

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

LESHAWN LAWSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
For the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

First, whether five minutes of drug-related investigative questioning of a driver at the beginning of an admittedly pretextual traffic stop, while no traffic investigation was pending – and none was ever pursued, because the officer extracted the driver’s consent to search the car at the end of the investigative questioning – violates the rule of *Rodriguez v. United States*, 135 S. Ct. 1609 (2015), that “[a] seizure justified only by a police-observed traffic violation . . . becomes unlawful if it is prolonged beyond the time reasonably required to complete the mission of issuing a ticket for the violation.” *Id.* at 1612 (internal brackets and quotation marks omitted).

Second, whether *Rodriguez* also squarely precludes the government from justifying such a prolongation of a traffic stop on the alternative grounds that the officer had developed reasonable suspicion of drug activity by the time of the search, where such suspicion was not independent of and prior to the unconstitutional delay, but rather exclusively based on information learned during the non-traffic-related investigative questioning at the beginning of the stop.

INTERESTED PARTIES

There are no parties to the proceeding other than those named in the caption of the case.

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW.....	i
INTERESTED PARTIES.....	ii
PETITION FOR A WRIT OF CERTIORARI.....	1
OPINIONS BELOW.....	1
STATEMENT OF JURISDICTION	1
CONSTITUTIONAL PROVISION INVOLVED.....	1
INTRODUCTION	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT.....	5
I. The Ninth Circuit’s erroneous holding that a five-minute non-traffic-related interrogation at the beginning of a traffic stop is lawful, so long as the prolongation of the stop is not “unreasonable,” conflicts with <i>Rodriguez</i> and the decisions of other circuits.....	6
II. The Ninth Circuit erroneously concluded, in conflict with <i>Rodriguez</i> and decisions of other circuits, that the government may justify the prolongation of a traffic stop based on reasonable suspicion, even where that suspicion is based on facts gleaned from the unconstitutional delay itself.	9
III. This case is an ideal vehicle for this Court to address the questions presented.	11
CONCLUSION.....	15

TABLE OF AUTHORITIES

Federal Cases	Page(s)
<i>Hunt v. Zuniga</i> , 613 F. App'x 501 (6th Cir. 2015)	12, 13
<i>Payne v. Peninsula Sch. Dist.</i> , 653 F.3d 863 (9th Cir. 2011)	12
<i>Rodriguez v. United States</i> , 135 S. Ct. 1609 (2015)	<i>passim</i>
<i>United States v. Bowman</i> , 884 F.3d 2000 (4th Cir. 2018)	8
<i>United States v. Carter</i> , 675 F. App'x 100 (2d Cir. 2017)	12
<i>United States v. Clark</i> , 879 F.3d 1 (1st Cir. 2018)	8
<i>United States v. Clark</i> , ____ F.3d ___, 2018 WL 4131763 (3d Cir. Aug. 30, 2018)	<i>passim</i>
<i>United States v. Collazo</i> , 818 F.3d 247 (6th Cir. 2016)	12
<i>United States v. Evans</i> , 786 F.3d 779 (9th Cir. 2015)	8, 11
<i>United States v. Gomez</i> , 877 F.3d 76 (2d Cir. 2017)	8, 10, 11, 12
<i>United States v. Gorman</i> , 859 F.3d 706 (9th Cir. 2017)	1, 8
<i>United States v. Green</i> , 897 F.3d 173 (3d Cir. 2018)	10, 11, 12, 13
<i>United States v. Hill</i> , 852 F.3d 377 (4th Cir. 2017)	8, 11-12
<i>United States v. Lawson</i> , 721 F. App'x 722, as amended, 731 F. App'x 663 (9th Cir. 2018)	1, 4, 5
<i>United States v. Lawson</i> , No. 15-CR-00119-PJH-1, 2016 WL 658796 (N.D. Cal. Feb. 18, 2016)	4
<i>United States v. Pettit</i> , 785 F.3d 1374 (10th Cir. 2015)	10-11
<i>United States v. Rojas-Millan</i> , 234 F.3d 464 (9th Cir. 2000)	5

<i>United States v. Walton,</i> 827 F.3d 682 (7th Cir. 2016)	12
<i>United States v. Williams,</i> 808 F.3d 238 (4th Cir. 2015)	8
<i>Whren v. United States,</i> 517 U.S. 806 (1996)	2
Federal Statutes	
21 U.S.C. § 841(a)(1) (2012)	4
28 U.S.C. § 1254(1) (2012)	1

