No. 21-____

IN THE

Supreme Court of the United States

JANHOI COLE,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari To the United States Court of Appeals For the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the extension of a traffic stop for an officer to ask detailed questions about the driver's travel plans violates the Fourth Amendment rule in *Rodriguez v. United States*, 575 U.S. 348 (2015), that during a traffic stop, officer conduct must be related to the mission of the stop and not an investigation of unrelated crimes.

RELATED PROCEEDINGS

U.S. District Court for the Central District of Illinois

United States v. Cole, No. 18-cr-30038, 2019 WL 4280602 (C.D. Ill. July 22, 2019)

United States v. Cole, No. 18-cr-30038-RM-TSH-1, 2019 WL 4280579 (C.D. Ill. Sept. 10, 2019)

U.S. Court of Appeals for the Seventh Circuit

United States v. Cole, 994 F.3d 844 (7th Cir. 2021)

United States v. Cole, 21 F.4th 421 (7th Cir. 2021) (en banc)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The court of appeals' en banc opinion (App. 1a-47a) is reported at 21 F.4th 421. The panel opinion (App. 49a-87a) is reported at 994 F.3d 844. The district court's opinion (App. 88a-90a) is unreported but available at 2019 WL 4280579, and the magistrate judge's opinion (App. 91a-111a) is unreported but available at 2019 WL 4280602.

JURISDICTION

The judgment of the court of appeals was entered on December 17, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL PROVISION

The Fourth Amendment to the United States Constitution provides, in relevant part, "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated."

INTRODUCTION

Traffic stops provoke a universal response of anxiety. The flashing red lights and megaphone instructions mean, at the least, unwanted delay. But drivers can reassure themselves that the intrusion is limited. They expect to show their license and registration, provide proof of insurance, receive a ticket or a warning for the violation, and be sent on their way. In *Rodriguez v. United States*, 575 U.S. 348 (2015), this Court held that this common expectation reflects constitutional law. The Fourth Amendment, the Court explained, limits the permissible duration of a stop to the time necessary to complete its mission. *Id.* at 350-51. Absent reasonable suspicion of a more serious violation, officers may not prolong a routine traffic stop as pretext to investigate unrelated criminal activity. *Id*. at 354.

In this case, however, the Seventh Circuit held that questions about a driver's travel plans are "ordinarily" part of the mission of traffic stops—regardless of the specific traffic violation at hand. App. 12a. The court reasoned that travel-plan questions are part of

the mission of a traffic stop not only based on paper-thin connections to the violation and roadway-safety concerns, but also merely because a driver is traveling at the time of the stop. Applying that logic, the court upheld a traffic stop where an officer extended the stop to ask detailed, repetitive, and intrusive travel-plan questions in order to pursue his hunches about unrelated criminal activity. The court viewed minutes of circular questioning about petitioner's starting point, his destination, his work, and his residence as part of the "mission" of the traffic stop. And it so held despite the lack of plausible connection between the travel-plan questions and petitioner's offense of following another car too closely.

The Seventh Circuit's decision dramatically expands the scope of a traffic stop at the cost of Fourth Amendment rights. *Rodriguez* identified license, registration, insurance, and warrant checks as part of the stop's mission, 575 U.S. at 355; it did not authorize a free-ranging inquest into travel plans. For good reason: such an open-ended field of inquiry gives officers a means of following their inarticulate hunches that something is amiss, while drivers experience delay, inconvenience, and humiliation. Because this ruling is wrong, has widespread implications for routine stops, and invites potential abuses that disproportionately affect Black and Hispanic drivers, this Court should grant certiorari and reverse.

STATEMENT

1. The Stop, Investigation, and Search

On June 25, 2018, Illinois State Trooper Clayton Chapman was on highway patrol duty when he received a message from Deputy Sheriff Derek Suttles about a Volkswagen hatchback sedan with California license plates driving east on Interstate 72. Deputy Suttles reported that he found the car suspicious and that the car was driving 55 miles per hour in a 70 miles-per-hour zone. App. 50a.

Trooper Chapman soon spotted the Volkswagen, which was driven by petitioner Janhoi Cole. Chapman trailed the vehicle, intending to observe petitioner commit a traffic violation that could serve as a pretext for a roadside stop. As Interstate 72 merged with Interstate 55, another car cut off petitioner's car. Trooper Chapman believed he had witnessed a violation of an Illinois statute that provides that "[t]he driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway." 625 ILCS 5/11-710. Trooper Chapman pulled petitioner to the shoulder, requested his license and registration, and instructed him to exit the vehicle and sit in the front seat of the police cruiser. App. 4a, 50a.

The roadside stop lasted ten minutes, including eight-and-a-half minutes of questioning in the police cruiser. About four minutes into the stop, Trooper Chapman diverted from the traffic offense and petitioner's license and registration to ask petitioner about his travel plans. The trooper spent the next six

minutes probing those issues. Trooper Chapman asked petitioner about his state of residence, employment, travel plans, travel history, vehicle history, and registration information. Petitioner responded that he was a traveling chef who split his time between New York, Los Angeles (where his girlfriend lived and where the car was registered), and Maryland (where he was employed). He explained that he was driving from Maryland to Cincinnati to Colorado and back. The trooper repeated back several of petitioner's answers with evident skepticism, essentially asking for petitioner to repeat his answers. Petitioner responded with growing signs of nervousness. App. 5a-7a, 51a.

About eight minutes into the stop, Trooper Chapman told petitioner that he could go with only a warning, but that Chapman preferred to prepare the warning paperwork at a nearby gas station because it was safer than the road shoulder. (Trooper Chapman later testified, however, that he had already decided he was not going to let petitioner go until he figured out a way to search the car for drugs.) Petitioner responded that he wanted to continue his trip as soon as possible but that he would go to the gas station if he had to—which Trooper Chapman insisted he did. Both men drove to the gas station in their respective vehicles. During the drive, Trooper Chapman radioed to request a drug-sniffing dog. App. 7a, 50a-51a.

At the gas station, Trooper Chapman requested petitioner's proof of insurance, which he had not requested during the initial roadside stop. Trooper Chapman then learned from a radio call that peti-

tioner had been arrested for drug crimes 15 years earlier. Trooper Chapman continued to question petitioner about his vehicle, travel plans, and residence. Petitioner began to give conflicting answers about who he had visited in Colorado, how long he had been traveling, and how he had secured car insurance and registration remotely. More than 30 minutes after he first pulled petitioner over, Trooper Chapman informed petitioner that he was not free to go because Trooper Chapman suspected him of transporting drugs. Ten minutes later, the drug-sniffing dog arrived and alerted to the presence of drugs. Trooper Chapman searched the vehicle and found several kilograms of methamphetamine and heroin in a hidden compartment. App. 7a, 51a-52a.

2. The Prosecution and Appeal

a. A grand jury indicted petitioner on two counts of possessing controlled substances with intent to distribute. Petitioner moved to suppress the drugs on the basis that Trooper Chapman's search violated the Fourth Amendment—specifically, as relevant here, that Trooper Chapman impermissibly prolonged the stop without justification in violation of *Rodriguez v. United States*, 575 U.S. 348 (2015). App. 91a.

At a suppression hearing, Trooper Chapman conceded that issuing a warning normally takes about 15 minutes and that he intentionally delayed part of his investigation. Even before he stopped petitioner, Trooper Chapman had petitioner's license and registration information, and he knew there was insurance information on file. App. 52a.

The magistrate judge concluded that by the end of the roadside interrogation, ten minutes into the stop, Trooper Chapman had reasonable suspicion that petitioner was trafficking drugs, which justified delaying the stop until the drug-sniffing dog arrived a half hour later. The magistrate judge did not address whether Trooper Chapman prolonged the initial roadside stop by questioning petitioner extensively on topics unrelated to the pretextual basis for the stop. App. 52a-53a.

Over petitioner's objection, the district court adopted the magistrate judge's recommendation that the motion to suppress be denied. App. 53a, 88a-90a. Petitioner conditionally pleaded guilty to two counts of possessing a controlled substance with intent to distribute in violation of 21 U.S.C. § 841(a)(1), reserving his right to appeal the suppression issues. He was sentenced to 74 months in prison. App. 53a.

b. A divided panel of the court of appeals reversed. App. 49a-87a. The majority concluded that Trooper Chapman unreasonably prolonged the initial roadside stop by asking repeated and extensive questions unrelated to the stated purpose of the stop. App. 49a-50a, 75a. The majority explained that "[t]he reasonableness standard of the Fourth Amendment permits police officers substantial flexibility in how they perform their duties in a traffic stop." App. 73a. But in this case, the majority continued, "the undisputed evidence shows that Trooper Chapman's pretext was paper-thin, and he prolonged the stop for at least six minutes" with an interrogation "unrelated to tailgating or road safety." App. 61a, 73a. Judge St. Eve dissented, arguing that the travel-plan questions were

"acceptable inquiries that fall within the scope of a traffic stop." App. 81a.

c. The court of appeals *sua sponte* granted rehearing en banc to address whether travel-plan questions are part of the "mission" of a traffic stop under *Rodriguez*, and by a 7-3 vote affirmed the judgment of the district court. App. 1a-47a. The *en banc* majority held, contrary to the reasoning of the panel, that "travel-plan questions ordinarily fall within the mission of a traffic stop." App. 2a. The court justified that rule by stating that travel plans provide "important context"; the questions "may" bear on "roadway safety concerns beyond the immediate violation'"; and, "[a]t a more general level," they are "typically [] related to the purpose of a traffic stop because the motorist is traveling at the time of the stop." App. 12a-13a (internal quotation marks omitted). While the court conceded that the questioning must be "reasonable under the circumstances," it believed that the questions here met that test because the officer regarded petitioner's answers as implausible, thus justifying his follow-up questions under an "important corollary" of its holding: an officer can not only ask about travel plans, but can reasonably pursue questioning until he is satisfied that the answers are "truthful." App. 2a, 15a-17a. And the court concluded that the questioning it found permissible ultimately produced reasonable suspicion nine minutes into the stop, thus justifying an investigative detention. App. 19a-20a.

Judge Hamilton, joined by Judges Rovner and Wood, dissented. Judge Hamilton recognized that pretextual traffic stops, followed by a question or two

about the driver's destination, are permissible under the Fourth Amendment. App. 24a. But, he argued, the majority approved a rule that ranged far beyond that. "Under the majority opinion, the officer may also subject a driver and passengers to repetitive and detailed questioning about where they are coming from and where they are going *until the officer is satisfied that the answers are truthful*." *Id.* "[T]his decision," he explained, "will enable police officers to harass and humiliate civilians" by "subject[ing] almost any motorist to similar interrogation." *Id.* That expansive authority raised heightened concerns, he noted, because of the disproportionate rates that Black and Hispanic drivers are stopped on pretextual grounds. App. 27a-28a. And here, he observed, after having made a pretext stop for tailgating, "the trooper almost immediately focused on a different topic: detailed, repetitive, and intrusive questioning about [petitioner's] travel itinerary." App. 33a. "[W]e should not be surprised" by the officer's exploration of unrelated "criminal wrongdoing," he noted, "[s]ince detecting evidence of ordinary criminal wrongdoing is often the officer's real purpose." App. 35a. Under *Rodriguez*, however, "the officer's prolonging of this stop violated the Fourth Amendment." App. 25a.

REASONS FOR GRANTING THE PETITION

The court of appeals' decision provides a roadmap for converting routine traffic stops into a wide-ranging opportunity to investigate hunches. Under the court's ruling, an officer can typically ask detailed questions about travel plans as an incident of the stop, even for an offense as innocuous as a broken taillight. And under an "important corollary" of that rule,

the officer can pursue his doubts about the answers until he is satisfied that he has obtained the truth. This leveraging of the stop to manufacture reasonable suspicion of unrelated criminal conduct runs afoul of the Fourth Amendment principles announced in *Rodriguez*: officer conduct during a stop must adhere to its mission. The mission of the stop is to resolve the infraction and preserve roadway safety, not to satisfy officer curiosity about where the motorist came from, where he is going, and why. The court of appeals' mistaken holding opens up a wide berth for officers to pursue unrelated and inarticulate hunches in pretextual stops—a practice that falls most heavily on minority communities. This Court should grant certiorari and reverse.

A. The Seventh Circuit's Holding Is Wrong

Traffic stops are seizures under the Fourth Amendment. *Whren v. United States*, 517 U.S. 806, 809 (1996). And, like all searches and seizures, they are subject to the Fourth Amendment's overarching requirement of reasonableness. *See Heien v. North Carolina*, 574 U.S. 54, 60 (2014) ("[T]he ultimate touchstone of the Fourth Amendment is reasonableness." (internal quotation marks omitted)). The Seventh Circuit's holding permits an expansive detention of motorists through traffic-plan inquiries that reach far beyond the limited justification for the seizure.

1. a. Traffic stops are "more analogous" to *Terry* stops than to formal arrests. *See Berkemer v. McCarty*, 468 U.S. 420, 439 (1984) (citing *Terry v. Ohio*, 392 U.S. 1 (1968) (permitting brief investigative detentions based on reasonable suspicion)); *see also*

Knowles v. Iowa, 525 U.S. 113, 117 (1998). Accordingly, such stops must be based on reasonable suspicion of a particular traffic violation, *Heien*, 574 U.S. at 60, and be brief and limited in scope, *Rodriguez*, 575 U.S. at 354; *see Hiibel v. Sixth Jud. Dist. Ct. of Nev.*, 542 U.S. 177, 185 (2004) (citation omitted) (a traffic stop must be "justified at its inception, and reasonably related in scope to the circumstances which justified the interference in the first place"); *Berkemer*, 468 U.S. at 439 ("[T]he stop and inquiry must be reasonably related in scope to the justification for their initiation.") (internal quotation marks omitted); *see also United States v. Brignoni-Ponce*, 422 U.S. 873, 881 (1975); *Terry*, 392 U.S. at 29.

A stop's reasonableness is in part determined by its duration. The acceptable duration of a traffic stop "is determined by the seizure's 'mission'—[which is] to address the traffic violation that warranted the stop . . . and attend to related safety concerns," *Rodriguez*, 575 U.S. at 354 (citing *Illinois v. Caballes*, 543 U.S. 405, 407 (2005)). A traffic stop may last only as long as it "reasonably" takes to accomplish its "mission." *Id.* at 350. Once an officer has finished the "tasks" required to investigate the traffic violation—"or reasonably should have" through the exercise of diligence—the seizure must end. *Id.* at 354 (citing *United States v. Sharpe*, 470 U.S. 675, 686 (1985)).

b. Because questioning is not itself a search or seizure, *see Mueller v. Mena*, 544 U.S. 93, 100 (2005) (citing *Florida v. Bostick*, 501 U.S. 429, 434 (1991)), officers may engage in unrelated inquiries during a traffic stop, so long as the questioning does not extend the

stop. *Rodriguez*, 575 U.S. at 354. "An officer's inquiries into matters unrelated to the justification for the traffic stop . . . do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop." *Arizona v. Johnson*, 555 U.S. 323, 333 (2009). But unless police acquire reasonable suspicion of criminal activity unrelated to the perceived traffic violation, the seizure is only lawful "so long as [unrelated] inquiries do not measurably extend the duration of the stop." *Rodriguez*, 575 U.S. at 355 (quoting *Johnson*, 555 U.S. at 333) (alteration in original)).

In *Rodriguez*, a police officer pulled over a vehicle for driving on the shoulder of the highway. The officer investigated the traffic offense and issued the driver a written warning. Although Rodriguez declined the officer's request to remain for a dog sniff, the officer instructed him to get out of the car and wait for another officer to arrive. The second officer came with a drug-sniffing dog, which alerted to drugs in the car. *Id.* at 351-52. Rodriguez challenged the extension of the stop after the traffic infraction had been resolved, and this Court agreed that the additional detention for the dog sniff after the completion of the mission of the stop violated the Fourth Amendment. *Id.* at 356.

Rodriguez defined the incidents of an ordinary traffic stop's "mission." The Court explained that the stop permits "checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." 575 U.S. at 355. The purpose of these "ordinary inquiries," *Caballes*, 543

U.S. at 408, is to "serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly," *Rodriguez*, 575 U.S. at 355, and to protect officer safety, *id.* at 356. "On-scene investigation into other crimes, however, detours from that mission." *Id.* Accordingly, if a task is "lacking [a] close connection to roadway safety," it "is not fairly characterized as part of the officer's traffic mission." *Id.* at 356. Prolonging the traffic stop beyond the time necessary to complete the mission of the stop—to investigate the traffic violation and attend to safety concerns—is therefore impermissible "absent the reasonable suspicion ordinarily demanded to justify detaining an individual." *Id.* at 355.

2. The Seventh Circuit's holding that travel plan questions are "ordinarily" part of the mission of any traffic stop departs from the principles articulated in *Rodriguez*. Those questions are more akin to a free-standing exploration of potential unrelated crimes than they are means of resolving the justification for the stop: a traffic violation and related safety concerns.

First, travel questions are dissimilar from the sorts of inquiries that *Rodriguez* described as part of an ordinary traffic stop's mission. Those questions—which "involve checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance"—have a clear connection to roadway and officer safety. Travel plan questions, as a general matter, do not.

By checking a driver's license, an officer can confirm that a driver has demonstrated the required competency and knowledge required to safely operate a vehicle on public roads. Checking for outstanding warrants against the driver allows an officer to assess potential threats and whether a driver has committed a traffic violation that indicates his inability to drive safely and responsibly. *Rodriguez*, 575 U.S. at 355 (citing 4 Wayne LaFave, *Search & Seizures* § 9.3(c) (5th ed. 2012)). And inspecting a vehicle's registration and proof of insurance allows an officer to assess the lawful operation of a particular vehicle. Whether the violation being investigated is speeding, swerving, or failing to use a turn signal, the inquiries described in *Rodriguez* are "close[ly] connect[ed] to roadway safety." *Id.* at 356.

In contrast, while a brief question or two about a driver's route of travel is reasonable, extensive and detailed probing of his point of origin and destination, as a general matter, is not. Assessing whether a driver was speeding, for example, does not require knowing the purpose of his journey to another state, let alone the nature of his employment, his associates at other locations, or other reasons for travel. And ferreting out the details of a multistate itinerary generally serves no other road-safety purpose in resolving the mission of the stop.

Second, the Seventh Circuit's addition of travel-plan questions to those approved in *Rodriguez* adds a range of permissible inquiry with no clear boundaries. Countless questions could be defined as "travel plan" inquiries, giving rise to an ever-expanding universe of permissible questions. "Inquiry into [a] driver's

travel plans . . . can include quite detailed questioning about precisely where the driver has been, where he is going, and who he has seen or will be seeing." 4 Wayne LaFave, *Search & Seizures* § 9.3(d) (6th ed. 2020-21). Such an inquiry can readily morph into an investigation of hunches that fall well below the level of articulable reasonable suspicion.

Travel-plan questions also differ from those cited in *Rodriguez* because they inherently have a wide variety of potential answers. The categories described in *Rodriguez* are specific inquiries with yes-or-no answers. A driver has a valid license or not; warrants are outstanding or not; and a car has valid registration and insurance coverage or not. *See* App. 43a-44a (Hamilton, J., dissenting). But travel-plan questions "call[] upon a driver to fully explain the past and forthcoming aspects of his travel." 4 LaFave, *supra*, § 9.3(d). They are naturally keyed to investigating non-traffic-related crime, which is not within the stop's permissible scope.

Third, the Seventh Circuit's "important corollary"—allowing follow-up questions until an officer is satisfied with the answers, App. 16a—opens the door to an ever-widening range of irrelevant tangents. The court of appeals reasoned that these questions are permissible because "travel-plan questions are not mere formalities; they serve important law enforcement purposes, and therefore an officer has an interest not only in asking such questions but also in receiving truthful answers to them." *Id.* But the court's rationale veers offtrack from this Court's decision in *Rodriguez*, which tied permissible questioning to the

resolution of the violation that justified the stop. Permitting unlimited probing until the officer is satisfied gives officers a ticket to go on a fishing expedition. For example, the officer can ask the driver to repeat answers, seek to elicit reactions by expressing doubt, or challenge whether answers are consistent, all with the purpose of investigating unrelated criminal activity. The officer can thus use travel-plan questions to manufacture reasonable suspicion that he otherwise lacks. Exploiting a limited-purpose stop to explore unrelated hunches is contrary to the central principle articulated in *Rodriguez*.

3. Of course, an initial question or two about a driver's itinerary raises no concerns. These were the facts in *Rodriguez* itself. 575 U.S. at 351 (officer asked passenger "where the two men were coming from and where they were going"). And in particular circumstances, travel-plan questions may be related to investigating a violation—such as the court of appeals' example of a driver's speeding to take his pregnant wife to the hospital. App. 13a. But just because in some circumstances limited questions about itinerary—like "what's the rush?"—are reasonable does not imply that detailed travel-route questions would ordinarily have any linkage to the purpose of the stop. To assess whether travel-plan questions have the requisite "close connection" to the mission, *Rodriguez*, 575 U.S. at 356, the analysis should take a case-specific approach that examines the specific facts at issue rather than one that defaults to a presumption that the questions are reasonable. 4 LaFave, *supra*, § 9.3(d).

The Seventh Circuit itself recognized that in some circumstances travel-plan questions might go too far,

but its reasoning makes that purported limit illusory. The court stretched to connect detailed travel-plan questions to the immediate violation and a broader concern about roadway safety. App. 13a. And if that were not attenuated enough to open the door to exploratory questioning, the court reasoned that travel itinerary questions are "[a]t a more general level" ordinarily related to the mission of a stop by virtue of the fact that a driver is traveling at the time of the stop. *Id*. But the very nature of a traffic stop is that a driver is *always* traveling at the time of a stop for a traffic violation. This does not leave space for exceptions to the rule that such questions are "ordinarily" permissible. And the court declined to clarify any limiting principles. Instead, the court refused to "speculate about scenarios in which travel plan questions might go too far" and decided that it was "enough to say that travel-plan questions go too far when they are no longer related to the stop itself." App. 20a. This circular and opaque statement provides no guidance whatever.

4. The facts in this case illustrate how the Seventh Circuit's rule allows officers to use a traffic stop as a fishing expedition for unrelated criminal activity without the required reasonable suspicion. Trooper Chapman received a tip from another officer that there was a suspicious car heading in his direction that was driving 55 miles per hour in a 70 mile-per-hour zone. When he saw the car, he followed it until he perceived a quintessential pretext traffic violation (tailgating) for which he could initiate a stop. Trooper Chapman pulled petitioner over, and asked him for his license and registration—both of which Trooper

Chapman had already received from the officer who provided the tip. He informed petitioner that he had been following the car in front of him too closely. But Trooper Chapman then diverted to ask repeatedly where petitioner was going and where he had come from. These travel inquiries then turned into questions about where he lived; where he worked; whom he worked for; and how long he had been traveling. App. 50a-53a. Trooper Chapman spent six of the first eight and a half minutes of the stop asking repeated questions unrelated to tailgating or traffic safety.

Under *Rodriguez*, once the officer had diligently engaged in tasks related to following another car too closely—including confirming a valid license, registration, and insurance; checking for outstanding warrants; and deciding whether to a give a citation—extending the stop's duration was impermissible. The travel-plan questions here are inconsistent with the diligent conduct of the mission of the stop; they were a transparent detour to investigate hunches about unrelated crime. Yet the Seventh Circuit's rule allowed this police strategy. This approach cannot be reconciled with the rule of *Rodriguez*.

B. This Case Presents A Recurring Issue Of Nationwide Importance

The Seventh Circuit's error calls out for review. Traffic stops are among the most common types of interactions police officers have with the public. Across the United States, police pull over more than 50,000 drivers on an average day and more than 20 million

drivers each year.[1] These stops intrude on travelers' liberty, delay their travel, and can subject them to humiliation. And in combination with the established lawful practice of pretext traffic stops, these extended encounters lend themselves to abusive and discriminatory police practices. The court of appeals' decision exacerbates the potential for abuse, and those abusive practices will persist absent this Court's intervention.

