No. _____

In The Supreme Court of the United States

STATE OF WYOMING,

Petitioner,

v.

WILLIAM THOMAS MAHAFFY V,

Respondent.

On Petition For Writ Of Certiorari To The Wyoming Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In *Rodriguez v. United States*, 575 U.S. 348 (2015), this Court held that the Fourth Amendment requires reasonable suspicion to extend an already-completed traffic stop. It rejected a line of cases that permitted "*de minimis*" extensions after the tasks of a traffic stop were complete. However, in *Arizona v. Johnson*, 555 U.S. 323 (2009), this Court held that officers may make unrelated inquiries during a traffic stop "so long as those inquiries do not measurably extend the duration of the stop."

In this case, the Wyoming Supreme Court held *Rodriguez* required suppression, even though the officer's unrelated questioning during the traffic stop—including the defendant's answers—only lasted 27 seconds.

The Question Presented is:

Did the *Rodriguez* Court's rejection of *de minimis* extensions to traffic stops abrogate or limit *Johnson*, thereby prohibiting officers from posing any unrelated questions even where the inquiry does not measurably extend the duration of the stop?

RELATED PROCEEDINGS

District Court for the Sixth Judicial District, Campbell County, Wyoming:

> *State v. Mahaffy*, Criminal Case No. 9111 (May 15, 2020).

Wyoming Supreme Court:

> *Mahaffy v. State*, No. S-20-0191 (May 6, 2021).

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

OPINIONS BELOW

The opinion of the Wyoming Supreme Court is reported at *Mahaffy v. State*, 486 P.3d 170 (Wyo. 2021). App. 1-24. The court reversed the unpublished decision of the state district court that denied Mahaffy's motion to suppress. App. 25-34.

JURISDICTION

The judgment of the Wyoming Supreme Court was entered on May 6, 2021. The court denied a petition for rehearing on June 8, 2021. App. 35-36. This Court has jurisdiction to review this case under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV.

INTRODUCTION

"This Court's precedents have repeatedly affirmed that the ultimate touchstone of the Fourth Amendment is reasonableness." *Kansas v. Glover*, 140 S. Ct. 1183, 1191 (2020) (citation and internal quotation marks omitted). The Wyoming Supreme Court concluded that the Fourth Amendment required suppression of evidence seized during a traffic stop, even though the deputy's questions about nervousness only prolonged the duration of the stop by 27 seconds. Despite this Court's earlier decisions in *Johnson* and *Muehler v. Mena*, 544 U.S. 93 (2005), the Wyoming Supreme Court held that the stop ran afoul of *Rodriguez*.

State and federal lower courts have grappled with how to apply *Rodriguez* to claims that an officer's actions extended the duration of an ongoing traffic stop. Some courts, like the Wyoming Supreme Court, have applied *Rodriguez* strictly, holding that *Rodriguez* requires an officer act with absolute efficiency: some stop-related activity must be simultaneously occurring in order to permit any unrelated questioning, no matter how short.

Other courts have applied a reasonableness standard to evaluate whether an officer's non-traffic actions, such as unrelated questions, require suppression. These courts have reviewed whether the police actions measurably extended the stop on a case-by-case basis.

The State of Wyoming petitions this Court for certiorari to resolve the conflict in the lower courts and to reiterate that the Fourth Amendment does not

prohibit an officer from posing unrelated inquiries during a traffic stop unless those inquiries "measurably extend" the duration of the stop under *Johnson*. This Court should clarify that *Rodriguez*'s prohibition on *de minimis* extensions did not impose a mandate of absolute efficiency on police actions during a traffic stop. Instead, this Court should hold the Fourth Amendment's overall reasonableness standard applies; it should clarify that only police conduct that measurably extends a stop renders a stop unreasonable and thus merits suppression. *See Carroll v. United States*, 267 U.S. 132, 147 (1925) ("The Fourth Amendment does not denounce all searches or seizures, but only such as are unreasonable").

STATEMENT OF THE CASE

1. *Factual background*. Mahaffy, his wife Raina, and their two children were driving through Gillette, Wyoming, when Mahaffy threw a lit cigarette out of the front passenger side window. App. 3-4, 27-28. Deputy Joshua Knittel pulled the car over. App. 3. Deputy Knittel obtained the registration, insurance, and Mahaffy's and his wife's licenses. *Id.* On his way back to his patrol car, Deputy Knittel radioed for a K-9 unit because Raina appeared "very nervous" and her hands were shaking. App. 3, 28.

