
No. 25-6051

in the
Supreme Court
of the
United States

CLAUDE COLEMAN,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI FROM
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

REPLY TO BRIEF IN OPPOSITION

JOSEPH MEDICI
Federal Public Defender Southern District of Ohio

Kevin M. Schad
Appellate Chief
Office of the Federal Public Defender
Southern District of Ohio
250 E. Fifth St. Suite 350
Cincinnati OH 45202
(513) 929-4834
Kevin_schad@fd.org
Counsel for Petitioner

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
REASON FOR GRANTING THE WRIT	1
<p>A police officer may not detain a citizen without reasonable suspicion only because the citizen is in a “high crime area,” and near another person whom police believe may be committing a minor misdemeanor</p>	
CONCLUSION	9

TABLE OF AUTHORITIES

Page(s)

Cases

Bailey v. United States,
568 U.S. 186, 133 S. Ct. 1031, 185 L. Ed. 2d 19 (2013) 4, 5

Elk Grove Unified Sch. Dist. v. Newdow,
542 U.S. 1, 124 S. Ct. 2301, 159 L. Ed. 2d 98 (2004) 3

Hunter v. United States,
Case No. 24-1063 7

Keathley v. Buddy Ayers Const.,
Case No. 25-6 7

Maryland v. Wilson,
519 U.S. 408, 117 S. Ct. 882, 137 L. Ed. 2d 41 (1997) 3

Michigan v. Summers,
452 U.S. 692, 101 S. Ct. 2587, 69 L. Ed.2d 340 (1981) 3, 4, 5

New Jersey Transit Corp. v. Colt,
Case No. 24-1113 6

Pung v. Isabella County, MI,
Case No. 25-95 6

Riley v. California,
573 U.S. 373, 134 S. Ct. 2473, 189 L. Ed. 2d 430 (2014) 2

Rodriguez v. United States,
575 U.S. 348, 135 S. Ct. 1609, 191 L. Ed. 2d 492 (2015) 3

Rogers v. Sec'y, Dep't of Corr.,
855 F.3d 1274 (11th Cir. 2017) 7

Terry v. Ohio,
392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968) 6, 8

United States v. Cole,
162 F.4th 1070 (10th Cir. 2025) 7

<i>United States v. Gordon</i> , 93 F.4th 294 (5th Cir. 2024)	7
<i>United States v. Hammond</i> , 912 F.3d 658 (4th Cir. 2019)	7
<i>United States v. Hemani</i> , Case No. 24-1234	6
<i>United States v. Navedo</i> , 694 F.3d 463 (3d Cir. 2012)	5, 6
<i>United States v. Williams</i> , 731 F.3d 678 (7th Cir. 2013)	5, 6
<i>Welsh v. Wisconsin</i> , 466 U.S. 740, 104 S. Ct. 2091, 80 L. Ed. 2d 732 (1984)	1
<i>Ybarra v. Illinois</i> , 444 U.S. 85, 100 S. Ct. 338, 62 L. Ed. 2d 238 (1979)	4
Other Authorities	
Fourth Amendment	1, 2, 3, 5, 6, 7, 8
Appellate Rule 32.1(a) notes	7
Sixth Circuit Rule 32.1(a)	7
Federal Rule of Appellate Procedure 32.1	7

A police officer may not detain a citizen without reasonable suspicion merely because the citizen is in a “high crime area,” and adjacent to another person whom police believe may be committing a minor misdemeanor

The Sixth Circuit’s determination, that police officers may, for safety reasons, detain a citizen on a public street whenever they want to investigate a potential minor misdemeanor (here open possession of alcohol), contradicts this Court’s precedents, other circuit’s holdings, and the Constitution. The Solicitor General’s arguments to the contrary are unavailing, and certiorari should issue to correct the Sixth Circuit’s mistake.

1. The Solicitor General first contends that an officer may always “protect himself by temporarily detaining ‘innocent bystanders’ where ‘necessary to secure the scene of a valid search or arrest.’” (BIO, p.5) But “officer safety” is not without limits, and there is a demarcation point where an individual’s Constitutional protections from Government interference collide with “officer safety”. That demarcation point was crossed here, and sets dangerous precedent moving forward.

Bear in mind that this Court has already held that “the common-sense approach utilized by most lower courts is required by the Fourth Amendment prohibition on ‘unreasonable searches and seizures,’ and hold that an important factor to be considered when determining whether any exigency exists is the gravity of the underlying offense for which the arrest is being made.” *Welsh v. Wisconsin*, 466 U.S. 740, 753, 104 S. Ct. 2091, 2099, 80 L. Ed. 2d 732 (1984). The fact that the

“offense” for which officers showed this alarming display of force was for an open container of alcohol is critical to the determination of whether “officer safety” was at issue to the point that the entire block needed to be shut down to investigate. Of course, consideration of officer safety must be considered case-by-case. *Riley v. California*, 573 U.S. 373, 388, 134 S. Ct. 2473, 2486, 189 L. Ed. 2d 430 (2014). This rule necessarily implies that the citation to officer safety is not merely a shield; rather, officer safety is a scale, measuring case-by-case the actual danger against the Government intrusion into a constitutional protection. Here, the Solicitor General does not attempt to explain how officer safety was at issue in investigating this minor offense.¹