1. The question presented arises frequently

Challenges to travel-plan questions arise regularly in the federal courts of appeals, reflecting the frequency with which police officers ask these questions during a routine traffic stop. Several courts of appeals have misunderstood *Rodriguez* in holding that travel plan questions are generally within the "mission" of a traffic stop. Like the court of appeals below, the Eleventh Circuit recently held that "[g]enerally, questions related to an individual's traffic plans or itinerary are ordinary inquires related to a traffic stop." *United States v. Braddy*, 11 F.4th 1298, 1311 (11th Cir. 2021). The First, Third, Fifth, Sixth and Tenth Circuits have held the same way. *United States v. Cortez*, 965 F.3d 827, 838 (10th Cir. 2020) ("An officer may . . . inquire about the driver's travel plans."), *cert. denied*, 141 S. Ct. 1250 (2021); *United States v. Garner*, 961 F.3d 264, 271 (3d Cir. 2020) ("[S]ome questions relating to a driver's travel plans ordinarily fall within the scope of the traffic stop.");

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[1] Emma Pierson et al., Stanford Open Policing Project, *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States*, 4 Nature Hum. Behav. 736, 736 (2020), https://5harad.com/papers/100M-stops.pdf.

United States v. Smith, 952 F.3d 642, 647 (5th Cir. 2020) (citation omitted) (concluding that officers "may . . . ask about the purpose and itinerary of the occupants' trip"); *United States v. Dion*, 859 F.3d 114, 125 (1st Cir. 2017) ("[O]ur case law allows an officer carrying out a routine traffic stop to . . . inquire into the driver's itinerary."); *United States v. Collazo*, 818 F.3d 247, 258 (6th Cir. 2016) (citation omitted) ("Questions relating to travel plans . . . rarely offend our Fourth Amendment jurisprudence."). And the Eighth Circuit has observed that "[i]n some post-*Rodriguez* cases we have at least suggested that travel-related questions remain a 'permissible' part of routine traffic stops in the Eighth Circuit." *United States v. Callison*, 2 F.4th 1128, 1131 n.2 (8th Cir. 2021), *cert. denied*, 142 S. Ct. 830 (2022) (citation omitted).

In *State v. Jimenez*, 420 P.3d 464, 469, 475-77 (Kan. 2018), in contrast, the court rejected "a bright-line rule permitting unbridled 'travel plan' questioning" and affirmed a suppression order where the travel plan questions prolonged a pretextual stop for following too closely. And other decisions outside the Seventh Circuit have recognized through more fact-specific analysis that travel-plan questions do not fall within the "mission" of a traffic stop merely because a person is traveling at the time of the stop. *See, e.g.*, *United States v. Gomez-Arzate*, 981 F.3d 832, 836, 840-44 (10th Cir. 2020) (concluding that a few minutes of travel-plan questioning violated the Fourth Amendment by prolonging a completed stop, but noting that detailed questioning on vehicle ownership may be permissible where driver is not listed on registration and cannot identify the vehicle's

owner); *Garner*, 961 F.3d at 271-72 (some itinerary questions were permissible, and follow-up on employment, family, criminal history, and unrelated conduct were permissible *only* where officer had reasonable suspicion of criminal activity). The cases thus demonstrate that police frequently ask travel-plan questions as part of a routine traffic stop, some courts outside of the Seventh Circuit have made efforts to rein them in, and no other court has adopted the expansive "corollary" that permits an officer to press for clarification until he is satisfied with the responses. As Professor LaFave has observed, "the contention 'that unrestrained travel plan questioning is routine and always within a traffic stop's mission' must be rejected out of hand." 4 LaFave, *supra*, § 9.3(d) (quoting *Jimenez*, 420 P.3d at 474). Only this Court can resolve the recurring question of the bounds that the Fourth Amendment places on that common practice.

2. The decision below creates the potential for abuse

Against the backdrop of this Court's Fourth Amendment jurisprudence, the court of appeals' holding creates the potential for abusive police practices and racially discriminatory policing. In *Whren*, this Court held that "[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis." 517 U.S. at 813. To the contrary, courts must use an objective standard to determine whether a traffic stop was reasonable, without assessing the officer's underlying purpose. That objective test gives police offers substantial leeway to stop vehicles for pretextual purposes.

This objective test, coupled with the sheer number of traffic laws and the vast discretion many of those laws leave to the officers enforcing them, empower the police to stop almost any vehicle after watching it for just a few minutes. "In the most literal sense, no driver can avoid violating some traffic law during a short drive, even with the most careful attention;" "with the traffic code in hand, any officer can stop any driver any time." David A. Harris, *"Driving While Black" and All Other Traffic Offenses: The Supreme Court and Pretextual Traffic Stops*, 87 J. Crim. L. & Criminology 544, 545, 558-59 (1997); *cf.* Robert Jackson, *The Federal Prosecutor, Address Delivered at the Second Annual Conference of United States Attorneys* 31 J. Crim. L. & Criminology 3, 5 (1940) ("We know that no local police force can strictly enforce the traffic laws, or it would arrest half the driving population on any given morning.").

Beyond the sheer proliferation of traffic laws, many of these laws accord the enforcing officer significant discretion. Here, for instance, the officer's stop was justified by a perceived violation of an Illinois law providing that the "driver of a motor vehicle shall not follow another vehicle more closely than is *reasonable and prudent*, having *due regard* for the speed of such vehicles and the traffic upon and the condition of the highway." 625 ILCS 5/11-710(a) (emphases added). And courts will uphold a traffic stop based not only on the actual circumstances or the law as written, but also on an officer's reasonable mistake of fact or law. *Heien*, 574 U.S. at 61. These layers of discretion provide officers ample room to stop virtually any motorist and for courts to uphold those stops as reasonable.

Since *Whren*, the phrase "driving while Black" has been used to describe how the objective test for a traffic stop's reasonableness enables abusive police practices and racially discriminatory stops and searches. *See, e.g.*, Tracey Maclin, *Cops and Cars: How the Automobile Drove Fourth Amendment Law*, 99 B.U. L. Rev. 2317, 2347-49 (2019); David A. Harris, *Profiles in Injustice: Why Racial Profiling Cannot Work* 30 (2002); Tracey Maclin, *Race and the Fourth Amendment*, 51 Vand. L. Rev. 333, 336 n.19 (1998); David A. Sklansky, *Traffic Stops, Minority Motorists, and the Future of the Fourth Amendment*, 1997 Sup. Ct. Rev. 271, 308-16 (1997). Empirical studies based on millions of traffic stops have shown that police departments have abused *Whren* to conduct widespread pretext stops and that Black and Hispanic drivers are disproportionately subjected to such stops and attendant searches. *See Utah v. Strieff*, 579 U.S. 232, 254 (2016) (Sotomayor, J., dissenting) ("[I]t is no secret that people of color are disproportionate victims of this type of scrutiny.").

Even controlling for variables other than racial profiling, these studies reveal notable racial disparities in police stops. *See, e.g.*, Emma Pierson et al.*, supra*, at 736 (analyzing data from approximately 100 million traffic stops nationwide); Stephen Rushin & Griffin Edwards, *An Empirical Assessment of Pretextual Stops and Racial Profiling*, 73 Stan. L. Rev. 637 (2021) (analyzing data from 8 million Washington state traffic stops); Frank R. Baumgartner, Derek A. Epp & Kelsey Shoub, *Suspect Citizens* 215 (2018) (analyzing 18 years of North Carolina data); Samuel R.

Gross & Katherine Y. Barnes, *Road Work: Racial Profiling and Drug Interdiction on the Highway*, 101 Mich. L. Rev. 651, 666-67 (2002) (analyzing three years of data from Maryland State Police). The North Carolina study, for instance, found that Black drivers were, on average, twice as likely as white drivers to be searched during a traffic stop. Some police forces had even higher racial disparities. Data from the Department of Justice, too, has long shown that Black and Hispanic drivers are much more likely than white drivers to be searched during a traffic stop. *See* Patrick A. Langan et al., Bureau of Just. Stats, *Contacts Between Police and the Public* 18 (2001).

These empirical studies also show that traffic stop searches rarely find drugs, let alone drugs in quantities large enough for distribution. Examining data from more than 20 million traffic stops, the North Carolina study found that searches were conducted in about 3.36% of stops, or 690,000. Baumgartner et al., *supra*, at 59. Only 96,841 of those stops, or 14% of all searches, turned up drugs in any quantity. *Id*. at 62. And distribution quantities of drugs are generally found in only a small percentage of searches that yield drugs at all. *See* Gross & Barnes, *supra*, at 695-97 (only 11.2% of Maryland State Police vehicle searches in known drug corridor yielded distribution quantities of drugs). Simply put, police disproportionately use this intrusive tactic on Black and Hispanic drivers, the vast majority of those drivers are not trafficking drugs, and these individuals have no remedy.

The abusive police practices that lead to racially discriminatory stops subject millions of motorists

each year, including innocent motorists, to police detention by the side of the road. This Court has long recognized that even the briefest such detention is more than a "minor inconvenience and petty indignity." *Terry*, 392 U.S. at 10, 16-17 (citation omitted). For exactly that reason, this Court has "emphatically reject[ed]" the notion that the Fourth Amendment does not limit a police officer's conduct whenever he "accosts an individual and restrains his freedom to walk away." *Id*. at 16. Where, as here, a stop is motivated by an officer's desire to investigate suspected criminal activity unrelated to the stated purpose of the stop, officers can be expected to press the limits of their authority to investigate the actual reasons that prompted them to make the stop.

The potential for abusive questioning is highlighted by the fact that many standard police training materials do not instruct officers to ask travel-plan questions as part of a routine traffic stop—underscoring that travel plan questions are not necessarily (or even "ordinarily") within the mission of a traffic stop. The Illinois State Police Academy and Illinois Police Training Institute, for instance, instruct officers conducting a traffic stop to ensure that all license and registration information is correct but say nothing of travel-plan questions.[2] The California Commission on Peace Officer Standards and Training, a State government commission, instructs officers to greet the driver, identify themselves, explain the reason for the stop, and request the driver's license, registration,

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[2] Counsel obtained these training materials through a freedom-of-information request and will lodge them with the Court upon request. *Cf.* Sup. Ct. R. 32.3.

and proof of insurance.[3] The curriculum makes no mention of travel plan questions. And a curriculum from Massachusetts' Municipal Police Training Committee, which the Virginia Department of Criminal Justice Services also cites as a model, teaches that an officer may ask "additional questions" beyond license and registration, including "Where are you going tonight?"—but only "to gather or clarify needed information" like "identity" or "vehicle ownership."[4]

The doctrine around pretext stops must thus account for such "mission creep," *Jimenez*, 420 P.3d at 476, which unjustifiably expands and prolongs a motorist's police detention. The court of appeals' conclusion that travel plan questions are "ordinarily" within the mission of a traffic stop—merely by virtue of the traveler traveling—invites such expansion at the police officer's will. Indeed, one "widely followed police manual," *Strieff*, 579 U.S. at 251 (Sotomayor, J., dissenting), specifically instructs officers to deploy seemingly innocuous travel-plan questions to investigate drug crimes unrelated to the stated pretextual purpose of a traffic stop, *see* Charles Remsberg, *Tactics for Criminal Patrol* 277, 301-02 (1995). The court of appeals' rule not only fails to maintain the boundaries

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[3] Cal. Comm'n on Peace Officer Standards and Training, *Basic Course Workbook Series, Student Materials: Vehicle Pullovers*, 2-27 (rev. 2018), https://post.ca.gov/portals/0/post_docs/basic_course_resources/workbooks/LD_22_V-3.2.pdf.

[4] Commonwealth of Mass. Mun. Police Training Comm., *Motor Vehicle Stops*, *in Recruit Officer Course: Investigations* 35-36 (vers. 0108a), https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/sample_curriculum.pdf.

on traffic stops necessary to prevent them from becoming occasions for investigating unrelated criminal conduct, but openly invites that unjustified expansion. Only this Court can clarify the constitutional limitations on this intrusive practice.

C. This Case Is The Ideal Vehicle For Resolving The Question Presented

This case presents an opportunity for the Court to address whether travel-plan questions are "ordinarily" within the mission of a traffic stop merely because a person is traveling at the time of the stop. The legal issue is cleanly presented. Petitioner was stopped for the pretextual reason that he had violated an Illinois law prohibiting following too closely, and Trooper Chapman prolonged the stop to investigate his suspicion that petitioner was transporting drugs—criminal activity unrelated to the stated purpose of the stop. Trooper Chapman testified that he was not going to let petitioner go until a dog could sniff the car for drugs. App. 101a. That testimony reveals that Trooper Chapman was conducting the stop, including asking detailed and repeated travel plan questions, to investigate Deputy Suttles's hunch that petitioner was transporting drugs.

The court of appeals suggested that the record is "undeveloped" on whether Trooper Chapman's questioning in fact prolonged the stop. App. 11a. The record puts any such concern to rest, making clear that petitioner would benefit from reversal of the court of appeals' opinion. Trooper Chapman's dashboard camera recorded the stop. In addition, Trooper Chapman already had petitioner's license and registration information at the outset of the stop, and he did not seek

additional insurance information until he and petitioner had already arrived at the gas station. App. 51a. And Trooper Chapman admitted that he waited to collect certain information related to the violation for following too closely because he was "trying to piece together Mr. Cole's story, which was . . . kind of inconsistent." App. 64. Finally, the government has not tried to demonstrate that Trooper Chapman's questioning about petitioner's travel plans was actually making progress on, or even had the potential to resolve, on the subject of the traffic stop.

This was not the diligent conduct of a traffic stop with a limited mission; it was instead a textbook example of a pretext stop where the underlying suspicion of unrelated criminal conduct rose to the surface and steered the encounter. Citizens expect the police to process a ticket, not to probe for inconsistent stories until they have generated reasonable suspicion. This Court should intervene to put a halt to such free-ranging intrusions.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A

In the United States Court of Appeals For the Seventh Circuit

No. 20-2105

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JANHOI COLE,

Defendant-Appellant.

Appeal from the United States District Court for the Central District of Illinois.

No. 3:18-cr-30038 – **Richard Mills**, *Judge*.

ARGUED SEPTEMBER 30, 2021 – DECIDED DECEMBER 17, 2021

Before SYKES, *Chief Judge*, and EASTERBROOK, KANNE, ROVNER, WOOD, HAMILTON, BRENNAN, SCUDDER, ST. EVE, and KIRSH, *Circuit Judges*.*

* Circuit Judge Jackson-Akiwumi did not participate in the consideration or decision of this case.

ST. EVE, *Circuit Judge*. An Illinois state trooper stopped Janhoi Cole for following too closely behind another car. At the time, Cole was traveling on an Illinois interstate with an Arizona driver's license and a California registration. During the brief roadside detention that followed, the trooper questioned Cole about his license, registration, and travel plans. Cole's answers struck the trooper as evasive, inconsistent, and improbable. Many of the trooper's questions were follow-up questions to Cole's answers and volunteered information. Combined with other factors, they led the trooper to suspect that Cole was trafficking drugs. To investigate his suspicions, the trooper called for a K-9 unit to meet him and Cole at a nearby gas station. The dog alerted, and officers found large quantities of methamphetamine and heroin in Cole's car.

Facing federal charges, Cole moved to suppress the drugs as well as his statements during the stop. He argued that the trooper unlawfully initiated the stop and unreasonably prolonged it without reasonable suspicion of other criminal activity. The district court denied the motion, but a divided panel of this Court reversed on the basis that the trooper's initial roadside questioning unreasonably prolonged the traffic stop. We reheard the case en banc to resolve an apparent conflict between the panel's decision and *United States v. Lewis*, 920 F.3d 483 (7th Cir. 2019), as to whether travel-plan questions are part of the "mission" of a traffic stop under *Rodriguez v. United States*, 575 U.S. 348 (2015).

In keeping with *Lewis* and the consensus of other circuits, we hold that travel-plan questions ordinarily fall within the mission of a traffic stop. Travel-plan questions, however, like other police inquiries during

a traffic stop, must be reasonable under the circumstances. And here they were. The trooper inquired about the basic details of Cole's travel, and his follow-up questions were justified given Cole's less-than-forthright answers. The stop itself was lawfully initiated, and the trooper developed reasonable suspicion of other criminal activity before moving the initial stop to the gas station for the dog sniff. We therefore affirm the district court's denial of Cole's motion to suppress.

I.

A magistrate judge held a hearing on Cole's motion to suppress. Evidence at the hearing included the trooper's police report and dash camera video as well as testimony from Cole, the trooper, and another officer involved in the stop. After the hearing, the magistrate judge entered a report and recommendation with extensive factual findings, which the district court adopted. Absent clear error, we defer to the district court's factual findings. *United States v. Bacon*, 991 F.3d 835, 840 (7th Cir. 2021).

A.

Sheriff's Deputy Derek Suttles was on criminal interdiction patrol in central Illinois when he spotted a silver Volkswagen hatchback traveling east on the interstate. The car caught his attention because it was travelling 10 to 15 miles below the posted speed limit. Deputy Suttles also noticed a covering over the car's rear cargo area. He messaged Illinois State Police Trooper Clayton Chapman, who was doing criminal interdiction patrol further east on the interstate, and told him to look out for the Volkswagen. Trooper Chapman had about 250 hours

of training, mostly related to drug interdiction and other crime interdiction on roadways.

Deputy Suttles relayed the information that he considered to be suspicious, along with the results of a license plate check. The check revealed that the Volkswagen had been sold and registered three weeks earlier to Janhoi Cole, with an address in Los Angeles, California. It had been insured only four days earlier.

Trooper Chapman spotted the Volkswagen, whose driver was leaned far back in the seat with his arms fully extended, obscuring his face, and began following the vehicle. Shortly thereafter, Trooper Chapman saw another car merge in front of the Volkswagen from the far-left lane. When the other car merged, the Volkswagen did not move into the right lane, but instead followed closely behind the merged car. From his vantage point—about a football field behind the Volkswagen—Trooper Chapman determined that the Volkswagen was two car lengths or less behind the merged car.

Trooper Chapman stopped the Volkswagen for following too closely, in violation of Illinois law. *See* 625 ILCS 5/11-710(a). After calling in the license plate and confirming that the plate matched the car, Trooper Chapman approached the Volkswagen and asked the driver (Cole) for his license and registration. Cole produced his Arizona driver's license and California registration. In response to Trooper Chapman's questions, Cole confirmed that his license showed his current address and that he owned the Volkswagen. Trooper Chapman then asked Cole to sit in his squad car so he could explain the purpose of the stop in a quieter and safer setting.

While standing by Cole's car, Trooper Chapman saw numerous drinks and snacks in the car, which led him to believe that Cole had been traveling long distances. He observed, though, that the only luggage in the car was a small backpack.

In the squad car, Trooper Chapman spent about a minute explaining the details of how Cole had followed the other car too closely. He then asked Cole about his Arizona driver's license and California license plate. Cole offered, "I'm a chef. I spend most of my time between Los Angeles and Maryland and New York at work. But I genuinely had a job in Arizona. And I genuinely keep this driver's license because of the expiration date."

About four minutes into the stop, Trooper Chapman began inquiring into Cole's travel plans. He first asked where Cole was headed. Cole answered, Maryland, because his boss resided in Maryland. Following up, the trooper asked where Cole worked and for whom. Cole responded that he was a personal chef for two former professional football players and, in between, an ordinary chef. After confirming Cole's destination (Maryland), the trooper asked Cole where his trip began. Cole did not answer the question initially. Instead, he offered that he had met up with some friends and family in Colorado Springs. The trooper asked again where the trip began. Cole clarified that his trip started in Maryland. From there, he went to Cincinnati, before heading to Colorado Springs, then Boulder, and was going back home to Maryland when the trooper stopped him. The trooper asked Cole when he left on the trip. Cole said about four to five days earlier.

The trooper then moved on to the vehicle's information. He questioned Cole as to how long he had owned the Volkswagen. Cole said six months, adding that he just had the paperwork transferred. He explained that the car was a recent purchase. He had been driving with his friend's paperwork and had only recently acquired the insurance and registration. Looking at Cole's paperwork, the trooper noted that the car had been registered on June 4, 2018. Cole verified that was correct; his girlfriend had registered the car then.

Trooper Chapman next inquired where Cole was living. Cole said he spent most of his time in Los Angeles, adding that he had a child in both Los Angeles and Florida and was planning to move to Florida. The trooper wondered, "So, you've got an Arizona driver's license that says Tucson … I'm just trying to … And you said you've been traveling from Maryland, so have you been staying recently in Maryland?" Cole replied, "Yes. I have family in Maryland. My boss is in Maryland. When I work in Maryland, I stay by my uncle. But this driver's license, I genuinely keep it just because of the expiration. I haven't been in Arizona in a long time." The trooper followed up, "So your primary address, or your current address, is in California. But recently you've been staying in …." Before he could finish, Cole interjected, "Yeah, cause I'm a chef. I travel." The trooper asked, "Back and forth?" Cole said yes, explaining that he went wherever he got jobs. The trooper concluded by asking Cole why he did not fly. Cole responded, "Fly? I have a car. And I travel with pots sometimes. I'm a chef. Occasionally I travel with a bicycle."

Trooper Chapman thought that Cole's travel details sounded vague and made up. Cole appeared extremely nervous during the stop. Among other physical symptoms, he was breathing heavily, and his neck was sweaty.

Less than nine minutes into the stop, Trooper Chapman told Cole that he was going to issue him a warning. He explained, though, that they would have to relocate to a nearby gas station for safety reasons. Cole returned to his own car, and they drove separately to the gas station. At the gas station, Trooper Chapman called for a K-9 unit. While waiting, Trooper Chapman continued questioning Cole about his travel plans. He regarded Cole's answers as increasingly suspicious. He also learned from dispatch that Cole had been arrested three times on drug trafficking charges. About 45 minutes after the stop began, the K-9 unit alerted on Cole's car. Officers searched the car and found large quantities of methamphetamine and heroin.

B.

A federal grand jury charged Cole with possession with intent to distribute 500 grams or more of methamphetamine (Count 1) and heroin (Count 2). Cole moved to suppress the drugs found in his car and his statements during the stop. The magistrate judge recommended denying the motion. The district court accepted the recommendation and denied the motion. Cole conditionally pleaded guilty to both counts, while reserving his right to appeal the denial of his motion to suppress. A divided panel of this Court reversed, but we vacated that opinion and voted to rehear the case en banc.

II.

Cole maintains that Trooper Chapman violated his Fourth Amendment rights by stopping him without reasonable suspicion of a traffic violation and by unreasonably prolonging the stop to inquire into his travel plans. We review the district court's legal conclusions de novo, *Bacon*, 991 F.3d at 840, and its factual findings for clear error, *United States v. Gholston*, 1 F.4th 492, 496 (7th Cir. 2021).

The Fourth Amendment provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV. Time and again, the Supreme Court has held that "the ultimate touchstone of the Fourth Amendment is reasonableness." *Lange v. California*, 141 S. Ct. 2011, 2017 (2021) (quoting *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006)). "Reasonableness, in turn, is measured in objective terms by examining the totality of the circumstances." *Ohio v. Robinette*, 519 U.S. 33, 39 (1996).

Traffic stops are seizures, so they must be reasonable under the circumstances. *Whren v. United States*, 517 U.S. 806, 809 (1996). To be reasonable, a traffic stop must be "justified at its inception, and reasonably related in scope to the circumstances which justified the interference in the first place." *Hiibel v. Sixth Jud. Dist. Ct. of Nevada, Humboldt Cnty.*, 542 U.S. 177, 185 (2004). Because traffic stops are typically brief detentions, more akin to *Terry* stops than formal arrests, they require only reasonable suspicion of a traffic violation—not probable cause. *Rodriguez*, 575 U.S. at 354; *Navarette v. California*, 572 U.S. 393, 396–97 (2014); *see also*

Terry v. Ohio, 392 U.S. 1 (1968). By the same token, though, traffic stops must remain limited in scope: "A seizure for a traffic violation justifies a police investigation of that violation." *Rodriguez*, 575 U.S. at 354. Police may not "detour[]" from that "mission" to investigate other criminal activity. *Id.* at 356–57. A detour that "prolongs the stop" violates the Fourth Amendment unless the officer has reasonable suspicion of other criminal activity to independently justify prolonging the stop. *Id.* at 355.

A.

