

IN THE SUPREME COURT OF MARYLAND

ORLANDO CARSON ROGERS, JR., *

Petitioner, * SCM-PET-0107-2025

v. *

STATE OF MARYLAND, *

Respondent. *

* * * * *
**BRIEF OF AMICI CURIAE THE PUBLIC JUSTICE CENTER, BALTIMORE
ACTION LEGAL TEAM, MARYLAND CRIMINAL DEFENSE ATTORNEYS'
ASSOCIATION, AND PROFESSOR MICHAEL PINARD IN SUPPORT OF
PETITION FOR CERTIORARI**

Traffic stops are the most common point of police-initiated contact between civilians and law enforcement. Susannah Tapp & Elizabeth Davis, *Contacts Between Police and the Public 2022*, U.S. Dep't of Just., Bureau of Just. Stat. 6 (Oct. 2024), <https://bjs.ojp.gov/document/cbpp22.pdf>. But for many Marylanders of color, particularly Black Marylanders, these encounters are fraught with the threat of escalation and harm. See William J. Ford, *Advocates Plan to Push Legislation That Would Rein in Random Traffic Stops*, Maryland Matters (Nov. 26, 2024), <https://marylandmatters.org/2024/11/26/advocates-plan-to-push-legislation-that-would-rein-in-random-traffic-stops/>; Maryland Equitable Justice Collaborative, *Breaking the 71%: A Path Toward Racial Equity in the Criminal Legal System* 25–27 (Mar. 2025), https://www.marylandattorneygeneral.gov/Reports/MEJC_Report.pdf.

Pretextual traffic stops, where an officer seizes on a minor violation as an excuse to investigate unrelated criminal activity, are a driver of racially discriminatory policing. While such stops are often justified using race-neutral language, they have become mechanisms for racialized surveillance and over-policing. *See* Stephen Rushin & Griffin Edwards, *An Empirical Assessment of Pretextual Stops and Racial Profiling*, 73 Stan. L. Rev. 637, 697 (2021).

This case exemplifies that reality. The officer extended the stop of Orlando Carson Rogers, Jr., a Black man, for a drug investigation based on vague, generalized observations of common innocent behavior: nervousness, travel from Baltimore through Hagerstown, a rental car, possession of a large bottle of cologne, and the absence of visible DJ equipment. None of these factors, individually or collectively, support reasonable suspicion of criminal activity. More importantly, these justifications are consistent with the kinds of amorphous, discretionary cues that facilitate racially biased enforcement.

Amici¹ ask this Court to grant certiorari to clarify that the use of vague, subjective, and race-coded observations to prolong a traffic stop beyond its original scope violates the Fourth Amendment and inflicts outsized harm on drivers of color. Mr. Roger's experience underscores the need for this Court to make clear that any extension of a traffic stop must rest on genuine, articulable suspicion of criminal activity. Without

¹ Amici's statements of interest are in the Appendix.

clarification, Maryland courts risk legitimizing a framework that erodes constitutional protections for drivers of color and perpetuates the discriminatory patterns that have long plagued traffic enforcement.

I. Pretextual Stops Are Vehicles for Racialized Policing

Extensive empirical data demonstrate that pretextual traffic stops disproportionately target Black and Latine drivers and often escalate into unjustified, invasive encounters. This reality is borne out in Maryland and across the country, where traffic stops frequently serve as gateways to broader investigatory searches untethered to any objective suspicion.

Even after controlling for various factors including location and time of day, Black drivers continue to be stopped and searched at higher rates than white drivers in the same area because officers use “visible cues to determine the likelihood of criminality. . . [that] cause an overly great focus on young men of color.” John Sides, *What Data on 20 Million Traffic Stops Can Tell Us about ‘Driving While Black,’* Wash. Post (July 17, 2018), <https://www.washingtonpost.com/news/monkey-cage/wp/2018/07/17/what-data-on-20-million-traffic-stops-cantell-us-about-driving-while-black/>.

