 E. Third St., Ste 100
Los Angeles, CA 90013
(323) 210-2900
fred.rowley@wsgr.com

JOHN B. KENNEY
ABIGAIL HERMES
Wilson Sonsini Goodrich & Rosati, P.C.
1700 K St. NW, 5th Floor
Washington, DC 20006

Counsel for Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

INTRODUCTION

The State's refrain is that "settled Fourth Amendment rules" (BIO1) resolve whether police effect a seizure when they conclude a traffic stop's purpose, then "immediate[ly] transition into [an] inquiry" about contraband and request to search, *Ferris* v. *State*, 735 A.2d 491, 503 (Md. 1999). But that insistence cannot overcome the chorus of concern about the very "analytical gap" that the State dismisses (BIO14) and this Court's *Robinette* decision left open. Because *Robinette* "did not address" the "blurring of the transition from detention to consensual encounter," *State* v. *Thompson*, 166 P.3d 1015, 1035 (Kan. 2007), and left open this "continuing seizure" question, the "Court missed the opportunity to clarify an area of the law suffering from uncertainty," George M. Dery III, *"When Will This Traffic Stop End?": The United States Supreme Court's Dodge of Every Detained Motorist's Central Concern*-Ohio v. Robinette, 25 Fla.St.U.L.Rev. 519, 565 (1998). That confusion persists today.

The State fares no better with its other arguments against review. In suggesting that the only alternative to the current confusion is a "categorical rule" yielding "rigid per se commands" (BIO2), the State presents a false choice. As illustrated by the dissent below, this Court can furnish critical guidance without "elevat[ing]" the "temporal proximity" between a traffic stop and further questioning into a "dispositive test." *Ibid.* The petition—like lower courts and commentators—asks only that the Court clarify whether an officer improperly prolongs a roadside detention where, as here, his transition from completed stop to questioning is "so seamless that a reasonable motorist

would not have believed that the initial, valid seizure had concluded." *Ferris*, 735 A.2d at 503.

The dissent and like-minded courts hold that an "officer's immediate continuation of questioning" may—"coupled with" his words and actions—convey "ongoing investigative authority." Pet.App.26a. The majority and like-minded courts give inadequate weight to that practice and the risk of "cloud[ing] a [motorist's] understanding," treating the continued questioning as consensual. Pet.App.21a. Resolving that debate would clarify the responsibilities and promote the safety of officers and motorists alike, particularly because consent searches following traffic stops "are now a wholesale activity" and the subject of police training. Pet.App.21a-22a.

The State glosses over both the doctrinal gap on, and conflict over, seamless stop-to-questioning transitions by invoking the totality-of-the-circumstances test—*46* times. This argument proves too much. If, as the State suggests, the totality-of-the-circumstances inquiry that applies across Fourth Amendment contexts supplied the controlling "legal standard" (*e.g.*, BIO25), the Court would never need to articulate or clarify substantive search-and-seizure standards. Yet, this Court routinely grants review for that very purpose—including to address "the tolerable duration of police inquiries in the traffic-stop context." *Rodriguez* v. *United States*, 575 U.S. 348, 354 (2015).

The State's effort to harmonize the conflicting cases as resting on "the identical" totality-of-the-circumstances inquiry (BIO25) thus falls apart. Of course these cases all undertake a totality-of-the-circumstances inquiry. And of course that inquiry is aimed at determining whether a reasonable motorist

would feel "free to decline the officers' requests." *Florida* v. *Bostick*, 501 U.S. 429, 439 (1991). But these courts widely diverge on whether a motorist would feel "compelled to submit to the officer's questioning" if it immediately follows a completed traffic stop. *State* v. *Robinette*, 685 N.E.2d 762, 771 (Ohio 1997) (*Robinette III*).