The first issue we address is whether Trooper Chapman had a lawful basis to initiate the stop.[1] We have little trouble concluding that he did. Under Illinois law, "[t]he driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway." 625 ILCS 5/11-710(a). Trooper Chapman testified that Cole was less than two car lengths behind the car in front of him. The magistrate judge credited that testimony and made an express factual finding that Cole was following too closely behind the other car. Cole does not challenge that factual finding on appeal. Instead, he argues that the district court failed to consider the statutory factors (speed of other

[1] We, of course, do not consider Trooper Chapman's subjective motivations for deciding to conduct a traffic stop. As the Supreme Court has unequivocally held, "[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis." *Whren*, 517 U.S. at 813. To the extent that the dissent opposes the objective test established by *Whren*, or suggests that police discretion informs how courts should approach Fourth Amendment law more generally, that is an issue for the Supreme Court, not us.

cars, traffic, and road conditions) when determining that there was reasonable suspicion of a traffic violation. The question, however, is whether Trooper Chapman reasonably believed that he saw a traffic violation, not whether Cole actually violated the statute. *United States v. Muriel*, 418 F.3d 720, 724 (7th Cir. 2005); *see also United States v. Simon*, 937 F.3d 820, 829 (7th Cir. 2019) ("If an officer reasonably thinks he sees a driver commit a traffic infraction, that is a sufficient basis to pull him over without violating the Constitution."). As in *Muriel*, the trooper's "estimation" of a short following distance justified the stop. *Muriel*, 418 F.3d at 724; *accord Lewis*, 920 F.3d at 490.

B.

The more substantial issue is whether Trooper Chapman unlawfully prolonged the traffic stop by inquiring about Cole's itinerary.

1.

To answer this question, we start with *Rodriguez*. There, the Supreme Court held that "the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission.'" *Rodriguez*, 575 U.S. at 354 (quoting *Illinois v. Caballes*, 543 U.S. 405, 407 (2005)). The mission of a traffic stop, in turn, is "to address the traffic violation that warranted the stop and attend to related safety concerns." *Id.* (citations omitted). Tasks within that mission include "determining whether to issue a traffic ticket" and pursuing "'ordinary inquiries incident to [the traffic] stop.'" *Id.* at 355 (quoting *Caballes*, 543 U.S. at 408). Typically, the ordinary inquiries incident to a traffic stop "involve checking the driver's license, determining whether there are outstanding warrants

against the driver, and inspecting the automobile's registration and proof of insurance." *Id.* Such inquiries fall within the mission of a stop because they "serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly." *Id. Rodriguez* distinguished those ordinary inquiries from measures aimed at investigating other criminal activity, such as a dog sniff for drugs. *Id.*

As part of making these ordinary inquiries, no one disputes that an officer may ask questions unrelated to the stop, and even conduct a dog sniff, if doing so does not prolong the traffic stop. As the Supreme Court explained in *Arizona v. Johnson*, 555 U.S. 323 (2009), "[a]n officer's inquiries into matters unrelated to the justification for the traffic stop … do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop." *Id.* at 333; *see Rodriguez*, 575 U.S. at 354–55; *Caballes*, 543 U.S. at 408 (dog sniff). This recognition does not resolve this appeal because the record is undeveloped as to whether Trooper Chapman's travel-plan questions prolonged the stop. If they did not, then they would have been permissible even if they exceeded the mission of the stop. *See Lewis*, 920 F.3d at 492; *United States v. Walton*, 827 F.3d 682, 687 (7th Cir. 2016). But because the district court never made such a factual finding, we put this issue aside and ask whether Trooper Chapman's travel-plan questions fell within the mission of the stop, such that they could not have prolonged it in the first place.

Rodriguez did not list travel-plan questions among the ordinary inquiries of a traffic stop. *See Rodriguez*, 575 U.S. at 351. From this, Cole infers that the

Supreme Court must have meant to exclude them. Judicial opinions are not statutes, however, and we decline to extrapolate a holding about travel-plan questions from the Supreme Court's silence on them in a case where they were not at issue. *See United States v. Skoien*, 614 F.3d 638, 640 (7th Cir. 2010) (en banc). The question presented in *Rodriguez* was "whether the Fourth Amendment tolerates a dog sniff conducted after completion of a traffic stop." *Rodriguez*, 575 U.S. at 350. The Court had no occasion to reach—and did not reach—the propriety and permissible scope of travel-plan questions. We decline to read *Rodriguez* as creating an exhaustive list of mission-related inquiries. *See United States v. Gholston*, 1 F.4th 492, 496 (7th Cir. 2021) (noting that "[a] stop may call for a variety of measures beyond" the ordinary inquiries listed in *Rodriguez*).

Though *Rodriguez* did not address whether travel-plan questions fall within the mission of a traffic stop, it supplied an analytical framework for answering that question. Namely, we must ask whether, in the totality of circumstances, reasonable travel-plan questions, like the other ordinary inquiries of a stop, are justified by the traffic violation itself or by the "related" concerns of "[h]ighway and officer safety." *Rodriguez*, 575 U.S. at 354, 356–57. Our sister circuits have followed this approach in deciding whether other unlisted inquiries fall within the mission of a traffic stop. *See, e.g.*, *United States v. Buzzard*, 1 F.4th 198, 203–04 (4th Cir. 2021); *United States v. Clark*, 902 F.3d 404, 410–11 (3d Cir. 2018); *United States v. Evans*, 786 F.3d 779, 786–87 (9th Cir. 2015).

Applying the *Rodriguez* framework, we hold that travel-plan questions ordinarily fall within the

mission of a traffic stop. To begin, travel-plan questions supply important context for the violation at hand. If, for example, "a given driver was speeding in order to get his pregnant wife to the hospital," then perhaps this "extenuating circumstance" might persuade the officer to issue a warning or simply release the driver. *United States v. Brigham*, 382 F.3d 500, 508 & n.6 (5th Cir. 2004) (en banc); *accord United States v. Cortez*, 965 F.3d 827, 839 (10th Cir. 2020) (reasoning that officer's travel-plan questions "could cast light on why Cortez had been speeding, tying them to the initial justification for the stop"). In other circumstances, the context of a stop might counsel in favor of a ticket or arrest. *See Brigham*, 382 F.3d at 508 & n.6.

A driver's travel plans may also inform an officer's assessment of roadway safety concerns beyond the immediate violation. An officer investigating a broken taillight, for example, has a legitimate interest in knowing whether the driver is two miles from home or halfway through a cross-country trip. *Cf. United States v. Ellis*, 497 F.3d 606, 613–14 (6th Cir. 2007) (holding that officer who stopped car for weaving "was justified in asking the occupants general questions of who, what, where, and why regarding their 3:23 a.m. travel," as such questions could help "determine the driver's ability to safely operate the vehicle").

At a more general level, "[t]ravel plans typically are related to the purpose of a traffic stop because the motorist is traveling at the time of the stop." *United States v. Holt*, 264 F.3d 1215, 1221 (10th Cir. 2001) (en banc), *abrogated on other grounds as recognized in Cortez*, 965 F.3d at 839; *see also United States v. Collazo*, 818 F.3d 247, 258 (6th Cir. 2016) (describing travel-plan questions as "classic context-framing

questions directed at the driver's conduct at the time of the stop" (quoting *United States v. Lyons*, 687 F.3d 754, 770 (6th Cir. 2012))). In that sense, travel-plan questions comport with the "public's expectations regarding ordinary inquiries incidental to traffic stops." *Cortez*, 965 F.3d at 839.

In short, travel-plan questions are routine inquiries that reasonably relate to the underlying traffic violation and roadway safety. As a result, we hold that such questions ordinarily fall within the mission of a traffic stop. This does not mean, however, that officers have a free pass to ask travel-plan questions until they are subjectively satisfied with the answers. An officer's travel-plan questions, like the officer's other actions during the stop, must remain reasonable, and reasonableness is an objective standard based on all the circumstances. *Robinette*, 519 U.S. at 39.

We are not alone in holding that travel-plan questions ordinarily fall within the mission of a traffic stop. In fact, every circuit to address the issue post-*Rodriguez* has reached the same conclusion. Most recently, the Eleventh Circuit rejected a defendant's argument that an officer's travel-plan questions went beyond the mission of a stop, holding that "[g]enerally, questions related to an individual's traffic plans or itinerary are ordinary inquires related to a traffic stop." *United States v. Braddy*, 11 F.4th 1298, 1311 (11th Cir. 2021). Five other circuits agree. *Cortez*, 965 F.3d at 838 ("An officer may … inquire about the driver's travel plans."); *United States v. Garner*, 961 F.3d 264, 271 (3d Cir. 2020) ("[S]ome questions relating to a driver's travel plans ordinarily fall within the scope of the traffic stop."); *United States v. Smith*, 952 F.3d 642, 647 (5th Cir. 2020)

(observing that an officer "may … ask about the purpose and itinerary of the occupants' trip" (quoting *Brigham*, 382 F.3d at 508)); *United States v. Dion*, 859 F.3d 114, 125 (1st Cir. 2017) ("[O]ur case law allows an officer carrying out a routine traffic stop to … inquire into the driver's itinerary."); *Collazo*, 818 F.3d at 258 ("Questions relating to travel plans … rarely offend our Fourth Amendment jurisprudence." (quoting *Lyons*, 687 F.3d at 770)); *see also United States v. Callison*, 2 F.4th 1128, 1131 n.2 (8th Cir. 2021) (noting that "[i]n some post-*Rodriguez* cases we have at least suggested that travel-related questions remain a 'permissible' part of routine traffic stops in the Eighth Circuit." (citing *United States v. Murillo-Salgado*, 854 F.3d 407, 415 (8th Cir. 2017))).

The dissent claims that the Tenth Circuit has taken a more nuanced approach to travel-related questions in *United States v. Gomez-Arzate*. 981 F.3d 832 (10th Cir. 2020). In *Gomez-Arzate*, however, the officers' travel-plan questions came *after* the traffic stop was completed, in contrast to the questions from Trooper Chapman that occurred *during* the traffic stop. *Id.* at 840 n.3 ("Here, though, the traffic stop had effectively been completed before the VIN search and questioning about travel plans.").

We, too, have approved of travel-plan questions post-*Rodriguez*. In *Lewis*, the defendant complained that an officer spent several minutes "asking about irrelevant travel matters" during a traffic stop, thereby prolonging the stop in violation of the rule announced in *Rodriguez*. 920 F.3d at 492. We rejected the argument. To begin, we dismissed the idea that the officer's first question—"Where are we headed to today, sir?"—was unrelated to the stop, remarking that "[o]fficers across the country would be surprised

if we countenanced the characterization of this basic, routine question as irrelevant to a traffic stop." *Id.* Lewis's response to the officer's first question was "not entirely forthcoming," and prompted the officer to ask several follow-up questions. Lewis answered these questions in a similarly evasive manner. Again, adhering to the rule announced in *Rodriguez*, we squarely rejected Lewis's argument that the officer's travel-plan questions were impermissible: "The Constitution allows an officer to ask these questions during a traffic stop, especially when the answers objectively seem suspicious."[2] *Id.*

Lewis reinforces an important corollary of our holding: Officers asking travel-plan questions may also ask reasonable follow-up questions based on a driver's responses. Travel-plan questions are not mere formalities; they serve important law enforcement purposes, and therefore an officer has an interest not only in asking such questions but also in receiving truthful answers to them. If a driver's responses are evasive, inconsistent, or improbable, the officer need not accept them at face value and move on. To the contrary, the officer may ask reasonable follow-up questions to clarify the answers. This was our point in *Lewis*, when we said the Fourth Amendment permits travel-plan questions during traffic stops "especially when the answers objectively seem suspicious." *Id.*; *see also Murillo-Salgado*, 854 F.3d at 415 (holding that an officer may take the time

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[2] The dissent attempts to recast *Lewis*, asserting that "the most important reason [we] had for affirming denial of the motion to suppress there was that the defendant had simply failed as a matter of fact to show that the questioning had actually prolonged the stop." But that reading contradicts the opinion's unambiguous language. *Lewis*, 920 F.3d at 492.

to respond to "legitimate complications" that arise during the "routine tasks" of a traffic stop); *Dion*, 859 F.3d at 124–25 (explaining that a *Terry* stop is not a "snapshot of events frozen in time and place" and that an officer's "actions must be fairly responsive to the emerging tableau" (internal quotation and citation omitted)). It is only when an officer's follow-up questions go too far and become unreasonable that a stop risks becoming prolonged.

2.

Applying these principles here, we hold that Trooper Chapman's travel-plan questions during the initial roadside detention fell within the mission of the traffic stop and did not unlawfully prolong the traffic stop.

At the outset, it is important to recall the sequence of events here. Trooper Chapman asked his travel-plan questions following Cole's elusive and confusing account. These travel-plan questions related closely to his questions about Cole's Arizona license and California registration. *See Braddy*, 11 F.4th at 1311 (holding that the officer's questions about license, registration, and travel plans were within the mission of stop). Before inquiring into Cole's travel, Trooper Chapman asked Cole about the discrepancy between his Arizona license and California registration. Cole's response referenced three other states beyond Arizona and California. He explained that he was a chef who split his time between Los Angeles, Maryland, and New York, adding that he kept his Arizona license because of the expiration date and that he might be moving to Florida soon. When Trooper Chapman began generally inquiring about Cole's travel details, Cole added two more states into

the mix: He said he had stopped in Cincinnati on his way from Maryland to Colorado. By this point, Cole had mentioned seven different states—none of which was Illinois—in response to Trooper Chapman's questions about his license, registration, and basic trip details. *See id.* (holding that the officer's travel-plan questions were "ordinary inquiries related to the traffic stop, especially given the fact that Braddy was driving a vehicle on Alabama roads with an obstructed Florida license plate that was not registered to him").

Understandably, Trooper Chapman had follow-up questions. Cole evaded some of these follow-up questions. After Cole volunteered that he worked as a chef, for example, Trooper Chapman asked where he worked. Cole replied with his occupation, saying he was a personal chef. Trooper Chapman tried asking the same question another way: "Who do you work for?" This time, Cole responded that he worked for two former professional football players and that "in between" he was a chef. Cole similarly evaded Trooper Chapman's question about where he began his trip, prompting Trooper Chapman to repeat the question. Cole's explanation for where he was currently living was also hard to pin down. Initially, he said he spent most of his time in Los Angeles, while noting that he might be moving to Florida. When Trooper Chapman followed up, however, Cole seemed to agree that he was currently living in Maryland. In addition to evading questions, Cole gave confusing and improbable answers that prompted other reasonable follow-up questions. *See Dion*, 859 F.3d at 125–26 (where driver with Colorado plates produced an Arizona license and "described his travel itinerary as a return trip from a cross-country road trip to visit a

CPA in Pennsylvania," an officer's follow-up questions on the same subject were "both prompted and warranted" by that "odd answer to a concededly appropriate question about travel itinerary").

Under these circumstances, Trooper Chapman's travel-plan questions were reasonable. Trooper Chapman questioned Cole about the basic details of his travel—which were relevant to the traffic violation and roadway safety—and asked reasonable follow-up questions based on Cole's elusive answers. *See Lewis*, 920 F.3d at 492. As Trooper Chapman testified, his questions were aimed at "piec[ing] together" Cole's "inconsistent" answers to basic travel-plan questions. He was not, as Cole suggests, conducting a "fishing expedition" for information that might generate reasonable suspicion to prolong the stop. *Dion*, 859 F.3d at 128 n.12 (citing *United States v. Pruitt*, 174 F.3d 1215, 1221 (11th Cir. 1999)); *cf. Cortez*, 965 F.3d at 840 (holding that "repetitive" and "in depth" questions about travel details were unrelated to traffic stop because such questions "neither helped investigate the original infraction—speeding—nor could they reasonably be characterized as relating to officer safety"); *United States v. Macias*, 658 F.3d 509, 519 (5th Cir. 2011) (holding that officer's detailed questions about driver's mother, children, and past encounters with law enforcement went beyond mission of stop because they bore no relation to driver's failure to wear a seatbelt).

Cole complains that Trooper Chapman's questions went beyond the details of his travel and into unrelated matters, such as his occupation. But Cole initially volunteered his occupation almost three minutes into the stop in response to a question about his license and registration and repeatedly returned

to it when explaining his travel and living situation, so it was reasonable for Trooper Chapman to ask a few follow-up questions about it. Cole also complains about the length of Trooper Chapman's travel-plan questions (just under five minutes). But "we repeatedly have declined to adopt even a rule of thumb that relies on the number of minutes any given stop lasts." *Gholston*, 1 F.4th at 496 n.4. Reasonableness is the touchstone, and what is reasonable depends on the circumstances of a case. *Lange*, 141 S. Ct. at 2017. Here, Trooper Chapman's questioning stayed within reasonable limits given Cole's responses.

Because Trooper Chapman's questioning was reasonable, we need not speculate about scenarios in which travel-plan questions might go too far. For now, it is enough to say that travel-plan questions go too far when they are no longer reasonably related to the stop itself (and related safety concerns) but rather reflect an independent investigation of other criminal activity. *See Rodriguez*, 575 U.S. at 356–57.

3.

We do not address whether Trooper Chapman's additional questions at the gas station stayed within the mission of the stop because he developed reasonable suspicion of other criminal activity less than nine minutes into the stop, before he told Cole he would issue him a warning and before they drove to the gas station.

Reasonable suspicion exists when, considering the totality of the circumstances, an officer has "a particularized and objective basis for suspecting the particular person stopped of criminal activity." *Navarette*, 572 U.S. at 396–97 (quoting *United States*

v. Cortez, 449 U.S. 411, 417–18 (1981)). A hunch is not enough, but "the likelihood of criminal activity need not rise to the level required for probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard." *United States v. Arvizu*, 534 U.S. 266, 274 (2002). The standard "allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person.'" *Id.* at 273 (quoting *Cortez*, 449 U.S. at 418).

This standard was met here. Cole was driving on an Illinois interstate with an Arizona driver's license and a California registration, and his explanation for this discrepancy was confusing at best. According to Cole, he was a traveling personal chef who split his time between California, Maryland, and New York, traveling to each destination by car so that he could bring his pots and bicycle with him. He claimed to have had a job at one point in Arizona, and he added that he might be moving to Florida soon, again for job-related reasons. Even if this story was not inconceivable, Trooper Chapman reasonably suspected that it was false. *See Walton*, 827 F.3d at 688–89 (finding reasonable suspicion based in part on defendant's "implausible" answers).

The details of Cole's current trip were equally dubious and seemed to evolve throughout the conversation. In Cole's telling, he had driven from Maryland to Cincinnati to multiple locations in Colorado and then to Illinois on his way back to Maryland—all in just four or five days. He originally said he spent two of the four days in Cincinnati for work, but he quickly changed his answer and said he

just passed through Cincinnati. His story about Colorado also seemed to evolve. Initially, he said he met friends and family in "the springs." Then, he said he met some friends at the Springs and went to Boulder to visit a buddy. After that, he said he met some friends in Colorado because one of them was getting a divorce. Cole's improbable and inconsistent answers about his trip details reasonably increased Trooper Chapman's suspicions. *See Lewis*, 920 F.3d at 493 (finding reasonable suspicion based in part on defendant's "suspiciously inconsistent" answers).

Cole's extreme nervousness reinforced the suspicion. *See United States v. Rodriguez-Escalera*, 884 F.3d 661, 669 (7th Cir. 2018) ("[N]ervousness is certainly a factor that can support reasonable suspicion."). Trooper Chapman testified that Cole was "extremely nervous" throughout the stop, adding that his neck was sweaty and that he was breathing heavily. Cole suggests that the dash camera video refutes this testimony, but the dash camera was not pointed at Cole during the conversation. Moreover, the dash camera records Cole himself commenting on how nervous he was, so if anything, it supports Trooper Chapman's testimony. Cole cannot show that the district court's finding of extreme nervousness was clearly erroneous. *See id.* (holding that the district court did not have to credit officer's testimony that defendant was nervous "when the court's own review of the traffic stop footage led it to the opposite conclusion").

Additional factors further supported Trooper Chapman's belief that Cole was engaged in criminal activity. Cole's car was newly registered and insured. Trooper Chapman found this suspicious because he knew that drug traffickers often traded and

reregistered cars and purchased insurance for specific trips rather than maintaining permanent insurance. Cole disputes the district court's finding that Trooper Chapman possessed this knowledge. But Deputy Suttles's message to Trooper Chapman provided the car's most recent registration date, and Cole, himself, told Trooper Chapman that he recently acquired the "insurance, registration, and all that stuff." So here too, Cole has not shown clear error. In addition to the recent registration and insurance purchase, Trooper Chapman knew from Deputy Suttles that Cole had a covering over his rear cargo area, which was common among persons engaged in criminal activity. Finally, Trooper Chapman noticed that Cole had limited luggage in his car—one small backpack—which was hard to square with Cole's cross-country road trip.

Taken together and assessing the totality of the circumstances known to Trooper Chapman, these factors created reasonable suspicion that Cole was engaged in criminal activity. We need not consider the other factors that the government relies on—*e.g.*, the make of Cole's car (a Volkswagen), Cole's origin in Los Angeles (a supposed drug source location), his travel on Interstate-55 (a supposed drug corridor), and his slow speed and rigid driving posture—though we remind the government to refrain from using criteria so broad as to subject "a very large category of presumably innocent travelers" to "virtually random seizures." *Reid v. Georgia*, 448 U.S. 438, 441 (1980); *see also United States v. Street*, 917 F.3d 586, 594 (7th Cir. 2019) ("Without more, a description that applies to large numbers of people will not justify the seizure of a particular individual.").

Because Trooper Chapman developed reasonable suspicion less than nine minutes into the stop, during

the initial roadside detention, he had a lawful basis for prolonging the stop to conduct a dog sniff at the gas station, where Cole's increasingly incoherent answers and criminal history further increased his suspicions. *See Rodriguez*, 575 U.S. at 355.

III.

The trooper's actions in this case complied with the Fourth Amendment, so we AFFIRM the district court's denial of Cole's motion to suppress.

* * *

HAMILTON, *Circuit Judge*, joined by ROVNER and WOOD, *Circuit Judges,* dissenting. A broken taillight, a too-sudden lane change, or tailgating for a few seconds allows a police officer to carry out a traffic stop even if the officer's real purpose is to investigate other possible crimes. In such stops, no one sees a problem with an officer's question or two about where the driver is coming from or going. Answers to those questions may help the officer understand the situation and assess the driver's attitude and potential threats. The majority's decision today errs, however, by going much further. Under the majority opinion, the officer may also subject a driver and passengers to repetitive and detailed questioning about where they are coming from and where they are going *until the officer is satisfied that the answers are truthful*. Ante at 15–16. Given the low "hit rate" of police searches of vehicles for drugs, this decision will enable police officers to harass and humiliate civilians far more often than they actually turn up significant quantities of drugs.

The scope of permissible police activity in pretextual traffic stops is important. By adopting a general presumption allowing such detailed

interrogation as occurred in this case, the majority enables police officers to subject almost any motorist to similar interrogation, delay, and even humiliation, for little gain in terms of law enforcement. *See* Jeannine Bell, *The Violence of Nosy Questions*, 100 B.U. L. Rev. 935 (2020) (criticizing wide discretion for officers to ask "nosy" questions on fishing expeditions that humiliate and anger drivers stopped for minor traffic infractions).

This case presents a pretextual traffic stop based on a police officer's hunch that the car was carrying drugs. The video recording and the officer's later testimony show that, almost from the very outset, the officer prolonged the stop by questioning the driver at length and in detail on subjects beyond the legal justification for the stop. Under *Rodriguez v. United States*, 575 U.S. 348 (2015), the officer's prolonging of this stop violated the Fourth Amendment. We should order suppression of evidence found later in the stop.

To be sure, in some traffic stops, some questions about travel plans will be relevant. For example, an officer who has reason to believe the driver is impaired by fatigue will want to know how long the driver has been on the road. In such cases, an officer should have little difficulty explaining his questioning in terms of the lawful purpose of the stop. This stop for tailgating was not such a stop, and the officer offered no such lawful explanation. I respectfully dissent.