Deputy Knittel wrote Mahaffy a citation for throwing the lit cigarette. App. 3. While he wrote the citation, the K-9 unit and another deputy arrived to

assist. *Id.* With Mahaffy at the front of the patrol car, Deputy Knittel proceeded to explain the citation, the amount of the fine, his court date, how to appear for his court date, and how to pay the citation. App. 3-4, 32-33; R., Ex. 1.[1] During this short conversation about the citation, Deputy Knittel asked Mahaffy why he and his wife were "so nervous[.]" App. 3-4, 33; R., Ex. 1. This questioning about nervousness, including Mahaffy's answers, took 27 seconds. R., Ex. 1. Mahaffy then asked, and Deputy Knittel explained, how Mahaffy could pay the citation to avoid a court appearance. App. 32-33; R., Ex. 1. While Deputy Knittel was explaining the citation and answering Mahaffy's questions about it, the K-9 officer informed Deputy Knittel that the drug dog had alerted to the presence of narcotics inside the car. App. 3-4. A search of the car revealed methamphetamine and a pipe. App. 4.

2. *Trial court proceedings*. Mahaffy was charged with one count of methamphetamine possession and two counts of child endangerment. App. 4. He moved to suppress the evidence seized from the search. *Id.* In the trial court, Mahaffy argued that Deputy Knittel unlawfully extended the stop when he had Mahaffy exit the car to explain the citation. App. 29 (citing *Mills v. State*, 458 P.3d 1 (Wyo. 2020)). The court denied Mahaffy's motion, concluding the officers "acted efficiently and within the time reasonably needed to effectuate

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[1] Deputy Knittel activated his body camera and recorded the entire traffic stop. *See* App. 3-4. The trial court admitted this video into the record as an exhibit at the suppression hearing. *See* R., Ex. 1.

their purpose" and finding "nothing improper related to Deputy Knittel's asking [Mahaffy to] come back to his patrol vehicle so that he could explain the citation being issued." App. 32, 34. Mahaffy then entered a conditional guilty plea to the possession and child endangerment charges, preserving for appellate review the denial of his motion. App. 4.

3. *Wyoming Supreme Court review*. The Wyoming Supreme Court reversed. App. 1-24. Mahaffy modified his appellate argument from what he had argued below, instead contending that Deputy Knittel's questioning about nervousness impermissibly extended the stop. App. 5, 13. The Wyoming Supreme Court agreed and concluded that this Court's decision in *Rodriguez* "directly and clearly addressed this question[.]" App. 12-15. The court found *Rodriguez* required the stop to end when Deputy Knittel completed writing the citation, and therefore, the entire one-and-a-half minute discussion outside of the car impermissibly extended the stop. *Id.* Despite *Johnson* and *Muehler*, the court further held that Deputy Knittel's inquiry about nervousness that took place within the larger discussion also violated the Fourth Amendment under *Rodriguez*. *Id.* Two justices dissented, focusing on the shift between Mahaffy's trial and appellate arguments. App. 15-24.

The State filed a petition for rehearing. It argued that—contrary to the Wyoming court's broad assertion—*Rodriguez* did not "directly and clearly" require suppression given the facts of Mahaffy's case, as evidenced by multiple cases from other jurisdictions

grappling with how to apply *Rodriguez* to unrelated questions in ongoing stops. The Wyoming Supreme Court denied the petition, with two justices again dissenting. App. 35-36.

REASONS FOR GRANTING THE PETITION

The question in this case is whether, after the Court's opinion in *Rodriguez*, an officer conducting a traffic stop may ask unrelated questions that minimally extend the duration of the stop. After *Rodriguez*, state and federal appellate courts have split over how *Rodriguez* applies to an officer's actions that do not measurably extend the duration of an ongoing stop.

Review by this Court is necessary to resolve the conflict and confusion over the limits on officer actions and to ensure the Fourth Amendment is applied consistently. Left unchecked, the absolute efficiency approach will mandate the severe consequences of the exclusionary rule even where an officer's minor conduct does not measurably extend a traffic stop. *See Davis v. United States*, 564 U.S. 229, 236-37 (2011); *Hudson v. Michigan*, 547 U.S. 586, 591 (2006). To prevent this result, this Court should grant certiorari and hold that an officer conducting a traffic stop need only be reasonably diligent—not absolutely efficient—to comply with the Fourth Amendment.

A. The lower courts are divided over how *Rodriguez* applies to an officer's actions during an ongoing traffic stop.

"The *Rodriguez* rule, though clear in its formulation, has proved less precise where the rubber meets the road." *United States v. Green*, 897 F.3d 173, 180 (3d Cir. 2018). Review by this Court is necessary to resolve this conflict and clarify what the Fourth Amendment requires in the traffic stop context.

1. Some courts have held that *Rodriguez* absolutely prohibits an officer from engaging in unrelated activity unless a traffic-related task is simultaneously occurring.