Finally, the State's vehicle challenge based on "clear-error review" (BIO30) is foreclosed by the Montana Supreme Court's rehearing order and *the State's own brief to that Court*. At the State's insistence, that court made clear it "applied a de novo review" (Rhrg.Opp.2), and "reviewed the record independently" (Pet.App.29a) to resolve the *legal* question whether Summers was seized when she gave consent. And "whether there has been a consensual encounter after a highway traffic stop and return of the driver's documents is one circumstance when an appellate ruling in one case can provide substantial guidance in many circumstances." *Shaw* v. *Smith*, 166 F.4th 61, 85 (10th Cir. 2026).

I. It remains unsettled whether an officer continues to seize a motorist by seamlessly transitioning from a traffic stop to unrelated questioning.

Montana's insistence that "settled Fourth Amendment rules" already resolve the question presented (BIO1) is belied by this Court's precedents, lower court decisions, and leading commentary. Those sources confirm that "whether a traffic offender somehow becomes 'unseized' upon return of his license notwithstanding a continuation (albeit on a different subject) of police discussion with the stopped driver" remains a flashpoint of disagreement. 4 W.R. LaFave,

Search & Seizure: A Treatise on the Fourth Amendment, § 9.3(h) (6th ed. 2024).

1. The State agrees that this question intersects two lines of authority. On one hand, under *Rodriguez*, "'[a]uthority for [a traffic-stop] seizure…ends when tasks tied to the traffic infraction are' done." BIO11 (quoting 575 U.S. at 354). On the other (BIO27-28), a motorist is not seized by "mere police questioning" unless a "reasonable person" would not feel "free to decline the officers' requests or otherwise terminate the encounter[,]" *Bostick*, 501 U.S. at 434, 439.

The State concedes that under these principles, "when a traffic stop ends and the officer asks additional unrelated questions, the interaction becomes *either* a consensual conversation or a coercive seizure." BIO12. To a reasonable motorist, however, the line between compulsion and consent may not be obvious where, as here, an officer eschews "good police practice" by not telling the motorist "they are free to go." Pet.App.22a. Such "transition[s] between detention and a consensual exchange can be so seamless that the untrained eye may not notice that it has occurred." *State* v. *Spies*, 575 P.3d 708, 728 (Haw. 2025).

That is exactly the situation that warrants review and clarity. For decades, courts and commentators have noted that this remains "an unresolved legal question" (*cf.* BIO3), because *Ohio* v. *Robinette* stopped short of "decid[ing] whether [the driver] *remained seized* during the request for permission to search," Dery, *supra*, at 541. *Robinette* left that "analytical gap" (BIO14) because the Court focused on invalidating a "per se" voluntariness requirement of "inform[ing] detainees that they are free to go," 519 U.S. 33, 40-41 (1996). That is why the Ohio Supreme Court

remained free, on remand, to "reaffirm[] its prior conclusion that the extended detention was illegal." *Thompson*, 166 P.3d at 1035. And while this Court has subsequently clarified *adjacent* issues—like non-consensual "investigation into other crimes" following a stop, *Rodriguez*, 575 U.S. at 356—it has not analyzed the "transition from detention to consensual encounter," *Thompson*, 166 P.3d at 1035.

The 4-3 decision below illustrates why "straightforward application of this Court's precedents" cannot resolve the question presented. BIO1. Invoking *Rodriguez* and *Bostick* principles (BIO27-28), the majority held that Detective Monaco did not prolong "the stop after it concluded" because he "asked Summers a single question—if she would 'mind' answering some questions" (Pet.App.18a). Applying these same principles, the dissent concluded that Monaco's "phrase, coupled with [his] immediate continuation of questioning, conveyed ongoing investigative authority." Pet.App.26a.

2. Addressing how "immediately transition[ing] into further questioning" can continue a seizure (*ibid.*) would hardly require the "bright-line rule" Montana chides (BIO2). Summers is not asking this Court to "elevate" "temporal proximity" into the "dispositive test." *Ibid.* After all, as the dissent below recognized, an officer's words and actions leading to the questioning—including any "authoritative positioning"—bear critically on whether the transition was so "seamless" and "immediate" that a reasonable driver would not have felt "truly free to leave." Pet.App.26a. The Court should use this case to provide a framework for assessing—not ignoring—those facts, and determining when a transition is so seamless and immediate that

it continues the detention. *Cf. Kansas* v. *Glover*, 589 U.S. 376, 386 (2020) (resolving recurring, general Fourth Amendment question, while identifying salient factors).