To explain my conclusion, Part I of this opinion outlines the legal doctrines allowing pretextual stops and their well-known consequences. Part II lays out important limits the Supreme Court has imposed on such pretextual traffic stops, in terms of both time

and the activities an officer may engage in unless and until he develops at least reasonable suspicion of some criminal activity. Part III explains why the traffic stop of defendant Janhoi Cole was prolonged in violation of the Fourth Amendment. Part IV identifies further problems in the majority's decision. Part V concludes with some suggestions for going forward in similar cases.

I. Pretextual Traffic Stops and Their Effects

In *Whren v. United States*, 517 U.S. 806 (1996), the Supreme Court held that the reasonableness of a traffic stop under the Fourth Amendment must be decided using an objective standard, not the officer's actual purposes. *Whren* thus gave police officers wide latitude to stop vehicles for reasons having nothing to do with the traffic laws that provide lawful pretexts for the stops.

Many of those traffic laws also give an officer considerable room for judgment and discretion in applying them. In this case, for example, the stop was justified based on a perceived violation of this law: "The driver of a motor vehicle shall not follow another vehicle more closely than is *reasonable and prudent*, having *due regard* for the speed of such vehicles and the traffic upon and the condition of the highway." 625 ILCS 5/11-710(a) (emphasis added). Extending that discretion even further, courts will uphold a traffic stop based on not only the actual facts and law but even an officer's reasonable mistake of fact or law. *Heien v. North Carolina*, 574 U.S. 54, 61 (2014).

The combination of the objective test under *Whren*, the number and detail of traffic laws, and the discretion inherent in applying those laws gives police officers the power to stop nearly any vehicle if they

watch it for more than a few minutes. See David A. Harris, *"Driving While Black" and All Other Traffic Offenses: The Supreme Court and Pretextual Traffic Stops*, 87 J. Crim. L. & Criminology 544, 545, 558–59 (1997) ("In the most literal sense, no driver can avoid violating some traffic law during a short drive, even with the most careful attention;" "with the traffic code in hand, any officer can stop any driver any time"); Barbara C. Salken, *The General Warrant of the Twentieth Century? A Fourth Amendment Solution to Unchecked Discretion to Arrest for Traffic Offenses*, 62 Temp. L. Rev. 221, 223 (1989) ("The innumerable rules and regulations governing vehicular travel make it difficult not to violate one of them at one time or another."). As then-Attorney General Robert Jackson said long ago, "We know that no local police force can strictly enforce the traffic laws, or it would arrest half the driving population on any given morning." Robert Jackson, *The Federal Prosecutor, Address Delivered at the Second Annual Conference of United States Attorneys* (April 1, 1940), quoted in *Morrison v. Olson*, 487 U.S. 654, 727–28 (1988) (Scalia, J., dissenting).

The phrase "Driving While Black" reflects long recognition of how *Whren* enables racially discriminatory stops and searches. See, e.g., Tracey Maclin, *Cops and Cars: How the Automobile Drove Fourth Amendment Law*, 99 B.U. L. Rev. 2317, 2347–49 (2019); David A. Harris, *Profiles in Injustice: Why Racial Profiling Cannot Work* 30 (2002); David A. Sklansky, *Traffic Stops, Minority Motorists, and the Future of the Fourth Amendment*, 1997 Sup. Ct. Rev. 271, 308–16.

These police tactics subject large numbers of innocent drivers to this sort of harassment and

humiliation for minimal gains in drug interdiction. For judges who see these tactics primarily in criminal prosecutions in the rare cases where dealer quantities of drugs were found, it's easy to lose sight of this reality. Empirical studies based on millions of traffic stops show: (1) that police departments have exploited *Whren* to carry out pretextual stops on a massive scale; (2) that Black and Hispanic drivers are subjected to such stops and ensuing searches at substantially higher rates than white drivers; and (3) that pretextual stops rarely find drugs, let alone dealer quantities of drugs. The empirical studies have used statistical methods to control for variables other than racial profiling, and the disparities remain dramatic. E.g., Emma Pierson et al., *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States*, 4 Nature Human Behavior 736 (2020) (based on data from nearly 100 million stops nationwide); Stephen Rushin & Griffin Edwards, *An Empirical Assessment of Pre-textual Stops and Racial Profiling*, 73 Stan. L. Rev. 637 (2021) (based on data from over 8 million stops in Washington state); Frank R. Baumgartner, Derek A. Epp & Kelsey Shoub, *Suspect Citizens* 215 (2018) (based on 18 years of data in North Carolina); Samuel R. Gross & Katherine Y. Barnes, *Road Work: Racial Profiling and Drug Interdiction on the Highway*, 101 Mich. L. Rev. 651, 666–67 (2002) (based on three years of data from Maryland State Police). The Department of Justice's own data has long supported the conclusion that Black and Hispanic drivers are significantly more likely than white drivers to be searched during a traffic stop. Patrick A. Langan et al., Bureau of Justice Statistics, Contacts Between Police and the Public, at 18 (2001).

For example, the North Carolina study found that, on average, Black drivers were twice as likely to be searched as white drivers, with some police forces having much higher rates of racial disparity. The empirical work also shows that when police use traffic stops to search for drugs, a small fraction of searches turn up any drugs, and the proportion finding dealer quantities of drugs is much lower still. The North Carolina study looked at data from more than 20 million traffic stops. Searches were carried out in a small fraction, about 690,000, or 3.36%. Baumgartner et al., *Suspect Citizens* 59. Drugs were found—in any quantity—in 96,841 of those stops, or 14% of all searches. *Id.* at 62. Typically, dealer quantities are found in a small fraction of those. See Gross & Barnes, 101 Mich. L. Rev. at 695–97 (88.8% of Maryland State Police vehicle searches in drug corridor did not locate dealer quantities of drugs). In other words, these intrusive and humiliating police tactics are used disproportionately on Black and Hispanic drivers, the vast majority of whom are not trafficking drugs, and thus whose cases do not wind up in criminal courts to shape Fourth Amendment jurisprudence.

II. Limits on Pretextual Stops

While pretextual traffic stops are easy to initiate, the Supreme Court has tried to impose some legal limits on them. Most important, such a stop is limited by time and the purpose that makes the stop lawful in the first place. A seizure that is "lawful at its inception" can violate the Fourth Amendment if it is "prolonged beyond the time reasonably required to

complete" the initial mission of the stop. *Illinois v. Caballes*, 543 U.S. 405, 407 (2005).[1]

The Supreme Court took an important step to make this limit effective in *Rodriguez v. United States*, 575 U.S. 348 (2015), which established the governing law for this appeal. In *Rodriguez*, a police officer had carried out a traffic stop for a car that had driven onto the shoulder of the highway. After the officer had issued and explained a written warning to the driver, he insisted that the driver could not leave until another officer arrived some minutes later with a drug-sniffing dog, which led to a search that found drugs in the car.

The district court in *Rodriguez* denied a motion to sup- press, applying circuit precedent holding that dog sniffs that occur shortly after completion of the traffic stop did not violate the Fourth Amendment if the intrusion on the driver's liberty was "de minimis." 575 U.S. at 353. *Rodriguez* rejected that "de minimis" exception. The Court vacated the denial of the motion to suppress and remanded.

Establishing guidance that applies here, *Rodriguez* explained that "a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures." 575 U.S. at 350. During a traffic stop, the police officer must stick to the "mission" of the seizure: ensuring road safety and determining whether to issue a traffic ticket. "Typically such inquiries involve checking the driver's license, determining whether there are outstanding

[1] For interested readers, the articles cited in the text cite in turn numerous other sources on the doctrinal questions and empirical effects of Whren's pretextual stops.

warrants against the driver, and inspecting the automobile's registration and proof of insurance." *Id.* at 355. An officer may not prolong the stop, "absent the reasonable suspicion ordinarily demanded to justify detaining an individual." *Id.* The latter qualification creates an opportunity for exploiting pretextual stops. The question for the officer is whether he can see, hear, or smell anything that provides reasonable suspicion for expanding the scope of the pretextual traffic stop.

III. Prolonging the Stop in This Case

One way to prolong a pretextual stop is to question drivers and passengers about topics beyond the mission authorized by the supposed ground for the stop. That's what happened here, for all to see in Trooper Chapman's video recording of the stop.

The trooper's tailgating rationale for stopping Janhoi Cole was obviously pretextual. The trooper had received the tip from Deputy Suttles, who suspected the car was transporting drugs.[2] The

[2] The tip from Deputy Suttles fell well short of reasonable suspicion. He observed that Cole was driving below the speed limit on an interstate highway in a car with California plates. He sat with an erect posture that Suttles thought was unusual, and he had empty fast-food wrappers in the car. Suttles also apparently thought that two contradictory observations added to the suspicion: that the only luggage he could see was a small backpack and that the cargo area of the car was covered. See generally *Kansas v. Glover*, 589 U.S. —, —, 140 S. Ct. 1183, 1190 (2020) (traffic stops do not "allow officers to stop drivers whose conduct is no different from any other driver's"); *United States v. Flores*, 798 F.3d 645, 649 (7th Cir. 2015) ("A suspicion so broad that would permit the police to stop a substantial portion of the lawfully driving public ... is not reasonable."); *United States v. Ingrao*, 897 F.2d 860, 865 (7th Cir. 1990) (reversing denial of motion to suppress where arrest was based in part on

trooper began following Cole's car, looking for a reason to stop him. Cole was driving so carefully that it took a while. (The most startling fact in this case is that Cole was driving so carefully that Deputy Suttles never managed to identify even a pretext for stopping him.) Trooper Chapman also found no basis for a stop until, finally, Cole entered a construction zone where interstate highway lanes had to merge. The trooper saw another vehicle cut off Cole's car. The trooper did not stop the other vehicle for its dangerous maneuver. Instead, he stopped Cole on the ground that he had followed that other car too closely for a few seconds.

Following too closely was enough, based on the district court's factual findings, to permit the stop under *Whren*. But the supposed infraction of following too closely also set limits on the trooper's powers over Cole and his vehicle, unless and until the trooper developed reasonable suspicion for further investigation.

Under *Rodriguez* and *Caballes*, the trooper's authority to pull Cole over did not give him license to detain Cole for a speculative search or interrogation for "evidence of ordinary criminal wrongdoing." *Rodriguez*, 575 U.S. at 355, quoting *City of Indianapolis v. Edmond*, 531 U.S. 32, 41 (2000). Police detention, however brief, is not a "minor inconvenience and petty indignity." *Terry v. Ohio*, 392 U.S. 1, 10, 16–17 (1968) (citation omitted). The Supreme Court has "emphatically reject[ed]" the notion that the Constitution does not regulate an

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defendant's cautious driving: "The mere lawful operation of a motor vehicle should not be considered suspicious activity absent extraordinary contemporaneous events.").

officer's actions when he "accosts an individual and restrains his freedom to walk away." *Id.* at 16.

In pretextual traffic stops, courts should expect just the sort of "mission creep" that we see in this case. See *State v. Jimenez*, 420 P.3d 464, 476, 308 Kan. 315, 329–30 (2018) (following *Rodriguez* to affirm suppression of evidence from stop pro- longed by questions about travel plans unrelated to grounds for stop). After all, if a stop is actually motivated by a different purpose, we should expect officers to behave consistently with their actual purposes, not with the legal fiction that *Whren* tolerates.

That's what happened here, as the record makes obvious. Even before stopping Cole, the trooper had already obtained most of the information that *Rodriguez* treats as routinely within the scope of a traffic stop: "determining whether to issue a traffic ticket, … checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." 575 U.S. at 355. The trooper already had obtained the registration information for the car showing Cole as the owner. He also had Cole's license information. (As for the last *Rodriguez* item, insurance, the trooper already knew that insurance information was on file, though he did not yet have details. He did nothing more about insurance information until nearly twenty minutes into the stop, well after he had improperly prolonged the stop by interrogating Cole on other topics.)

Instead of focusing on the tailgating and the routine topics of license, registration, and insurance, the trooper almost immediately focused on a different topic: detailed, repetitive, and intrusive questioning

about Cole's travel itinerary. The questioning went far beyond a quick and routine "where are you headed?" or "where are you coming from?" In the ten minutes of the stop while the trooper kept Cole in the police car at the side of the highway, about six minutes consisted of questioning about Cole's itinerary and the related topic of his work.[3]

We now know that Cole's confusing answers on those topics were not true. And as a person who was transporting a substantial quantity of illegal drugs, Cole elicits little sympathy. Yet the stakes here are more important than this one drug courier. The evidence is clear that police use these tactics to stop, search, and even humiliate large numbers of innocent drivers, and that these tactics are used disproportionately on Blacks and Hispanics.

Rodriguez makes clear that a traffic stop's mission is "to address the traffic violation that warranted the stop and at- tend to related safety concerns." 575 U.S. at 354 (internal citation omitted); *United States v. Clark*, 902 F.3d 404, 411 (3d Cir. 2018) (affirming suppression of evidence obtained by pro- longing traffic stop by questioning driver about his criminal

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[3] The majority suggests that its essay on travel plan questions results from the record being "undeveloped" on whether the trooper's questioning actually prolonged the stop. Ante at 11. The recordis more than sufficient to say that it did. We have the video recording of the stop. We also know that the trooper already had license and registration information at the outset, and that he did not seek more insurance information until much later in the stop. The government has not tried to show that the trooper was actually making any progress on the subject of the traffic stop while he interrogated Cole about his travel plans. Cf. *United States v. Lewis*, 920 F.3d 483, 492 (7th Cir. 2019) (video and testimony showed that officer worked on warning while questioning driver about itinerary).

history). Hence the *Rodriguez* endorsement of the usual litany: license, registration, and insurance, and an opportunity to check for outstanding warrants. 575 U.S. at 355.

Courts need to guard against unjustified expansion and prolonging of pretextual stops by questioning on other topics. As the Third Circuit explained in *Clark*: "Not all inquiries during a traffic stop qualify as ordinarily incident to the stop's mission. In particular, those 'measure[s] aimed at detect[ing] evidence of ordinary criminal wrongdoing' do not pass muster." 902 F.3d at 410 (alterations in original), quoting *Rodriguez*, 575 U.S. at 355. Since detecting evidence of ordinary criminal wrongdoing is often the officer's real purpose, we should not be surprised when an officer devotes his time to pursuing his real aims rather than the pretext.[4]

Where should we draw the lines on how an officer may spend his time in such a stop? We start with the

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[4] *Whren* established that whether a stop is constitutionally permissible depends on objective grounds, not the officer's subjective purpose, whether pretextual or not. Contrary to the majority's footnote, however, that rule about the legality of the initial stop does not mean that courts must or may close their eyes to what was really going on. Cf. ante at 8 n.1. When considering factual issues that govern whether the officer has gone beyond the boundaries permitted by the traffic stop, courts should pay attention to reality rather than legal fiction. *Rodriguez* itself makes that much clear. It directs lower federal courts to consider actual facts in evaluating whether a stop has been extended impermissibly. 575 U.S. at 357 ("The reasonableness of a seizure, however, depends on what the police in fact do. See *Knowles* [*v. Iowa*, 525 U.S. 113, 115–17 (1998).] In this regard, the Government acknowledges that 'an officer always has to be reasonably diligent.' Tr. of Oral Arg. 49. How could diligence be gauged other than by noting what the officer actually did and how he did it?").

Rodriguez list of the activities typically part of the mission of the traffic stop: checking license, registration, and insurance information, and the opportunity to check for outstanding warrants. 575 U.S. at 355. Those actions are designed to protect highway safety by determining whether the vehicle and driver are authorized to be on the road at all, and whether they might pose a particular danger to others on the road. *Rodriguez* also recognized that traffic stops can be dangerous for police officers, *id*. at 356, so that measures to protect an officer's safety can also be authorized. Beyond the listed topics, however, which activities are permissible quickly becomes a very case-specific problem. It defies general rules like the majority's presumption here.

Courts applying *Rodriguez* must consider whether an officer spent time on matters apart from those safety-based matters authorized by the lawful but pretextual basis for the stop, at least unless and until the officer developed reasonable suspicion to pursue other matters. See, e.g., *United States v. Cortez*, 965 F.3d 827, 839–40 (10th Cir. 2020) (assuming without deciding that thirteen minutes of repetitive questioning about how long driver and passenger had been in town where journey started was not justified by traffic stop, but officer already had independent reasonable suspicion of human smuggling before beginning those questions); *Clark*, 902 F.3d at 410–11 (stop improperly prolonged to question driver about his criminal history); *United States v. Evans*, 786 F.3d 779, 787 (9th Cir. 2015) (stop improperly prolonged to see if driver had properly registered in Nevada registry of ex-felons).

Turning to questions about travel plans, courts must "in- quire whether, on the facts of the particular

case, [itinerary] questioning is within the traffic stop's mission" and if not, must determine whether the questioning impermissibly lengthened the stop. 4 Wayne R. LaFave, Search & Seizure § 9.3(d) (6th ed. 2020). There has never been a problem with a brief question or two about travel like, "Where are you headed today?" or "Where are you coming from?" As the arresting officer in *Cortez* testified, innocuous background questions can help an officer assess a driver's stress and possible evasion, and they may help an officer gauge how cautious he needs to be in the stop. 965 F.3d at 839.

Similarly, if an officer has reason to suspect that a driver may be impaired by fatigue, alcohol, or drugs, questioning about how long the driver has been on the road and where he is headed might help the officer assess the driver's condition and any dangers that might be posed. *Jimenez*, 420 P.3d at 475– 76, 308 Kan. at 329; see also *Navarette v. California*, 572 U.S. 393, 402–03 (2014) (report that truck had forced another vehicle off road gave officer reasonable suspicion that driver was im- paired, permitting stop to investigate). In other cases, information about travel plans might help an officer decide whether to issue a ticket or a warning, or perhaps even to hop back in the police car and lead a speeding car to a hospital so the passenger can safely give birth. See *United States v. Brigham*, 382 F.3d 500, 508 & n.6 (5th Cir. 2004) (en banc).

This case, however, is not about such brief, routine, and easily justifiable questions. This case is about whether an officer may start with those questions and then prolong the stop while continuing to probe the answers, looking for evasion and contradiction by asking more questions, by repeating

the questions, by asking others the same questions, and by checking answers against other information that might be available with in-car computers. As Professor LaFave has explained in his treatise, the controversy is over

> multi-question extended inquiries of vehicle occupants into the most minute details regarding the parts of the journey completed and lying ahead. The officers are "trained to subtly ask questions about * * * their destination, their itinerary, the purpose of their visit, the names and addresses of whomever they are going to see, etc.," "to make this conversation appear as natural and routine a part of the collection of information incident to a citation or warning," and "to interrogate the passengers separately, so their stories can be compared." The objective is not to gain some insight into the traffic infraction providing the legal basis for the stop, but to uncover inconsistent, evasive or false assertions that can contribute to reasonable suspicion or probable cause regarding drugs.

4 LaFave, Search & Seizure § 9.3(d) (footnotes omitted), quoting Gross & Barnes, 101 Mich. L. Rev. at 685.[5]

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[5] The majority asserts that this stop was not a "fishing expedition," see ante at 18, and implies that it was Cole's answers to the travel plan questions that led the trooper to suspect that he was transporting drugs. Ante at 2. The record contradicts both the assertion and the implication. The trooper was always acting on Deputy Suttles' hunch that Cole was transporting drugs. He was looking for a way to justify a longer

Cases after *Rodriguez* from around the country illustrate the wide, almost kaleidoscopic variations in the ways these questions can arise and play out. Several circuits have taken the route the majority does here, which I believe is contrary to *Rodriguez*, writing that questions about a driver's travel plans are ordinarily within the scope of a traffic stop, and that an officer may prolong a stop to ask follow-up questions to confirm or check those answers. *United States v. Braddy*, 11 F.4th 1298, 1311 (11th Cir. 2021) (following pre-*Rodriguez* case law on itinerary questions, at least where driver's license had incorrect address and ownership of vehicle was not clear); *United States v. Dion*, 859 F.3d 114, 125–26 & n.7 (1st Cir. 2017) (defendant conceded that pre-*Rodriguez* case law allowed itinerary questions); *United States v. Collazo*, 818 F.3d 247, 258 (6th Cir. 2016) (allowing questions to follow up on conflicting answers from driver and passenger). But see *United States v. Callison*, 2 F.4th 1128, 1131–32 & n.2 (8th Cir. 2021) (holding that itinerary questions were permissible because the officer, as a matter of fact, was still "handl[ing] the matter for which the stop was made," but declining to reach the question of "the extent to which officers may ask travel-related questions during a routine traffic stop after *Rodriguez*.") (alteration in original), quoting *Rodriguez*, 575 U.S. at 350.

The majority's summary of other courts' decisions, however, glosses over substantial variety among the approaches. Other courts have wisely taken more nuanced and fact-specific approaches to the problem,

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stop that would lead to a search. And as the trooper later testified, he simply was not going to let Cole go, no matter what, until a dog could sniff the car for drugs.

recognizing that not all traffic stops justify prolonged and close interrogation about travel plans. See, e.g., *United States v. Gomez-Arzate*, 981 F.3d 832, 836, 840–44 (10th Cir. 2020) (finding that a few minutes of itinerary questioning that prolonged an already completed stop violated Constitution, but noting extended inquiry into car ownership may be permissible where driver is not listed on registration and cannot say who owns vehicle); *United States v. Garner*, 961 F.3d 264, 271–72 (3d Cir. 2020) (some itinerary questions were permissible; some follow-up on employment, family, criminal history, and unrelated conduct was not, but officer's reasonable suspicion of criminal activity permitted the additional questioning); *Jimenez*, 420 P.3d at 469, 475–77, 308 Kan. at 318, 328–30 (affirming suppression where itinerary questions prolonged stop for following too closely, and noting that courts must guard against "mission creep" in pre-textual traffic stops); see also *Cortez*, 965 F.3d at 839–40 (some itinerary questions were permissible, but later follow-up questioning fell outside bounds permitted by original reason for stop).

Disagreeing with the majority's rule in this case, Professor LaFave's treatise has this to say about travel-plan questioning as it is actually carried out by officers who are looking for drugs:

> The objective is not to gain some insight into the traffic infraction providing the legal basis for the stop, but to uncover inconsistent, evasive or false assertions that can contribute to reasonable suspicion or probable cause regarding drugs. Thus, "[n]ot only are questions about travel plans investigatory rather than merely

> conversational, the ordinary traveler cannot reasonably be expected to decline to answer such questions, particularly if they are posed while an officer is holding the driver's license and other essential documents."

4 LaFave, Search & Seizure § 9.3(d) (alteration in original) (footnote and citation omitted).

In this case, the trooper's questions did nothing to advance the limited road-and driver-safety missions that he was legally authorized to pursue. Cole's claim to be a California-based traveling personal chef employed part-time in Maryland had nothing to do with whether he was safe to continue driving. And Trooper Chapman knew that Cole was authorized to drive the Volkswagen when he saw that his name matched the registration mere seconds into the initial ten-minute stop at the roadside.

It should not matter here whether, at some later point, Cole's answers became suspicious. The critical point under *Rodriguez* is that it was unconstitutional to prolong the stop, the restraint on liberty, to ask those questions to begin with. *United States v. Lopez*, 907 F.3d 472, 486–87 (7th Cir. 2018) (suppressing evidence gathered following questioning that prolonged seizure); see also *Garner*, 961 F.3d at 270–71 (looking for "*Rodriguez* moment" when officer began pursuing off-mission tasks); *United States v. Childs*, 277 F.3d 947, 952 (7th Cir. 2002) (en banc) ("Questioning that prolongs the detention, yet cannot be justified by the purpose of such an investigatory stop, is unreasonable under the fourth amendment."), citing *United States v. Sharpe*, 470 U.S. 675, 685 (1985).

When asked to explain his actions, Trooper Chapman admitted that he delayed collecting the last of the authorized information (for investigating the tailgating and Cole's driving) because he "was trying to piece together Mr. Cole's story, which was—as we all heard, was kind of inconsistent. Changed each time." Tr. 35.

With respect, that is not how this is supposed to work. Under the Constitution, people do not need "stories" to travel on interstate highways—even if they have a broken taillight, don't signal a lane change, or briefly tailgate another vehicle. Unless an officer efficiently processing the legitimate purpose of the stop sees, hears, or smells something new that gives him reasonable suspicion of other criminal activity, he needs to let the driver go with a ticket or warning when the legitimate tasks are done. This rule applies even if the officer still has a hunch the driver is up to no good.