Since *Rodriguez*, some lower courts have held that *Rodriguez* prohibits police actions during a traffic stop that are unrelated to the traffic infraction giving rise to the stop, typically unrelated questions, where these actions add any time to the stop without additional reasonable suspicion. *Green*, 897 F.3d at 180-81 (collecting cases). "Several [circuits] have applied *Rodriguez*'s language quite rigidly, holding that any diversion from a stop's traffic-based mission is unlawful absent reasonable suspicion." *Id.* (discussing *United States v. Gomez*, 877 F.3d 76, 82, 91 (2d Cir. 2017); *United States v. Evans*, 786 F.3d 779, 782-83, 786 (9th Cir. 2015)).

After its review of both of the "starkly divergent interpretations of *Rodriguez*[,]" the *Green* court "err[ed]

on the side of caution and proceed[ed] on the assumption—not conclusion—that" the officer in that case extended the duration of the stop under *Rodriguez*. *Id.* at 180-82. It held the stop was impermissibly extended because the officer made a non-traffic-related phone call about suspected drug activity. *Id.* at 182. Since *Green*, other courts—including a subsequent Third Circuit panel—have rigidly applied this absolute efficiency approach to suppress evidence where some unrelated officer conduct extended a stop's duration. *See United States v. Clark*, 902 F.3d 404, 409-11 (3d Cir. 2018); *United States v. Bowman*, 884 F.3d 200, 218-19 (4th Cir. 2018); *Commonwealth v. Lane*, 553 S.W.3d 203, 205-07 (Ky. 2018); *see also United States v. Campbell*, 912 F.3d 1340, 1355 (11th Cir. 2019), *vacated and superseded*, 970 F.3d 1342, 1356-60 (11th Cir.), *vacated and reh'g en banc granted*, 981 F.3d 1014 (11th Cir. 2020).[2]

The Second Circuit's opinion in *Gomez* demonstrates the harsh consequences of the absolute efficiency approach. *Gomez* interpreted *Rodriguez* to require suppression even where the officer's unrelated questions were interspersed with traffic-related questions because it was "not a situation where one officer expeditiously completed all traffic-related tasks while another officer

[2] Between the first and second panel opinions in *Campbell*, this Court denied certiorari. *Campbell v. United States*, 140 S. Ct. 196, *reh'g denied*, 140 S. Ct. 633 (2019). That petition did not present the substantive Fourth Amendment question presented here, but it instead focused on whether *Davis*'s good faith exception applied. *See generally* Pet. for Writ of Cert., *Campbell*, 140 S. Ct. 196 (No. 18-9631).

questioned the driver or conducted a dog sniff without extending the stop." *Gomez*, 877 F.3d at 92 (citing *Illinois v. Caballes*, 543 U.S. 405, 406, 408 (2005)). In other words, this approach requires some other stop-related task to be simultaneously occurring in order to permit unrelated questioning, regardless of the questioning's duration. *Id.*; *see also State v. Jimenez*, 420 P.3d 464, 472-74 (Kan. 2018) (requiring officers to engage in "multitasking" to "ensure nonconsensual inquiries occur concurrently with the tasks permitted for such stops").

The Wyoming Supreme Court's decision in this case is consistent with this absolute interpretation of *Rodriguez*. App. 12-15. *Muehler* and *Johnson* notwithstanding, the Wyoming Supreme Court held that the unrelated questioning impermissibly extended the stop and that *Rodriguez* "directly and clearly addressed" this issue. *Id.* In sum, this absolute efficiency requirement mandates suppression if any "off-mission" conduct, no matter how brief, extends the duration of the stop by even a second. *See Clark*, 902 F.3d at 410 n.4 (rejecting government argument that 20 seconds of criminal history questioning was too brief to require suppression).

2. Other courts have evaluated whether officers' actions during a traffic stop were reasonable.

Unlike the absolute efficiency requirement, other courts "have applied *Rodriguez* more leniently, evaluating

police actions by something more akin to a reasonableness standard." *Green*, 897 F.3d at 181 (discussing *United States v. Collazo*, 818 F.3d 247, 257-58 (6th Cir.), *cert. denied*, 137 S. Ct. 169 (2016); *United States v. Walton*, 827 F.3d 682, 687 (7th Cir.), *cert. denied*, 137 S. Ct. 407 (2016)). Courts applying this approach have noted that "*Rodriguez* does not prohibit all conduct that in any way slows the officer from completing the stop as fast as humanly possible" and permitted questioning that involved "conversational inquiries" to allow officers "to get a feel for what's going on[.]" *United States v. Cortez*, 965 F.3d 827, 837-40 (10th Cir. 2020) (citation omitted).

