

No. _____

In the Supreme Court of the United States

RAQUEL CORTEZ,

Petitioner,
v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Tenth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This Court has held that held that the use of a drug-detention canine unit after the completion of an otherwise lawful traffic stop exceeded the time needed to handle the matter for which the stop was made violated the Fourth Amendment's prohibition against unreasonable searches and seizures. *Rodriguez v. United States*, 575 U.S. 348 (2015). The mission of the stop determines its allowable duration and the authority for the stop ends when the mission has been accomplished. *Id.* This case poses the question of whether the same rule applies when an officer extends the stop to allow border patrol agents to arrive without reasonable suspicion or other lawful justification.

RELATED PROCEEDINGS

United States District Court (D. N.M.): *United States v. Cortez*, No. 2:18-cr-02639-KG (Nov. 16, 2018) (memorandum opinion and order of the district court)

United States Court of Appeals (10th Cir.): *United States v. Cortez*, No. 19-2058 (Jul. 14, 2020) (decision of the court of appeals)

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PETITION FOR WRIT OF CERTIORARI

Petitioner Raquel Cortez respectfully petitions for a writ of certiorari to review the opinion and judgment entered by the United States Court of Appeals for the Tenth Circuit in this case on July 14, 2020.

OPINIONS BELOW

The decision of the court of appeals affirming Ms. Cortez's conviction is reported at *United States v. Cortez*, 965 F.3d 827 (10th Cir. 2020). A copy of the opinion of the court of appeals is appended to this Petition. (App. A, 1a–28a). The memorandum opinion and order of the district court is unpublished and available at 2018 WL 6026814. A copy of the memorandum opinion and order of the district court is contained in the Appendix. (App. B, 29a–38a).

JURISDICTION

The judgment of the court of appeals was entered on July 14, 2020 (App. A, 1a–28a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1), having timely filed this petition for a writ of certiorari within 150 days of the judgment of the court of appeals.

CONSTITUTIONAL AND OTHER PROVISIONS INVOLVED

Ms. Cortez's Petition for a Writ of Certiorari involves the Fourth Amendment's right to be free from unreasonable searches and seizures:

U.S. Const. Amend. IV

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.

STATEMENT OF THE CASE

This Court has held that the use of a drug-detention canine unit after the completion of an otherwise lawful traffic stop exceeded the time needed to handle the matter for which the stop was made violated the Fourth Amendment's prohibition against unreasonable searches and seizures. *Rodriguez v. United States*, 575 U.S. 348, 350 (2015). The mission of the stop determines its allowable duration and the authority for the stop ends when the mission has been accomplished. This case poses the question of whether the same rule applies when an officer extends the stop to allow border patrol agents to arrive without reasonable suspicion or other lawful justification.

1. The traffic stop

On May 1, 2018, Ms. Cortez was driving a pickup truck northbound on New Mexico Highway 80. Ms. Cortez's sister, Josefina Reyes-Moreno, their niece and nephew, and two men were passengers in the vehicle. At approximately 4:07 p.m., New Mexico State Police Sergeant Christopher Alvarez stopped Ms. Cortez allegedly for speeding near mile marker 27 in Hidalgo County, New Mexico.

During the traffic stop, Officer Alvarez questioned Ms. Cortez, Ms. Reyes-Moreno, and the passengers on matters unrelated to the traffic ticket. This line of questioning unreasonably prolonged the duration of the stop beyond the permissible scope of a stop for issuing a traffic ticket. Officer Alvarez did not allow Ms. Cortez to terminate the encounter. Officer Alvarez called United States Border Patrol for

assistance because he suspected that the two adult male passengers were undocumented persons from Mexico.

Border Patrol Agent Rockford Wyrembelski arrived at approximately 4:27 p.m. Officer Alvarez informed Agent Wyrembelski that he believed undocumented persons were in the vehicle. Agent Rockford Wyrembelski questioned the passengers of the vehicle. The two men were undocumented persons.