We have explained that during a *Terry* stop, one of three things must happen:

> (1) the police gather enough information to develop probable cause and allow for continued detention; (2) the suspicions of the police are dispelled and they release the suspect; or (3) the suspicions of the police are *not* dispelled, yet the officers have not developed probable cause but must release the suspect because the length of the stop is about to become unreasonable.

United States v. Leo, 792 F.3d 742, 751 (7th Cir. 2015) (internal citations omitted). An officer who reasonably believes a driver is suspicious based on some ambiguous or conflicting statements may not detain

the suspect indefinitely, lest the stop turn into "a de facto arrest that must be based on probable cause." See *id.*, quoting *United States v. Bullock*, 632 F.3d 1004, 1015 (7th Cir. 2011).

IV. Other Problems with the Majority Holding

The majority here adopts a different rule, at least "ordinarily." Ante at 12 ("[W]e hold that travel-plan questions ordinarily fall within the mission of a traffic stop."). The majority does not hint at what might not be ordinary. It offers instead what is supposed to be a reassuring limit: "This does not mean, however, that officers have a free pass to ask travel-plan questions until they are subjectively satisfied with the answers. [Such questions] must remain reasonable, and reasonableness is an objective standard based on all the circumstances." Ante at 13. If the officer's questions "go too far and become unreasonable," the stop may no longer be permissible. Ante at 16.

Despite that assurance, the majority's approach invites unreasonable restraints on liberty. The majority adds that an officer asking travel-plan questions may ask "reasonable follow-up questions," especially if the answers are "evasive, inconsistent, or improbable." Ante at 16. That's the critical door that enables further abuse of pretextual traffic stops, prolonging those stops as the officer uses the coercive power of the state and the authority to use force to subject drivers and their passengers to close questioning in search of other criminal activity. That is exactly what *Rodriguez* rejected. 575 U.S. at 355–56. All the other questions that *Rodriguez* treats as part of the mission of every stop should quickly produce a clear answer rather than inviting discretionary interrogation. A driver's license can be

valid or not, but it is unlikely to call for follow-up questions.

In *Rodriguez*, the Supreme Court pointedly declined to categorically permit questioning about travel plans as central— even "ordinarily" central—to traffic stops' missions. The officer in *Rodriguez* had asked the driver and passenger about their itinerary, 575 U.S. at 351, but the Court left travel plans out of the topics typically permissible because they help ensure that vehicles are "operated safely and responsibly," *id.* At 355. The majority responds to this omission by noting that judicial opinions are not statutes and that the travel-plan questions were not directly at issue in *Rodriguez*, so we should infer nothing from the omission of travel-plan questions from the *Rodriguez* list. Ante at 11.

That is an unduly narrow understanding of the opinion. The Court knew it was providing important and practical guidance for police officers and motorists all over the nation, especially with that key passage about what is "typically" within the scope of a traffic stop. No one suggests that the list is universal and complete for all cases. As noted above, for some traffic stops travel plans will be relevant. But those cases should be evaluated based on their specific facts, not using a general rule that allows such persistent, repetitive, and close questioning in a stop legally justified as merely a routine traffic stop. At a minimum, courts should expect an officer who engages in such questioning to be able to explain how, specifically, the questioning was based on the legal justification for the stop. As Professor LaFave has explained:

> [G]iven the Supreme Court's *Rodriguez* decision, … *the contention "that unrestrained travel plan questioning is routine and always within a traffic stop's mission" must be rejected out of hand*, and … instead courts must inquire whether, on the facts of the particular case, such questioning is within the traffic stop's mission.

4 LaFave, Search & Seizure § 9.3(d) (emphasis added) (footnote and citation omitted).

The extraordinary nature of this en banc rehearing also should not be passed by in silence. After the panel issued its decision, the government chose not to seek en banc review. It also informed this court that it did not oppose Cole's motion for immediate release from prison. No litigant is better able to protect its interests in the federal courts than the federal government. This court chose, however, to act sua sponte to rehear the case en banc. That is an extraordinary step that this court has taken very rarely.

The majority suggests that en banc review was needed to resolve an apparent conflict between the panel decision here and another post-*Rodriguez* decision, *United States v. Lewis*, 920 F.3d 483 (7th Cir. 2019). The supposed conflict was illusory. *Lewis* did not hold that an officer may prolong a stop indefinitely to ask increasingly invasive and repetitive questions about a driver's travels and employer—nor could it have, given *Rodriguez*. As *Lewis* explained, the most important reason it had for affirming denial of the motion to suppress there was that the defendant had simply failed as a matter of fact to show that the questioning had actually prolonged the stop. *Id.* at 492. Careful analysis of *Lewis* shows that the case is

distinguishable on that fact, which is decisive under *Rodriguez*. See *United States v. Cole*, 994 F.3d 844, 855–57 (7th Cir. 2021) (panel decision here).

V. Moving Forward

Having explained why I view the majority's general presumption in favor of allowing questions about travel plans in pretextual traffic stops as unwise and contrary to *Rodriguez*, it is still necessary to look toward future cases.

District courts should be alert for unconstitutional "mission creep" where the stop is justified constitutionally by one limited purpose but is actually motivated by a different purpose. See *Jimenez*, 420 P.3d at 476, 308 Kan. at 329–30. In such cases, district courts must make the joint legal and factual determination of how long was reasonably necessary to execute the stop's permissible mission, and must then decide whether the stop's duration exceeded that limit or the officer otherwise unreasonably prolonged the stop. Extensive itinerary questions posed to a motorist stopped for a broken taillight or tailgating, for example, should not pass muster.

Courts deciding motions to suppress often give officers substantial leeway in evaluating their actions and credibility. An obviously pretextual stop, however, calls for more skepticism. We should expect officers to behave in ways that serve their real purpose, without necessarily working from the pretextual basis for the stop. When officers do so, district courts should make the appropriate factual findings, and our review of their fact-finding should be deferential. E.g., *United States v. Simon*, 937 F.3d 820, 832–33 (7th Cir. 2019) (deferring to district court's credibility determinations as to whether the

officers prolonged a stop); *Lewis*, 920 F.3d at 492 (similar); see also *United States v. Rodriguez-Escalera*, 884 F.3d 661, 672 (7th Cir. 2018) (affirming grant of motion to suppress based on factual findings, including those on credibility).

We should reverse this judgment, suppress the evidence obtained by improperly prolonging this traffic stop, and remand to allow Cole to withdraw his guilty plea.

APPENDIX B

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

June 9, 2021

By the Court:

No. 20-2105

UNITED STATES OF AMERICA, *Plaintiff-Appellee* *v.* JANHOI COLE, *Defendant-Appellant*	Appeal from the United States District Court for the Central District of Illinois. No. 3:18-cr-30038-RM-TSH-1 **Richard Mills**, *Judge.*

ORDER

The court has voted sua sponte to rehear this appeal en banc. Accordingly, the panel opinion of April 16, 2021 is vacated, and the court will set an argument date by separate order.

The parties shall each file a supplemental brief of up to 8,000 words no later than July 15, 2021 on the questions whether and when travel-plan questions fall within the "mission" of a traffic stop under *Rodriguez v. United States*, 575 U.S. 348 (2015). The parties' briefs should also address how the court's recent decision in *United States v. Lewis*, 920 F.3d 483 (7th Cir. 2019), affects those questions, and whether and when an officer may ask travel-plan questions if such questions are not part of the "mission" of a stop.

APPENDIX C

In the
United States Court of Appeals
For the Seventh Circuit

No. 20-2105

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JANHOI COLE,

Defendant-Appellant.

Appeal from the United States District Court for the Central District of Illinois.

No. 3:18-cr-30038-RM-TSH-1 – **Richard Mills**, *Judge.*

ARGUED JANUARY 19, 2021 – DECIDED APRIL 16, 2021

Before ROVNER, HAMILTON, ST. EVE, *Circuit Judges*.

HAMILTON, *Circuit Judge*. In this appeal we deal with a pre-textual traffic stop for purposes of drug interdiction. Even assuming that the stop was permissible at the outset, the record shows that the officer prolonged the stop by questioning the driver at length on subjects going well beyond the legal justification for the stop. Under *Rodriguez v. United States*, 575 U.S. 348 (2015), prolonging the stop violated the Fourth Amendment and requires

suppression of evidence found much later as a result of the actions that prolonged the stop.

I. The Traffic Stop and Later Search

On June 25, 2018, Illinois State Trooper Clayton Chapman was on highway patrol duties and received a message from Deputy Sheriff Derek Suttles about a car that he found suspicious. A Volkswagen hatchback sedan with California license plates was headed east toward Trooper Chapman on Interstate 72. Deputy Suttles reported that the Volkswagen was driving roughly 50 to 55 miles per hour where the speed limit was 70 miles per hour.

Trooper Chapman spotted the Volkswagen, driven by defendant Janhoi Cole, and trailed him with the intent to catch him in a traffic violation to provide a pretext for a roadside stop. That opportunity came after Interstate 72 merged with Interstate 55. In the merging traffic, another car cut off the Volkswagen. Trooper Chapman believed that the Volkswagen trailed the car that cut it off at an unreasonably close distance, in violation of the Illinois Vehicle Code. See 625 ILCS 5/11-710 ("The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway."). Trooper Chapman pulled Mr. Cole over to the partially unpaved shoulder lane, requested his driver's license and vehicle registration, and ordered him to exit the Volkswagen and sit in the front seat of the police cruiser.

This initial roadside stop lasted ten minutes. It included an eight-and-a-half-minute conversation between Trooper Chapman and Mr. Cole in the police cruiser. Trooper Chapman used about six minutes of

that initial conversation to question Mr. Cole about his state of residence, employment, travel history, travel plans, vehicle history, and registration information. Mr. Cole said that he was a traveling chef who split his time between New York, Los Angeles (where his girlfriend lived and the car was registered), and Maryland (where he was presently employed). He claimed to be on a long road trip from Maryland to Cincinnati to Colorado, and back. About eight minutes into the stop, Trooper Chapman told Mr. Cole that he would get off with a warning. But Trooper Chapman said that he preferred to go to a nearby gas station to complete the warning paperwork because he was concerned for their safety on the unprotected shoulder. That was not entirely true. Trooper Chapman testified later that he had already decided that he was not going to let Mr. Cole go until he had somehow managed to search the car for drugs. In response, Mr. Cole said he wanted to get on his way as soon as possible and would go only if he had to. Trooper Chapman made clear that Mr. Cole had no choice. Each drove in his respective car to the gas station. On the drive over, Trooper Chapman radioed to request a drug-sniffing dog.

After they arrived at the gas station, Trooper Chapman requested for the first time Mr. Cole's proof of insurance. Trooper Chapman then learned over the radio that Mr. Cole had been arrested for drug crimes fifteen years earlier. Trooper Chapman continued to interrogate Mr. Cole in a faux-casual manner, about his car, itinerary, travel plans, and residence. Mr. Cole's answers became increasingly contradictory and incoherent. He vacillated about whom he visited in Colorado, how long he had been on the road, and how he had the car insured and registered remotely

(suggesting he sent two different girlfriends to "one of those places" to fill out different parts of the paperwork). Upon finishing the warning, over thirty minutes after he first pulled Mr. Cole over, Trooper Chapman informed Mr. Cole that he was not free to leave because he suspected Mr. Cole was transporting drugs. The drug-sniffing dog arrived ten minutes later and quickly alerted to the presence of drugs. Trooper Chapman found several kilograms of methamphetamine and heroin in a hidden compartment and arrested Mr. Cole.

Mr. Cole was indicted on two counts of possessing controlled substances with intent to distribute. He moved to suppress the evidence against him on the ground that it was gathered in violation of the Fourth Amendment. He claimed that Trooper Chapman did not actually observe any traffic violations so that the stop was unlawful from the beginning. He also asserted that Trooper Chapman prolonged the stop without justification in violation of *Rodriguez v. United States*, 575 U.S. 348 (2015).

Trooper Chapman, Deputy Suttles, and Mr. Cole testified at a suppression hearing about the stop. Trooper Chapman testified that he saw Mr. Cole follow the car ahead of him too closely. He also conceded that issuing a warning normally takes only about 15 minutes and that he delayed part of his investigation. Even before he stopped Mr. Cole, Trooper Chapman had his vehicle registration and driver's license information, and he knew that insurance information was on file.

Relying heavily on a recording from Trooper Chapman's dashboard camera, the magistrate judge's written report and recommendation credited Trooper

Chapman's version of the tailgate over Mr. Cole's and concluded that Trooper Chapman had probable cause to stop Mr. Cole for following too closely. The judge also concluded that by the end of the roadside interrogation ten minutes into the stop, Trooper Chapman had a reasonable suspicion that Mr. Cole was a drug courier, justifying the further delays until the arrival of the dog 30 minutes later. The magistrate judge did not address directly the point that we think is decisive under *Rodriguez*, whether Trooper Chapman prolonged the stop in those first ten minutes by using the time to question Mr. Cole on topics unrelated to the constitutionally permissible, but pretextual, basis for the stop. After the district judge overruled his objections to the magistrate judge's recommendation that the motion to suppress be denied, Mr. Cole pleaded guilty to two counts of possessing a controlled substance with intent to distribute in violation of 21 U.S.C. § 841(a)(1), reserving his right to appeal the suppression issues. He was sentenced to 74 months in prison.

II. Analysis

This appeal takes us to the niche in Fourth Amendment law governing pretextual traffic stops. The Fourth Amendment forbids "unreasonable searches and seizures," and courts generally must exclude evidence recovered in a search or seizure that violated the Constitution. *United States v. Simon*, 937 F.3d 820, 828 (7th Cir. 2019). When faced with the appeal of a motion to suppress decided after an evidentiary hearing, we review the district court's legal conclusions de novo and findings of fact for clear error. *United States v. Wilbourn*, 799 F.3d 900, 908 (7th Cir. 2015).

Police officers may "seize" (stop and detain) drivers, but only where such a stop is reasonable under the Fourth Amendment. *Delaware v. Prouse*, 440 U.S. 648, 663 (1979). A full-blown arrest must be supported by probable cause. See *Martin v. Marinez*, 934 F.3d 594, 598 (7th Cir. 2019), citing *Holmes v. Village of Hoffman Estates*, 511 F.3d 673, 679 (7th Cir. 2007). A lesser seizure, such as a brief, investigatory stop, may be based on a mere reasonable suspicion, supported by "specific and articulable facts," that the subject is engaged in criminal activity. *Terry v. Ohio*, 392 U.S. 1, 21 (1968).

Though reasonable suspicion is a lower standard than probable cause, it must still be *reasonable*—a *Terry* stop requires more than curiosity, inchoate suspicion, or a hunch. *United States v. Rodriguez-Escalera*, 884 F.3d 661, 668 (7th Cir. 2018); *United States v. Paniagua-Garcia*, 813 F.3d 1013, 1014 (7th Cir. 2016) (a "mere possibility" of unlawful activity is not "enough to create a reasonable suspicion of a criminal act"); see generally *Heien v. North Carolina*, 574 U.S. 54, 60 (2014) (suspicion must be "particularized and objective"). Traffic stops, due to their relative brevity, are usually analyzed under the constitutional framework for *Terry* stops as opposed to formal arrests. *Rodriguez*, 575 U.S. at 354, quoting *Knowles v. Iowa*, 525 U.S. 113, 117, 119 (1998).

The constitutional reasonableness of traffic stops does not depend on the real motives of the officers involved. In *Whren United States*, 517 U.S. 806, 818–19 (1996), the Supreme Court held that pretextual stops for minor traffic violations do not run afoul of the Fourth Amendment so long as the officer has probable cause for the driving violation.

Pretextual traffic stops are common in drug interdiction efforts, and they seem to be easy to initiate lawfully. As then Attorney General Robert Jackson said long ago, "We know that no local police force can strictly enforce the traffic laws, or it would arrest half the driving population on any given morning." Robert Jackson, *The Federal Prosecutor*, Address Delivered at the Second Annual Conference of United States Attorneys (April 1, 1940), quoted in *Morrison v. Olson*, 487 U.S. 654, 727–28 (1988) (Scalia, J., dissenting). Yet there are limits. One of the most important is imposed by time and the purpose that makes the stop lawful in the first place. A seizure that is "lawful at its inception" can violate the Fourth Amendment if it is "prolonged beyond the time reasonably required to complete" the initial mission of the stop. *Illinois v. Caballes*, 543 U.S. 405, 407 (2005).

Most recently, the Supreme Court explained that a "police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures." *Rodriguez*, 575 U.S. at 350. During a traffic stop, the police officer must stick to the "mission" of the seizure: ensuring road safety, "determining whether to issue a traffic ticket, … checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." *Id.* at 355. An officer may not prolong the stop, "absent the reasonable suspicion ordinarily demanded to justify detaining an individual." *Id.* In determining whether an officer had reasonable suspicion to justify prolonging a traffic stop, we consider "the totality of the circumstances" and ask whether the officer can

"point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant th[e] intrusion." *Rodriguez-Escalera*, 884 F.3d at 668 (quotation marks omitted), quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981), and *Terry*, 392 U.S. at 21.

A. The Initial Stop

We proceed chronologically, considering first Trooper Chapman's initial stop and then the roadside questioning. Trooper Chapman first seized Mr. Cole by pulling him over for tailgating. We see no sound basis for overturning the district court's conclusion that Trooper Chapman had probable cause to do so, thus permitting the pretextual stop at the outset. The dashboard camera's recording of the asserted violation was taken from a distance, and it is grainy, with a partially obstructed view. The magistrate judge did not clearly err in crediting Trooper Chapman's testimony that he saw what was in his judgment a violation and in treating that judgment as objectively reasonable. See *Simon*, 937 F.3d at 829 ("If an officer reasonably thinks he sees a driver commit a traffic infraction, that is a sufficient basis to pull him over without violating the Constitution."). Based on the video and the magistrate judge's credibility determinations, we assume for purposes of this appeal that Trooper Chapman had probable cause to initiate the traffic stop for tailgating.

B. Interrogation at the Side of the Road

Under *Rodriguez* and *Caballes*, however, Trooper Chapman's legal authority to pull Mr. Cole over did not give him license to detain Mr. Cole for a speculative search or interrogation for "evidence of ordinary criminal wrongdoing." *Rodriguez*, 575 U.S.

at 355, quoting *Indianapolis v. Edmond*, 531 U.S. 32, 40–41 (2000). Police detention, however brief, is not a "minor inconvenience or petty indignity." *Terry*, 392 U.S. at 10, 16. The Supreme Court has "emphatically reject[ed]" the notion that the Constitution does not strictly regulate an officer's actions when he "accosts an individual and restrains his freedom to walk away." *Id.* at 16.

The implicit or explicit threat of violence hangs over even routine and constitutionally permissible seizures. "We are mindful that police, in carrying out their duties, often must react to potential threats quickly and under difficult and uncertain circumstances." *United States v. Howell*, 958 F.3d 589, 602 (7th Cir. 2020). Thus, during a *Terry* stop, an officer may in some cases frisk a suspect to search for weapons. *Terry*, 392 U.S. at 16–17, 30 (describing "a careful exploration of the outer surfaces of a person's clothing all over his or her body" and condoning a search because it did not reach "under the outer surface of [defendants'] garments"). The officer may also order a driver out of his car, even if, as here, that requires the driver to exit near moving traffic. *Pennsylvania v. Mimms*, 434 U.S. 106, 111 (1977) (per curiam).

If a suspect refuses to submit to any of these orders or an officer fears for her safety, the officer may use reasonable (and sometimes even deadly) force to make him submit. E.g., *Catlin v. City of Wheaton*, 574 F.3d 361, 365–66 (7th Cir. 2009) (no constitutional violation where police forced wrong person off road, tossed him to the side of the road, tackled him, and held his face in the ground while handcuffing him—even though quick license plate check would have revealed the mistaken identity); *Tom v. Voida*, 963

F.2d 952, 954 (7th Cir. 1992) (no constitutional violation where attempt to make justified *Terry* stop escalated until officer fatally shot subject); see also *Scott v. Harris*, 550 U.S. 372, 381 (2007) (no constitutional violation where deadly force was used against fleeing driver where initial purpose of attempted stop was routine traffic violation).

Here, the evidence, including the trooper's own testimony, shows clearly that Trooper Chapman slow-walked his work throughout the stop, though the critical constitutional violation came in those first ten minutes. Even before stopping Mr. Cole, Trooper Chapman had already ascertained that the Volkswagen was registered to him and that the car had insurance on file. Of the eight and a half minutes that Trooper Chapman had Mr. Cole in his police cruiser on the side of the road, he spent six minutes questioning Mr. Cole about topics that he already knew the answers to or went beyond the limited topics justified by the traffic stop: "determining whether to issue a traffic ticket, … checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." *Rodriguez*, 575 U.S. at 355.

Next, Trooper Chapman demanded that they drive to a nearby gas station—he claimed for officer safety, but Mr. Cole argues that Trooper Chapman wanted a few minutes alone to call in a drug-sniffing dog. Then, after the warning was complete, Trooper Chapman held Mr. Cole an additional ten minutes while they waited for a drug-sniffing dog to arrive.

We focus on the initial roadside questioning, which prolonged the stop without the reasonable,

articulable suspicion necessary to justify this delay. At the outset of the seizure, Trooper Chapman had at best only a hunch that Mr. Cole might be a drug courier. Most of what he knew simply came from Deputy Suttles' tip, but a police officer cannot launder such flimsy speculation into reasonable suspicion through the mere act of voicing a hunch to another officer. *United States v. Street*, 917 F.3d 586, 596–97 (7th Cir. 2019) ("To rely on collective knowledge to support a stop … the officer providing the information … must have facts supporting the level of suspicion required.") (quotation marks and citation omitted); see also *Navarette v. California*, 572 U.S. 393, 401 (2014), quoting *Terry*, 392 U.S. at 30 ("Even a reliable tip will justify an investigative stop only if it creates reasonable suspicion that 'criminal activity may be afoot.'").

The government claims that other facts of which Trooper Chapman was aware at the outset of the stop allowed this hunch to hobble across the line into the territory of reasonable suspicion: Mr. Cole was from a large American city, drove cautiously on a major interstate highway, owned a popular brand of car, sat with good posture, and had empty fast-food wrappers in the passenger compartment. Those are perfectly normal facts that could easily be true of millions of law-abiding Americans. "Without more, a description that applies to large numbers of people will not justify the seizure of a particular individual." *Street*, 917 F.3d at 594; see also *Kansas v. Glover*, 589 U.S. —, — , 140 S. Ct. 1183, 1190 (2020) (traffic stops do not "allow officers to stop drivers whose conduct is no different from any other driver's"); *United States v. Flores*, 798 F.3d 645, 649 (7th Cir. 2015) ("A suspicion so broad that would permit the police to stop a

substantial portion of the lawfully driving public … is not reasonable.").

The government also emphasizes the fact that Mr. Cole was driving *below* the speed limit. While a violation of a traffic law may justify a traffic stop, we have rejected the startling idea that *obeying* traffic laws may also justify a stop: "The mere lawful operation of a motor vehicle should not be considered suspicious activity absent extraordinary circumstances." *United States v. Ingrao*, 897 F.2d 860, 865 (7th Cir. 1990) (reversing denial of motion to suppress where arrest had been based in part on defendant's cautious driving).[1]

So, armed with little more than Deputy Suttles' guess, Trooper Chapman had no reasonable suspicion of wrongdoing that could support a seizure, a restraint on Mr. Cole's liberty. Accordingly, Trooper Chapman's mission was confined to executing the traffic stop: determining whether to issue a traffic ticket, checking Mr. Cole's authority to drive the Volkswagen, searching for outstanding warrants, and any other tasks needed to ensure road safety. See

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[1] The dissenting opinion asserts that Mr. Cole's nervous demeanor throughout the stop contributed to Trooper Chapman's growing reasonable suspicion. This misunderstands the record. Trooper Chapman testified, "A lot of people are nervous when they get stopped by the police until they just realize they're going to be issued a warning; it won't be any fine or court date. And then that nervousness will dissipate. In this case, the nervousness, if anything, increased and was sustained throughout the duration of the traffic stop." Tr. at 71–72. In other words, Mr. Cole's nervousness was a perfectly normal response to a police stop at the beginning, and it did not on its own provide a basis for prolonging the roadside detention for the extended inquiry into Mr. Cole's itinerary and travel plans.