2. The Solicitor General emphasizes that the detention of Mr. Coleman was limited to “twenty seconds.”² But the Fourth Amendment is not concerned with the

¹ Three other salient points on this matter. First, the entire argument of the Solicitor General regarding the investigation of an open container is itself a red herring. Officer Deighan, the Cleveland police officer handling the operation that evening, testified at the suppression hearing that they were checking other vehicles in the area for “officer safety” without knowing about the open container. (R.27, Suppression Hearing PAGE ID # 98) Second, at the time officers approached Coleman’s car for “officer safety,” two other officers were already engaged with the person with the open container. (R.37, Suppression Hearing PAGE ID # 848) Finally, officers had no information that the person with the open container and Coleman were connected in any way. They were merely on the same street together. Officers saw no interaction between the two.

² The “twenty seconds” the Solicitor General relies on is a misnomer itself. As the Solicitor General notes, one of the officers passed Coleman twenty seconds after he parked his vehicle. (BIO, p.3) But as the district court found, Coleman was detained

duration of any violation of the Constitution – there is no “de minimus” exception. *Rodriguez v. United States*, 575 U.S. 348, 135 S. Ct. 1609, 191 L. Ed. 2d 492 (2015). “There are no de minimis violations of the Constitution—no constitutional harms so slight that the courts are obliged to ignore them.” *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 36–37, 124 S. Ct. 2301, 2323, 159 L. Ed. 2d 98 (2004), Justice O’Conner, Concurring. The Solicitor General’s fixation on the length of the detention is a smokescreen.

3. The Solicitor General also argues that *Michigan v. Summers*, 452 U.S. 692, 702, 101 S. Ct. 2587, 2594, 69 L. Ed.2d 340 (1981) and *Maryland v. Wilson*, 519 U.S. 408, 117 S. Ct. 882, 137 L. Ed. 2d 41 (1997) control this issue. Not so. While the passenger in *Wilson* may have been as close to the driver of his vehicle as Coleman was here to the person with the open container, their circumstances could not have been more different for Fourth Amendment purposes. The passenger in *Wilson* voluntarily came under the control of the driver of his vehicle prior to the stop. Thus, when the police officer stopped the vehicle, “as a practical matter, the passengers are already stopped by virtue of the stop of the vehicle.” *Wilson*, 519 U.S. at 414. In Coleman’s case, he was not associated with the person who had the open

when officers blockaded the street itself by driving en masse the wrong way down a one-way street. (Appendix 2, p.3) Thus, Coleman’s detention, before finding any evidence of wrongdoing, was much longer.

container. A stop of that person would not (and should not) have automatically resulted in a stop and detention of Coleman.

And this Court's decision in *Michigan v. Summers* does not provide an apt analogy. The Solicitor General merely argues that *Summers* deals with seizures, not search (as the Court dealt with in *Ybarra v. Illinois*, 444 U.S. 85, 100 S. Ct. 338, 62 L. Ed. 2d 238 (1979), and therefore *Summers* controls Coleman's seizure. But there are three distinct problems with this analysis. First, the Court in *Ybarra*, like in *Summers*, dealt with the execution of a search warrant. But the Court did address seizure: "[w]here the standard is probable cause, a search or seizure of a person must be supported by probable cause particularized with respect to that person. This requirement cannot be undercut or avoided by simply pointing to the fact that coincidentally there exists probable cause to search or seize another or to search the premises where the person may happen to be. The Fourth and Fourteenth Amendments protect the legitimate expectations of privacy of persons, not places." 444 U.S. at 91. Thus, *Ybarra* addressed seizure as well as searches.

Second, the *Summers* decision was curtailed by this Court in *Bailey v. United States*, 568 U.S. 186, 133 S. Ct. 1031, 185 L. Ed. 2d 19 (2013), which held that the *Summers* rule turned on three key concerns: "officer safety, facilitating the completion of the search, and preventing flight." 568 U.S. at 194. The Court recognized the problems that could occur in expanding the *Summers* rule to other situations – especially where the detention is made in public, and not within the

house subject to a warrant. “A public detention, even if merely incident to a search, will resemble a full-fledged arrest. As demonstrated here, detention beyond the immediate vicinity can involve an initial detention away from the scene and a second detention at the residence. In between, the individual will suffer the additional indignity of a compelled transfer back to the premises, giving all the appearances of an arrest. The detention here was more intrusive than a usual detention at the search scene.” *Id.* at 200. Thus, “[d]etentions incident to the execution of a search warrant are reasonable under the Fourth Amendment [only] because the limited intrusion on personal liberty is outweighed by the special law enforcement interests at stake.” *Id.* at 202. Here, where there is no warrant to be executed, and Coleman was in public, those “special law enforcement interests” were not present.