Border Patrol agents transported Ms. Cortez, Ms. Reyes-Moreno, and the passengers to the Border Patrol Station in Lordsburg, New Mexico. Border Patrol agents obtained statements from Ms. Cortez, Ms. Reyes, and the passengers.

2. The district court proceedings

The United States charged Ms. Cortez and Ms. Reyes-Moreno with conspiracy to transport undocumented persons and transporting undocumented persons. Ms. Cortez and Ms. Reyes-Moreno filed a Joint Motion to Suppress Evidence and Statements contending that their Fourth Amendment rights were violated because Officer Alvarez unreasonably extended the scope of the stop, Officer Alvarez had no basis to prolong the stop, neither Ms. Cortez nor Ms. Reyes-Moreno consented to the unlawful detention, their statements were obtained in violation of the Fifth Amendment because they were in custody, Officer Alvarez unlawfully interrogated them, and the fruits of the unlawful stop, detention, and interrogation must be suppressed.

After an evidentiary hearing, the district court denied the motion to suppress. The district court determined that the scope and length of the stop was reasonable and Ms. Cortez and Ms. Reyes-Moreno were not in custody during the stop. The

district court concluded Ms. Cortez and Ms. Reyes-Moreno's Fourth Amendment rights were not violated, their Fifth Amendment rights were not implicated.

Ms. Cortez subsequently entered a conditional guilty plea, reserving her right to appeal the denial of the motion to suppress. On March 20, 2019, the district court sentenced Ms. Cortez to the lesser of ten days or time served and two years of supervised release.

3. The decision of the court of appeals

Ms. Cortez appealed the denial of the motion to suppress, but the Tenth Circuit affirmed. Citing this Court's decision in *Rodriguez v. United States*, 575 U.S. 348, 350 (2015), the Tenth Circuit started with the proposition that: "To be reasonable, a traffic stop must be justified at its inception and the officer's actions must be 'reasonably related in scope' to the 'mission of the stop.'" *United States v. Cortez*, 965 F.3d 827, 833 (10th Cir. 2020).

The Tenth Circuit continued

The questions relating to whether Cortez was working in Douglas, whom she was staying with while there, and what her boyfriend did for a living are farther afield. But we find these questions permissible as the type of "negligibly burdensome" inquiries directed at ensuring officer safety. *See United States v. Rice*, 483 F.3d 1079, 1084 (10th Cir. 2007) ("While a traffic stop is ongoing . . . an officer has wide discretion to take reasonable precautions to protect his safety."). As Sergeant Alvarez testified, he routinely asks innocuous background questions to assess driver stress, nervousness, and evasiveness to help gauge the degree of caution necessary in conducting a stop. R. at 162 (testifying that he "engage[s] [people] in conversation . . . [f]or officer safety, to get a feel for what's going on, who you're dealing with"); *id.* (noting that his practice is to "have a conversation with [people] . . . on the side of the road we talk about travel itinerary, you know what brings them to New Mexico, and based on that, you know, we'll determine okay, it's common motoring public").

The specific questions Sergeant Alvarez posed here represent only a few conversational inquiries related to the identity and travel plans he and Cortez had been discussing. After asking them, apparently satisfied that more precautions were unnecessary, he immediately returned to the business of completing the stop. Such questioning is consistent with both the public's expectations regarding ordinary inquiries incidental to traffic stops and taking the least burdensome approach to ensuring officer safety. *See Cone*, 868 F.3d at 1153–54 (holding asking a driver questions regarding his or her criminal history is justifiable as a negligibly burdensome inquiry in part because “allowing the officer to ask the question may provide important clues pertaining to safety, such as nervous or evasive responses”).