PETITION FOR A WRIT OF CERTIORARI

Leshawn Lawson respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The Ninth Circuit's unpublished opinion affirming the denial of Petitioner's motion to suppress is reported at *United States v. Lawson*, 721 F. App'x 722 (9th Cir. 2018). This opinion was superseded by *United States v. Lawson*, 731 F. App'x 663 (9th Cir. 2018), which denied Petitioner's petition for rehearing en banc but amended the panel's opinion to distinguish *United States v. Gorman*, 859 F.3d 706 (9th Cir. 2017), as to an independent ground for suppression not raised here.

STATEMENT OF JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1). The Ninth Circuit entered its judgment in favor of the respondent on May 2, 2018, and denied Petitioner's petition for rehearing en banc on July 12, 2018. Appendix 5. This petition is timely under S. Ct. R. 13.3.

CONSTITUTIONAL PROVISION INVOLVED

Petitioner's petition for a writ of certiorari invokes the Fourth Amendment's right to be free from unreasonable searches and seizures:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause,

supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

INTRODUCTION

The Ninth Circuit in this case erred in approving the abusive police tactic of engaging in lengthy investigative questioning of a motorist about unrelated crimes at the beginning of a pretextual traffic stop, before attending to the traffic violation, and then justifying a search of the vehicle based on either the motorist's consent (extracted at the end of the investigative questioning) or reasonable suspicion of criminal activity (based on the answers to the investigative questioning).

The court's reasoning was based on a fundamental misunderstanding of this Court's decisions related to traffic stops. To be sure, an officer may lawfully stop a vehicle upon probable cause for a traffic violation, even if the true motivation is a hunch about unrelated criminal activity. *Whren v. United States*, 517 U.S. 806 (1996). If the officer then observes a crime either "immediately" upon approaching the car, as in *Whren*, *id.* at 808-09, or during an investigation of the traffic violation, the officer can fully detour from traffic matters to investigate those observations, even if the stop was pretextual. But what police cannot do is "prolong[] a stop based only on probable cause for traffic violations with investigations of unrelated criminal activity "beyond the time reasonably required to complete the mission of issuing a ticket for the violation." *United States v. Rodriguez*, 135 S. Ct. 1609, 1612 (2015) (citations omitted).

Unfortunately, some courts of appeals have misconstrued *Rodriguez* to allow the prolongation of a traffic stop with unrelated questioning so long as the delay is "de-

minimis” and the overall stop is still of a “reasonable” length. Relying on this logic, the Ninth Circuit concluded that the investigative questioning of Petitioner was lawful because it was only five minutes. On the contrary, *any* unrelated questioning that “adds time” beyond a reasonably conducted traffic investigation, even “incrementally” so, violates *Rodriguez*. *Id.* at 1615-16. In turn, the Ninth Circuit’s erroneous acceptance of the government’s alternative argument – that the officer had sufficient reasonable suspicion to prolong the stop, based on information gleaned from the unconstitutional investigative delay itself – also flatly contradicts *Rodriguez* and finds no support in other circuits.

STATEMENT OF THE CASE

The drug evidence at issue in this case was seized during a search of Petitioner’s car, after he was stopped for an admittedly pretextual traffic-related reason. Specifically, on February 6, 2015, federal agents directed local police to “perform a traffic stop on [Petitioner’s] Bentley if it drove through [their] jurisdiction” because, based on an ongoing investigation of Petitioner, the agents thought his car might contain drugs or proceeds. Appendix 10. In response, a local officer stopped Petitioner’s car for speeding and missing license plates. Appendix 2.

Instead of beginning a typical traffic-related investigation of the missing license plates and speeding, the officer simply told Petitioner the reason for the stop, took Petitioner’s driver’s license, and then launched into five minutes of unrelated interrogation. Appendix 3, 7-8, 18. The questioning appeared designed to investigate a potential drug crime: where Petitioner was coming from, what he

was doing in Los Angeles, why he had little luggage, how he paid for his car, whether he was on probation or parole, and whether he had anything illegal in his car. Appendix 7-8. The pointed questioning culminated in a request to search the car, which the court found Petitioner eventually gave. Appendix 2-3.