The courts applying this reasonableness approach have noted that the Fourth Amendment does not mandate officers employ "the least intrusive means **conceivable**" in a traffic stop. *Id.*; *United States v. Hill*, 852 F.3d 377, 381-84 (4th Cir. 2017) (emphasis added) (citation omitted). These courts have generally relied on *Johnson* and the broader reasonableness principles underlying the Fourth Amendment. *See, e.g.*, *State v. Salcedo*, 935 N.W.2d 572, 579-81 (Iowa 2019); *State v. Vetter*, 927 N.W.2d 435, 440-44 (N.D. 2019); *State v. Wright*, 926 N.W.2d 157, 163-66 (Wis. 2019); *see also State v. Still*, 458 P.3d 220, 223-25 (Idaho Ct. App. 2019); *Curry v. State*, 90 N.E.3d 677, 683-86 (Ind. Ct. App. 2017), *transfer denied*, 97 N.E.3d 235 (Ind. 2018); *State v. Miller*, 438 P.3d 1011, 1018-19 (Utah Ct. App.), *cert. denied*, 455 P.3d 1053 (Utah 2019).

For example, in *Vetter*, the North Dakota Supreme Court reviewed whether 16 seconds of unrelated

questioning asking whether anything illegal was in the car merited suppression under *Rodriguez*. *Vetter*, 927 N.W.2d at 438-39, 443-44. The *Vetter* court declined to "scrutinize a traffic stop looking for 16 seconds that were not strictly necessary for the officer to complete the traffic stop." *Id.* at 443. It held that the Fourth Amendment does not "require [courts] to examine an officer's actions step-by-step throughout the traffic stop for utmost efficiency." *Id. Vetter* demonstrates the significant consequences of this outstanding national divide: if Mahaffy's stop had occurred in North Dakota instead of Wyoming, the evidence of his drug possession likely would have survived Fourth Amendment scrutiny under *Vetter*. *See id.* at 443-44.

The courts adopting this reasonableness approach have relied on *Johnson* to find that a "stop will remain lawful only 'so long as [unrelated] inquiries do not measurably extend the duration of the stop.' " *Salcedo*, 935 N.W.2d at 579 (alteration in original) (citation omitted). Even where an unrelated question "[o]bviously . . . took some amount of time to ask[,]" these courts have declined to require suppression where the questioning was "de minimis and virtually incapable of measurement." *Wright*, 926 N.W.2d at 166. In dicta, other courts adopting the reasonableness approach have reiterated the continued ability for police to take limited unrelated actions under *Johnson* but have ultimately decided cases on other grounds, such as finding additional reasonable suspicion or concluding the actions at issue were related to officer safety. *See Cortez*, 965 F.3d at 838-40; *People v. Bujari*, 148 N.E.3d

830, 839-43 (Ill. App. Ct. 2020); *State v. Walton*, 857 S.E.2d 753, 759 (N.C. Ct. App. 2021).

Where courts have interpreted *Rodriguez* to require reasonable—not absolute—police diligence, this rule has not generated a *fait accompli* that guarantees an officer's actions will survive Fourth Amendment scrutiny. *Compare Vetter*, 927 N.W.2d at 442-44, *with Salcedo*, 935 N.W.2d at 579-81 (suppressing evidence where officer spent six minutes "repeatedly thumbing through [a] rental agreement" which constituted "a stalling tactic to keep the conversation going until a drug dog arrived"). Instead, these courts have endeavored to apply the fact-specific reasonableness inquiry required by the Fourth Amendment. *See Ohio v. Robinette*, 519 U.S. 33, 39 (1996).

3. The national divide merits this Court's intervention.

Contrary to the Wyoming Supreme Court's assertion that this Court "directly and clearly" addressed this question in *Rodriguez*, courts have encountered difficulty and confusion in applying *Rodriguez* to evaluate officers' actions during traffic stops. App. 14-15; *compare Hill*, 852 F.3d at 381-84, *with Bowman*, 884 F.3d at 218-19; *compare Walton*, 827 F.3d at 687, *with United States v. Stewart*, 902 F.3d 664, 674-76 (7th Cir. 2018).

As noted by the Third Circuit in *Green*, "*Rodriguez* provides less clarity regarding what exactly is dispositive when evaluating an officer's pre-citation conduct."

Green, 897 F.3d at 180. The nation's trial courts cannot hope to coherently decide the countless suppression motions that arise from traffic stops where the nation's appellate courts cannot agree on what the Fourth Amendment requires. This Court should grant certiorari to clarify and resolve this conflict.

B. The Wyoming Supreme Court erred in concluding that the officer's brief unrelated questioning unconstitutionally extended the stop.

The Wyoming Supreme Court's decision is incorrect because it contravenes the Fourth Amendment's ordinary reasonableness analysis and misconstrues the extent of the holding in *Rodriguez*. This Court has "consistently eschewed bright-line rules, instead emphasizing the fact-specific nature of the reasonableness inquiry" for each stop. *Robinette*, 519 U.S. at 39. The absolute efficiency standard is a bright-line misapplication of *Rodriguez* that this Court should correct.

