

IN THE SUPREME COURT OF THE UNITED STATES

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JACQUES S. GHOLSTON, PETITIONER

v.

UNITED STATES OF AMERICA

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

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BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly determined that petitioner's traffic stop was not unreasonably prolonged.

(I)

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No. 21-6150

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-8a) is reported at 1 F.4th 492. The opinion of the district court (Pet. App. 1b-8b) is not published in the Federal Supplement but is available at 2019 WL 3752908. The report and recommendation of the magistrate judge (Pet. App. 9b-31b) is not published in the Federal Supplement but is available at 2019 WL 4891700.

JURISDICTION

The judgment of the court of appeals was entered on June 14, 2021. A petition for rehearing was denied on July 29, 2021. The

petition for a writ of certiorari was filed on October 27, 2021.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

#### STATEMENT

Following a guilty plea in the United States District Court for the Central District of Illinois, petitioner was convicted of possessing five grams or more of methamphetamine with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(B). Judgment 1. He was sentenced to 120 months of imprisonment, to be followed by eight years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. 1a-8a.

1. Shortly after midnight on April 29, 2018, Officer Erik Cowick spotted petitioner's truck driving by in a "high crime, high drug" area of Quincy, Illinois. Pet. App. 10b (citation omitted); see id. at 2a. Officer Cowick had learned from multiple sources that petitioner was trafficking methamphetamine and selling it out of a green pickup truck with a toolbox in the bed. Id. at 2a-3a, 11b-13b. He also knew that petitioner had multiple prior convictions for drug-trafficking offenses, had recently completed a term of supervised release for a methamphetamine-related offense, and was at one point "one of the top dealers in Quincy." Id. at 13b. Officer Cowick used the computer in his squad car to confirm that the truck was petitioner's. Ibid.

Officer Cowick then followed petitioner's truck. Pet. App. 3a. Shortly thereafter, Officer Cowick saw petitioner make a right turn without signaling. Id. at 3a, 13b-14b. Officer Cowick activated his emergency lights while he made the same right turn behind petitioner. Id. at 3a. While Officer Cowick completed the turn, petitioner parked his truck, crossed the street, and began walking away. Ibid. Officer Cowick parked his vehicle behind petitioner's truck and called out to petitioner to stop, but petitioner kept going, even after making eye contact with Officer Cowick. Ibid. Following petitioner on foot, Officer Cowick again called for him to come back. Ibid. Petitioner eventually complied. Ibid. Officer Cowick asked petitioner why he did not stop; petitioner first responded that he had not seen Officer Cowick, and then said that he did not stop because Officer Cowick had not activated his lights until he was right behind the truck. Id. at 3a, 15b, 29b.

Officer Cowick handcuffed petitioner, sat him on the curb, and "began the standard procedure for writing a ticket." Pet. App. 3a; see id. at 15b. He asked petitioner for his driver's license, but petitioner opted to convey his information to Officer Cowick orally rather than have Officer Cowick retrieve the license from petitioner's truck. See id. at 3a, 15b. While petitioner spoke with Officer Cowick, two other officers who had arrived at the scene walked around the truck. Id. at 15b. Petitioner turned

away from Officer Cowick to monitor what the other officers were doing. Id. at 15b-16b. After obtaining petitioner's information, Officer Cowick returned to his squad car to check with dispatch whether petitioner had a valid driver's license. Id. at 3a, 16b. Dispatch responded that petitioner's license was valid but that he had a "notice of violation" (NOV) on file for a prior parking infraction. Ibid.

Officer Cowick then returned to petitioner and asked for permission to search his person; petitioner consented. Pet. App. 3a, 17b. While Officer Cowick searched petitioner, petitioner again turned to look at the other officers near his truck. Id. at 17b. After searching petitioner's person, Officer Cowick asked petitioner if he had anything in the truck that Officer Cowick needed to know about, and petitioner responded that he did not. 3/25/19 Tr. 86-87. Officer Cowick then asked if petitioner would allow him to search the truck, and petitioner declined. Pet. App. 17b.

After that search and exchange -- which collectively spanned about two minutes -- Officer Cowick returned to his squad car to write a warning for the turn-signal violation. Pet. App. 17b. The process took longer than usual because Officer Cowick had to enter in petitioner's information manually, rather than scan his license. Id. at 4a, 17b. While working on the warning, Officer Cowick was at the same time communicating with two other officers,

asking one (whom he asked to hurry) to bring a drug-sniffing dog to the scene and another (whom he told to take his time) to bring the unserved NOV from the police station. Id. at 3a, 18b-22b. It took Officer Cowick about eight minutes to prepare the warning. Id. at 17b, 22b.