Lastly, the Solicitor General’s reliance on *Summers* is misplaced because applying the *Summers* rule to this situation is a significant expansion of police power. Under the Sixth Circuit’s holding, any time a police officer sees any crime: from loitering, to jaywalking, to littering, an office may secure other, unrelated persons in the area to “investigate” that minor misdemeanor. This is not a “mere application” of *Summers*, as the Solicitor General suggests – it is a significant expansion of *Summers* – one in direct contradiction to the Constitution.

4. The Solicitor General claims that Coleman’s citations to the Third Circuit’s holding in *United States v. Navedo*, 694 F.3d 463 (3d Cir. 2012) and the Seventh Circuit’s decision in *United States v. Williams*, 731 F.3d 678 (7th Cir. 2013) are

“inapposite.” But *Navedo* addressed the detention of a bystander without reasonable suspicion, like Mr. Coleman. In *Navedo*, while the officers had reasonable suspicion of Navedo’s companion that he was standing near, the officers lacked any articulable suspicion as to Navedo. The Third Circuit correctly found that “[t]he Supreme Court has never viewed *Terry* as a general license to detain everyone within arm’s reach of the individual whose conduct gives rise to reasonable suspicion. Rather, the Court has stressed that ‘[t]his demand for specificity in the information upon which police action is predicated is the central teaching of this Court’s Fourth Amendment jurisprudence.’” *Id.* at 468. And in *Williams*, the Seventh Circuit correctly determined that an officer did not have license to detain an individual merely because he was in a “high crime” area, and in the vicinity where another person had committed a crime. 731 F.3d at 469. Far from “inapposite,” these cases stand in direct contrast to the Sixth Circuit’s holding here.

5. Finally, the Solicitor General contends that, because the Sixth Circuit’s decision was “unpublished,” it is non-precedential and will not affect future cases. This argument fails for two reasons. First, the fact that a lower court panel has designated their opinion as “unpublished” has not prevented this Court from granting certiorari review on important matters. Even from this Term, the Court has granted certiorari in several cases where the lower court has not designated their decision as published. See, for example, *New Jersey Transit Corp. v. Colt*, Case No. 24-1113; *Pung v. Isabella County, MI*, Case No. 25-95; *United States v.*

Hemani, Case No. 24-1234; *Hunter v. United States*, Case No. 24-1063; *Keathley v. Buddy Ayers Const.*, Case No. 25-6. And there is good reason for this practice. Were this Court to accept the Solicitor General’s claim that such cases should not be granted review, then a lower court panel could shield any important Constitutional decision from review by merely marking the decision “unpublished.”

Second, the line delineating the value of so called “unpublished” opinions and published ones has diminished in recent years. For instance, the Tenth Circuit has determined that unpublished decisions may be cited for their “persuasive value.” *United States v. Cole*, 162 F.4th 1070, 1079 (10th Cir. 2025). Tenth Circuit Appellate Rule 32.1(a) notes that “While citation to published authority is preferred, citation of unpublished decisions is permitted as authorized in Federal Rule of Appellate Procedure 32.1. Unpublished decisions are not precedential but may be cited for their persuasive value. They may also be cited under the doctrines of law of the case, claim preclusion, and issue preclusion.” Other circuits have also treated unpublished opinions as “persuasive” authority for subsequent decisions. See *United States v. Hammond*, 912 F.3d 658, 662 (4th Cir. 2019); *United States v. Gordon*, 93 F.4th 294, 308 (5th Cir. 2024); *Rogers v. Sec’y, Dep’t of Corr.*, 855 F.3d 1274, 1278 (11th Cir. 2017). The Sixth Circuit’s local rules expressly permit the citation of unpublished decisions without limitation. See Sixth Circuit Rule 32.1(a). Thus, contrary to the Solicitor General’s argument, the Sixth Circuit’s decision here will affect future Fourth Amendment decision making in the Sixth and other circuits.

“The Fourth Amendment proceeds as much by limitations upon the scope of governmental action as by imposing preconditions upon its initiation.” *Terry v. Ohio*, 392 U.S. 1, 28–29, 88 S. Ct. 1868, 1883–84, 20 L. Ed. 2d 889 (1968). Here, officers exceeded their authority in closing a street, and detaining everyone on that street (including Coleman), based on their determination that someone may have had an open container of alcohol. This Court should grant certiorari, and reverse the Sixth Circuit’s determination to the contrary.

CONCLUSION

Coleman requests that this Court grant certiorari, reverse the Sixth Circuit's decision, and remand for a new trial after suppression of the evidence obtained because of the illegal seizure.

Respectfully submitted,

JOSEPH MEDICI
Federal Public Defender



Kevin M. Schad
Appellate Chief
Office of the Federal Public Defender
Southern District of Ohio
Appellate Chief
250 E. Fifth St.
Suite 350
Cincinnati OH 45202
(513) 929-4834
Kevin_schad@fd.org
Counsel for Petitioner