Rodriguez, 575 U.S. at 355. If Trooper Chapman developed grounds for continued detention *while carrying out those permissible tasks*, he could have justified continued detention. That's the logic for using constitutionally permissible but pretextual stops in the first place. But that's not what happened.

Instead, Trooper Chapman went beyond that permissible scope almost immediately. Of the first eight and a half minutes in the cruiser on the side of the road, he spent about six minutes interrogating Mr. Cole about matters unrelated to tailgating or road safety. After informing Mr. Cole he had been following too closely, Trooper Chapman asked where Mr. Cole lived, since his car was validly registered in California, though he was validly licensed to drive in Arizona. Mr. Cole explained that he used to work in Arizona and kept the license for convenience because the expiration date was still a long way off. Mr. Cole also explained that he is a travelling chef who splits his time between New York, Maryland, and California. Trooper Chapman pressed Mr. Cole repeatedly on where he was headed (Maryland, for work), where he worked (Maryland, where he worked as a personal chef), and who his employer was (a former professional football player). Trooper Chapman asked again where Mr. Cole was headed, and he again replied Maryland. Trooper Chapman then asked where Mr. Cole's trip had started, and Mr. Cole responded that he had met up with friends and family in Colorado to visit "the springs." Trooper Chapman pressed what the *origin* of the trip was, and Mr. Cole explained that he stopped in Cincinnati on his way out from Maryland to Colorado. Trooper Chapman asked how long "this trip" had taken him, and Mr. Cole responded four days but clarified that he

only stopped in Cincinnati because he was passing through. Trooper Chapman continued to question Mr. Cole about his car, registration, and residence.[2]

These questions did nothing to advance the limited road and driver safety missions that Trooper Chapman was legally authorized to pursue. Mr. Cole's profession as a California-based traveling personal chef employed part-time in Maryland to a former professional footballer simply had nothing to do with whether he was safe to continue driving. And Trooper Chapman knew that Mr. Cole was authorized to drive the Volkswagen when he observed that Mr. Cole's name matched the registration mere seconds into the ten-minute-long roadside encounter.

It does not matter here whether, at some later point, Mr. Cole's answers became suspicious. The critical point under *Rodriguez* is that it was unconstitutional to prolong the stop to ask those questions to begin with. *United States v. Lopez*, 907 F.3d 472, 486–87 (7th Cir. 2018) (suppressing evidence gathered following questioning that prolonged seizure); see also *United States v. Childs*, 277 F.3d 947, 952 (7th Cir. 2002) (en banc), citing *United States v. Sharpe*, 470 U.S. 675, 685 (1985) ("Questioning that prolongs the detention, yet cannot be justified by the purpose of such an investigatory stop, is unreasonable under the fourth amendment.").

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[2] We tally the length of impermissible questioning during this road-side interrogation slightly differently than the dissenting opinion. But under the dissent's accounting, Trooper Chapman still prolonged the stop by several minutes, "even though *any* delay … is unconstitutional absent independent reasonable suspicion." See *Simon*, 937 F.3d at 833; see also *Rodriguez*, 575 U.S. at 356–57 (de minimis delays violate the Constitution); *United States v. Clark*, 902 F.3d 404, 410 n.4 (3d Cir. 2018).

This is where the magistrate judge erred. Even if we assume that issuing a warning typically takes 15 minutes, as Trooper Chapman testified, that does not mean that an officer has 15 free minutes to investigate other crimes before starting the substance of the stop in the hope that the questioning will unearth signs of other wrongdoing to justify still more detention and more investigation, such as waiting for a busy drug-sniffing dog to arrive. See *United States v. Garcia*, 376 F.3d 648, 650 (7th Cir. 2004) ("[T]he reasonableness of a search or seizure depends on what actually happens rather than what could have happened.").

If the video left any doubts that Trooper Chapman prolonged the stop and delayed executing his lawful mission to ask his off-topic questions, he admitted as much at the suppression hearing. Recall that he failed to collect Mr. Cole's insurance information at the outset of the stop, though that is an integral piece of information about Mr. Cole's authorization to drive. Trooper Chapman even admitted that the insurance information he had received prior to the stop was incomplete. In fact, collecting Mr. Cole's proof of insurance is one of the few things the Supreme Court has endorsed as within the mission of a normal traffic stop. *Rodriguez*, 575 U.S. at 355.[3]

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[3] The dissenting opinion relies in part on the timing of Mr. Cole's purchase of insurance to justify Trooper Chapman's drug-trafficking suspicions, well before he collected and verified the insurance information. There is no evidence that Trooper Chapman had the information about timing before he asked Mr. Cole for insurance information after arriving at the gas station. Even if we assume that Trooper Chapman knew earlier about the allegedly suspicious timing, however, he said at the suppression hearing that he doubted about the quality of the initial data and could not rely on it, and that he did not learn the full details of Mr. Cole's insurance and its timing until after they

When asked what accounted for that delay, Trooper Chapman admitted that he delayed collecting those necessary materials (for investigating the tailgating and Mr. Cole's driving) because he "was trying to piece together Mr. Cole's story, which was—as we all heard, was kind of inconsistent. Changed each time." Tr. 35.

With respect, that is not how this works. Under the Constitution, drivers do not need "stories" to travel on interstate highways. *Rodriguez* made clear that police officers may not use the implicit threat of state-sanctioned violence to hold someone against his will to extract details about his personal life, absent reasonable suspicion of criminal activity. Even if Mr. Cole's responses to Trooper Chapman's later questions contradicted the answers to the earlier questions, that could not justify prolonging the stop to ask and reask the questions in the first place.

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had arrived at the gas station. Tr. 68. Whether the initial summary available to Trooper Chapman before the stop contributed to his suspicion is doubtful but ultimately irrelevant. We assume that Trooper Chapman reasonably suspected Mr. Cole was trafficking drugs by the time he ordered Mr. Cole to drive to the gas station. We therefore need not determine whether the magistrate judge erred in concluding that the recent insurance registration contributed to Trooper Chapman's initial suspicions despite: Trooper Chapman's testimony (Tr. 68), the court's acknowledgment that "Trooper Chapman testified that the computer record about insurance was not reliable" (Dkt. 30 at 4), Trooper Chapman's arrest report, which did not mention the insurance as informing his suspicions (Dkt. 24, Ex. 1 at 1) and did not mention insurance until reporting the questioning after he had called for a dog (*id*. at 4), and both parties' respective descriptions of the traffic stop in the district court, where neither side asserted that Trooper Chapman learned anything about Mr. Cole's insurance before they drove to the gas station (Dkt. 24 at 5; Dkt. 29 at 5—6).

The government invites us to adopt a different rule, under which police officers may insist that a driver who is lawfully stopped for a minor and routine traffic infraction be able to convince the officer that she is not a criminal. The government's theory is that itinerary questions by definition fall within the scope of a traffic stop because they are road-related, so there was no constitutional violation despite the evidence that Trooper Chapman prolonged the stop. For support, the government cites several out-of-circuit cases approving of itinerary questions, all but one of which predate *Rodriguez*, and dicta from our decision in *United States v. Lewis*, 920 F.3d 483 (7th Cir. 2019).

The Supreme Court's most recent decision on pretextual traffic stops pointedly declined to categorically permit itinerary questioning as central to traffic stops' missions. The officer in *Rodriguez* had asked the driver and passenger about their itinerary, 575 U.S. at 351, but the Court left that out of the topics typically permissible because they help ensure that vehicles are "operated safely and responsibly." *Id.* at 355.

Courts applying *Rodriguez* thus must "inquire whether, on the facts of the particular case, [itinerary] questioning is within the traffic stop's mission" and if not, determine if the questioning impermissibly lengthened the stop. Wayne R. LaFave, 4 Search & Seizure § 9.3(d) (6th ed 2020); see also *United States v. Gomez-Arzate*, 981 F.3d 832, 836, 840 (10th Cir. 2020) (a few minutes of itinerary questioning that prolonged an already completed stop violated Constitution, but extended inquiry into car ownership may be permissible where driver is not listed on registration and cannot say who owns vehicle;

affirming denial of suppression on other grounds); *United States v. Callison*, 436 F. Supp. 3d 1218, 1226 (S.D. Iowa 2020) (suppressing evidence; itinerary questions irrelevant where defendant had been stopped for having an improperly lit license plate), appeal pending, No. 20-1398 (8th Cir. Feb. 27, 2020); *State v. Jimenez*, 420 P.3d 464, 475–76, 308 Kan. 315, 328–29 (2018) (affirming suppression where itinerary questions prolonged stop for following too closely, noting that courts must guard against "mission creep" in pretextual traffic stops); cf. *United States v. Dion*, 859 F.3d 114, 125 (1st Cir. 2017) (assuming that pre-*Rodriguez* case law about itinerary questioning survived because defendant conceded it); *United States v. Murillo-Salgado,* 854 F.3d 407, 416 (8th Cir. 2017) (declining to consider *Rodriguez's* impact on circuit case law because it did not affect the outcome).[4]

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[4] The government's other out-of-circuit cases all predate *Rodriguez*. A close examination of other circuits' approaches demonstrates that they did not categorically allow lengthy itinerary questioning even before *Rodriguez*. The Eighth Circuit did not apply consistent tests as to when itinerary questioning that prolongs a stop is permissible, and in any event *Rodriguez* expressly abrogated the Eighth Circuit's general approach to prolonged traffic stops. Compare *United States v. Bowman*, 660 F.3d 338, 343 (8th Cir. 2011) (reasoning that a 14-minute stop during which itinerary questions were asked was not too long, but granting that a 28-minute stop may violate the Constitution), with *United States v. $404,905.00 in United States Currency*, 182 F.3d 643, 647 (8th Cir. 1999), abrogated on other grounds, *Rodriguez*, 575 U.S. 348, (allowing officer to ask about driver's destination, route, and purpose only "during th[e] process" of completing "computerized checks of the vehicle's registration and the driver's license and criminal history, and the writing up of a citation or warning"). The government's citation from the Third Circuit is hesitant, and that circuit's current approach does not help the government's case. Compare *United States v. Givan*, 320 F.3d 452, 459 (3d Cir. 2003)

Contrary to the government's contention, our decision in *Lewis* did not hold that an officer may prolong a stop indefinitely to ask increasingly invasive and repetitive questions about a driver's travels and employer—nor could it have, given *Rodriguez*. In fact, *Lewis's* holding affirming denial of suppression is consistent with the outcome here, notwithstanding similarities between the cases. In *Lewis*, the defendant was also pulled over for tailgating, 920 F.3d at 487, and the arresting officer asked itinerary and personal questions. The critical difference is that he did so while he was also filling out the necessary paperwork. *Id.* at 492. The officer in *Lewis* completed the written warning and dog sniff within eleven and twelve minutes, respectively. *Id.*

We described several possible routes to affirming the district court's denial of Lewis's suppression motion. We concluded that "the biggest problem with Lewis's argument" was that he failed to show that the district court clearly erred in concluding that the officer's questioning simply did not prolong the stop. The video showed the officer filled out paperwork throughout the conversation and did so expeditiously. *Id.*

In this case, however, the video showed, and Trooper Chapman admitted, that he delayed commencing important, permissible parts of his investigation until after questioning Mr. Cole about his "story" for six minutes, roughly the same amount

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(acknowledging before *Rodriguez* that itinerary questions are "ordinarily" part of an officer's mission), with *United States v. Clark*, 902 F.3d 404, 408, 410–11 (3d Cir. 2018) (confirming that *Rodriguez* calls for fact-sensitive inquiry as to whether ordinarily permissible questions actually advance a stop's mission when they measurably prolong a stop).

of time that the Supreme Court held to be an unconstitutional delay in *Rodriguez*. 575 U.S. at 352. This critical difference distinguishes this case from *Lewis*. Mr. Cole, unlike Mr. Lewis, has shown that "these exchanges prolonged the process of issuing the warning." *Lewis*, 920 F.3d at 492.

Moreover, Trooper Chapman admitted that the stop took twice as long as it should have, dragging on to about 30 minutes when it should have taken 15 minutes. Recall that Trooper Chapman already had Mr. Cole's license and registration information even before the stop began. Trooper Chapman also admitted that he failed to commence key aspects of his investigation about Mr. Cole's legal authority to drive until 17 minutes after he first pulled Mr. Cole over, well after the initial roadside encounter at issue here had ended. When asked what accounted for this delay, Trooper Chapman did not even gesture toward a constitutional justification, such as investigation of the traffic violation or officer safety. Instead, he admitted that he had held off completing the substance of the stop until he had pressed Mr. Cole about his "story." See Tr. 35. Simply put, whereas the officer in *Lewis* completed the warning within eleven minutes, Trooper Chapman had not even collected all of Mr. Cole's paperwork by that point, and he did not even attempt to account for that delay in constitutionally permissible terms.[5]

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[5] The government further argues that we should infer from a beeping noise in the background of the dashboard camera video during the roadside questioning that Trooper Chapman was doing some kind of permissible investigation or preparation while asking questions. That argument is refuted by several aspects of Trooper Chapman's testimony, including his admissions that he delayed executing his permissible mission and that issuing a warning generally takes about 15 minutes.

To be sure, we were rightly incredulous in *Lewis* at the prospect that a police officer who opens a traffic stop with a brief question such as, "How are you doing?" or, "Where are you going today?" violates the Constitution. That dicta cited two pre-*Rodriguez* cases that each concerned the constitutionality of a seizure when a police officer asked a single, pointed question aimed at detecting drug transport; in each case we held that such brief inquiries did not prolong the respective stops. See generally *Childs*, 277 F.3d 947; *United States v. Muriel*, 418 F.3d 720 (7th Cir. 2005). To use *Rodriguez*'s language, the seizures in *Childs* and *Muriel* remained lawful because the isolated question did not "measurably extend the duration of the stop." See *Rodriguez*, 575 U.S. at 355, quoting *Arizona v. Johnson*, 555 U.S. 323, 333 (2009).[6]

Lewis's invocation of these decisions in discussing whether an officer may inquire as to a driver's destination clarifies that our dicta referred to a brief context-setting question as opposed to a lengthy interrogation such as what happened here. Under our precedents, we expect it will be almost impossible for a defendant to demonstrate that one or two broad questions at the beginning of a traffic stop were irrelevant to an officer's constitutional mission and measurably extended the duration of the stop. See

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See also *Lewis*, 920 F.3d at 492 (Illinois state trooper completed warning within eleven minutes while also questioning driver).

[6] To the extent that those decisions relied on an alternate cost-benefit rationale to excuse officers' de minimis but quantifiable delays in the service of drug interdiction, the Supreme Court flatly rejected that reasoning in *Rodriguez*. 575 U.S. at 349, 356. Our subsequent cases recognize as much. E.g., *Lopez*, 907 F.3d at 486 ("a 15-minute stop would be too long if the investigation justifying the stop finished at the 14-minute mark").

Rodriguez, 575 U.S. at 355; see also, e.g., *Simon*, 937 F.3d at 833 (affirming district court's factual finding that unrelated inquiry did not measurably prolong stop at all, but noting that constitutionality of stop would be in question if suspicion less checks prolonged stop); cf. *Clark*, 902 F.3d at 409 n.2, 410–11 (affirming suppression of evidence based on district court's factual finding that 20 seconds of irrelevant questioning *after an officer had completed his mission* measurably prolonged stop); *United States v. Cone*, 868 F.3d 1150, 1155 (10th Cir. 2017) (affirming denial of suppression because there was no causal connection between brief itinerary questions and discovery of firearm that was visible in car's cabin).

Lewis simply did not pronounce broadly on the permissibility of extended itinerary questioning, even in dicta. We explicitly avoided making such a conclusion when we noted that Mr. Lewis's "biggest" problem was the ambiguous evidence of delay he brought on appeal, not that our precedents conclusively foreclosed his claim as a matter of law. See *Lewis*, 920 at 492. And in any event, the government's argument here on the itinerary questions ignores the fact that Trooper Chapman also dwelled on Mr. Cole's registration, which he knew to be in good order, as well as residence, chef jobs, vehicle history, and so forth. See *Gomez-Arzate*, 981 F.3d at 836, 840 (prolonging a stop to conduct redundant or superfluous checks violates the Fourth Amendment); *Clark*, 902 F.3d at 409 n.2, 410–11 (similar); *United States v. Gorman*, 859 F.3d 706, 715 (9th Cir. 2017) (half-hour stop violated Fourth Amendment where most of the duration of the stop occurred after the officer learned that the driver's registration was in good order); see also *United States*

v. Cortez, 965 F.3d 827, 839 (10th Cir. 2020) (questioning about driver's profession and where she stays while traveling was outside the scope of traffic stop; affirming suppression on other grounds).

To be clear, we are not drawing a line that says itinerary questions are never permissible. Under the Fourth Amendment and *Rodriguez*, the question is reasonableness under the circumstances that made the stop constitutional in the first place. "An officer, in other words, may conduct certain unrelated checks during an otherwise lawful traffic stop. But contrary to Justice ALITO's suggestion … he may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual." 575 U.S. at 355.

In some situations, basic information about how long a driver has been on the road and where the driver is headed can inform an officer's investigation into whether a traffic violation such as speeding in fact occurred and a decision to warn, ticket, or arrest: "Q: What's the rush, sir? A: My wife is in labor." See *United States v. Brigham*, 382 F.3d 500, 508 & n.6 (5th Cir. 2001) (en banc). It is not hard to imagine instances where even detailed itinerary questioning could fall squarely within an officer's mission in executing a traffic stop. For example, in furtherance of road safety, an officer concerned that a driver is exhibiting signs of fatigue may be permitted to prolong a stop to ask questions about how long she had been on the road. See *Jimenez*, 420 P.3d at 475, 308 Kan. at 329. We also do not read *Rodriguez* as barring an officer from extending a stop to make conversation with an erratic driver where the officer is reasonably looking for signs of impairment. Cf. *Navarette*, 572 U.S. at 402–03. And nothing stops

police officers from investigating the infraction that actually motivated the stop.

This circuit's approach accordingly remains in line with the other circuits that have addressed the propriety of itinerary questioning after *Rodriguez*. As we explained in *Lewis*, police officers may ask about whatever they want, so long as they do not prolong the stop with their questioning; that is what the Supreme Court explained in *Caballes* and *Rodriguez*. See also *Childs*, 277 F.3d at 950. Officers may "ordinarily" indulge in "some" itinerary questioning, *United States v. Garner*, 961 F.3d 264, 271 (3d Cir. 2020), but itinerary questions and the like do not necessarily fall within the scope of a traffic stop, *Rodriguez*, 575 U.S. at 355, and ordinarily acceptable questions may impermissibly prolong a stop based on the specific facts of a given case. See also *Clark*, 902 F.3d at 410–11. Though introductory context-setting questions about a driver's itinerary and registration "rarely offend our Fourth Amendment jurisprudence," *United States v. Collazo*, 818 F.3d 247, 258 (6th Cir. 2016), the interrogation here went well beyond the permissible scope of the stop given the clear-cut six-minute delay, the overall context of an unusually long traffic stop, and Trooper Chapman's failure to provide a permissible justification for the easily observable delays.[7]

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[7] The dissenting opinion also cites *United States v. Cortez*, 965 F.3d 827, 839 (10th Cir. 2020), which observed that "an officer may generally inquire about a driver's travel plans … because travel plans typically are related to the purpose of the stop." (cleaned up). Neither the government nor the dissent hypothesize how the extended questioning here could have had anything to do with the infraction and stop—Mr. Cole's having followed too closely for several seconds after being cut off, notwithstanding otherwise proper driving under an extended

The reasonableness standard of the Fourth Amendment permits police officers substantial flexibility in how they perform their duties in a traffic stop. Here, however, the undisputed evidence shows that Trooper Chapman's pretext was paper-thin, and he prolonged the stop for at least six minutes. This case is ripe for decision without additional fact-finding because Trooper Chapman admitted that he held off on key aspects of his investigation and did not provide any constitutional justification for why this stop was so long or why he delayed during the initial roadside encounter. See *United States v. Evans*, 786 F.3d 779, 787 (9th Cir. 2015).[8]

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period of observation. *Cortez* is also a problem for the government because it explained that many of Trooper Chapman's more invasive questions, including those related to employment, fall outside the routine bounds of a traffic stop. *Id.* And as discussed above, the Tenth Circuit has further clarified that even ordinarily acceptable travel questions can run afoul of the Fourth Amendment when they are irrelevant to the stop and prolong the detention. *Gomez-Arzate*, 981 F.3d at 840.

[8] The dissenting opinion characterizes this as wading into waiver-adjacent territory. To be sure, Mr. Cole's amended suppression motion was terse, but the rules against consideration of waived and forfeited arguments are not so narrow as to limit an appellant to his or her initial *focus*. Mr. Cole's suppression motion observed that ten minutes elapsed roadside, during which time Trooper Chapman asked itinerary questions, and then the dog sniff did not occur for another 30 minutes yet. Under *Rodriguez*, he asserted, all of these delays were unconstitutional. Dkt. 24 at 3, 9, 11. His argument was broad, and the government interpreted it as such. The government's equally terse response devoted valuable space to the propriety of itinerary questions and *Lewis*. Dkt. 25 at 8. Mr. Cole in fact developed a record on this point at the hearing, and the government failed to repair the damage during its cross-examination. The government's post-hearing brief elaborated on *Lewis*'s applicability. Dkt. 29 at 10. The magistrate judge

We should not be surprised that there is a significant risk of "mission creep" where the stop is justified constitutionally by one limited purpose but is actually motivated by a different purpose. See *Jiminez*, 420 P.3d at 476, 308 Kan. at 329. In such cases, district courts must make the joint legal and factual determination of how long was reasonably necessary to execute the stop's permissible mission and then decide whether the stop's duration measurably exceeded that ceiling or the officer otherwise unreasonably prolonged the stop. Our review of fact-finding is deferential. *E.g.*, *Simon*, 937 F.3d at 832 (deferring to district court's credibility determinations as to whether the officers prolonged a stop); *Lewis*, 920 F.3d at 492 (similar); see also *Rodriguez-Escalera*, 884 F.3d at 672 (affirming grant of motion to suppress based on factual findings, including those on credibility).

We need not consider the additional delays that took place during the gas station detour. The permissible scope and duration of investigations into reasonably suspicious behavior are highly fact-intensive and fluid, and when considering an obviously pretextual stop like this one, a court needs to stay focused in its analysis on the circumstances that make the stop constitutional in the first place.

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likewise addressed the propriety and duration of the initial roadside encounter. Dkt. 30 at 23. The government did not ask us to resolve this appeal on a weak forfeiture argument. We need not second-guess its tactical decisions or ignore facts that were developed at the suppression hearing in response to the arguments that the parties made in their pre-hearing briefs. The evidence of Trooper Chapman's roadside activities is one-sided: the video showing several minutes of off-point interrogation, his admission that he held off parts of his traffic investigation until he had learned Mr. Cole's full story, and some beeping noises.

One of three things must happen during a *Terry* stop: "(1) the police gather enough information to develop probable cause and allow for continued detention, (2) the suspicions of the police are dispelled and they release the suspect, or (3) the suspicions of the police are *not* dispelled, yet the officers have not developed probable cause but must release the suspect because the length of the stop is about to become unreasonable." *United States v. Leo*, 792 F.3d 742, 751 (7th Cir. 2015) (internal citations to collected cases omitted). An officer who reasonably believes a driver is suspicious based on some ambiguous or conflicting statements may not detain the suspect indefinitely, lest the stop turn into "a de facto arrest that must be based on probable cause." See *id.*, quoting *United States v. Bullock*, 632 F.3d 1004, 1015 (7th Cir. 2011). Because the initial portion of this stop was unconstitutional and was used to prolong the stop improperly, we need not address how the stop evolved over the entire hour.