One study of nearly 100 million traffic stops found that Black drivers are 20% more likely to be stopped and nearly twice as likely to be searched, despite carrying contraband less frequently. See Emma Pierson et al., *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States*, 4 Nature Hum. Behav. 736, 738–39 (2020). It also noted that racial disparities in stops diminish after dark, when officers cannot easily discern a driver’s race. *Id.* Furthermore, the researchers developed the

“threshold test,” which estimated the minimum level of suspicion officers apply before conducting a search, and revealed that Black and Latine drivers are generally searched based on less evidence than white drivers. *Id.*

Other research has reached similar conclusions. One study concluded that Black drivers are twice as likely to be searched during traffic stops and race, not behavior, is often the strongest predictor of who gets searched. *See* Frank Baumgartner et al., *Racial Disparities in Traffic Stop Outcomes*, 9 Duke F. for L. & Soc. Change 21, 43–46 (2017). Of the states studied, Maryland ranked among those with the highest disparity rates. *Id.* at 46 fig.8.

These disparities are reflected in Maryland’s own data. Black residents make up approximately 32% of the state’s population but account for 43% of traffic stops. *See Race-Based Traffic Stop Data Dashboard*, Md. Governor’s Off. of Crime Prevention and Pol’y, (2023), <https://app.powerbigov.us/view?r=eyJrIjoizTBhNDYzMtMTZTRhMy00OWRkLTk3ZGIzMjMGMGQ2OTRjMDQzIiwidCI6IjYwYWZlOWUyLTQ5Y2QtNDliMS04ODUxLTY0ZGYwMjc2YTJlOCJ9&pageName=ReportSection>. In contrast, white residents comprise 57% of the population but only 39% of stops. *Id.*

While Maryland does not collect statewide data on the use of drug-sniffing dogs, other states reveal stark disparities. In Ohio, the State Highway Patrol used drug-sniffing dogs on stops involving Black drivers at a disproportionately higher rate than stops involving white individuals. Andrew Welsh-Huggins, *Ohio Highway Patrol Uses Drug Dogs More Often with Black Drivers*, WOSU Pub. (May 7, 2018), <https://www.wosu.org/news/2018-05-07/ohio-highway-patrol-uses-drug-dogs-more->

often-with-black-drivers. While Black people made up about 13% of the population and 14% of the drivers stopped by the patrol, they accounted for 28% of the stops in which dogs were used. *Id.* In Illinois, Black motorists were 55% more likely than white motorists to be subjected to a dog sniff search, yet white motorists were 14% more likely than black motorists to be found with contraband during officer searches performed in response to a dog alert. *Racial Disparity in Consent Searches and Dog Sniff Searches*, ACLU of Ill. (Aug. 13, 2014), <https://www.aclu-il.org/en/publications/racial-disparity-consent-searches-and-dog-sniff-searches>.

II. Pretextual Stops Inflict Harm

Racial disparities persist because of highly discretionary enforcement that allows for unregulated pretextual stops. Traffic laws are easy to violate, and police have broad discretion in deciding whom to stop, ticket, or search. As Judge McKee of the U.S. Court of Appeals for the Third Circuit observed, “[i]f an officer follows any motorist long enough, the motorist will eventually violate some traffic law’ and could, therefore, be subjected to a stop ‘almost anytime, anywhere, virtually at the whim of police.’” *United States v. Hunter*, 88 F.4th 221, 227 (3d Cir. 2023) (McKee, J., concurring) (quoting *Rushin & Edwards*, *supra*, at 641), *cert. denied*, 144 S. Ct. 858 (2024). Indeed, if police had to “strictly enforce the traffic laws,” they “would arrest half the driving population on any given morning.” *Morrison v. Olson*, 487 U.S. 654, 727–28 (1988) (Scalia, J., dissenting). This broad discretion creates a system that invites racial bias and diverts attention from enforcing crimes that truly endanger public safety.

