

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**

SCOTT GOODWIN
CRIMINAL AND CIVIL RIGHTS APPEALS
CLINIC
J. Reuben Clark Law School
252 JRCC
Provo, UT 84602

GENE C. SCHERR
Counsel of Record
MICHAEL T. WORLEY
SCHAERR | JAFFE LLP
1717 K Street NW, Suite 900
Washington, DC 20006
(202) 787-1060
gschaerr@schaerr-jaffe.com

Counsel for Applicant Julia Augusta Constan Macri

January 15, 2019

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 was originally due on December 26, 2018. Macri previously sought and received a thirty-day extension to January 25, 2019. Undersigned counsel seeks an additional thirty-day extension, to February 24, 2019, a Sunday, and thus, with the weekend rule, to February 25, 2019. This Court will have jurisdiction under 28 U.S.C. 1257.

1. As explained in the last motion for an extension, 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. As explained previously, 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. Despite the previous thirty-day extension, undersigned counsel and co-counsel need an additional thirty days. Besides attending his daughter's wedding and three related receptions around the country, counsel of record was very busy over the holiday season, filing briefs in multiple cases:

- On December 26, counsel submitted a merits stage amicus brief on behalf of religious denominations and other religious institutions in *American Legion v. American Humanist Association*, No. 17-1717. That brief clarifies that the Establishment Clause, as originally understood, extends to some governmental activities that are not coercive.

- On December 20, counsel submitted an amicus brief supporting review in *Doe v. Boyertown Area School District*, No. 18-658, highlighting the watered-down nature of the Third Circuit’s strict scrutiny analysis in the opinion below in that case.

Counsel, moreover, has other pressing obligations this month. Counsel just began a new semester teaching two courses at Brigham Young University’s law school, where he serves as an adjunct professor. And just yesterday, counsel received a brief in opposition in *Patterson v. Walgreen Co.*, No. 18-349, which concerns splits among the circuits over the proper interpretation of Title VII’s religious accommodation provision. Counsel, who represents the petitioner in that case, needs to prepare a reply brief by January 30, which will occupy much of counsel’s available time for the remainder of the month.

Because of these and other obligations both in January and at the end of December, counsel needs an additional thirty days to adequately prepare the petition. This extension—from January 25, 2019 to, with the weekend rule, February 25, 2019—will ensure that the important questions the petition will present are adequately explained and supported.

Respectfully submitted,



SCOTT GOODWIN
CRIMINAL AND CIVIL RIGHTS
APPEALS CLINIC
J. Reuben Clark Law School
252 JRCB
Provo, UT 84602

GENE C. SCHAEERR
Counsel of Record
MICHAEL T. WORLEY
SCHAERR | JAFFE LLP
1717 K Street NW, Suite 900
Washington, DC 20006
(202) 787-1060
gschaerr@schaerr-jaffe.com

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 January 15, 2019, to:

Paul Delfino
Director
David J. Robinson
Acting Deputy Director
Chelsea E. Kasten
Staff Attorney
Office of the State's Attorneys
Appellate Prosecutor
Fifth District Office
730 E. Illinois Highway 15, Suite 2
P.O. Box 2249
Mt. Vernon, IL 62864
05dispos@ilsaap.org



Gene C. Schaerr