Trooper Chapman measurably prolonged the stop by six minutes to investigate possible additional crimes without reasonable suspicion, and those actions led to discovery of the evidence against Mr. Cole. We REVERSE the denial of Mr. Cole's motion to suppress and REMAND the case for further proceedings where Mr. Cole may withdraw his guilty plea that was conditioned on the admissibility of the evidence against him obtained through the unlawful seizure and subsequent searches.

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ST. EVE, *Circuit Judge*, dissenting. I would affirm the district court's denial of Cole's motion to suppress. Trooper Chapman developed reasonable suspicion

that Cole was engaged in criminal activity less than nine minutes into the stop, following a brief and routine conversation about Cole's license, registration, and travel plans. That reasonable suspicion allowed Trooper Chapman to prolong the stop for the dog sniff, which uncovered drugs in Cole's car. The majority's holding to the contrary conflicts with our precedent, creates new limits on what officers can ask during *Terry* stops, and rests on a dubious factual finding that the district court never made. I respectfully dissent.

I.

As the majority recognizes, Trooper Chapman lawfully stopped Cole on the interstate for following too closely. Indeed, Cole himself conceded at oral argument that there is no basis for upsetting the district court's factual finding that he followed too closely. The central issue on appeal is whether the stop became unlawful at any point during the detention that followed the lawful stop.

A closer look at the factual record puts this issue in context. After stopping Cole, Trooper Chapman approached Cole's car and spoke to him for about 30 seconds at the passenger's side window. He retrieved Cole's license and registration and asked if Cole's license showed his current address. He then asked Cole to sit in his squad car so he could explain the purpose of the stop. Trooper Chapman testified that he asked Cole to sit in his squad car because he was having trouble hearing Cole, and for safety reasons because his body was exposed to traffic on the highway. He added that he "was looking at the California registration, an Arizona driver's license, and all the other observations I made prior to that."

About a minute and a half into the stop, Cole entered the squad car. Cole asked why Trooper Chapman pulled him over. Trooper Chapman spent about a minute explaining the details of how Cole had followed another car too closely. Trooper Chapman then asked Cole about his Arizona driver's license and California license plate. Cole explained that he worked as a personal chef who traveled around the country for work. Trooper Chapman asked Cole when he got his license and what his first name was. These questions (and Cole's answers) lasted another minute. At that point (about four minutes into the stop), Trooper Chapman asked Cole where he was headed. He followed up with questions about Cole's job as a traveling chef and the details of Cole's trip. These questions lasted about two and a half minutes. Trooper Chapman then asked Cole about his car and current residence, apparently trying to make sense of the discrepancy between Cole's license (Arizona), registration (California), and current residence (Maryland). In Cole's telling, his job as a traveling chef explained the discrepancy. Trooper Chapman also asked Cole why he chose to drive, rather than fly. These additional questions (and Cole's answers) lasted two minutes and 20 seconds.

Less than nine minutes into the stop, Trooper Chapman told Cole that he was going to issue him a warning. He explained, though, that they would have to relocate to a gas station for safety reasons. Cole exited the car, and they both drove to the gas station. In total, the initial roadside detention lasted about ten minutes. Less than five minutes passed between when Trooper Chapman began asking Cole about his travel plans and when he told him he would issue him a warning.

The district court concluded that Trooper Chapman had reasonable suspicion of other criminal activity by the time he decided to relocate the stop, at which point he was "clearly within the time reasonably needed to complete the traffic stop." I agree. It is undisputed in this case that issuing the warning alone would have taken 15 minutes. As such, the critical question is whether the traffic stop was "'prolonged beyond the time reasonably required to complete th[e] mission' of issuing a warning ticket." *Rodriguez v. United States*, 575 U.S. 348, 354–55 (2015) (quoting *Illinois v. Caballes*, 543 U.S. 405, 407 (2005)).[1]

Based on the above facts, I would hold that Trooper Chapman had reasonable suspicion of other criminal activity when he told Cole he was going to issue him a warning—less than nine minutes into the stop. In response to Trooper Chapman's questions, Cole, an out-of-state motorist traveling on an interstate, told an implausible and evolving travel story about driving from Maryland to Cincinnati to multiple locations in Colorado and then to Illinois on his way back to Maryland— all in just four days. He originally said he spent two of the four days in Cincinnati alone, but he quickly changed his answer and said he just passed through Cincinnati. His story about Colorado also seemed to evolve. Initially, he said he met friends and family in "the springs." Then,

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[1] I agree with the majority that an officer does not have "15 free minutes to investigate other crimes before starting the substance of the stop in the hope that the questioning will unearth signs of other wrong-doing to justify still more detention and more investigation." As I explain below, Trooper Chapman's questioning stayed within the permissible scope of the traffic stop.

he said he met some friends at the Springs and went to Boulder to visit a buddy. After that, he said he met some buddies in Colorado because one of them was getting a divorce. Trooper Chapman also testified that Cole was "extremely nervous." Cole himself commented on how nervous he was.[2] Beyond that, Cole's car insurance was only a few days old. Trooper Chapman testified that drug traffickers often insure cars for specific trips, rather than maintaining permanent insurance.[3] Finally, Cole offered a vague and confusing explanation for why he had an Arizona driver's license, a car registered in California, and a residence in Maryland.

Taken together and assessing the totality of the circumstances known to Trooper Chapman, these facts created reasonable suspicion that Cole was engaged in criminal activity. *See, e.g.*, *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000) ("Our cases have … recognized that nervous, evasive behavior is a pertinent factor in determining reasonable suspicion."); *United States v. Lewis*, 920 F.3d 483, 493 (7th Cir. 2019) (finding reasonable suspicion based on defendant's "unusually nervous" behavior, criminal

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[2] The majority cites a portion of Trooper Chapman's testimony for the proposition that Cole's nervousness was "perfectly normal" at the outset. But in the quoted testimony Trooper Chapman distinguished Cole's nervousness from the level of nervousness that most drivers exhibit when they are pulled over. Indeed, Trooper Chapman testified earlier in the hearing that Cole's level of nervousness was "consistent with other individuals that I've stopped that were involved in criminal activity."

[3] The majority claims that Trooper Chapman did not know about Cole's recent insurance purchase before relocating the stop to the gas station. But the district court found that he did, and Cole does not challenge that factual finding on appeal.

history, and "suspiciously inconsistent" answers); *United States v. Ruiz*, 785 F.3d 1134, 1144 (7th Cir. 2015) (finding that an officer's suspicions were reasonably increased by the defendant's Texas driver's license and Wisconsin registration). I place no reliance on the many innocuous factors (e.g., Cole's compliance with the speed limit and good driving posture) that the government labels suspicious.

Because Trooper Chapman knew the above facts less than nine minutes into the stop, he had a lawful basis to prolong the stop for the dog sniff. *See Rodriguez*, 575 U.S. at 355 (holding an officer may not prolong a stop beyond the time reasonably required to complete it "absent the reasonable suspicion ordinarily demanded to justify detaining an individual"). And because Trooper Chapman had reasonable suspicion to prolong the stop less than nine minutes in, it does not matter that he ultimately issued the warning 30 minutes into the stop. *See id.*

II.

The majority analyzes the stop differently. In its view, the stop became unlawful as soon as Trooper Chapman began asking Cole about his itinerary. In reaching this conclusion, the majority announces a new legal rule regarding travel-plan questions during a *Terry* stop that is at odds with our precedent and hamstrings law enforcement officers. The majority proclaims that Trooper Chapman's travel-plan questions "almost immediately" became impermissible because they were "unrelated to tailgating or road safety;" that the questions did not "advance the limited road and driver safety missions" that Trooper Chapman could pursue; and that they unreasonably "delayed" the "permissible parts of his

investigation." This broad holding ignores our law on the permissibility of travel-plan questions and imposes rigid, unreasonable boundaries on officers during traffic stops.

If Trooper Chapman's questioning had veered away from the traffic stop and into completely unrelated territory, I might agree with the majority that the stop here was unlawful. *See*, *e.g.*, *United States v. Gomez*, 877 F.3d 76, 91–92 (2d Cir. 2017) (holding that a traffic stop was unlawful because the officer spent most of it asking questions about heroin trafficking); *see also Rodriguez*, 575 U.S. at 356 ("On-scene investigation into other crimes … detours from th[e] mission" of a traffic stop). But that is not what happened. Trooper Chapman asked Cole about his out-of-state license, out-of-state registration, and travel plans. These are acceptable inquiries that fall within the scope of a traffic stop.[4]

The Supreme Court has made clear that the Fourth Amendment permits an officer to inquire into "matters unrelated to the justification for the traffic stop" without converting "the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop." *Arizona v. Johnson*, 555 U.S. 323, 333 (2009). In *Rodriguez*, the Court held that "the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission'—to address the traffic violation that

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[4] Contrary to the majority's suggestion, the issue here is not whether "police officers may insist that a driver who is lawfully stopped for a minor and routine traffic infraction be able to convince the officer that she is not a criminal." The issue is whether basic travel-plan questions fall within the permissible scope of a traffic stop.

warranted the stop and attend to related safety concerns." *Rodriguez*, 575 U.S. at 354 (quoting *Caballes*, 543 U.S. at 407). "Beyond determining whether to issue a traffic ticket, an officer's mission includes 'ordinary inquiries incident to [the traffic] stop.'" *Id.* at 355 (quoting *Caballes*, 543 U.S. at 408). These ordinary inquires typically "involve checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." *Id.* These inquiries "serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly." *Id.*

Rodriguez did not address whether travel-plan questions fall within the "mission" of a traffic stop, but we and other circuits have held that they normally do. *Lewis*, 920 F.3d at 492 (rejecting the argument that "Where are we headed to today, sir?" was "irrelevant to a traffic stop"); *see also United States v. Cortez*, 965 F.3d 827, 838 (10th Cir. 2020) ("An officer may … inquire about the driver's travel plans and the identity of the individuals in the vehicle."); *United States v. Garner*, 961 F.3d 264, 271 (3d Cir. 2020) ("[S]ome questions relating to a driver's travel plans ordinarily fall within the scope of the traffic stop."); *United States v. Dion*, 859 F.3d 114, 125 (1st Cir. 2017) ("[O]ur case law allows an officer carrying out a routine traffic stop to request identification from the driver and to inquire into the driver's itinerary."); *United States v. Collazo*, 818 F.3d 247, 258 (6th Cir. 2016) ("Questions relating to travel plans … are the sorts of classic context-framing questions directed at the driver's conduct at the time of the stop that rarely offend our Fourth Amendment jurisprudence."

(quoting *United States v. Lyons*, 687 F.3d 754, 770 (6th Cir. 2012))).

And for good reason. Travel-plan questions comport with "the public's expectations" and normally relate to the purpose of a stop. *Cortez*, 965 F.3d at 839. Here, for example, Cole's itinerary could inform why he was following too closely. *See id.* (reasoning that travel-plan questions "could cast light on why Cortez had been speeding, tying them to the initial justification for the stop"). Trooper Chapman's travel-plan questions were also closely related to his permissible questions about Cole's possession of an Arizona license and California registration while traveling on an Illinois interstate. *See Rodriguez*, 575 U.S. at 355. More broadly, the command of the Fourth Amendment is reasonableness. Our "object in implementing its command of reasonableness is to draw standards sufficiently clear and simple to be applied with a fair prospect of surviving judicial second-guessing months and years after an arrest or search is made." *Atwater v. City of Lago Vista*, 532 U.S. 318, 347 (2001). Holding that travel-plan questions ordinarily fall within the scope of a traffic stop gives officers the flexibility they need to investigate traffic violations and ensure their own safety without worrying that judges will dissect their routine travel-plan questions months or years after the stop. *Id.*

The majority acknowledges that travel-plan questions often fall within the scope of a traffic stop, but it holds that the questions here went too far. The majority's holding on this point conflicts with our recent decision in *Lewis*. *Lewis* is essentially identical to this case. Like Cole, Lewis was pulled over for following too closely. *Lewis*, 920 F.3d at 486. Like

Cole, Lewis complained that the officer spent several minutes "asking about irrelevant travel matters." *Id.* at 492. Like Trooper Chapman, the officer in *Lewis* began by asking where the defendant was headed. We dismissed the idea that this question was unrelated to the traffic stop: "Officers across the country would be surprised if we countenanced the characterization of this basic, routine question as irrelevant to a traffic stop." *Id.* Because Lewis's response to the officer's first question was "not entirely forthcoming," the officer—like Trooper Chapman—asked several follow-up questions. Lewis answered these follow-up questions in a similarly evasive manner. We squarely rejected Lewis's argument that the officer's travel-plan questions were impermissible: "The Constitution allows an officer to ask these questions during a traffic stop, especially when the answers objectively seem suspicious." *Id.* So too here: The Constitution allowed Trooper Chapman to ask Cole about his travel plans, especially because Cole's "answers objectively seem[ed] suspicious." *Id.*

The majority finds *Lewis* distinguishable on the ground that the officer there was efficiently pursuing the warning while simultaneously asking travel-plan questions. I doubt the constitutional boundary hinges on whether an officer is asking basic travel-plan questions simultaneously, rather than immediately before or after, processing the warning. Even assuming, however, that Trooper Chapman's travel-plan questions were outside the scope of the traffic stop—which they were not—the majority's distinction rests on a factual finding that the court below never made, i.e., that Trooper Chapman was not otherwise furthering the traffic stop while asking travel-plan questions. We simply do not know if that is true; the

record is not developed on that point. In the district court, the parties' evidence and arguments centered on whether Trooper Chapman had probable cause to pull Cole over for a traffic offense and whether Trooper Chapman had reasonable suspicion to prolong the stop. The district court analyzed the evidence and legal issues accordingly. On appeal, Cole shifts his focus to the lawfulness of Trooper Chapman's travel-plan questions. The government does not assert waiver, but that does not give us license to roam through the record and make factual findings that the district court never made and on which the parties never focused. Our job is to review the district court's factual findings for clear error—not to make factual findings in the first instance. *See United States v. Jackson*, 962 F.3d 353, 357 (7th Cir. 2020).

Further, the majority's factual finding appears to be incorrect. The limited evidence in the record suggests that Trooper Chapman was double tasking while talking to Cole. Trooper Chapman testified that he ran Cole's criminal history after receiving his driver's license, and that he got the results back while talking to Cole on the side of the road. At the very beginning of the traffic stop, Trooper Chapman called in Cole's license plate, presumably so that dispatch could run a check on it. In the video of the stop, it sounds as though Trooper Chapman is working on something else while talking to Cole. There are long pauses in the conversation and various beeping noises. I understand the majority's unwillingness to infer from the beeping that Trooper Chapman was efficiently pursuing the traffic stop while talking to Cole—but there is no basis for drawing the opposite inference. By all appearances, Trooper Chapman was

doing other things while talking to Cole on the side of the road. The majority's contrary finding goes beyond what the district court found and contradicts the record. As such, it is an improper basis for distinguishing *Lewis*.

More generally, the lack of factual findings on this point prevents us from drawing any conclusions on appeal about whether Trooper Chapman's travel-plan questions "prolonged the stop by several minutes," as the majority concludes. To begin, the travel-plan questions fell within the mission of the stop, so they could not have prolonged the stop. And even if they did not, we lack the factual findings to determine whether Trooper Chapman "detour[ed]" from the stop to ask them. *Rodriguez*, 575 U.S. at 356. Contrary to the majority's suggestions, Trooper Chapman did not "admit[]" that he delayed the stop to ask travel-plan questions. To be sure, he testified that he was "trying to piece together Mr. Cole's story" before he asked for Cole's insurance information. But this does not mean he was not performing tasks related to issuing a warning while asking these questions. And the district court certainly never made such a factual finding, given that the parties did not raise this issue below. There is thus no basis for the majority's factual conclusion that Trooper Chapman admitted to delaying the stop.

The majority portrays its holding as in line with *Lewis* and the holdings of other circuits. But it does not cite any other circuit court decision holding a traffic stop unlawful because an officer asked travel-plan questions. And, for reasons I have explained, the

majority provides no sound basis for distinguishing *Lewis*.[5]

Applying *Rodriguez* and *Lewis*, I would hold that the stop here was constitutional and affirm the judgment below. I respectfully dissent from the majority's decision to the contrary.

[5] Because the majority's holding conflicts with Lewis, I would circulate this opinion to the full court under Circuit Rule 40(e).

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF ILLINOIS, SPRINGFIELD DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. JANHOI COLE, Defendant.	No. 18-cr-30038

OPINION

RICHARD MILLS, United States District Judge:

United States Magistrate Judge Tom Schanzle-Haskins entered a Report and Recommendation, wherein he recommended that Defendant Janhoi Cole's amended motion to suppress evidence be denied.

Defendant Janhoi Cole has filed an Objection to the Report and Recommendation.

Pursuant to 28 U.S.C. § 636(b)(1)(C), the Court will make a de novo determination of the portions of the report to which objection is made.

The Defendant seeks the suppression of any evidence found as a result of a traffic stop in Springfield, Illinois on June 25, 2018, and any statements or admissions obtained as a result of that stop.

Specifically, the Defendant objects to the magistrate judge's conclusion that "the recording shows that after the Squad Car swung to the left from

behind the Black SUV, the Vehicle was following too closely behind the Merging Vehicle." Doc. No. 30, at 8. Based on that objection, the Defendant also objects to the conclusion that "Trooper Chapman had probable cause to stop Cole for following too closely behind the Merging Vehicle." *Id*. at 21. The Defendant further objects to the conclusion that "Trooper Chapman also had reasonable suspicion to detain Cole beyond the time reasonably necessary to complete the traffic stop." *Id*. He claims the traffic stop was not supported by probable cause. The Defendant further contends that the Court's review of video will show that he was not following too closely and that the magistrate judge's finding is erroneous.

Accordingly, the Defendants asks the Court to suppress any and all physical, oral, tangible or intangible evidence, admissions or statements obtained by Illinois State Trooper Clayton Chapman or any other law enforcement personnel in their illegal detention of the Defendant and subsequent warrantless search.

The Court has reviewed the video and agrees with the magistrate judge's finding that when the squad car moved left from behind the black SUV, the Defendant's vehicle appeared to be following too closely behind the merging vehicle when the left lane ended. An officer could reasonably have believed that Defendant was following too closely behind the merging vehicle in violation of 635 ILCS 5/11-710. Therefore, the Court concludes that the officer had probable cause to stop the vehicle for following too closely.

Based on the factors noted on pages 23 and 24 of the Report and Recommendation, the Court also

agrees with the magistrate judge's finding that Trooper Chapman had reasonable suspicion to detain the Defendant beyond the time reasonably necessary to complete the traffic stop.

For all of these reasons, the Court will accept the Report and Recommendation and deny the motion to suppress.

Ergo, the Court ACCEPTS United States Magistrate Judge Tom Schanzle-Haskins' Report and Recommendation [d/e 30] and Denies the Defendant's Objections [d/e 31] thereto.

The Defendant's Amended Motion to Suppress Evidence [d/e 24] is DENIED.

ENTER: September 10, 2019

FOR THE COURT:

s/ *Richard Mills*
Richard Mills
United States District Judge

APPENDIX E

IN THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF ILLINOIS, SPRINGFIELD DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. JANHOI COLE, Defendant.	No. 18-cr-30038

REPORT AND RECOMMENDATION

TOM SCHANZLE-HASKINS, U.S. MAGISTRATE JUDGE:

This matter comes before the Court on Defendant Janhoi Cole's Amended Motion to Suppress Evidence (d/e 24) (Motion). On July 10, 2018, a grand jury indicted Cole for possession with intent to distribute 500 grams or more of a substance containing methamphetamine (Count 1), and possession with intent to distribute 1 kilogram or more of a substance containing heroin (Count 2), both in violation of 21 U.S.C. §§ 841(a)(1), and (b)(1)(A). Indictment (d/e 9). On April 12, 2019, Cole filed the Motion to suppress the evidence found as a result of a traffic stop in Springfield, Illinois on June 25, 2018, and any statement or admissions obtained as a result of that stop.

On May 28, 2019, the Court held an evidentiary hearing on the Motion. Cole appeared personally and by his attorney Daniel Noll. The Government appeared by Assistant United States Attorney

Matthew Weir. At the close of the hearing, the Court took the matter under advisement and directed the parties to submit supplemental memoranda. A transcript (T.) of that hearing was prepared and filed (d/e 26). The briefing is now complete, and the matter is ready for this Court's Report and Recommendation. For the reasons set forth below, this Court recommends that the Motion should be DENIED.

STATEMENT OF FACTS

On June 25, 2018, Morgan County, Illinois, Sheriff's Deputy Derek Suttles was patrolling on Interstate 72 (I-72) in Morgan County, Illinois, west of Springfield, Illinois. Deputy Suttles was working criminal interdiction on I-72. Deputy Suttles had nine years' experience as a Deputy in Morgan County. For six of those years he worked criminal interdiction on the roadways. Deputy Suttles also had training in criminal interdiction. T. 15.

At 11:02 a.m., Deputy Suttles sent a message to the Illinois State Police Trooper Clayton Chapman that he was following a silver Volkswagen hatchback automobile traveling eastbound in I-72 (Vehicle). Deputy Suttles observed that the Vehicle was traveling at 50 to 55 miles per hour, well below the speed limit. Deputy Suttles notified Trooper Chapman because Trooper Chapman worked criminal interdiction patrol on I-72 and Interstate 55 (I-55) in Illinois State Police District 9 that included Morgan and Sangamon Counties, Illinois. Deputy Suttles notified Trooper Chapman because the Vehicle was traveling east out of Morgan County, and so, out of Deputy Suttles's jurisdiction, and into Sangamon County, Illinois. Deputy Suttles had not observed the Vehicle commit any traffic violation. He

considered traveling at such a low speed sufficiently unusual to alert Trooper Chapman. Transcript of Proceedings (d/e 26) (T.), at 6-11; Government Exhibit 1, In-Car Communications between Deputy Suttles and Trooper Chapman.

Trooper Chapman had 14 years' experience as an Illinois State Trooper. He worked patrol in the Chicago, Illinois, area for the first five years and worked the remaining time in District 9. T. 11-14, 17-18, 21. During his employment as a State Trooper, Chapman took approximately 250 hours of additional training, mostly related to interdiction of drug trafficking and other criminal activity on the highways. T. 67.

Deputy Suttles told Trooper Chapman that Suttles did not have a basis to pull the Vehicle over. Deputy Suttles told Trooper Chapman to take a look at it. Deputy Suttles also checked the information on the license plate on his in-car computer. Deputy Suttles sent that information to Trooper Chapman by text message. The license plate information showed that on June 4, 2018, the car was sold and registered to Cole with an address zip code in Los Angeles, California. The odometer reading at the time of sale was 122,492 miles. Trooper Chapman knew from his experience that Los Angeles was a known drug source location for marijuana, methamphetamine, heroin, and cocaine. Trooper Chapman also knew from his training and experience that drug trafficking organizations re-register vehicles and trade vehicles so law enforcement cannot associate a vehicle with a particular individual. The information indicated that the car was insured on June 21, 2018, just four days earlier. Trooper Chapman knew from his training and experience that drug traffickers purchase insurance

for a specific trip rather than maintaining continuous insurance on the car. T. 78-79. The computer information indicated that the license plate was valid, and the car was insured. Trooper Chapman testified that the computer record about insurance was not reliable because the computer record would not indicate the effective date of the insurance. T. 28-29, 68; Government Exhibit 1, In-Car Communications between Deputy Suttles and Trooper Chapman.

Deputy Suttles told Trooper Chapman that the rear cargo area of the hatchback Vehicle was covered. Deputy Suttles testified that coverings were commonly used by individuals involved in criminal activity. Trooper Chapman told Deputy Suttles that he would set up to take a look at the Vehicle. T. 12-13; Government Exhibit 1, In-Car Communications between Deputy Suttles and Trooper Chapman.

Trooper Chapman moved his marked squad car into position on I-72 median in the City of Springfield, Sangamon County, Illinois, facing eastbound traffic in order to observe the Vehicle. Trooper Chapman had a dash-mounted camera in his marked squad car. The camera was mounted on the rear-view mirror in the center of the front windshield. The camera took both a panoramic and normal video of the view in front of the squad car, and also took video of the interior of the squad car. Cole submitted into evidence the video recording of the events that occurred in front of the squad car during the incident with the Vehicle on June 25, 2018. Defense Exhibit 2, DVD Dash Cam Recording. The recording also included the audio of Trooper Chapman, those communicating with him on the squad car radio, and Cole when Cole was talking to Trooper Chapman. T. 18-20.