After completing the warning, Officer Cowick exited his squad car to give it to petitioner. Pet. App. 3a, 22b. He then realized that he had forgotten to ask petitioner for proof of insurance. Ibid. Petitioner explained that he did not have any proof of insurance, so Officer Cowick returned to his squad car to prepare a second traffic ticket. Ibid. Officer Cowick once again had to enter in petitioner's information manually. Id. at 22b-23b.

About three minutes after Officer Cowick returned to his squad car, the officer with the drug-sniffing dog arrived. Pet. App. 3a, 23b. The dog alerted on petitioner's truck while the ticket for driving without proof of insurance was printing. Id. at 3a. The officers then searched the truck and uncovered nine grams of methamphetamine. Id. at 3a, 23b.

2. A federal grand jury in the Central District of Illinois returned an indictment charging petitioner with one count of possessing five grams or more of methamphetamine with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(B). Indictment 1. Petitioner filed a motion to suppress the methamphetamine seized from his truck, claiming that the officers

had violated the Fourth Amendment by unreasonably extending the traffic stop. Pet. App. 3a.

After an evidentiary hearing, the magistrate judge considering the motion found that most of the delay in completing the stop was a result of petitioner's "refusal to provide his driver's license" at the outset of the stop and "Officer Cowick's failure to ask for proof of insurance at the beginning of the stop," the latter of which was an "innocent mistake." Pet. App. 25b. The magistrate judge noted that it was possible that by communicating with other officers about his suspicions that petitioner was trafficking methamphetamine, "Officer Cowick may have extended the stop for a minute or two beyond the time he needed to conduct the traffic stop." Ibid.; see id. at 25b-26b. But the magistrate judge declined to make such a finding. Id. at 26b. He instead avoided any need to do so by recommending that the motion be denied because Officer Cowick "had reasonable suspicion based on articulable facts that [petitioner] was distributing methamphetamine from the [t]ruck," and Officer Cowick therefore had a "proper basis" for detaining petitioner until the arrival of the drug-sniffing dog. Ibid.

The district court adopted the magistrate judge's factual findings, to which petitioner had not objected. Pet. App. 3b. Unlike the magistrate judge, however, the district court explicitly found that the traffic stop was not unreasonably

prolonged, id. at 6b, and it denied the motion on that basis, id. at 8b. The district court did not decide whether, in the alternative, reasonable suspicion would have justified petitioner's continued detention. Ibid.

Petitioner subsequently entered a conditional guilty plea, reserving his right to appeal the district court's denial of his motion to suppress. Pet. App. 2a. He was sentenced to 120 months of imprisonment, to be followed by eight years of supervised release. Judgment 2-3.

3. The court of appeals affirmed. Pet. App. 1a-8a.

a. The court of appeals recognized that a valid traffic stop "can become unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission" of the stop. Pet. App. 4a (quoting Illinois v. Caballes, 543 U.S. 405, 407 (2005)). And the court acknowledged that "[s]ide-inquiries into other potential crimes such as drug-related activity represent a 'detour[] from [the original] mission'" and therefore can violate the Fourth Amendment. Ibid. (second and third sets of brackets in original) (quoting Rodriguez v. United States, 575 U.S. 348, 356 (2015)). But the court found no such unreasonable extension on the particular facts of this case.

The court of appeals found that the two-minute period during which Officer Cowick conducted a consensual search of petitioner's person, asked him if anything was in his truck that Officer Cowick

needed to know about, and asked for permission to search the truck should be "disregarded" because these events had "nothing to do" with a drug investigation. Pet. App. 4a. The court then found no clear error in the district court's factual determination that Officer Cowick's communication with other officers did not prolong the period during which he was producing the first warning ticket. Id. at 5a. The court of appeals similarly found no clear error in the district court's determination that Officer Cowick's failure to obtain petitioner's insurance information at the outset was "an innocent mistake, not a manipulative ruse," that justified the period during which Officer Cowick was producing the second ticket. Ibid. And because the court of appeals accepted the district court's finding that "[Officer] Cowick did not extend the stop at all," it concluded that this was "not a case" like Rodriguez v. United States, supra, "in which an officer completes the activities for a stop and then detains the suspect longer in order to allow time for a K9 officer to arrive." Pet. App. 5a.

b. Judge Hamilton dissented, stating that he would deem the stop to have been unreasonably prolonged. Pet. App. 5a-8a.

#### ARGUMENT

Petitioner renews his contention (Pet. 11-16) that Officer Cowick unreasonably prolonged an otherwise lawful stop. The court of appeals correctly rejected that contention, and its factbound decision does not conflict with any decision of this Court or

another court of appeals. This Court has accordingly denied review in other cases presenting similar issues. See, e.g., Banks v. United States, 141 S. Ct. 1078 (2021) (No. 20-5074); Lawson v. United States, 139 S. Ct. 1320 (2019) (No. 18-6310); Frierson v. United States, 577 U.S. 1145 (2016) (No. 15-6448). It should follow the same course here.