1. The absolute efficiency standard contravenes the reasonableness foundations of this Court's Fourth Amendment jurisprudence.

The duration of a traffic stop may "last no longer than is necessary to effectuate the purpose of the stop." *Florida v. Royer*, 460 U.S. 491, 500 (1983) (plurality opinion); *Rodriguez*, 575 U.S. at 354. But this duration requirement has never risen to a mandate that an

officer act with absolute efficiency: this Court "consider[s] the law enforcement purposes to be served by the stop as well as the time **reasonably** needed to effectuate those purposes." *United States v. Sharpe*, 470 U.S. 675, 685 (1985) (emphasis added) (citation omitted). This Court has "held repeatedly that mere police questioning does not constitute a seizure" and can occur without any basis for suspicion. *Muehler*, 544 U.S. at 101 (citations omitted).

Muehler and *Johnson* made clear that an officer may ask questions unrelated to the purpose of a seizure without violating the Fourth Amendment in every instance. *Muehler*, 544 U.S. at 100-02; *Johnson*, 555 U.S. at 332-34. In *Muehler*, an officer posed immigration status questions to a person detained while other officers completed a search warrant on a house. *Muehler*, 544 U.S. at 100-02. The *Muehler* Court found no additional justification was required for the immigration questions where the questioning did not extend the time the person was detained. *Id.* (citing *Caballes*, 543 U.S. at 407-08).

In *Johnson*, this Court addressed a similar questioning-during-seizure fact pattern, a traffic stop conducted by three officers. *Johnson*, 555 U.S. at 327-29. One officer asked unrelated questions to a passenger while another officer tended to the traffic tasks. *Id.* The unanimous *Johnson* Court reiterated that "[a]n officer's inquiries into matters unrelated to the justification for the traffic stop, this Court has made plain, 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 (citing *Muehler*, 544 U.S. at 100-01).

Before *Rodriguez*, a consensus had developed among lower courts on what *Johnson* meant by the term "measurably extend[.]" *Id.*; *see United States v. Everett*, 601 F.3d 484, 488-97 (6th Cir. 2010) (collecting federal cases); *State v. Jenkins*, 3 A.3d 806, 826-28 (Conn. 2010) (reviewing state and federal precedent). Because even "milliseconds" provide "a quantum of time large enough to be measured[,]" some defendants argued that *Johnson* mandated a strict "no prolongation" rule. *Everett*, 601 F.3d at 491-92. However, most courts understood the use of the term "measurably" to mean extensions which are "significant" or "great enough to be worth consideration." *Id.* (citation omitted). In other words, before *Rodriguez*, courts generally agreed that a "traffic stop is not 'measurably' extended by extraneous questioning even when such questioning undeniably prolongs the stop to a minimal degree." *United States v. Stepp*, 680 F.3d 651, 662 (6th Cir. 2012).

2. *Rodriguez* did not abrogate or modify *Johnson*'s holding that officers may ask unrelated questions that do not "measurably extend" a stop's duration.

As the current national split demonstrates, *Rodriguez* has undermined the post-*Johnson* consensus that a minimal level of reasonable unrelated questioning is permissible. The absolute efficiency standard applied

by the Wyoming Supreme Court misinterprets *Rodriguez* to suppress evidence whenever unrelated officer questions, no matter how short, extend a stop. App. 12-15.

This Court's decision in *Rodriguez* did not abrogate or limit its previous decision in *Johnson*. *Rodriguez* affirmatively quoted *Johnson*, maintaining the rule that genuinely minimal unrelated inquiries do not merit suppression: a "seizure remains lawful only 'so long as [unrelated] inquiries do not measurably extend the duration of the stop.'" *Rodriguez*, 575 U.S. at 355 (alteration in original) (quoting *Johnson*, 555 U.S. at 333).

The fact that an officer poses some unrelated questions does not alone render the detention unconstitutional because *Rodriguez* did not require absolute efficiency in police actions during a stop. *See Rodriguez*, 575 U.S. at 354. "A seizure justified only by a police-observed traffic violation, therefore, becomes unlawful if it is prolonged beyond the time **reasonably** required to complete the mission of issuing a ticket for the violation[,]" and "authority for the seizure thus ends when tasks tied to the traffic infraction are—or **reasonably** should have been—completed." *Id.* at 350-51, 354 (emphasis added) (citation, internal quotation marks, and brackets omitted). Because *Rodriguez* reiterated the underlying principle of reasonableness, the rule from *Johnson* still holds. *Id.* An officer may still ask questions that "do not measurably extend the duration of the stop." *Rodriguez*, 575 U.S. at 355 (quoting *Johnson*, 555 U.S. at 333).