II. The State begs the question in focusing on the totality-of-the-circumstances test.

The "fact-bound" inquiry that Montana ultimately deems controlling is "totality-of-the-circumstances review." BIO20. By framing the test for "post-stop encounters" at this overarching level, Montana seeks both to bury the question presented and cast every traffic-stop decision as "apply[ing] the same test." BIO20-22. But the Court undertakes totality-of-the-circumstances review as its method of "inquiry" in virtually every Fourth Amendment context, *e.g.*, *Glover*, 589 U.S. at 386—not as a substantive test obviating context-specific standards.

It is indeed "well-settled" (BIO1) that courts examine the totality of the circumstances in a wide range of search-and-seizure contexts, from warrant-based searches, *e.g.*, *Illinois* v. *Gates*, 462 U.S. 213, 238 (1983), to seizures of people, *Bostick,* 501 U.S. at 437. But that method merely guides courts in applying the controlling substantive standard, be it probable cause (for warrants) or freedom to disregard the police (for seizures). If, as Montana suggests, that general inquiry foreclosed any specific "legal conflict that warrants this Court's review" (BIO26), the Court would never take cases to formulate or clarify search-and-seizure standards. Yet, the Court routinely does just that, underscoring the need for appellate courts "to maintain control of, and to clarify, the legal principles" governing Fourth Amendment challenges. *Ornelas* v. *United States*, 517 U.S. 690, 697 (1996).

More specifically, the Court has repeatedly granted review in traffic-stop cases to provide guidance on the scope of permissible police action—including the very "temporal issues" Montana dismisses. BIO2. In *Illinois* v. *Caballes*, for example, the Court upheld a dog sniff during a traffic stop that did not prolong "the duration of the stop." 543 U.S. 405, 408 (2005). In *Rodriguez*, however, the Court invalidated a dog sniff conducted—over motorist objection—after "completion of a traffic stop." 575 U.S. at 350. The seizure became unlawful because it "prolong[ed] the stop" without "reasonable suspicion." *Id.* at 355. Together, these and related cases define a "temporal" principle that governs traffic-stop seizures (*cf.* BIO2) and allows certain police actions during a traffic stop, provided they "do not measurably extend the duration of the stop," *Rodriguez*, 575 U.S. at 355. What the Court's precedents have *yet* to do, however, is provide similar guidance on the transition from a completed traffic stop to consensual questioning "into other crimes." *Cf. id.* at 349. That question warrants review not only because of the discord it has created, but also because of its importance and pervasiveness. Pet.30-33.

Montana does not dispute that the traffic-stop scenario Summers faced is common, and the attendant detention issues, recurring. Nor are the frequency and implications of the scenario happenstance, for they result from a "standard investigat[ive] technique" that is decades-old, *Schneckloth* v. *Bustamonte*, 412 U.S. 218, 231-232 (1973), and that police departments continue to refine, *e.g.*, *Shaw*, 166 F.4th at 72 (reviewing Kansas troopers' "Two-Step" practice, involving "an extension of a traffic stop for a round of seemingly innocuous question[ing]"). The "routine" nature of this unresolved issue strengthens, rather than dampens

(BIO1), the need for review. As the majority below recognized, the "wholesale activity" of stop-based consent searches carries the risk that police will "cloud[] [motorists'] understanding" of whether they remain "subject to the officer's authority," then leverage that confusion into "highly invasive"—and dangerous—consent searches. Pet.App.21a (quoting LaFave, § 9.3(e)).

III. The split is real and persistent.

Montana tries to chalk up the split's "differing outcomes" to "different facts" (BIO2), arguing that the "same standard" leads to "different fact-bound outcomes" (BIO25). Not so. Courts instead "reach[] different conclusions as they confront" the same basic scenario presented here. *Cf.* BIO26.