But the far deeper harm is felt by those subjected to repeated, racialized enforcement. Pretextual stops have inflicted significant and lasting harm on communities of color—especially Black individuals—that manifests as psychological trauma, mistrust of law enforcement, and the persistent burden of navigating a society where “driving while Black” remains reason enough for police scrutiny. *See* Matthew A. Graham, *Compounding Anti-Black Racial Disparities in Police Stops*, Ctr. for Policing Equity, (Oct. 2024), <https://policingequity.org/wp-content/uploads/2024/10/CPE-WhitePaper-Compounding-Disparities.pdf>. Pretextual stops undermine public safety by weakening trust in law enforcement. Communities that experience policing as discriminatory are less likely to report crimes, cooperate with investigations, or view officers as legitimate actors. *See id.* at 18; Jonathan Blanks, *Thin Blue Lies: How Pretextual Stops Undermine Police Legitimacy*, 66 Case W. Res. L. Rev. 931 (2016).

Even more troubling, pretextual stops often escalate into violent encounters. Demonte Ward-Blake was brutally beaten and ultimately died after being pulled over by Prince George’s County police officers for driving with expired tags; Philando Castille was shot forty seconds into a stop for a broken taillight; Sandra Bland died in custody after being stopped for failing to use a turn signal; and Walter Scott was fatally shot after a stop for a faulty brake light. These tragedies are not isolated but reflect a broader pattern of disproportionate harm inflicted on Black and brown individuals during encounters with law enforcement. *See* Frank Edwards et al., *Risk of Being Killed by Police Use of Force in the United States by Age, Race-Ethnicity, and Sex*, 116 Proc. Nat’l Acad. Scis. 16793, 16794 (2019).

Justice Sotomayor, dissenting in *Utah v. Strieff*, powerfully described this lived reality:

For generations, black and brown parents have given their children “the talk”—instructing them never to run down the street; always keep your hands where they can be seen; do not even think of talking back to a stranger—all out of fear of how an officer with a gun will react to them We must not pretend that the countless people who are routinely targeted by police are “isolated.” They are the canaries in the coal mine whose deaths, civil and literal, warn us that no one can breathe in this atmosphere Until their voices matter too, our justice system will continue to be anything but.

579 U.S. 232, 256–57 (2016) (citations omitted).

Courts must not permit vague assertions of suspicion to mask racial decision-making. Judicial vigilance is essential to restoring constitutional boundaries and rebuilding community trust.

III. The Justifications Offered in this Case Reflect Commonplace Traits that Enable Disproportionate Enforcement Against Drivers of Color

Some of the justifications cited in this case, such as nervousness, traveling through a “drug corridor,” and driving a rental car are unremarkable and common behaviors that should not raise suspicion on their own. Yet, when a person of color is involved, these neutral facts are often treated as grounds for suspicion, reflecting a pattern of racial profiling. The law does not permit, and the Constitution does not tolerate, such pretextual expansions of police authority under the guise of reasonable suspicion.

Labeling the Dual Highway as a “drug corridor” turns ordinary travel into suspicion. The officer testified that it is “a funnel for drugs” because drivers can “jump straight off the interstate” from Baltimore and “shoot straight into downtown

Hagerstown.” Appellant Br. 27. But that is precisely what makes the road so commonly used: it is a direct route from I-70 into town, heavily trafficked by truckers, tourists, and locals alike. Mr. Rogers, a Black man traveling from Baltimore into Hagerstown, a majority-white city, was using the most direct and ordinary route available. To treat that as inherently suspicious reflects the kind of arbitrary and discriminatory enforcement that pretextual stops invite and that constitutional protections are meant to guard against.

Similarly, nervousness during a police encounter is both common and unsurprising. Maryland’s Supreme Court has noted that nervousness is an unremarkable reaction and not by itself proof of criminal activity. *Sellman v. State*, 449 Md. 526, 551 (2016). This is particularly true for drivers of color, who may experience heightened anxiety during such encounters due to a well-founded fear of escalation or mistreatment.