Furthermore, after a review of the record, we are not convinced these questions were posed as a pretext to “facilitate” a detour into investigating other crimes. *See Rodriguez*, 575 U.S. at 356. A useful comparison here are the questions Sergeant Alvarez and Sergeant Gomez posed to Cortez in the last thirteen minutes of the stop. During that period, despite already knowing their identities, Sergeant Alvarez asked Cortez whether she and Reyes-Moreno were biological sisters, inquired whether there were a lot of lakes in Alabama, and asked Cortez a series of repetitive questions regarding how long Reyes-Moreno had been in Douglas. Both Sergeant Alvarez and Sergeant Gomez also inquired in depth regarding the circumstances of picking up the two men.

Ms. Cortez believes that the Tenth Circuit has misinterpreted the meaning of the “mission of the stop” and the allowable duration of the stop in *Rodriguez v. United States*, and that the Fourth Amendment prohibits a post-stop detention to allow border patrol agents to arrive without reasonable suspicion or probable cause. She seeks a writ of certiorari from the decision of the Tenth Circuit.

REASONS FOR GRANTING THE WRIT

1. The decision of the court of appeals conflicts with this Court's precedent

Certiorari review is necessary because the decision of the court of appeals

stands in conflict withstands in conflict with this Court’s precedent.

Officer Alvarez unreasonably extended the scope of the traffic stop by extending the detention beyond the time required to complete the purpose of the traffic stop. An investigative detention may only last as long as necessary to effectuate its purpose. *See Florida v. Royer*, 460 U.S. 491, 500 (1983). “A seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission.” *Illinois v. Caballes*, 543 U.S. 405, 407 (2005). The seizure remains lawful only “so long as [unrelated] inquiries do not measurably extend the duration of the stop.” *Arizona v. Johnson*, 555 U.S. 323, 333 (2009). “On-scene investigation into other crimes, however, detours from that mission.” *Rodriguez v. United States*, 575 U.S. 348, 356 (2015).

If an officer can complete the stop expeditiously, then that is the time reasonably required to complete the stop’s purpose. *Rodriguez*, 135 S.Ct. at 356. Typically the inquiries needed to handle a traffic stop involve checking the driver’s license, determining whether there are outstanding warrants, and inspecting the automobile’s registration and proof of insurance. *Id.* at 355. A traffic stop prolonged beyond the amount of time reasonably required to complete the stop’s mission is unlawful. *Id.* at 357.

Consequently, prolonging the duration of a traffic stop to ask questions that have nothing to do with the reason for the stop transgresses the Constitution. *United States v. Stepp*, 680 F.3d 651, 662–64 (6th Cir. 2012); *United States v. Macias*, 658 F.3d 509, 522 (5th Cir. 2011). “The critical question, then, is not whether [unrelated]

questioning] occurs before or after the officer issues a ticket, but whether the [unrelated questioning] ‘prolongs’—*i.e.*, adds time to—‘the stop.’” *Rodriguez*, 575 U.S. at 357 (internal citations omitted). It is the government’s burden to show that a seizure was sufficiently limited in scope and duration to satisfy the conditions of an investigative detention. *Royer*, 460 U.S. at 500.

In this case, Officer Alvarez prolonged the traffic stop beyond the time reasonably required to issue a speeding ticket to Ms. Cortez. Officer Alvarez held Ms. Cortez for over twenty minutes before a Border Patrol agent arrived. However, Officer Alvarez gathered all the information necessary for the issuance of the citation within four minutes of the stop. Officer Alvarez called the Border Patrol approximately seven minutes after the stop. Officer Alvarez explained the citation and the legal process to Ms. Cortez within ten minutes of the stop. Ms. Cortez stated she would plead guilty and asked how to pay the fine within eleven minutes of the stop. After Ms. Cortez offered to plead guilty, the dispatcher notified Officer Alvarez that the estimated time for Border Patrol was twenty minutes.

This Court found a Fourth Amendment violation where the traffic stop was prolonged by seven to eight minutes for reasons unrelated to the original stop. *See Rodriguez*, 575 U.S. at 367. In this case, Officer Alvarez unreasonably prolonged the stop by approximately sixteen minutes to allow border patrol agents to arrive on the scene.

