

No. A-_____

In the Supreme Court of the United States

DONNA ELIZABETH SUMMERS,
PETITIONER

v.

STATE OF MONTANA,
RESPONDENT

*APPLICATION FOR AN EXTENSION OF TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO THE MONTANA SUPREME COURT*

**APPLICATION OF PETITIONER TO THE
HONORABLE ELENA KAGAN AS CIRCUIT JUSTICE**

UNOPPOSED APPLICATION FOR EXTENSION OF TIME

To the Honorable Elena Kagan, as Circuit Justice for the Supreme Court of Montana:

In accordance with this Court's Rules 13.5, 22, 30.2, and 30.3, Applicant Donna Elizabeth Summers respectfully requests that the time to file her petition for a writ of certiorari be extended for 60 days, up to and including November 14, 2025. The Supreme Court of the State of Montana issued its opinion on May 27, 2025 (attached), and denied Summers's petition for rehearing on June 17, 2025 (attached). Absent an extension of time, the petition would be due on Monday, September 15, 2025. The jurisdiction of this Court is based on 28 U.S.C. § 1257. The State of Montana consents to this request.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is the decision of the Montana Supreme Court in *State of Montana v. Donna Elizabeth Summers*, Case No. DA 23-0365, 2025 MT 109 (“Op.”) (attached). That decision, issued on May 27, 2025, affirmed the district court’s denial of Summers’s motion to suppress, which sought to exclude drug possession evidence found in her car following a traffic stop and questioning by the police. In her appeal, Summers argued that the officer violated the Fourth Amendment by transitioning a routine traffic stop into a drug investigation without the requisite reasonable suspicion or consent. The Montana Supreme Court agreed that the officer lacked the requisite suspicion to prolong the traffic stop or turn it into a drug investigation but held that Summers consented to additional questioning and a search of her vehicle after the officer’s actions related to the purpose of the traffic stop had concluded.

JURISDICTION

The judgment of the Montana Supreme Court was rendered on May 27, 2025. Summers filed a petition for rehearing, which the Montana Supreme Court denied on June 17, 2025. This Court has jurisdiction over any timely filed petition in this case pursuant to 28 U.S.C. §§ 1257(a) and 2101(d). Under Rule 13.1 of the Rules of this Court, a petition for certiorari is due to be filed in this case on or before September 15, 2025. As required by Rule 13.5, this application is being filed more than 10 days before the petition is due.

BACKGROUND

This petition arises from an unconstitutional search of Summers's car following a valid and completed traffic stop.

The case arose from a routine speeding stop by a Ravalli County Detective. Op. 2. After pulling Summers over, the detective checked Summers's license and learned from police dispatch that she had no warrants, but had a history of drug possession. The detective returned Summers's license, registration, and insurance card, and said he would "put [her] down for a warning." *Ibid.* After a brief exchange about Summers's speed and cruise control, the detective stated: "Since I got you here, do you mind if I ask you a couple of questions." *Ibid.* She said "go ahead," and the detective proceeded to engage in further questioning, culminating in a request to search Summers's vehicle. *Ibid.* Summers said "go ahead," and the officer found drug paraphernalia and a small bag of methamphetamine. *Id.* at 3-4.

The state charged Summers with felony possession of dangerous drugs and misdemeanor possession of drug paraphernalia. *Id.* at 4. Summers moved to suppress the evidence found in the vehicle search, arguing that the officer unlawfully prolonged the traffic stop, converting it into a drug investigation without the required reasonable suspicion. *Ibid.* After the district court denied the motion, Summers pleaded no contest to the charges but reserved the right to appeal the suppression ruling. *Ibid.*

In a 4-3 Opinion, the Montana Supreme Court affirmed, rejecting Summers's parallel challenges under the Fourth Amendment and Article II, Section 11 of the

Montana Constitution. *Id.* at 5. Summers argued that the officer violated the Fourth Amendment by transitioning a routine traffic stop into a drug investigation without the requisite reasonable suspicion that Summers or her vehicle possessed drugs and without her voluntary consent to continue questioning or search her vehicle. The majority agreed that the officer lacked the requisite suspicion to prolong the traffic stop or turn it into a drug investigation. *Id.* at 11-12. At the time the officer “completed the speeding warning,” the majority reasoned, “the information he had obtained from and about Summers did not give him objective indicators that she was ‘immediately involved in, or about to be involved in, criminal activity.’” *Id.* at 11 (citation omitted). The majority went on to reason, however, that Summers voluntarily consented to the search of her vehicle. *Id.* at 20-21.

Summers argued that she was still seized when the officer completed the purpose of the traffic stop and continued to question her (*id.* at 15), but the Montana Supreme Court upheld the district court’s determination “that Summers authorized the additional questioning by giving her consent, thus validly expanding the stop,” and “again consented” when the officer “asked Summers’s permission to search her vehicle.” *Id.* at 21. The majority acknowledged that “[c]ases where the traffic stop transitions into a drug investigation based on consent pose the risk that the prior seizure clouds a person’s understanding of when they are no longer subject to the officer’s authority.” *Id.* at 20. It rejected Summers’s argument, however, that the officer objectively indicated she was not free to leave by stating “*while I’ve got you here*, do you mind if I ask you a couple of questions.” *Id.* at 18 (emphasis added).