Only after this five-minute drug investigation and securing Petitioner's consent did the officer return to his patrol car, ask for cover, and run a background check, which came back clean. Appendix 3. When the cover officer arrived, the arresting officer searched Petitioner's car. *Id.* Based on evidence found during the search, the government charged Petitioner with one count of possession with intent to distribute cocaine in violation of 21 U.S.C. § 841(a)(1). Appendix 1.

After an evidentiary hearing, the district court denied Petitioner's motion to suppress all fruits of the warrantless stop and search on grounds that prolongation of the stop beyond its traffic-related mission violated the Fourth Amendment.

United States v. Lawson, No. 15-CR-00119-PJH-1, 2016 WL 658796 (N.D. Cal. Feb. 18, 2016); Appendix 18-20. The district court then found him guilty at a bench trial on stipulated facts. Appendix 2.

The Ninth Circuit affirmed, *United States v. Lawson*, 721 F. App'x 722 (9th Cir. 2018), holding that the "traffic stop of [Petitioner's] Bentley was not *unreasonably prolonged.*" Appendix 3 (emphasis added). Specifically, the court reasoned that while the stop was twenty minutes long, the questioning culminating in Petitioner's consent was only "five minutes" long, and the "background check . . . 'came back clean' approximately seven minutes into the stop." *Id.*

The court also held that the officers' "grounds for the search were buttressed by facts providing independent reasonable suspicion that Lawson was involved in criminal activity." Appendix 4; *see also id.* ("Williams' questioning of Lawson and observations regarding the inconsistency in his answers were reasonable. *See United States v. Rojas-Millan*, 234 F.3d 464, 469-70 (9th Cir. 2000)."). Significantly, of the three facts the district court cited, which the Ninth Circuit adopted, two were gleaned during the investigative interrogation about drugs: "(1) the absence of luggage given Lawson's statement that he had spent three weeks in Los Angeles; (2) Lawson's stated employment as an entertainer and iron worker, which would not pay enough for Lawson to afford the Bentley he was driving; and (3) [the officer's] knowledge that Interstate 580 was a well-known drug trafficking route from Los Angeles to San Francisco."¹ Appendix 4. The Ninth Circuit denied Petitioner's petition for rehearing en banc and issued an amended opinion addressing an issue not raised in this petition. Appendix 5.

REASONS FOR GRANTING THE WRIT

The Ninth Circuit's erroneous decision in this case is – in two key respects – in conflict with decisions of this Court and other courts of appeals. *See S. Ct. R. 10(a)–(c).* First, the Ninth Circuit failed to appreciate the clear illegality of a five-

¹ Petitioner pointed to a duffle bag on the front passenger seat and told the officer "that he had been driving back and forth so he doesn't take too much with him." Appendix 7. In response to the officer's comments about his car, Petitioner told the officer that it was a 2006 model and that he paid only \$470 per month for it. Appendix 8.

minute unrelated investigative interrogation at the beginning of a traffic stop because of its mistaken premise, borrowed from a few other courts of appeals, that a prolongation of a traffic stop is not unlawful under *Rodriguez* so long as the prolongation itself is relatively short and thus not “unreasonable.” Second, the Ninth Circuit –with no support from *Rodriguez* or other circuits’ decisions – held that the government may prolong a traffic stop beyond the traffic mission based on reasonable suspicion of a crime, even where that suspicion is not independent of the *Rodriguez* violation, but rather based almost exclusively on information gleaned during the unconstitutional unrelated investigative delay itself.

- I. The Ninth Circuit’s erroneous holding that a five-minute non-traffic-related interrogation at the beginning of a traffic stop is lawful, so long as the prolongation of the stop is not “unreasonable,” conflicts with *Rodriguez* and the decisions of other circuits.

The Ninth Circuit betrayed a fundamental misunderstanding of *Rodriguez* in holding that a five-minute investigative detour at the outset of a traffic stop is lawful so long as the stop as a whole is “not unreasonably prolonged.” Appendix 3. In *Rodriguez*, this Court made clear that an officer’s “mission” during a traffic stop is “to address the traffic violation that warranted the stop . . . and attend to related safety concerns.” 135 S. Ct. at 1614 (citation omitted). The stop “may last no longer than is necessary to effectuate” its purpose. *Id.* Thus, officers may not conduct “unrelated checks during an otherwise lawful traffic stop . . . *in a way that prolongs the stop*, absent the reasonable suspicion ordinarily demanded to justify detaining an individual.” *Id.* at 1615 (emphasis added).