1. Compare *Robinette III* with *United States* v. *Bradford*, 423 F.3d 1149 (10th Cir. 2005). Montana says these decisions are in harmony because each undertook totality-of-the-circumstances review to determine whether the driver was detained (BIO18-19, 23), but does not identify a *single* "different fact[]" that could justify their "differing outcomes" (*cf.* BIO2).

Nor could it. Each driver was pulled over for a traffic infraction, then issued a "verbal warning." *Robinette III*, 685 N.E.2d at 767; *Bradford*, 423 F.3d at 1154 (same). Each officer then "returned [the] driver's license," before "seamlessly" transitioning into further questioning. *Robinette III*, 685 N.E.2d at 764; *Bradford*, 423 F.3d at 1158-1159 (trooper "questioned her after handing back her documents"). Yet as Montana concedes, *Robinette III* focused "on the 'troubling' 'immediate transition' from the end of the traffic stop to the unrelated questions" (BIO19), holding that it implied "Robinette was *not* free to go," 685 N.E.2d at 770.

Conversely, *Bradford* upheld the immediate questioning because there was no *additional* "coercive show of authority," 423 F.3d at 1159, and the Tenth Circuit recently reaffirmed that point, *Shaw*, 166 F.4th at 83 (quoting *Bradford*, 423 F.3d at 1159). The contrast between these two approaches—one deeming the immediate transition sufficient to seize, the other requiring an "additional show of authority"—shows the difference is doctrinal, not factual. *Cf.* BIO18-19.

2. That comparison illustrates why Montana's individual case summaries cannot explain the courts' disparate outcomes—but for their disagreement over the significance of an "immediate transition into the [consent] inquiry." *Ferris*, 735 A.2d at 503. Montana again incants its totality-of-the-circumstances mantra, stressing that Maryland, Utah, and Missouri all take that approach. BIO18-20. But that is both unsurprising (*supra* § II) and beside the point. What matters is that these courts all hold motorists detained when post-stop questioning is "so seamless that a reasonable motorist" would not "believe[] that the initial, valid seizure had concluded." *Ferris*, 735 A.2d at 503; *see State* v. *Hansen*, 63 P.3d 650, 662 (Utah 2002) (stressing "factual differences between the initial traffic stop and the additional questioning were minimal"); *State* v. *Barks*, 128 S.W.3d 513, 514-515 (Mo. 2004) (per curiam) (prolonged detention involved "constant" conversation).

Montana insists the Third Circuit does not support our position because the "improper questioning in [*United States* v.] *Clarke* occurred *during* the traffic stop." BIO17. But that is not how the Third Circuit saw it. Rather, it framed the issue as whether "the traffic stop must reasonably be seen *as having been*

completed before th[e unrelated] questioning began," then concluded the questioning was unlawful because the "traffic stop was effectively completed." 902 F.3d 404, 410-411 (3d Cir. 2018) (emphasis added).

It is equally irrelevant that the Sixth Circuit in *United States* v. *Richardson* focused—like the dissent here—on the officer's "combination of directions and words" rather than any "bright-line" consideration. BIO16. *Richardson* held that the officer suggested the driver "would not be free to walk away" by saying "just hang out right here for me, okay" after "the traffic stop [had] concluded," then proceeding to question the passenger. 385 F.3d 625, 630 (6th Cir. 2004). And while Montana relegates the follow-on decision in *United States* v. *Whitley*, 34 F.4th 522, 529-530 (6th Cir. 2022), to a footnote, it confirmed that the officer's unrelated questioning would have amounted to a "coercive seizure" had it occurred "after the traffic stop ended" (*cf.* BIO16 n.1).

3. Conversely, the Fourth, Fifth, Seventh, Eighth, and Eleventh Circuits, along with other states, allow the same, post-stop questioning on materially identical facts. Pet.23-28. Montana again tries to cohere the courts on this side of the split based on their totality-of-the-circumstances approach. BIO20-26. But it identifies no *doctrinal* basis for the jurisdictions' "differing outcomes" (BIO2) beyond their disagreement over the question presented.