This Court should clarify that the pre-*Rodriguez* consensus applying *Johnson* remains valid. *See Everett*, 601 F.3d at 488-97. Unrelated questioning may impermissibly extend the duration of a traffic stop where the duration of the questioning measurably extends the stop and thus becomes unreasonable. *Id.* The absolute efficiency standard improperly requires a court "to examine an officer's actions step-by-step throughout the traffic stop for utmost efficiency[,]" which the Constitution does not require. *Vetter*, 927 N.W.2d at 443-44.

The facts this Court reviewed in *Rodriguez* did not implicate *Johnson*. The "*de minimis*" police activity the *Rodriguez* Court found impermissible involved the detention of a person for approximately eight minutes after the traffic stop had ended to wait for backup to arrive in order to conduct a drug dog sniff. *Rodriguez*, 575 U.S. at 352, 357. *Rodriguez* did not address the *Johnson* rule that the Fourth Amendment tolerates limited unrelated questions during a traffic stop. *Id.*; *see also id.* at 364 (Thomas, J., dissenting) (noting that the *Rodriguez* "majority's reasoning appears to allow officers to engage in *some* questioning aimed at detecting evidence of ordinary criminal wrongdoing"); 4 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* § 9.3(d) (6th ed.), Westlaw (database updated Sept. 2020) (opining that "the impact of *Rodriguez v. United States* [regarding *Johnson*] is less than certain").

The issue addressed in *Rodriguez* further demonstrates why that case did not create a new rule of

absolute efficiency. The *Rodriguez* Court "granted certiorari to resolve a division among lower courts on the question whether police routinely may extend an otherwise-completed traffic stop, absent reasonable suspicion, in order to conduct a dog sniff." *Rodriguez*, 575 U.S. at 353-54 (citation omitted). The question presented in *Rodriguez* treated *Johnson* as settled law, conceding that an officer "asking a few off-topic questions [is a] 'de minimis' intrusion[ ] on personal liberty that [does] not require reasonable suspicion[.]" *See* Pet. for Writ of Cert. at *i, *Rodriguez*, 575 U.S. 348 (No. 13-9972). In other words, *Rodriguez* dealt with relatively significant extensions to completed traffic stops that courts had dubbed "*de minimis*." *See Rodriguez*, 575 U.S. at 353-54. *Rodriguez* did not address genuinely minimal questioning in ongoing stops. *See id.* at 372 n.2 (Alito, J., dissenting) (citations omitted) (reiterating that police "may conduct certain unrelated checks during an otherwise lawful traffic stop[,]" including asking "questions aimed at uncovering other criminal conduct and [ordering] occupants out of their car").

Rodriguez rejected the argument "that by completing all traffic-related tasks expeditiously, an officer can earn bonus time to pursue an unrelated criminal investigation." *Rodriguez*, 575 U.S. at 357. "The critical question, then, is not whether the dog sniff occurs before or after the officer issues a ticket . . . but whether conducting the sniff prolongs—*i.e.*, adds time to—the stop[.]" *Id.* (internal quotation marks omitted).

This principle from *Rodriguez* did not abrogate *Johnson*, but it does clearly prohibit two types of officer

conduct. *Id.* First, an officer cannot speed up the traffic tasks of a stop to earn bonus time for unrelated investigation. *Id.* Second, an officer cannot unreasonably "stall" or "delay" to keep an otherwise-complete traffic stop going in order to permit a dog sniff or to obtain additional reasonable suspicion. *Id.* at 354-57; *Salcedo*, 935 N.W.2d at 579-81; *Vetter*, 927 N.W.2d at 443.[3] But this principle does not mean that any second of conceivable delay requires suppression. *Rodriguez*, 575 U.S. at 350-51, 354-55 (focusing on when a stop reasonably should have ended and quoting *Johnson*).

Related to the *Rodriguez* principle that an unreasonable delay is impermissible regardless of whether the delay occurred pre- or post-citation, the Wyoming Supreme Court erred in this case for an additional reason. *See* App. 12-15. The Wyoming court found the stop should have ended when Deputy Knittel finished writing the citation. *Id.* Thus, it held that the entire ensuing one-and-a-half minute process—having Mahaffy exit the car, discussing the citation, and asking questions about nervousness during the conversation—was impermissible. *Id.*

This holding is a clear error of law. "Normally, [a traffic] stop ends when the police have no further need to control the scene, and inform the driver and passengers they are free to leave." *Johnson*, 555 U.S. at 333

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[3] Unlike the prohibited delay in *Rodriguez*, the K-9 unit arrived to the scene of Mahaffy's stop well before the nervousness questioning began. App. 3; *see* R., Ex. 1; *see also Vetter*, 927 N.W.2d at 443-44 (noting the "canine was already present at the beginning of the stop").