By holding that a prolongation beyond the stop's traffic mission is forgivable so long as it is not "unreasonable," the Ninth Circuit appears to have relied on the very outdated precedent that *Rodriguez* itself considered and rejected. *See* 135 S. Ct. at 1614 (citing cases in which lower courts had upheld the legality of a stop based on the "de minimis" nature of any delay from investigative questioning). Specifically, this Court rejected the government's argument that a stop may be prolonged for unrelated inquiries "so long as the officer is reasonably diligent in pursuing the traffic-related purpose of the stop, and the overall duration of the stop remains reasonable in relation to the duration of other traffic stops involving similar circumstances." *Id.* at 1616. On the contrary, an officer receives no "bonus time" for conducting the traffic part of the stop expeditiously; "[t]he critical question is . . . whether conducting the sniff 'prolongs' -- *i.e.*, adds to time -- 'the stop.'" *Id.* Put differently, the very point of *Rodriguez* is that *any* prolongation of a traffic stop for unrelated investigative purposes – meaning *any extension of the time the stop should otherwise take* – is inherently unreasonable, no matter how short. *Id.* at 1615-16 (condemning a prolongation of fewer than ten minutes and rejecting arguments that an officer could conduct criminal-investigation tasks during a traffic stop as long as they were "de minimis" or only "incrementally prolong[ed]" the stop).

Accordingly, courts of appeals have correctly rejected arguments, after *Rodriguez*, that a non-traffic-related prolongation was permissible because it was *de minimis*. *See, e.g., United States v. Clark*, ____ F.3d ___, 2018 WL 4131763, at 3 & n.4 (3d Cir. Aug. 30, 2018) (finding Fourth Amendment violation where officer

questioned driver about his criminal history; “There is no de minimis exception to [Rodriguez’s] rule.”); *United States v. Hill*, 852 F.3d 377, 381 (4th Cir. 2017) (“The Supreme Court recently has clarified that extending a stop by even a de minimis length of time violates the Fourth Amendment.”). Courts of appeals, including the Ninth Circuit in other cases, have held that traffic-stop extensions of ten minutes or fewer violated the Fourth Amendment under *Rodriguez*. See, e.g., *United States v. Gomez*, 877 F.3d 76, 81 (2d Cir. 2017) (applying *Rodriguez* to hold that five-minute prolongation of traffic stop to question defendant about ongoing criminal investigation violated Fourth Amendment); *United States v. Gorman*, 859 F.3d 706, 715 (9th Cir. 2017) (prolongations of traffic stop with two periods of unrelated questioning or non-routine checks, each lasting ten or fewer minutes, were clear *Rodriguez* violations); *United States v. Williams*, 808 F.3d 238, 243-46 (4th Cir. 2015) (rejecting argument that a “two-minute and forty-second extension” of a traffic stop did not violate the Fourth Amendment under *Rodriguez*); *United States v. Evans*, 786 F.3d 779, 786-87 (9th Cir. 2015) (suppressing evidence under *Rodriguez* based on eight-minute prolongation of traffic stop). Relatedly, post-*Rodriguez* cases in other circuits have focused not merely on the duration of the stop but on the timing, sequence and substance of the officers’ traffic-related and non-traffic-related actions. See, e.g., *Clark*, __ F.3d __, 2018 WL 4131763, at *2; *United States v. Bowman*, 884 F.3d 2000, 205-07 (4th Cir. 2018); *United States v. Clark*, 879 F.3d 1, 4-5 (1st Cir. 2018). The Ninth Circuit’s decision in this case, by

contrast, said almost nothing about what happened during the first five minutes of the stop. Appendix 2-3.

If the Ninth Circuit had correctly focused on the officer's actions rather than merely the duration of the stop, the *Rodriguez* violation here would have been evident. Indeed, the district court here found that the officer himself conceded that his initial interrogation of Petitioner about his whereabouts, activities, financial status, probation or parole status, and the like was related to "supporting reasonable suspicion of criminal activity." Appendix 20. Although questions aimed at "detecting evidence of ordinary criminal wrongdoing" might not be unlawful if asked during the pendency of a traffic investigation in a way that does not prolong the stop, such inquiries violate the Fourth Amendment when, as here, they prolong the stop absent independent reasonable suspicion. *Rodriguez*, 135 S. Ct. at 1615.

