

In the Supreme Court of the United States

Julia Augusta Constan Macri, Applicant

v.

Illinois

**APPLICATION FOR EXTENSION OF TIME TO
FILE A PETITION FOR WRIT OF CERTIORARI**

**Directed to the Honorable Brett M. Kavanaugh,
Associate Justice of the Supreme Court of the United States
and Circuit Justice for the
United States Court of Appeals for the Seventh Circuit**

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To the Honorable Brett M. Kavanaugh, Circuit Justice for the United States Court of Appeals for the Seventh Circuit:

Julia Augusta Constan Macri respectfully requests a thirty-day extension of the deadline for filing her petition for a writ of certiorari. The Illinois Appellate Court's Fifth District affirmed Macri's conviction on May 9, 2018. App. A. The Illinois Supreme Court denied Macri's Petition for Leave to Appeal on September 26, 2018. App. B. The petition for certiorari is presently due on December 26, 2018. Macri seeks a thirty-day extension to January 25, 2018. This Court will have jurisdiction under 28 U.S.C. 1257.

1. This case concerns the constitutionality of a search and seizure that occurred after a pretextual vehicle stop. Macri was stopped for following the vehicle in front of her too closely. App. A at 3. The officer, knowing that a narcotics dog was en route but several minutes away, prolonged the traffic stop to confirm Macri's travel plans with her car rental, which allowed sufficient time for the dog to arrive and sniff her vehicle. App. A at 6. Law enforcement officers then found a quantity of cannabis in her car. App. A at 5. The Illinois Circuit Court denied her motion to suppress the evidence. App. A at 1. After her conviction, Macri appealed the denial of the motion to suppress. App. A at 1.

The Illinois Appellate Court found that the officer had prolonged the traffic stop because he detoured from the original purpose of stop – investigating Macri's traffic infraction. App. A at 6. However, the court also found the officer had reasonable, articulable suspicion to extend the traffic stop. App. A at 15. That suspicion included Macri's irritation with being stopped a second

time in one night, her out-of-state license plate, her willingness to roll the window down only partway, the large amount of luggage in the car, including black duffle bags, and inconsistent accounts of her travel plans. App. A at 13-14. While the officer could not confirm the inconsistency of Macri's travel plans until he extended the traffic stop, the court still included that factor in its reasonable suspicion analysis. App. A at 14.

2. In her petition, Macri intends to present an important issue of federal law:

Whether, to comply with the Fourth Amendment, the reasonable articulable suspicion necessary to extend a traffic stop must be formed before the officer's deviation from the stop's original mission.

This question, which has divided the lower courts, is important in ensuring that government officials will not overstep the bounds of individual privacy set by the Fourth Amendment.

Under the decision below, officers can justify prolonging their search with factors they would not have discovered without prolonging the search. While this reasoning has been adopted by some jurisdictions, it is constitutionally problematic.

The First Circuit in *U.S. v. Dion* has outlined the reasoning behind the type of analysis embraced by the Fifth District here. 859 F.3d 114 (1st Cir. 2017). In *Dion*, the First Circuit explained that an officer may open up different lines of questioning gradually, with each new reason for reasonable suspicion opening more doors, even when the questions may veer off the original

mission. *Id.* at 125. The court in *Dion* relied on *Terry v. Ohio*, 392 U.S 1 (1968) for this conclusion.

However, *Dion* and its allies (including the decision below) misapply the standard established in *Terry* and overlook other precedent of this Court. For example, in *Rodriguez v. U.S.*, this Court prohibited extending a traffic stop without continuing reasonable suspicion. 135 S. Ct. 1609, 1615 (2015). The Court expressly rejected the government’s assertion that incrementally prolonging a stop is permissible if the officer diligently pursues the purpose of the stop and the completed time is no longer than a normal, reasonable stop. *Id.* at 1616. That rejection indicates that the Fourth Amendment severely limits police officers’ use of pretextual stops to conduct warrantless searches.

Other courts since *Rodriguez* have departed from *Dion* and the analysis in the opinion below, correctly limiting their reasonable suspicion analysis to what the officer observed before prolonging the stop. For example, in *In re Pardee*, 872 N.W.2d 384, 393 (Iowa 2015), the Iowa Supreme Court recently followed *Rodriguez* and rejected the logic of *Dion*. In *Pardee*, the court found that the officer only developed suspicion about the driver and passenger’s criminal histories and their inconsistent travel plans after he extended the traffic stop to investigate those issues. *Id.* The court dismissed those facts and only considered the facts available to the driver “at the beginning of the stop.” *Id.* These factors combined were not sufficient to constitute reasonable suspicion. *Id.*

Macri, then, would have been protected under the Fourth Amendment in Iowa—but not in neighboring Illinois—as she was delayed, based in large part on the officer’s observations *while waiting for the dog*. In Iowa, her nervousness about the second stop of the night—observed only because the stop was extended beyond its original purpose—would have been insufficient to justify the stop. See *id.* (“Many motorists slow down, decline to make eye contact, and get nervous when a state trooper draws near.”). Yet in Illinois, such nervousness is a factor supporting reasonable suspicion.

3. To adequately present these issues for the Court’s consideration, undersigned counsel needs a thirty-day extension. Counsel’s other obligations include:

- Counsel of record is preparing an amicus brief in *The American Legion v. American Humanist Association*, No. 17-1717 consolidated with No. 18-18. That brief, which concerns critical questions what test should be applied Establishment Clause cases, is due December 24.
- Counsel is preparing an amicus brief supporting certiorari in *Joel Doe v. Boyertown Are School District*, No. 18-658. That brief will explain the errors with the Third Circuit's strict scrutiny analysis in the opinion below. That brief is due December 21.
- Counsel has numerous family commitments this month, including his daughter’s wedding on December 19.

Because of these and other obligations, counsel needs an additional thirty days to adequately prepare the petition. This extension—from December 26, 2018 to January 25, 2018—will ensure that the important question the petition will present is adequately explained and supported.

Respectfully submitted,



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CERTIFICATE OF SERVICE

As a member of the Supreme Court bar, I caused a copy of this document to be sent by e-mail and U.S. Mail on December 11, 2018, to:

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