

Trained Canines

State Bar of Texas

**CJS - Canine Search Litigation in Criminal
Cases: Suppression Strategies and Fifth Circuit
Developments
March 25, 2026**

Canine Sniff NOT a “Search.”

Sniff of exterior of luggage is not a search.

United States v. Place, 462 U.S. 696 (1983).

Focus on SEIZURE not Search

Sniff of a vehicle's exterior during time that is necessary to exhaust investigating the reason for a traffic stop, not a search. *United States v. Caballes*, 543 U.S. 403 (2003).

See Rodriguez v. United States, 575 U.S. 348 (2015) (Ruling that detention exceeded permissible investigation period).

Focus on SEIZURE not Search

United States v. Brigham, 382 F.3d 500 (5th Cir. 2004)(en banc).

Controlling authority on the subject of the length of a traffic stop investigation.

Timekeeper

Was the canine sniff conducted after the time it took to reasonably investigate the purpose of the traffic stop (i.e. traffic violation, speeding etc.), and thus, during time that the detention was still justified?

Did reasonable suspicion develop after the stop to justify prolonging the stop?

Was the continued detention supported by consent?



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Col. USAF
1928 – 2008



Received his veterinary degree from Texas A&M University (Distinguished Alumni Award).

Assisted and coordinated with the USAF in the development of specialized canine training for the Federal Aviation Agency FAA, the Armed Services and the Department of Defense.

Canine Scenting Prowess?

IRREFUTABLE

What is an “ALERT”

A dog’s “defined final response to a given scent.”

Source: Interview with Dr. Craig in Laredo, Texas (2001).

Jorge G. Aristotelidis, *Trained Canines at the U.S.-Mexico Border Region: A Review of Current Fifth Circuit Law and a Call for Change.*, 5 THE SCHOLAR (2003).

Determining the “Alert”

Detector dog handlers have been known to say things like 'I can read my dog,' 'My dog knows its there,' 'My dog's behavior tells me its in there', 'I can read my dog's behavioral change and I know the odor is there,' 'I am the only one who can read my dog,' 'I know what my dog is thinking,' 'I know when he is in the scent cone,' *et cetera. Scholar*, at 229.

Determining the “Alert”

In initial training and subsequent training the only time they reward (reinforce) their dog is when the dog makes the definitive defined final response (alert). Then and only then can the trainer verify that the dog has detected and responded to a specific target odor. The dog is rewarded for that response and no other. *Id.* 230-231.

Manner of Alerting

The first thing one must do ... is to decide what specific response the dog must make in order to determine if it is responding correctly to a selected target odor ... The handler or trainer must be able to articulate that specific response to anyone not in the dog training profession. That specific response is the only response you reward with the selected primary reinforcement.... *Id.* at 232

Determining the Alert

If the dog does not make the defined final response sometime during a search, the target odor is either not present or the dog or handler made an error. Dogs do respond when no target odor is present. They also fail to respond when a target odor is present. The handler may assume any response other than the defined final response verifies the presence of a target odor. A [sic] this point the handler is guilty of interpretation, supposition, or speculation.

Id.

Determining the Alert

The dog has the olfactory sensing system (nose) and the final decision as to the presence or absence of a target odor is up to the dog and not the handler. A well-trained detector dog will only respond only to the target odor(s) it has been properly trained to detect. That dog will emit the defined final response it was trained to make to a target odor at a predetermined rate of accuracy. *Id.*

Avoid Subjective Interpretations

Educated guesses based upon the handler's knowledge of their dog's training and past performance are nothing more than educated guesses when their dog fails to make the defined final response during a specific search When a dog makes the defined final response and no target odors are found on physical search one must rely on forensic chemical analysis to justify the accuracy of the dog. *Id.*

Must be Objectively Observable

As further found by Magistrate Judge Piester, even if the "alert" behavior described by Trooper Duis had in fact occurred, this is too subjective a standard to establish probable cause. I agree that there must be an objectively observable "indication" by the dog of the presence of drugs. See *United States v. Jacobs*, 986 F.2d 1231 (8th Cir. 1993) (warrant affidavit stating that drug sniffing dog had displayed interest in package, without disclosing that no "alert" had occurred, rendered warrant invalid). Because it is undisputed that Robbie did not positively "indicate" the presence of drugs in the vehicle, as he was trained to do, there was no probable cause for the search.

United States v. Heir, 107 F.Supp.2d 1088 ((Neb. D.C. 2000)

The “Hidden Human” Claim

Claims that a canine alerted, and thus, distinguished between the scent of visible, versus hidden humans, of any number, all of whom occupy the same air space.

Truck driver behind the wheel, hiding two aliens in the sleeper compartment of tractor, at immigration checkpoint. *United States v. Meza*, 02-41157 (5th Cir. December 5th, 2002)(unpublished).

The “Hidden Human” Claim

Motion to Suppress in *Meza*, before the Hon. Filemon Vela, Laredo, Texas, May 15, 2002.

Cross-examination of Matthew B. Devaney, training coordinator for the U.S. Border Patrol, National Canine Facility in El Paso, Texas...

Q: How can you be certain the dog is smelling multiple people versus one person only? You don't have any test to show that, do you?

A: We don't have test to show it but we train for it.

Q: You have no way of verifying that but you train for it. But you don't know whether it works or not.

A: We have got so far this year over 12,000 people apprehended. I would say it works.

Q: I am not asking whether you search vehicles and find people there. We know they do. The question is whether this dog is really doing what it is supposed to be doing, in accordance with whether it alerts or not. And my questions is this: The dog alerts and is trained to detect human odor and the only thing that this dog can detect is human odor of people, that you will agree with me, the dog has never come across before. You will agree with me on that.