There is no legitimate reason why the stop should have taken so long. Officer Alvarez justified the duration by simply stating that it took that long to write the speeding ticket, specifically given that he had to double check Ms. Cortez’s weight

and the year of the vehicle. However, this was information that Officer Alvarez had already obtained within minutes of the stop, and asked for a second time after at least ten minutes of completely unrelated questions. Officer Alvarez only started writing the ticket around ten minutes into the stop, and then continued to write the ticket for another approximately ten minutes. He did so even though most of the information, other than Ms. Cortez's weight and the vehicle's year, self-populated on the citation through the computer program. There is no evidence the computer equipment was malfunctioning on this particular date and Officer Alvarez does not allege that he was still waiting for returns from dispatch in order to complete the investigation. The fact that Officer Alvarez happened to still be writing the citation can only justify the duration of the stop if it was reasonable. Based on the foregoing, it was not.

Rather than simply complete the traffic citation, or obtain the information necessary to do so, Officer Alvarez unreasonably extended the scope of the stop by asking questions unrelated to the issue of speeding, or to ensuring that Ms. Cortez was properly licensed and the truck properly registered and insured. Officer Alvarez asked numerous questions about Ms. Cortez's travel plans, where she was staying, who she was with, how long she was in Douglas, the occupation of Ms. Cortez's boyfriend, and how many lakes were in Alabama. Officer Alvarez asked extremely personal questions about Ms. Cortez's living arrangements and family. *See United States v. Santos*, 403 F.3d 1120, 1132 (10th Cir. 2005) ("[v]ague answers" regarding travel plans may have been "a polite way to sidestep impertinent questions. . . . We therefore do not give much independent weight to this factor"); *United States v. Wood*, 106 F.3d 942, 944, 947 (10th Cir. 1997) (defendant's error in identifying the city where

he rented the car did not give rise to reasonable suspicion). This conversation unreasonably extended the detention’s duration beyond the time needed to issue a speeding ticket.

“Authority for the seizure . . . ends when tasks tied to the traffic infraction are—or reasonably should have been completed.” *Rodriguez*, 575 U.S. at 357–58 (citation omitted). *See also Caballes*, 543 U.S. at 406. An officer may extend a traffic stop beyond its initial scope, however, in either of two circumstances: (1) if, during the stop, the officer acquires “a particularized and objective basis for suspecting the person stopped of criminal activity”; or (2) if the driver voluntarily consents to further questioning. *United States v. West*, 219 F.3d 1171, 1176 (10th Cir. 2000).

Thus, the authority for the seizure ended within the time it should have taken Officer Alvarez to diligently investigate the traffic infraction. At the latest, this was when Officer Alvarez explained the citation and Ms. Cortez stated she wanted to plead guilty and pay her fine.

The extension of the stop was not supported by independent reasonable suspicion. *See Rodriguez*, 575 U.S. at 357 (stating that an officer may not conduct unrelated checks “in a way that prolongs the stop”); *United States v. Walker*, 933 F.2d 812, 816 (10th Cir. 1991) (finding that a detention without reasonable suspicion to ask questions unrelated to the speeding infraction violated the Fourth Amendment); *Macias*, 658 F.3d at 518–22 (holding that the officer prolonged a stop without reasonable suspicion with questions unrelated to the seat-belt-violation); *United States v. Peralez*, 526 F.3d 1115, 1117–18, 1120–21 (8th Cir. 2008) (holding stop unlawful where the officer interspersed drug interdiction questions into investigation

of a license plate violation).

The issue presented in this case is significant because of its potential ramifications in other areas of Fourth Amendment jurisprudence. The ambiguity inherent in the Tenth Circuit's application of *Rodriguez* makes it difficult for law enforcement officers to know with certainty that they are operating within constitutional bounds. *See Berghuis v. Thompkins*, 560 U.S. 370, 381 (2010) (ambiguous standards hinder law enforcement officers' ability to make decisions in the field). To prevent such ambiguity and to stem any further erosion of the Fourth Amendment's safeguards, this Court should grant certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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