(citation omitted). "[T]here is no question that" an officer may require a person to exit a car at the end of a traffic stop to return identification and to issue a warning. *Robinette*, 519 U.S. at 35, 38-39 (citing *Pennsylvania v. Mimms*, 434 U.S. 106, 111 n.6 (1977)); *see also Maryland v. Wilson*, 519 U.S. 408, 415 (1997) (applying *Mimms* to passengers). Similarly, an officer may explain a citation or warning being issued to a driver. *See, e.g.*, *State v. Brown*, 945 N.W.2d 584, 591-93 (Wis.), *cert. denied*, 141 S. Ct. 881 (2020); *Jenkins*, 3 A.3d at 831. An officer need not immediately end a seizure as soon as the officer physically completes writing a citation, and it appears that no other court has construed the Fourth Amendment this stringently.

However, the Wyoming Supreme Court opinion did not solely rest on the entire discussion after the citation was complete; it also cited *Rodriguez* to reject the contention that *Johnson* and *Muehler* could permit the unrelated questioning. App. 13-15. If *Rodriguez* means what the Wyoming Supreme Court interprets it to mean—that *Johnson* is no longer good law to permit even brief unrelated questions—then the timing of the questioning is irrelevant. *Id.* Because the Wyoming Supreme Court erred in its conclusion of law about when the stop should have ended, this Court may still grant certiorari to consider the nationwide divide raised by this petition. *Cf. Johnson*, 555 U.S. at 332-33 (reviewing permissible scope of unrelated investigation of a passenger where lower court erroneously based its opinion on the issue of the passenger's consent to search).

3. Interpreting *Rodriguez* to require absolute police efficiency will create untenable consequences and is inconsistent with the Fourth Amendment.

Without question, *Rodriguez* prohibits prolonging a stop "beyond the time reasonably required to complete [the traffic] mission of issuing a ticket for the violation." *Rodriguez*, 575 U.S. at 350-51 (citation and internal quotation marks omitted). But the courts adopting the absolute efficiency approach effectively have sought to delete the word "reasonably" from this pronouncement. *Id.*; *see Green*, 897 F.3d at 180-81 (collecting cases). This rigid approach skews *Rodriguez* to suppress evidence based on "minor inefficiencies in traffic stops [that] are unlikely to establish a Fourth Amendment violation." *Vetter*, 927 N.W.2d at 443.

In *Vetter*, the North Dakota Supreme Court explained why the Fourth Amendment does not impose this level of scrutiny:

> Although [i]f an officer can complete traffic-based inquiries expeditiously, then that is the amount of time reasonably required to complete the stop's mission, we are not persuaded that it is necessary to parse every citizen-officer interaction for indications of efficiency of purpose. There is no reason an officer needs to use a stop watch or avoid incidental conversation about fishing or the weather to reasonably accomplish the mission of the stop.

Id. (internal citations and quotation marks omitted). This Court has similarly cautioned against "unrealistic

second-guessing" because a "creative judge engaged in *post hoc* evaluation of police conduct can almost always imagine some alternative means by which the objectives of the police might have been accomplished." *Sharpe*, 470 U.S. at 686-87.[4]

The "multitasking" that the absolute efficiency approach requires is impractical and not mandated by the Fourth Amendment. *Vetter*, 927 N.W.2d at 443-44; *see also United States v. Mason*, 628 F.3d 123, 131 (4th Cir. 2010) (finding, pre-*Rodriguez*, that "questions about the weather or simply 'How 'bout them Georgia Bulldogs?' do not implicate the Fourth Amendment"); *contra Jimenez*, 420 P.3d at 474. This bright-line standard is especially likely to create unnecessary suppression of evidence in situations when a single officer controls the scene of a traffic stop. *See Green*, 897 F.3d at 180 (noting that *Rodriguez* "[l]eft unexplained [] how a police officer could possibly perform multiple tasks simultaneously without adding any time to a stop").[5]

The absolute efficiency standard's capacity to require suppression based on minor officer conduct

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[4] With the vast majority of traffic stops now being recorded, defendants like Mahaffy will continue to be able to parse videos to locate some minor officer inefficiency. *See generally* Richard E. Myers II, *Police-Generated Digital Video: Five Key Questions, Multiple Audiences, and a Range of Answers*, 96 N.C. L. Rev. 1237 (2018).

[5] Although three officers responded to Mahaffy's stop, Deputy Knittel's unrelated questions did not take place simultaneously with either of the other two officers conducting a traffic-related activity. *See* R., Ex. 1.

contravenes the purpose of the exclusionary rule—to deter against only "**deliberate, reckless, or grossly negligent**" police disregard for Fourth Amendment rights. *Herring v. United States*, 555 U.S. 135, 144 (2009) (emphasis added); *see also Davis*, 564 U.S. at 238. Instead, holding a traffic stop remains reasonable unless unrelated police conduct measurably extends a stop is appropriate "because reasonableness—rather than efficiency—is the touchstone of the Fourth Amendment." *United States v. Mayville*, 955 F.3d 825, 827 (10th Cir.), *cert. denied*, 141 S. Ct. 837 (2020). This Court does not compare a stop's duration to an abstract "typical" stop or to an arbitrary time limit, and therefore, courts already must perform a reasonableness analysis to determine when a stop should have ended. *Rodriguez*, 575 U.S. at 357; *Sharpe*, 470 U.S. at 686-88 (rejecting a "hard-and-fast time limit" for investigative stops).