II. The Ninth Circuit erroneously concluded, in conflict with *Rodriguez* and decisions of other circuits, that the government may justify the prolongation of a traffic stop based on reasonable suspicion, even where that suspicion is based on facts gleaned from the unconstitutional delay itself.

The Ninth Circuit in this case also defied the holding of *Rodriguez* and acted contrary to other appellate-court decisions by holding that an officer may prolong a traffic stop for non-traffic-related reasons even if the officer's "reasonable suspicion" turns on facts learned during the prolongation itself. Appendix 4. The Ninth Circuit described what it saw as three critical facts gleaned during that questioning: "(1) the absence of luggage despite Lawson's statement that he had spent three weeks in Los Angeles; (2) Lawson's stated employment as an entertainer and iron

worker, which would not pay enough for Lawson to afford the Bentley he was driving; and (3) Williams' knowledge that Interstate 580 was a well-known drug trafficking route from Los Angeles to San Francisco." *Id.* The officer learned the first two of these facts from his initial five minutes of non-mission-related questioning of Petitioner.²

One necessary corollary to *Rodriguez* – which the Ninth Circuit failed to appreciate – is that answers to questions during an unlawful prolongation of a traffic stop are themselves the tainted fruit of a *Rodriguez* violation. Accordingly, in assessing whether officers had reasonable suspicion to prolong traffic stops, other circuits have appropriately focused on what the officers knew before the prolongation. *See Clark*, ___ F.3d ___, 2018 WL 4131763, at *3 ("To prolong a stop beyond [when the traffic-stop mission reasonably should have been completed] the officer must have acquired reasonable suspicion *during the mission* to justify further investigation." (emphasis added)); *United States v. Green*, 897 F.3d 173, 181-82 (3d Cir. 2018) (considering, for reasonable-suspicion analysis, only facts that officer knew before stop was prolonged); *Gomez*, 877 F.3d at 93 n.27 (noting that reasonable suspicion to extend stop may be "based on the actions of a driver or passenger either (i) before the stop, or (ii) *during traffic-related processing of the stop*." (emphasis added)); *United States v. Pettit*, 785 F.3d 1374, 1381-82 (10th Cir. 2015) (considering only facts obtained before officer could have completed traffic violation processing in determining whether officer had reasonable suspicion to

² The third fact, that Petitioner was driving on an interstate highway, could not by itself establish reasonable suspicion that he was engaged in any illegal activity.

prolong traffic stop). Basing reasonable suspicion on the answers to investigative questions posed during an unlawful prolongation, as the Ninth Circuit did here, would not be any more permissible than basing it on the canine “sniff” clearly excluded in *Rodriguez*.

III. This case is an ideal vehicle for this Court to address the questions presented.

This Court needs to clarify its holding in *Rodriguez*. In the three years since its opinion, the circuits have interpreted it in “starkly divergent” ways. *Green*, 897 F.3d at 180. Some have “applied *Rodriguez*’s language quite rigidly, holding that any diversion from a stop’s traffic-based mission is unlawful absent reasonable suspicion”; others have “applied *Rodriguez* more leniently, evaluating police actions by something more akin to a reasonableness standard.” *Id.* at 180-81 (citing cases). The Ninth Circuit has now done both. *Compare United States v. Evans*, 786 F.3d 779, 786 (9th Cir. 2015) (holding that a registration check and dog sniff unrelated to the traffic violation “prolonged the traffic stop beyond the time reasonably required to complete his traffic mission” (brackets and internal quotation marks omitted)) with Appendix 3 (“Williams’ traffic stop of Lawson’s Bentley was not unreasonably prolonged.”). More specifically, appellate courts disagree about whether *Rodriguez* applies when the delay stems from an officer asking questions not directly related to the traffic violation. *Compare Clark*, ___ F.3d ___, 2018 WL 4131763, at *4 (holding that questions about criminal history violated *Rodriguez*); *Gomez*, 877 F.3d at 90 n.24 (noting that *Rodriguez* treated questioning as investigation unrelated to traffic mission); *Hill*, 852 F.3d at 382 (stating that *Rodriguez* allows questioning “on

unrelated topics” only if it does not prolong stop) *with United States v. Walton*, 827 F.3d 682, 684-87 (7th Cir. 2016) (holding that “officers have a ‘grace period’ to ask investigatory questions following the completion of a traffic stop, provided that it does not impose an ‘inconvenience’” (quoting *United States v. McBride*, 653 F.3d 879, 882 (7th Cir. 2011)); *United States v. Collazo*, 818 F.3d 247, 257-58 (6th Cir. 2016) (holding that questions unrelated to traffic stop did not unreasonably extend it); *Carter*, 675 Fed. Appx. at 101 (noting and questioning, district court’s suggestion that questions about travel plans may not violate *Rodriguez*).