These types of justifications are not grounded in objective indicators of criminal activity. Rather, they provide a veneer of neutrality that obscures the racialized patterns of enforcement underlying many pretextual stops.

CONCLUSION

Maryland mirrors the nation in its over-policing of communities of color through pretextual stops and vague justifications that invite discriminatory enforcement. This Court now has the opportunity to clarify that such practices violate constitutional protections. It should grant the writ of certiorari and make clear that a traffic stop may not be extended into a criminal investigation absent reasonable, articulable suspicion grounded in objective facts, not stereotypes.

Respectfully submitted,

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**STATEMENT OF INTENT TO FILE SUPPLEMENTAL BRIEF PURSUANT TO
RULE 8-511(E)(2)**

Should this Court grant the petition for a writ of certiorari, the amici intend to seek consent of the parties or move for leave to file an amicus curiae brief on the issues before the Court.

CERTIFICATE OF RULES COMPLIANCE

1. This brief contains 1,880 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

/s/ Sahar Atassi
Sahar Atassi

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Rule 20-201(g), on May 23, 2025, the foregoing brief of amici curiae in support of petitioner was served via the MDEC File and Serve Module and that, pursuant to Rule 8-502(c), two copies each were mailed, postage prepaid, first-class, to:

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APPENDIX

STATEMENTS OF INTEREST

The **Public Justice Center** (“PJC”) is a non-profit civil rights and anti-poverty legal organization established in 1985. Adopting a race equity lens, PJC uses impact litigation, public education, and legislative advocacy to reform the law for its clients. Its Appellate Advocacy Project expands and improves representation of disadvantaged persons and civil rights issues before the Maryland and federal appellate courts. PJC is committed to protecting constitutional rights and ensuring citizens are free from unlawful restraint or intrusion by law enforcement.

The **Baltimore Action Legal Team** (“BALT”) is a community lawyering organization that formed in April 2015 in response to a call from community organizations for legal assistance. BALT transitioned from providing emergency response services during the Baltimore Uprising to working towards addressing structural causes of its symptoms. This work includes close partnerships with community organizations in presenting legal education, policy advocacy, and legal representation. BALT operates under 501c3 status. BALT has an interest in this case because of its commitment to reducing over-incarceration in the justice system and supporting people and communities to advance.

The mission of the **Maryland Criminal Defense Attorneys’ Association** (“MCDAA”) includes research, education, and advocacy relating to criminal defense practice, the proper administration of justice, and the protection of individual rights. The MCDAA was formed to promote, study and research in the field of criminal defense law

and the related areas; to disseminate by lecture, seminars and publications the advancement of the knowledge of the law as it relates to the field of criminal defense practice; to promote the proper administration of justice; to foster, maintain and encourage the integrity, independence and expertise of the defense lawyer in criminal cases; and to foster periodic meetings of the defense lawyers and to provide a forum for the material exchange of information regarding the administration of criminal justice and thereby concern itself with the protection of individual rights and the improvement of criminal law, its practice and procedures. MCDAA respectfully joins this brief of amici curiae to highlight the public interests at stake when Marylanders of color are disproportionately subjected to pretextual stops by law enforcement in violation of their constitutional rights and the harms inflicted, including violent encounters and death, as a result.

Michael Pinard is the Francis and Harriet Iglehart Professor of Law at the University of Maryland Carey School. His legal practice, clinical teaching, scholarship, and advocacy have focused broadly on criminalization, race, and policing. He is interested in this appeal because of its potential impact on the criminalization of race vis-a-vis place and space in Maryland and, as a result, on the rights and protections afforded to all Marylanders on our roadways and in our communities.²

² This amicus brief is submitted on behalf of Professor Michael Pinard and not on behalf of Maryland Carey law, the University of Maryland, Baltimore, the University System of Maryland, or the State of Maryland.