"Start with the Fourth Circuit" (BIO21), whose *United States* v. *Lattimore* decision is "illustrative" of courts that assume "returning [a motorist's] credentials" marks a "clear line" between traffic stops and consensual encounters. LaFave, § 9.3(h). The Fourth Circuit placed critical weight not on the encounter's

"friendly" tone (BIO21), but on the fact that the officer "did not question Lattimore concerning the presence of narcotics or contraband" until "after [he] had issued the citations and returned Lattimore's driver's license," 87 F.3d 647, 653 (4th Cir. 1996) (en banc).

The Fifth Circuit in *Williams* similarly stressed that the officer had issued a "notice of violation" and "returned [the motorist's] driver's license" before "ask[ing] if he would keep talking." *United States* v. *Williams*, 784 F. App'x 876, 881 (5th Cir. 2019). Indeed, the State concedes the Fifth Circuit required some additional "coercive step" beyond these actions to deem the motorist seized. BIO22. That aligns the Fifth Circuit not only with the Fourth and Tenth Circuits, but also the Seventh Circuit, which has likewise held questioning consensual because it "transpired in less than one minute after [the officer] issued the warning to [the motorist] and returned his…license." *United States* v. *Brown*, 355 F. App'x 36, 38-39 (7th Cir. 2009). The court's determination that this exchange "only briefly extended the length of the stop" was hardly "a stray line" (BIO22); it grounded the court's detention holding.

Montana again pushes at an open door in touting the totality-of-the-circumstances approach taken in *United States* v. *White*, 81 F.3d 775, 779 (8th Cir. 1996), and *United States* v. *Ramirez*, 476 F.3d 1231, 1240 (11th Cir. 2007). BIO23-24. Regardless of whether these decisions noted "the details of the environment" or "more than timing" (*ibid.*), they both held that police converted "a traffic stop into a consensual encounter" when they proceeded directly to unrelated questioning "*after* [the driver] had been handed his

paperwork" and "the traffic citation." *Ramirez*, 476 F.3d at 1240; *accord White*, 81 F.3d at 778-779.

IV. This is a clean vehicle.

The State does not contest that the facts are undisputed and the question presented dispositive. It protests only that this case is a "poor vehicle" because the Montana Supreme Court supposedly applied "clear-error review." BIO30. But the Montana Supreme Court already addressed its standard of review on rehearing, explaining that it "reviewed the record independently" to "determine[] that the District Court finding was not erroneous…" Pet.App.29a. In arriving at that holding, it agreed with the State, which argued that "[t]his Court *applied a de novo review* of whether the district court applied the pertinent law to the facts." Rhrg.Opp.2 (emphasis added); *see also* Rhrg.Opp.6. This only makes sense; as with other substantive search-and-seizure standards, courts "review for clear error" the "findings regarding historical facts," but "review de novo" whether "those facts establish a consensual encounter." *Shaw*, 166 F.4th at 85-86 (citing *Ornelas*, 517 U.S. at 697-699). Regardless, the State cannot avoid rehearing on one theory, then adopt the opposite theory to avoid certiorari.

CONCLUSION

This Court should grant certiorari.

Respectfully submitted,

ELIZABETH NIELSON
Wilson Sonsini Goodrich & Rosati, P.C.
95 S. State St., Ste 1000
Salt Lake City, UT 84111

KELSEY C. CATINA
Wilson Sonsini Goodrich & Rosati, P.C.
701 Fifth Ave., Ste 5100
Seattle, WA 98104

PETE WOOD
1604 N. 30th Street
Boise, ID 83703

FRED A. ROWLEY, JR.
Counsel of Record
MARK R. YOHALEM
MADELYN CHEN
Wilson Sonsini Goodrich & Rosati, P.C.
953 E. Third St., Ste 100
Los Angeles, CA 90013
(323) 210-2900
fred.rowley@wsgr.com

JOHN B. KENNEY
ABIGAIL HERMES
Wilson Sonsini Goodrich & Rosati, P.C.
1700 K St. NW, 5th Floor
Washington, DC 20006

Counsel for Petitioner

MARCH 2026