Appellate courts also have not settled on a clear answer about whether *Rodriguez* applies to delays that occur before an officer issues a ticket or citation. *Compare Clark*, __ F.3d __, 2018 WL 4131763, at *3 n.3 (rejecting government argument that *Rodriguez* does not apply because ticket had not yet been issued where non-mission-related investigation followed resolution of traffic investigation but not issuance of ticket); *Gomez*, 877 F.3d 90 n.24 (stating that it does not matter under *Rodriguez* whether the unrelated investigation occurred before or after the ticket was issued); *with Green*, 897 F.3d at 181 (noting that *Caballes* and *Rodriguez* do not clarify how to assess prolongations before citations but assuming delay arguendo where a “short phone call, though unrelated to the traffic stop, was not shown to have measurably prolonged the stop, which took little more than ten minutes from its inception to the issuance of the warning); *United States v. Zuniga*, 613 Fed. Appx. 501, 507 n.1 (6th Cir. 2015) (noting that *Rodriguez* does not clearly apply to questioning before ticket has issued). This timing issue should be clarified.

The prohibition set forth in *Rodriguez* will lose its force if officers are permitted several minutes of general criminal investigation during a traffic stop, when, for example, no traffic investigation is ever undertaken, and the general criminal investigation consumes the same amount of time as a reasonable traffic investigation. In fact, such interpretations would perversely encourage officers to detour from their traffic-related missions at the outset of traffic stops and process the traffic violations afterwards or not at all.

This case is the ideal vehicle to both enforce and clarify the rule of *Rodriguez*. The opinion of the court of appeals defies *Rodriguez*, as have other circuits, by endorsing the continued viability of a time-based, rather than an activity-based, reasonableness test in assessing delay; but the opinion also presents the most important questions not answered in *Rodriguez*:³ what specific inquiries constitute non-mission-related investigation?; how should delay be quantified when an officer conducts non-mission-related investigation without any traffic investigation after it, or conducts the non-mission-related questioning before the traffic investigation?; and what evidence gained during a non-mission-related delay may support the reasonable suspicion for the delay? This Court can clearly address each of these questions in one case.

³ Other opinions raising these issues have not squarely addressed them as the present case does. The *Green* and *Zuniga* courts, for example, raised questions about the application of *Rodriguez* but ultimately determined that reasonable suspicion existed before the delay. *Green*, 897 F.3d at 184-85; *Zuniga*, 613 Fed. Appx. at 507-08. In *Clark*, the traffic investigation had also been effectively concluded at the time the off-mission investigation began. 2018 WL 4131763 at *4.

This Court should clarify *Rodriguez* because of both the frequency with which these important issues arise and their potential to affect the legality and perceived fairness of police-citizen interactions. More than 26 million people were subjected to traffic stops by the police in 2011. *See* U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Police Behavior during Traffic and Street Stops, 2011*, (Rev. Oct. 27, 2016) Appendix Table 1, *available at* <https://www.bjs.gov/content/pub/pdf/pbtss11.pdf>. In every traffic stop, there is the potential for the police to search, seize -- and prolong seizure -- in violation of the Fourth Amendment, and to do so based on impermissible factors such as race, gender and socio-economic status.

Rodriguez is a straightforward and crucial guide to police conduct within a framework that allows pretextual policing. It has been cited more than 900 times in the three years since it was decided. Properly enforced and construed, *Rodriguez* can help ensure that traffic stops justified by no more than traffic violations remain “relatively brief encounter[s],” “more analogous to a so-called ‘*Terry* stop’ than to a formal arrest.” *Rodriguez*, 135 S. Ct. at 1614 (internal quotation marks omitted). This Court should grant review in this case to clarify the scope and application of *Rodriguez*.

CONCLUSION

For the reasons stated above, Petitioner respectfully requests that this Court issue a writ of certiorari.

Dated: *October 10, 2018*

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