A: I don't agree that the dog is trained to detect human odor. He is trained to detect concealed people. As I said, we do not know what other senses he may be using to assist in that function.

Q: So it is a mere speculation on your part then?

A: Yes, sir.

Prior 5th Cir. Holding on Canines

Majority View: Canines must be trained and reliable.

Minority View: An alert by a trained canine automatically constitutes probable cause, without a need to establish the canine's reliability.

Fifth Circuit: *United States v. Williams*, 69 F.3d 27 (5th Cir. 1995).

Prior 5th Cir. Holding on Canines

"...this court has consistently ruled that a showing of a canine's training and reliability is not required if probable cause is developed at the site of a Border Patrol stop as a result of a canine sniff of a vehicle."

United States v. Meza, No. 02-41157 at *5 (5th Cir. 2003)(unpublished).



A New Era: *Florida v. Harris*

"...evidence of a dog's satisfactory performance in a certification or training program can itself provide sufficient reason to trust his alert."

A defendant, however, must have an opportunity to challenge such evidence of a dog's reliability, whether by cross-examining the testifying officer or by introducing his own fact or expert witnesses.

The defendant, for example, may contest the adequacy of a certification or training program

...the defendant may examine how the dog (or handler) performed in the assessments made in those settings.

Indeed, evidence of the dog's (or handler's) history in the field, although susceptible to the kind of misinterpretation we have discussed, may sometimes be relevant,

And even assuming a dog is generally reliable, circumstances surrounding a particular alert may undermine the case for probable cause--if, say, the officer cued the dog (consciously or not), or if the team was working under unfamiliar conditions.

Florida v. Harris, 568 U.S. 237, 247 (2013).

23 years after *Meza*...

“Hidden Humans” Revisited

According to testimony at the suppression hearing, canines...engage in two types of behavior when they encounter odors that they are trained to detect.

An "alert" is an instinctual change in body posture that occurs when the canine first encounters a trained odor.

The exact change in body posture is unique to each canine and may not be recognizable to every observer but is recognizable to the canine's handler.

An "indication" is a trained behavior—such as sitting, pointing, scratching, or biting—that occurs after the "alert," when the canine detects contraband or people.

United States v. Keller, 123 F.4th 264, (5TH Cir. 2024).

“Hidden Humans” Revisited

As noted above, nuances in the use of canine sniff-related terminology have led us to hold "that a drug-dog's alert is sufficient to create probable cause for a search" but that a "weak alert on its own" does not necessarily "trigger a search."

Avoiding the problem of changing terminology, we clarify: A trained and certified dog performing its trained behavior is sufficient by itself to create probable cause for a search.

A trained and certified dog exhibiting a distinct behavior that is innate or instinctive but not trained may create probable cause in combination with other evidence or testimony supporting the government's burden of proof.

The disparate terminology "indicate," "alert," "cast," "weak," and "strong" should not be a barrier in applying the Fourth Amendment to canine sniff cases.

Keller, at 269 n2.

“Hidden Humans” Revisited

Bak is a canine trained and certified to detect concealed humans and controlled substances.

Bak responds to contraband in two ways:

(1) he may "alert," which refers to the canine's immediate response to stimulus, including respiratory and posture changes as well as more aggressive signals, after having identified something he has been trained to detect; and

(2) he may "indicate," which is a more passive response the canine is trained to perform when the canine has found the source of what it has detected—which, in Bak's case, is sitting.

United States v. Martinez, 102 F.4th 677, 682 (5th Cir. 2-24).

“Hidden Humans” Revisited

Agent Devaney, in 2024:

"Now I freely admit, we have no idea how the dogs do this [i.e., learn to 'ignore the obvious and go by all these visible people and identify only the one that is concealed']. We have no idea what senses they use, or how they make this differentiation. We don't know. . . . We don't know how they do it. So, all we do know is that we can train the dogs to do it. They do it reliably. And as evidenced by our success over the last 40 years."

Martinez hearing testimony.

“Hidden Humans” Revisited

Q: “What is the purpose of the secondary sniff?”

A: "The secondary sniff is following a pre-Primary or Primary alert. So what we do in the Secondary sniff, is once the vehicle's moved to Secondary, we've removed all visible occupants from the vehicle and conduct another sniff of the vehicle. An alert under those circumstance establishes and verifies that the Primary alert was not triggered by the vehicle occupants. So that is the purpose of the Secondary sniff is to establish and prove that the dog was not responding to the vehicle occupants when it alerted in Primary."

Martinez hearing testimony.

“Hidden Humans” Revisited

Agent Compton and Bak then approached for a secondary sniff of the vehicle to confirm Bak was not alerting to Martinez. Bak again alerted to the cab by jumping against the door. Bak then hesitated, but he did not fully sit down, *i.e.*, indicate.

Martinez, at 682.

Reasonable Suspicion

The court consequently found that Bak's alerts and indications at the initial inspection provided reasonable suspicion for Agent Compton to extend the stop for a second sniff, and Bak's alerts at the second inspection after Martinez was removed from the vehicle provided probable cause to search Martinez's tractor-trailer.

Martinez, at 682.

Reasonable Suspicion

The primary elements "of a determination of reasonable suspicion or probable cause will be the events which occurred leading up to the stop or search, and then the decision whether these **historical facts**, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion or to probable cause."

United States v. Freeman, 914 F.3d 337, 342 (5th Cir. 2019).

Guide to Suppression Challenges

Obtain an expert;

Request discovery of video evidence; – **A MUST**

Request discovery of training AND usage records;

Request discovery of on-the-field performance.

Request a hearing on your motion to suppress.