



**GOVERNMENT OF
THE VIRGIN ISLANDS OF THE UNITED STATES**

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**DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
6040 Castle Coakley`
Christiansted, St. Croix, U.S. Virgin Islands 00820
Tel: (340 773-0295**

Intraoffice

MEMORANDUM

To: Chief, Criminal Division

From: Sonya N. Armfield, Assistant Attorney General

Date: July 7, 2011

Subject: Are the use of dogs at traffic stops constitutional?

Yes, the use of traffic dogs at traffic stops is constitutional. U.S. v. Place, 103 S.Ct. 2637, (1983) states that the exposure of a traveler's luggage, which was located in a public place; to a trained narcotics detection dog for sniffing purposes did not constitute a "search" for Fourth Amendment purposes. The Court reasoned that the Fourth Amendment does not prohibit law enforcement authorities from temporarily detaining personal luggage for exposure to a trained narcotics detection dog on the basis of reasonable suspicion that the luggage contains narcotics. Given the enforcement problems associated with the detection of narcotics trafficking and the minimal intrusion that a properly limited detention would entail, the Fourth Amendment does not prohibit such a detention.

In addition, U.S v. Morgan, 270 F. 3d, (2001) states that a dog sniff of the exterior of a vehicle is not a search and therefore is not subject to Constitutional regulations as outlined in the Fourth Amendment. In Morgan, the Court held that the State trooper had reasonable, articulable suspicion of criminal activity beyond reason for which he had stopped van, i.e., speeding, and thus did not violate defendants' Fourth Amendment rights in expanding scope of stop by walking drug-sniffing dog around van, where officer was experienced in detecting contraband, van had intense smell of cigar smoke and deodorizer or perfume, van's occupants were unusually nervous and avoided eye contact, and occupant later looked at trooper when she denied there was cocaine or metamphetamine in the van and looked away when asked about marijuana.

The U.S. Supreme Court has placed limitations on this policy. They are: (1) The traffic violation, however minor must provide probable cause for the traffic stop. United States v. Barahona, 990 F.2d 412, 416 (8th Cir. 1992); (2) The scope of the 'sniff' by the dog is limited to the exterior of the vehicle. United States v. Sukiz-Grado, 22 F.3d 1006, 1009.

In addition, United States v. Ludwig, 10 F.3d 1523,1528, (10th Cir.1993) states “The warrant less entry of a car interior is unlawful unless there is probable cause to believe it contains contraband.” Ludwig, further states “an agent may not unlawfully enter an area in order to conduct a dog search.” Id at 1523, 1527.

However, once there has been a positive identification of drugs by the dog in luggage or in a car, probable cause does exist that drugs are present, and the vehicle then can be searched without warrant under the automobile exception to the warrant requirement. United States v. Bloomfield, 40 F.3d 910. Furthermore, the scope of a stop may be expanded if the officer has a reasonable, articulable suspicion of criminal activity. In determining whether an officer has a reasonable, articulable suspicion of criminal activity, the court would be required to consider facts in their totality rather than consider each fact separately. United States of America v. Morgan, 270 F.3d 625.

In conclusion, the use of dogs at traffic stops are constitutional as long as certain guidelines are followed: (1) Initially, probable cause must exist for there to be a traffic stop; (2) the scope of the stop must be limited to the exterior of the vehicle unless there is probable cause that there are drugs in the vehicle and/or the officer has a reasonable articulable suspicion of criminal activity.