One justice concurred separately, explaining that the “circumstances of [the] consent search [were] tenuous and subject to interpretation” and the decision “easily c[ould] go the other way” but deferring to the district court judge because of the “standard of review on appeal” and agreeing that the finding “that Summers’s consent *was* voluntary” was “not clearly erroneous.” Op. 22-23 (Shea, J., concurring).

Justice Bidegaray dissented, in an opinion joined by Justices McKinnon and Gustafson. Op. 23-25 (Bidegaray, J., dissenting). Justice Bidegaray would have concluded that Summers had not “voluntarily consented to further questioning and the vehicle search.” *Id.* at 23. Noting that the officer grounded his request for further questioning in the phrase “[s]ince I got you here,” the dissent reasoned that this phrase, “coupled with the officer’s immediate continuation of questioning” after the traffic stop’s purpose was complete, “conveyed ongoing investigative authority rather than the conclusion of the stop, suggesting Summers was not truly free to leave.” *Id.* at 24. In addition, she reasoned, the officer’s “authoritative positioning and the roadside environment significantly contributed to the coercive atmosphere.” *Ibid.* Given this “inherently coercive context,” and the fact that Summers “had not been explicitly released from the seizure,” the dissent would have held her “purported consent not voluntary under the totality of circumstances.” *Id.* at 24-25.

This case presents important questions about the interplay between valid seizures for the purpose of a traffic violation and subsequent searches or seizures allegedly based on consent. In *Ohio v. Robinette*, 519 U.S. 33 (1996), this Court rejected a *per se* constitutional requirement “that a lawfully seized defendant must be advised

that he is ‘free to go’ before his consent to search will be recognized as voluntary.” *Id.* at 35. In the wake of *Robinette*, however, there has been disagreement and confusion among the lower courts about the circumstances in which a lawful traffic stop may lead to a non-voluntary consent to search. As one court has explained, the *Robinette* Court “did not address” a “primary issue” raised by evolving vehicle stops: “the blurring of the transition from detention to consensual encounter.” *State v. Thompson*, 166 P.3d 1015, 1035 (Kan. 2007); *accord* 4 LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* § 9.3(h), p. 404 (6th ed. 2024) (suggesting the Court “managed to avoid entirely” the question “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”).

Here, the Montana Supreme Court upheld the trial court’s determination that Summers voluntarily consent to further questioning under clear error review even though the officer’s statements and conduct objectively indicated to Summers she was still seized—a legal issue reviewed *de novo*. *See, e.g., United States v. Ramirez*, 976 F.3d 946, 951 (9th Cir. 2020) (“Whether an encounter between a defendant and an officer constitutes a seizure is ... review[ed] *de novo*.”). The dissent observed that “Summers’s consent was not the product of ‘an essentially free and unconstrained choice’ and therefore not voluntary” (Op. 25 (Bidegaray, J., dissenting)), and courts have held similar encounters to constitute a continued detention, *e.g., State v. Constantino*, 2018 WL 3077775, at *5 (Kan. Ct. App. June 22, 2018) (deeming post-traffic

stop questioning a detention where the officer “returned [the driver’s] license and documents, issued a verbal warning regarding the traffic infraction, and told [him] to ‘drive safely,’ then stated “while you’re still here can I ask you a few more questions” without disengaging).

Whether and when police continue to seize and detain a driver after the conclusion of a vehicle stop is an issue warranting further clarification. The majority itself acknowledged that “[c]onsent searches are no longer an occasional event ... but are now a wholesale activity accompanying a great many traffic stops.” Op. 20 (quoting 4 LaFave § 9.3(e), at 547-548). This case is potentially a good vehicle for providing guidance on the issue, not only because the officer’s conduct is commonplace, *compare, e.g.,* Op. 18 (focusing on officer’s statement “while I’ve got you here, do you mind if I ask you a couple of questions”) *with Constantino*, 2018 WL 3077775, at *5 (noting that officer asked “while you’re still here can I ask you a few more questions?”), but also because even the majority concluded the officer lacked reasonable suspicion to extend the stop beyond the traffic stop’s initial purpose (Op. 11-12).

REASONS FOR GRANTING AN EXTENSION

Petitioner has retained undersigned counsel as pro bono counsel for the purposes of filing a petition for certiorari. Counsel were not involved in the proceedings below, and require additional time to familiarize themselves with the record, research the complex issues presented in this case, and prepare a petition that will be most helpful to the Court. The legal issues in this case implicate the Court’s substantial

Fourth Amendment precedents concerning seizures, consent, and traffic stops. Preparing the petition will require a close study of these precedents.

In addition, the undersigned counsel have had substantial professional commitments over the past several weeks and will need to continue balancing commitments until the petition is filed. These commitments include:

- preparing and filing the Petitioner's Brief in this Court in *William Trevor Case v. State of Montana*, No. 24-624, on July 30, 2025;
- preparing and filing a reply brief in the same case, which is due on October 3, 2025, and preparing for oral argument in the same case on October 15, 2025; and
- preparing and filing a petition for certiorari due in *Mangano v. United States*, No. 25A42, on October 13, 2025.

For these reasons, additional time is required to prepare the petition.

The State of Montana consents to the requested extension of time.

CONCLUSION

For the foregoing reasons, Applicant requests that the time to file a writ of certiorari in the above-captioned matter be extended 60 days to and including November 14, 2025.

Respectfully submitted,

/s/ Fred A. Rowley, Jr.

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