1. In Rodriguez v. United States, 575 U.S. 348 (2015), this Court held that “absent reasonable suspicion” that the motorist is engaged in other criminal activity, a traffic stop “may ‘last no longer than is necessary to effectuate’” its mission. Id. at 353–354 (quoting Florida v. Royer, 460 U.S. 491, 500 (1983) (plurality opinion)). The Court also explained that “[b]eyond determining whether to issue a traffic ticket, an officer’s mission includes ‘ordinary inquiries incident to [the traffic] stop.’” Id. at 355 (second set of brackets in original) (quoting Illinois v. Caballes, 543 U.S. 405, 408 (2005)). Those inquiries “[t]ypically” include “checking the driver’s license, determining whether there are outstanding warrants against the driver, and inspecting the automobile’s registration and proof of insurance.” Ibid. And the Court made clear that the “mission of the stop” also includes ensuring officer safety; accordingly, an officer may “take certain negligibly burdensome precautions in order to complete his mission safely.” Id. at 356; see also ibid. (noting that traffic stops

are "especially fraught with danger to police officers") (quoting Arizona v. Johnson, 555 U.S. 323, 330 (2009)).

In renewing his claim of unreasonable delay in this case, petitioner focuses solely on the period during which Officer Cowick consensually searched petitioner's person, asked if petitioner had anything in his truck that Officer Cowick needed to know about, and requested permission to search the truck. See Pet. 2, 14. But the court of appeals correctly applied Rodriguez to the particular facts here in finding that Officer Cowick's consensual search of petitioner and safety-related questions did not unreasonably prolong the traffic stop. Petitioner has never disputed the factual finding that he consented to a search of his person. See Pet. App. 17b. And Rodriguez did not displace the rule that when a motorist consents to a search during a traffic stop, he thereby consents to extending the stop's duration. See, e.g., United States v. Tuton, 893 F.3d 562, 568 (8th Cir. 2018), cert. denied, 139 S. Ct. 1192 (2019); United States v. Hill, 852 F.3d 377, 381 (4th Cir. 2017); United States v. Vargas, 848 F.3d 971, 974 (11th Cir. 2017) (per curiam). Indeed, the unlawful prolongation in Rodriguez occurred after the motorist refused to consent to a search. See 575 U.S. at 352.

Petitioner, having consented to the search, cannot later complain that it unreasonably extended the traffic stop. After the consensual search was complete, Officer Cowick continued his

series of safety measures by asking whether petitioner had anything in his truck that Officer Cowick needed to know about and for permission to search the truck. Those brief questions furthered officer safety and were germane to the traffic stop's legitimate mission. See, e.g., United States v. Buzzard, 1 F.4th 198, 203-204 (4th Cir.) (recognizing that the question "[i]s there anything illegal in the vehicle" related to officer safety), cert. denied, 142 S. Ct. 728 (2021). As both lower courts correctly recognized, this two-minute "period of delay" did not unreasonably prolong the stop because it was a permissible part of the stop, rather than an unlawful side venture to find methamphetamine in petitioner's truck. Pet. App. 4a.

Petitioner errs in characterizing the court of appeals' decision as resting on the fact that the consensual search and the questions about the truck "occurred before the officer finished writing the traffic citation." Pet. i; see Pet. 11, 14, 15, 16. Instead, the court of appeals found that the period at issue was part of the permissible scope of the stop. Pet. App. 4a. In asserting otherwise, petitioner focuses (Pet. 3, 10, 14) on the court of appeals' observation that this was "not a case in which an officer completes the activities for a stop and then detains the suspect longer in order to allow time for a K9 officer to arrive," Pet. App. 5a. But while the court did note that Rodriguez had involved a delay after the officer had "complete[d] the

activities" for the stop, the court found that here, unlike in Rodriguez, "[Officer] Cowick did not extend the stop at all." Ibid. (emphasis added).