This Court should adopt the fact-specific approach the Sixth Circuit set forth in *Everett* to determine whether an officer has measurably extended a stop to render it unreasonable. *Everett*, 601 F.3d at 493-96. If an officer's questions are "relevant only to ferreting out unrelated criminal conduct[,]" suppression is warranted when "the officer, without reasonable suspicion, definitively abandoned the prosecution of the traffic stop and embarked on another sustained course of investigation, [] bespeak[ing] a lack of diligence." *Id.* at 495.

By submitting this petition, the State of Wyoming does not seek to re-litigate or undermine the principles

of *Rodriguez*. An officer may not engage in any unrelated activities that extend the duration of a stop beyond the time the stop reasonably should have been completed, and the sequence of the officer's actions vis-à-vis the officer's release of the seized persons is not dispositive. *See Rodriguez*, 575 U.S. at 354-57. A reasonableness rule would comport with *Rodriguez* by evaluating "what the police in fact do" and prohibiting measurable extensions or incremental delay. *Id.* at 355-57.

Admittedly, a reasonableness standard inevitably would create contested issues over what length of time does or does not "measurably extend" a stop. *Id.* at 355 (quoting *Johnson*, 555 U.S. at 333). However, as "[m]uch as a 'bright line' rule would be desirable, in evaluating whether an investigative detention is unreasonable, common sense and ordinary human experience must govern over rigid criteria[,]" and this Court "must still slosh [its] way through the factbound morass of 'reasonableness.'" *Sharpe*, 470 U.S. at 685; *Scott v. Harris*, 550 U.S. 372, 383 (2007). Trial courts will need to evaluate the reasonableness of officers' actions "judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Graham v. Connor*, 490 U.S. 386, 396 (1989) (citation omitted). This Court should prevent lower courts from imposing the "massive remedy" of the exclusionary rule where, in hindsight, police conduct always could somehow be found inefficient. *Hudson*, 547 U.S. at 599; *Sharpe*, 470 U.S. at 686-87. The absolute efficiency standard must yield to the Fourth

Amendment's prohibition against only "unreasonable searches and seizures[.]" U.S. Const. amend. IV.

C. This case is ideal to resolve this important and recurring issue.

The question presented here is important and recurs with great frequency. Traffic stops are the most common reason for members of the public to have contact with police officers. Erika Harrell & Elizabeth Davis, U.S. Dep't of Justice Bureau of Justice Statistics, *Contacts between Police and the Public, 2018—Statistical Tables*, at 4 tbl.2 (2020), https://bjs.ojp.gov/content/pub/pdf/cbpp18st.pdf. Consequently, the significant number of cases cited from both federal and state appellate courts demonstrate that a nationwide divide substantially has developed since *Rodriguez*. This split shows the compelling need for this Court's intervention and guidance to define the parameters of officers' actions in the ubiquitous traffic stop setting.

This case represents an ideal vehicle for resolving this important and recurring issue. The officer's questioning at issue here lasted 27 seconds, falling squarely into *Johnson*'s scope of unrelated inquiry that does not "measurably extend" a stop. The characterization of this short extension as impermissible under *Rodriguez* is emblematic of the types of claims that will persist absent this Court's intervention. The transitory questioning at issue was not related to the traffic rationale for the stop, and it did not result in additional reasonable suspicion; thus, only the duration of the

questioning is at issue. The brevity of the inquiry—like all of the relevant facts of the stop—is well documented by the officer's body camera video footage contained in the record. Moreover, the Wyoming Supreme Court solely decided the case under the Fourth Amendment, not under any independent state grounds.

This Court should intervene to resolve the post-*Rodriguez* divide between the lower courts in order to restore nationwide consistency in the standards governing traffic stops. Requiring a "stop watch" contest to find any time where an officer's actions even arguably can be characterized as inefficient or off-mission creates an impossible standard that will "almost always" result in suppression; this Court should grant certiorari to remedy this confusion and reiterate that reasonableness is the touchstone of the Fourth Amendment. *Vetter*, 927 N.W.2d at 443; *Sharpe*, 470 U.S. at 686-87.

CONCLUSION

For the foregoing reasons, the Court should grant the State of Wyoming's petition for a writ of certiorari.

Respectfully submitted,

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