Trooper Chapman waited to observe the Vehicle. In his report, Trooper Chapman indicated he knew Volkswagens to be used for drug trafficking and to have aftermarket hidden compartments installed to hold the drugs. He had discussed this with Illinois State Police Sergeant Dustin Weiss. Sergeant Weiss was part of the State Police Statewide Criminal Patrol Team (Team). The Team worked statewide criminal interdiction. Trooper Chapman also knew of another incident in which a drug trafficker used hidden compartments in Volkswagens to hold the drugs. T. 40, 41, 59, 60.

When the Vehicle passed Trooper Chapman, the Vehicle was traveling well below the speed limit. The Vehicle was not in a construction zone. Trooper Chapman noticed that when the Vehicle passed his marked squad car, the driver had his arms fully extended and sat back as far as possible. The driver seemed to hide behind the pillar between the driver's door and the passenger door in the Vehicle. Based on his experience and training, Trooper Chapman considered this behavior to be suspicious and indicative of someone attempting to hide. In January 2018, Trooper Chapman had taken a training course in evaluating how people react when they see a marked squad car. Trooper Chapman began following the Vehicle. Trooper Chapman had decided to see if he could stop the Vehicle for a traffic violation. T. 22, 26, 41-42.

The Court's recitation of the remaining facts below, including the quotations, is based primarily on the Court's review of the dash cam recording. The Court cites to the Transcript when including additional information from relevant testimony. The Vehicle traveled eastbound on I- 72 to the location in

Springfield where I-72 merged with I-55. As the two roads merge, the right lane of I-72 merges with the left lane of I-55. Shortly after these two lanes merge, the left lane of I-72 ends. The merger area was in a construction zone at the time. The Vehicle was traveling in the right lane of I-72 at the merger point. A vehicle in the left lane of I-72 (Merging Vehicle) moved in front of the Vehicle near the point where the left lane of I-72 ended. Trooper Chapman concluded that the Vehicle thereafter followed too closely behind the Merging Vehicle.

The recording showed the squad car following the Vehicle before the Vehicle entered the area where I-72 and I-55 merged. Trooper Chapman estimated that the Squad Car was behind the Vehicle by about the length of a football field. The Vehicle was in the right lane of I-72 and the Squad Car was in the left lane. A Black SUV was in the right lane of I-72 between the Squad Car and the Vehicle. After the right lane of I-72 merged with the left lane of I-55, the markings in the left lane of I-72 indicated that the lane was ending soon. The Merging Vehicle then moved to the right in front of the Vehicle as the Squad Car also merged to the right. The video shows the Merging Vehicle moving in front of the Vehicle, but the camera's view of the Vehicle is momentarily blocked by the Black SUV as the Squad Car merged into the right lane behind the Black SUV. The Squad Car, however, moved back immediately into the left lane to view the Vehicle and the Merging Vehicle. The recording at that point shows the Vehicle traveling closely behind the Merging Vehicle.

Trooper Chapman testified that he saw from the driver's seat that the Merging Vehicle merged in front of the Vehicle, although the camera mounted to his

right in the center of the Squad Car did not record the merger as he saw it. T. 37-39, 75. Trooper Chapman said he observed that the Vehicle was two car lengths or less behind the Merging Vehicle. T. 75-76. Cole testified that he was much farther away from the Merging Vehicle when it merged in front of him. T. 99-100. As explained above, the recording shows that after the Squad Car swung back to the left from behind the Black SUV, the Vehicle was following closely behind the Merging Vehicle. Based on the Court's observation of the recording, the Court credits Trooper Chapman's version of these events. The Vehicle was following closely behind the Merging Vehicle. Trooper Chapman turned on his lights and pulled over the Vehicle for the traffic violation of following too closely behind another vehicle.

The counter on the video shows that the Vehicle stopped at 1:32.[9] After stopping the Vehicle, Trooper Chapman called in the plate number to dispatch. At 1:48, Dispatch confirmed the plate belonged to a 2010 Volkswagen that matched the description of the Vehicle. Trooper walked up to the front passenger window of the Vehicle and asked for Cole's driver's license. Cole produced an Arizona driver's license. Trooper Chapman testified that Cole appeared to be extremely nervous. Trooper Chapman said he could see a throbbing artery in Cole's neck. He said Cole was also breathing heavily. Trooper Chapman testified that he saw perspiration appear on Cole's neck and could see the pulse in Cole's stomach.

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[9] Throughout, the Court refers to the time elapsed in the recording in the format "x:y," where "x" is the minutes elapsed in the recording and the "y" is the additional seconds elapsed in the recording. In this instance, the Vehicle stopped at 1:32, or 1 minute and 32 seconds into the recording.

Trooper Chapman said that in his experience, this type of nervous reaction to being pulled over was consistent with the driver being involved in criminal activity. Trooper Chapman also observed numerous drinks and snacks in the Vehicle's interior, indicating that the driver had been traveling long distances at the time of the stop. Trooper Chapman also noticed that the only luggage in the Vehicle was a small backpack on the rear seat. Trooper Chapman believed the lack of luggage was not consistent with a long-distance trip. T. 43-44, 52-53, 96.

Trooper Chapman asked Cole if the address on the license was his current address and if the Vehicle was his car. Trooper Chapman also asked for the registration of the Vehicle.[10] Trooper Chapman asked Cole to come out of the Vehicle and come back and sit in the Squad Car with Trooper Chapman. Trooper Chapman asked Cole to sit in the Squad Car because Trooper Chapman had a hard time hearing Cole due to the traffic noise. Trooper Chapman testified that he also considered himself exposed to the traffic standing on the shoulder of the Interstate. T. 31. At 2:33, Cole exited the Vehicle and walked back to the Squad Car with Trooper Chapman. Trooper Chapman briefly looked through the window into the hatchback area of the Vehicle before returning to the Squad Car. Cole asked if Trooper Chapman could tell him why he got pulled over. Trooper Chapman said he would tell him and told Cole to have a seat in the Squad Car. Cole entered the Squad Car at 3:02.

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[10] The audio portion of the recording at this point is garbled and difficult to discern. The Court could not hear anything Cole stated while Trooper Chapman was standing outside the Vehicle talking to Cole.

Once in the Squad Car, Trooper Chapman told Cole he stopped him because he was following too closely behind the Merging Vehicle. Cole said, "No bullshit, you got me nervous so I was wondering why."

Trooper Chapman asked Cole why he had an Arizona driver's license and a California license plate on the Vehicle. Cole said he was a chef who worked in California, Maryland, and New York. He said he worked in Arizona at one time. He had renewed the license a year earlier. He said he kept the license because of the expiration date.

Cole said he was headed to Maryland. He worked as a personal chef. He said he went to meet family in Colorado. He said "hooked up" with friends and family in "the Springs" in Colorado. Trooper Chapman asked Cole about the origin of his trip. Cole said he went from Maryland to Cincinnati "for a couple of days, work related," and then stopped in Colorado, "at the Springs." He said he "met some friends at the Springs." He said after that, he visited a friend outside of Boulder and came back. Trooper Chapman asked if he went from Maryland to Cincinnati to Colorado Springs. Cole said, "Yes sir." Trooper Chapman repeated that Cole was returning to Maryland. Cole said yes. Cole said that the "hook up" was in Colorado.

Trooper Chapman asked Cole when he left on this trip. Cole hesitated and said he left on this trip "about four days ago." He said stopping in Cincinnati was "just because I'm passing by." He said he was meeting some buddies in Colorado because one of them was getting a divorce.

Cole said he had the car for about six months, but "he just got the paperwork transferred." He was

driving it on his "buddy's paperwork," but had just purchased the car and got the registration and insurance. Cole said his girlfriend registered the car for him. He did not register the Vehicle in person. Cole said he spent most of his time in "LA." Cole stated that he had a child in "LA" and a child in Florida. He said he planned to move to Florida in the near future.

Trooper Chapman summarized the information:

> So, you've got an Arizona driver's license that says Tucson . . . I'm just trying to get this clear, . . . and you said you've been traveling from Maryland, so have you been staying recently in Maryland?

Cole said yes, he had family in Maryland and his boss was in Maryland. He said he stayed with his uncle in Maryland. Cole said that he has not been in Arizona in a long time. Trooper Chapman again summarized, "So you, your primary address or your permanent address is in California, but recently you've been staying in Maryland." Cole said, "Yes, because I am a chef, I travel." Trooper Chapman asked why he did not fly. Cole said he drove because he had a car. He said he sometimes traveled with pots and he sometimes took a bicycle with him.

Trooper Chapman testified that he believed Cole's story of his trip was vague and made up. Cole could not remember the place he went to in Colorado. Trooper Chapman considered Cole's reference to "the Springs" to be vague. Trooper Chapman testified that Cole also delayed answering, shifted in his seat, and stated "um" before giving his answers. The recording confirms that Cole hesitated sometimes in answering and said "um" sometimes before answering. Based on Trooper Chapman's training and his years of

experience, including a January 2018 training class, he knew these behaviors indicated that Cole was being deceptive in his response. T. 56-57.

At 10:16 on the recording, Trooper Chapman told Cole that he would give him a written warning. Trooper Chapman, however, decided to move the location of the stop from the shoulder of I-72, I-55, to a gas station located next to the closest exit east of the stop location. Trooper Chapman told Cole it would be safer off the shoulder of the freeway. Cole said he wanted to get on his way and that, "If I have to, I will." Trooper Chapman told Cole it would take about 15 minutes to write up the warning. T. 30-33, 44. Cole said he got nervous when he gets pulled over sometimes.

At this point, Trooper Chapman suspected that Cole was involved in drug trafficking and wanted a drug-sniffing dog to conduct a free air sniff around the Vehicle. See also T. 72-73. Trooper Chapman did not want to conduct the free air sniff on the shoulder of the busy Interstate. Trooper Chapman testified that Cole was not free to go at that point. Trooper Chapman later testified that Cole was not free to go because the traffic stop was not yet complete. T. 45, 48-49, 80-81, 88.

At approximately 11:19, Cole exited the Squad Car and walked back to the Vehicle. At 11:37, Trooper Chapman pulled the Squad Car into traffic to drive to the gas station. While driving to the gas station, Trooper Chapman radioed to get a K-9 Unit to come to the stop at the gas station to conduct a free air sniff around the Vehicle. He had Dispatch contact several law enforcement agencies, including Springfield Police Department, Sangamon County Sheriff's

Department, and the Chatham, Illinois, Police Department, but none had a K-9 Unit available.

At 15:00 on the recording, the Squad Car and the Vehicle arrived at the gas station. Trooper Chapman parked the Squad Car so that it was facing the front of the Vehicle nose-to-nose. At 15:50 on the recording, Trooper Chapman called into Dispatch with Cole's name and identifying information from his driver's license for a background check. At 16:53, while Trooper Chapman was waiting for a response from Dispatch, Cole exited the Vehicle and walked to the driver's side of the Squad Car. Trooper Chapman told Cole to have a seat in the Squad Car.

Once Cole sat in the Squad Car, Trooper Chapman again told Cole that he was only going to give him a warning. At 17:45, Trooper Chapman asked Cole to tell him more about his trip. Cole said he met up with some buddies in Glenwood Springs, Colorado. At approximately 18:30, Trooper Chapman asked Cole to get the proof of insurance out of the Vehicle. Cole left the Squad Car and went to the Vehicle to get the proof of insurance.

While Cole was out of the Squad Car, Dispatch gave Trooper Chapman information on Cole's criminal history. While Dispatch was giving Trooper Cole the information, Cole came back to the Squad Car and asked if he could use the bathroom. Trooper Chapman said yes. Cole left the view of the camera to go to the gas station bathroom. See also T. 85. Dispatch told Trooper Chapman that Cole had three arrests for drug trafficking charges in three different states, Arizona, New Jersey, and a third state. One charge included possession and use of a weapon in a drug offense. Cole was also charged with money

laundering in connection with one of these arrests. See also T. 85-86.

At 20:51, Trooper Chapman answered a telephone call and talked to an unidentified law enforcement officer about Cole while Cole was still out of the car going to the restroom. Trooper Chapman told the person that Cole was a smuggler. Trooper Chapman mentioned the criminal history and the story about traveling back and forth from Maryland to Colorado but having an Arizona driver's license and an address in California. Trooper Chapman said he would call "Kevin" to see if he could bring a K-9 Unit.

Trooper Chapman commented that the Vehicle was a Volkswagen. He said that "they were good for exhaust tunnels." Trooper Chapman commented that Cole was nervous. Trooper Chapman also commented that traveling from Maryland to Colorado would take two days one-way. Chapman opined in the telephone call that Cole would not give consent to search.

At approximately 22:50, Trooper Chapman hung up on the call and asked Dispatch to check "Pawnee" for a K-9 Unit. Trooper Chapman testified that he thought of the town of Pawnee, Sangamon County, Illinois, because the State Police K-9 training facility was in Pawnee. T. 45-46, 62. At 23:15, Cole walked back in front of the Squad Car. Cole stood outside between the two vehicles while Trooper Chapman was talking to Dispatch. At 24:20, Dispatch told Trooper Chapman that the Pawnee K-9 Unit was enroute. At 24:38, Cole got back into the Squad Car.

Trooper Chapman asked Cole about the insurance. Cole said his girlfriend got the insurance for him. He said he had been driving with his buddy's license plates and insurance. At 25:36, Cole said he had the

car for "nine months – eight, six to nine months." Trooper Chapman testified that he observed Cole with the car passenger side door ajar and his right leg remaining outside the car. Trooper Chapman testified that from his experience and discussions with other officers, he believed Cole engaged in this behavior at least subconsciously to leave himself an escape route. T. 49, 53-54.

At approximately 27:55, the recording includes sounds of Trooper Chapman typing. He was apparently typing up the warning. Trooper Chapman asked what day Cole left Maryland. Cole said he left Maryland about five days before. Cole said he stayed in Colorado two days. At 30:13, Trooper Chapman asked Cole for his current address to complete the warning. Cole gave an address in Los Angeles that was different from the address on the Vehicle's registration. Cole said his girlfriend used her family's address on the registration.

At approximately 33:08, Trooper Chapman told Cole he was issuing a written warning, but that he believed Cole was involved in some criminal activity. Trooper Chapman told Cole that he had a K-9 Unit coming. Trooper Chapman and Cole waited for the K-9 Unit. Trooper Chapman and Cole talked more about the trip. Cole said he stayed at a friend's place when he stopped in Cincinnati. Cole said he spent one night in Cincinnati to visit with a buddy in Cincinnati.

At Trooper Chapman's request, Cole checked the mileage on the Vehicle. The mileage was 124,562. This was approximately 2,000 miles more than the reading on June 4, 2018 when the Vehicle was sold and registered in California to Cole. T. 70. Trooper

Chapman asked Cole where he lived in Maryland. Trooper Chapman testified that he checked Google Maps to get the driving distance from Cole's address in Maryland to Glenwood Springs, Colorado. At 39:55, Trooper Chapman told Cole that the distance from Cole's address in Maryland to Colorado was 1,815 miles and would take 27 hours non-stop to drive the distance. See T. 71, 92. Trooper Chapman asked Cole again whether he left Maryland five days ago. Cole said he was not good with dates. He said he left Colorado yesterday. He said he met with his buddies in Colorado to have a party.

At 42:50, the K-9 Unit arrived. The K-9 Unit was a State Police K-9 Unit. While the dog was walking around the car Cole admitted that he had been nervous "since the minute" Trooper Chapman pulled him over. Cole stated that his hands were "really sweating." Trooper Chapman said Cole became increasingly nervous throughout the entire stop even though he knew he was only getting a written warning. Cole said he understood that. See also T. 71-72, 89-90. Cole also said he was responsible for everything in the Vehicle. The dog completed the free air sniff at approximately 45:25. The K-9 Unit officer put the dog back into the K-9 Unit. At approximately 46:20, the K-9 Unit Officer told Trooper Chapman that the dog "hit" or alerted on the Vehicle. Trooper Chapman and the K-9 officer subsequently searched the Vehicle and found the illegal drugs that form the basis of the charge in this case.[11] T. 91.

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[11] Trooper Chapman also testified that he radioed the Team to see if any license plate readers across the country had taken a picture of the Vehicle's plate. Trooper Chapman understood that the Team had been participating in a program to try to collect license plate pictures. He wanted to see if a picture existed that

ANALYSIS

Cole moves to suppress the drugs and any other evidence found at the June 25, 2018 search of the Vehicle and any post-arrest statements. Cole argues that the search violated his Fourth Amendment rights to be free from unreasonable searches and seizures because Trooper Chapman did not have probable cause to stop Cole, Trooper Chapman unreasonably delayed and extended the stop past the time necessary to complete the traffic stop, and Trooper Chapman did not have reasonable suspicion based on articulable facts that Cole was engaged in criminal activity necessary to justify detaining Cole past the time needed to complete the traffic stop.

An officer may stop a vehicle if he has probable cause to believe the driver of the vehicle is committing a traffic violation. The officer further may conduct a free-air sniff around the vehicle by a trained drug-sniffing dog during the course of the traffic stop. Illinois v. Caballes, 543 U.S. 405, 407 (2005). The officer, however, may not detain the vehicle and its occupants longer than would be reasonably necessary to complete a traffic stop in order to conduct the free-air sniff, unless the officer has some other basis for detaining the vehicle. Rodriguez v. United States, ___U.S.__, 135 S. Ct. 1609, 1612 (2015). An additional valid basis to detain the vehicle beyond the time necessary to conduct a traffic stop exists if the officer has reasonable suspicion of criminal activity, such as

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showed the Vehicle traveled through a location that was inconsistent with Cole's story. T. 60. The Team no longer had access to the license plate reader program. T. 61. The Court could not ascertain from the recording when Trooper Chapman had these communications with the Team.

possession of illegal drugs. Id. at 1616; see United States v. Guidry, 817 F.3d 997, 1005 (7th Cir. 2016).

An officer may also detain a vehicle and its occupants if he has probable cause that the occupants are carrying illegal drugs. An officer with such probable cause may search the vehicle. Caballes, 543 U.S. at 407. A properly trained drug sniffing dog's positive alert on a vehicle provides probable cause to search a vehicle. See Guidry, 817 F.3d at 1005.

The Court finds that Trooper Chapman had probable cause to stop Cole for following too closely behind the Merging Vehicle. Probable cause exists when a reasonable officer under the totality of the circumstances would believe that the driver committed a traffic violation. United States v. Lewis, 920 F.3d 483, 486 (7th Cir. 2019). Following more closely behind a vehicle than is reasonable and prudent under the circumstances is a violation of the Illinois Vehicle Code. 625 ILCS 5/11-710. The recording showed the Squad Car merge behind the Black SUV, but then immediately pulled back into the left lane of I-72. The recording showed that when the Squad Car moved back into the left lane, Cole was following closely behind the Merging Vehicle. This portion of the recording establishes that a reasonable officer under these circumstances could reasonably believe that Cole was following too closely behind the Merging Vehicle in violation of 625 ILCS 5/11-710. Trooper Chapman had probable cause to stop Cole. Cole's testimony to the contrary is not credible.

Trooper Chapman also had reasonable suspicion to detain Cole beyond the time reasonably necessary to complete the traffic stop. Reasonable suspicion is "something less than probable cause but more than a

hunch." United States v. Baskin, 401 F.3d 788, 791 (7th Cir. 2005).

> Reasonable suspicion requires " 'specific and articulable facts which, taken together with rational inferences from those facts,' suggest criminal activity." United States v. Ruiz, 785 F.3d 1134, 1141 (7th Cir. 2015 (quoting Terry v. Ohio, 392 U.S. 1, 21 (1968)). Reasonable suspicion is an objective standard, considering the totality of the circumstances.

Lewis, 920 F3d at 493. Reasonable suspicion is not an onerous standard:

> Reasonable suspicion requires "considerably less" than a preponderance of the evidence and "obviously less" than probable cause to effect an arrest. United States v. Esquivel–Rios, 725 F.3d 1231, 1236 (10th Cir. 2013). "To satisfy the reasonable suspicion standard, an officer need not 'rule out the possibility of innocent conduct,' or even have evidence suggesting 'a fair probability' of criminal activity." Id. (quoting Poolaw v. Marcantel, 565 F.3d 721, 736 (10th Cir. 2009)). Indeed, we have held that factors consistent with innocent travel may contribute to reasonable suspicion. United States v. Valles, 292 F.3d 678, 680 (10th Cir. 2002). As long as an officer has "a particularized and objective basis for suspecting an individual may be involved in criminal activity, he may initiate an investigatory detention even if it is more likely than not that the individual is not

> involved in any illegality." United States v. Johnson, 364 F.3d 1185, 1194 (10th Cir. 2004).

United States v. Petit, 785 F.3d 1374, 1379-80 ((10th Cir. 2015) (emphasis in the original) (cited with approval in United States v. Sanford, 806 F.3d 954, 959 (7th Cir. 2015)).

In light of these principles, Trooper Chapman had reasonable suspicion based on articulable fact to detain Cole when Trooper Chapman told Cole he was moving the traffic stop from the side of I-72 I-55 to the gas station at 10:16 into the recording, or less than 10 minutes into the traffic stop and clearly within the time reasonably needed to complete the traffic stop. By that time Trooper Chapman knew: (1) the Vehicle was registered to Cole only 21 days earlier and was insured only five days earlier, consistent with methods used by drug traffickers to avoid establishing a connection between a vehicle and a specific person; (2) the Vehicle was registered in Los Angeles, California, a known origin of illegal drug trafficking; (3) the Vehicle was a Volkswagen which could be equipped with hidden compartments to hold drugs; (4) Cole drove unusually slowly; (5) Cole extended his arms and tried to hide behind the pillar behind the driver's seat when he passed Trooper Chapman's Squad Car; (6) Cole was extremely nervous when Trooper Chapman stopped him and remained nervous throughout the traffic stop (Cole admitted his nervousness on the recording several times during the stop); (7) Cole gave a vague explanation for why he had an Arizona driver's license, a car registered in California, and lived in Maryland; (8) Cole told a vague and improbable story that in only four or five days he was able to drive: (a)

from Maryland to Cincinnati, Ohio "for a couple of days, work related," (b) then to "the Springs" in Colorado to hook up with family, (c) then to a location outside Boulder, Colorado to see a friend, and (d) then to Springfield, Illinois on his way back to Maryland; (9) Cole changed the story from staying in Cincinnati for a "couple of days, work related," to stopping in Cincinnati "just because I'm passing by;" (10) Cole also changed the story from meeting "family" at "the Springs" to meeting "family and friends," and then to meeting up with some buddies because one of the guys was getting a divorce; and (11) Cole hesitated, said "um" repeatedly, and shifted in his seat while answering questions. All of these factors either were consistent with drug trafficking or indicated that Cole was nervous and lying. Together, these factors constituted articulable facts that supported Trooper Chapman's reasonable suspicion that Cole was engaged in criminal activity.

Trooper Chapman, therefore, had a proper basis to detain Cole on reasonable suspicion for the additional approximately 35 minutes until the K-9 Unit arrived and the trained drug sniffing dog alerted on the Vehicle. At that point, Trooper Chapman had probable cause to search the Vehicle.

The search, therefore, was valid. Because the search was valid, the drugs found in the Vehicle should not be suppressed and Cole's subsequent statements should not be suppressed.

THEREFORE, THIS COURT RECOMMENDS that Defendant Janhoi Cole's Amended Motion to Suppress Evidence (d/e 24) should be DENIED.

The parties are advised that any objection to this Report and Recommendation must be filed in writing

with the Clerk of the Court within fourteen days after service of a copy of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). Failure to file a timely objection will constitute a waiver of objections on appeal. See Video Views, Inc. v. Studio 21, Ltd., 797 F.2d 538, 539 (7th Cir. 1986). See Local Rule 72.2.

ENTER: July 22, 2019

s/ *Tom Schanzle-Haskins*
Tom Schanzle-Haskins
United States Magistrate Judge