Since Rodriguez, the Seventh Circuit has repeatedly recognized in similar contexts that "the critical question is not whether" an investigative tactic "occurs before or after the officer issues the warning" or citation, but instead whether the tactic "'prolongs -- i.e., adds time to -- the stop.'" United States v. Lewis, 920 F.3d 483, 491 (2019) (quoting Rodriguez, 575 U.S. at 357); accord United States v. Simon, 937 F.3d 820, 832 (2019) ("[T]he critical question is not whether the dog sniffed before or after the officer issued the warning, 'but whether conducting the sniff prolongs \* \* \* the stop.'") (quoting Lewis, 920 F.3d at 491), cert. denied, 140 S. Ct. 824 (2020). The decision below should not be read to announce a contrary rule. It instead involves a factbound application of Rodriguez that does not warrant this Court's review. See Sup. Ct. R. 10; see also, e.g., United States v. Johnston, 268 U.S. 220, 227 (1925) ("We do not grant \* \* \* certiorari to review evidence and discuss specific facts.").\*

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\* Petitioner asserts (Pet. 10) that the magistrate judge found that the officers "extended the stop by at least several minutes." That is incorrect. Though the magistrate judge noted that "Officer Cowick may have extended the stop for a minute or two," Pet. App. 25b (emphasis added), he also explicitly stated that he "d[id] not need to decide" whether any unreasonable prolongation occurred because he found that reasonable suspicion supported the stop in any event, id. at 26b.

Petitioner's suggestion (Pet. 12-15) of a circuit conflict rests on the same infirm premise that undergirds his merits argument. Each decision he cites simply acknowledges that asking questions unrelated to a traffic stop's mission can be unlawful even if the questioning takes place before the mission is complete and applies that principle to specific facts. See United States v. Landeros, 913 F.3d 862, 864-865, 867-868 (9th Cir. 2019); United States v. Clark, 902 F.3d 404, 407-408, 410-411 (3d Cir. 2018); United States v. Gomez, 877 F.3d 76, 82-83, 90-93 (2d Cir. 2017); United States v. Stepp, 680 F.3d 651, 658-659, 661-664 (6th Cir. 2012). As just explained, the Seventh Circuit agrees with that principle. See, e.g., United States v. Cole, 21 F.4th 421, 426-427, 433 (2021) (en banc) (acknowledging that a Rodriguez violation can occur during a traffic stop when questions about the motorist's travel plans "are no longer reasonably related to the stop itself (and related safety concerns) but rather reflect an independent investigation of other criminal activity").

2. In any event, this case presents a poor vehicle to address the scope of Rodriguez because that question is not outcome determinative. Any otherwise unreasonable prolongation of the stop to investigate methamphetamine trafficking was justified by Officer Cowick's "reasonable suspicion of criminal activity." Rodriguez, 575 U.S. at 358.

Reasonable suspicion requires "considerably less than proof of wrongdoing by a preponderance of the evidence," Prado Navarette v. California, 572 U.S. 393, 397 (2014) (quoting United States v. Sokolow, 490 U.S. 1, 7 (1989)); "'obviously less' than is necessary for probable cause," ibid. (quoting Sokolow, 490 U.S. at 7); and "depends on the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act," Kansas v. Glover, 140 S. Ct. 1183, 1188 (2020) (quoting Prado Navarette, 572 U.S. at 402). In evaluating whether reasonable suspicion exists, courts consider "the totality of the circumstances -- the whole picture." Prado Navarette, 572 U.S. at 397 (quoting United States v. Cortez, 449 U.S. 411, 417 (1981)).

The facts as found by the district court supported a reasonable suspicion that petitioner was trafficking drugs. Pet. App. 10b-23b; see id. at 3b. Officer Cowick recognized petitioner by his green truck. Id. at 11b-13b. Officer Cowick had learned from multiple sources that petitioner was selling methamphetamine from that truck. Ibid. Officer Cowick also knew that petitioner had multiple prior convictions for drug trafficking and had recently completed supervised release for a methamphetamine-related crime. Id. at 13b. And he saw petitioner drive by after midnight in a "high crime, high drug" area. Id. at 10b (citation omitted).

Petitioner's conduct at the outset of the stop added further grounds for legitimate suspicion. Petitioner walked away from his car and crossed to the other side of the street despite a police car with activated emergency lights pulling behind him. Pet. App. 14b. He continued walking away despite making eye contact with Officer Cowick, and he refused to stop until Officer Cowick pursued him. Ibid. When petitioner finally returned, he gave varying explanations for his behavior. Id. at 15b, 29b. And when asked for his license, petitioner opted to convey his information orally rather than have Officer Cowick retrieve the license from his truck, while at the same time appearing overly concerned about the other officers' proximity to the truck. Id. at 15-16b.

Thus, even had Officer Cowick unreasonably prolonged the traffic stop, petitioner's detention during the duration of the stop would not have violated the Fourth Amendment. And that alternative, factbound basis for affirmance makes this case a poor vehicle for review, even if the question presented were implicated. Cf. United States v. New York Tel. Co., 434 U.S. 159, 166 n.8 (1977) ("[A] prevailing party may defend a judgment on any ground which the law and the record permit that would not expand the relief it has been granted.").

CONCLUSION

The petition for a writ of certiorari should be denied.  
Respectfully submitted.

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