No. _____

IN THE SUPREME COURT OF THE UNITED STATES

BERENICE DEL ANGEL,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

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PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Fourth Amendment prohibits a police officer from continuing his warrantless detention of a motorist after the officer has announced that he will not issue a ticket for the traffic violations that justified the initial seizure.

PARTIES TO THE PROCEEDINGS

All parties to petitioner's Fifth Circuit proceedings are named in the caption of the case before this Court.

DIRECTLY RELATED PROCEEDINGS

- *United States v. Del Angel*, No. 18-cr-604, U.S. District Court for the Southern District of Texas. Judgment entered May 13, 2020.
- *United States v. Del Angel*, No. 20-20258, U.S. Court of Appeals for the Fifth Circuit. Judgment entered May 17, 2022.

TABLE OF CONTENTS

Page

TABLE OF CONTENTS – (cont'd)

Page

TABLE OF CITATIONS

Page

CASES

TABLE OF CITATIONS – (cont'd)

Page

CASES – (cont'd)

CONSTITUTIONAL PROVISION

STATUTES AND RULE

TABLE OF CITATIONS – (cont'd)

Page

STATUTES AND RULE – (cont'd)

MISCELLANEOUS

PRAYER

Petitioner Berenice Del Angel prays that a writ of certiorari be granted to review the judgment entered by the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit in petitioner's case is attached to this petition as the Appendix. The district court did not issue a written opinion.

JURISDICTION

The Fifth Circuit issued its opinion and judgment on May 17, 2022. *See* Pet. App. This petition is filed within 90 days after the entry of judgment. Sup Ct. R. 13.1. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the U.S. 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.

STATEMENT OF THE CASE

The relevant facts are undisputed. In July 2018, petitioner was driving on a major highway in South Texas and was pulled over by Richmond Police Officer Larry Ganey for minor traffic violations of following too closely and speeding. Pet. App. 2. The traffic stop was recorded by Officer Ganey's dashcam. After finding a safe place to stop, Officer Ganey approached petitioner's car and asked whether she spoke English. She did not. Officer Ganey asked her to get out of her car, and called another officer to translate into Spanish (the "translating officer"). Officer Ganey told the translating officer on the phone that he was "not gonna write her a ticket or anything." Pet. App. 2. More specifically, the dashcam video admitted as Government's Exhibit 1 at the suppression hearing establishes that Officer Ganey told the translating officer: "Hey, bro. I just stopped this car, and she don't speak any English. I think she does a bit but not much. But the reason why she was stopped, she was following that car too close and they were going a little bit over the speed limit. I am not going to write her a ticket or anything, but I just want to know where they're going and where she come from, stuff like that."

About three-and-a-half minutes after petitioner had been asked to get out of her car, there was a problem with the phone on which the translating officer and petitioner were speaking. After that is when Officer Ganey asked petitioner whether she had a driver's license. Pet. App. 2. She did not. Petitioner said that she had a Texas ID card, and Officer Ganey asked her to get it out of her vehicle. Officer Ganey asked the translating officer to ask petitioner for consent to search the car, which petitioner gave. Pet. App. 2. While searching petitioner's car for nearly 25 minutes, Officer Ganey received the report he had

requested about petitioner's Texas ID number, and then requested her criminal history. Pet. App. 3. He received a dispatch report that petitioner had a prior arrest for theft and no outstanding warrants about five minutes later. Pet. App. 3.

Notable results of the search included a strong air freshener smell, loose panels that looked like they had been recently taken off or had been taken off and put back on frequently, recent work on the spare tire well, and a suspected hidden compartment in the dashboard due to the presence of wood screws. Pet. App. 3. At that point, Officer Ganey detained petitioner in the back of his patrol car. About ten minutes later, he located a hidden compartment in the trunk. Inside were six bundles, and four of the one-kilogram bundles contained heroin. Pet. App. 3. Officer Ganey did not issue a ticket for any traffic violation. Pet. App. 8.

In October 2018, a federal grand jury indicted petitioner for possessing with intent to distribute one kilogram or more of heroin, a Schedule I controlled substance, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A). In December 2019, petitioner filed a motion to suppress evidence, arguing in relevant part that she was seized in violation of the Fourth Amendment when the officer unconstitutionally prolonged the traffic stop beyond the time reasonably required to complete the stop's mission. The district court held a suppression hearing in January 2020, and made an oral ruling denying the motion. Pet. App. 3.

While expressly reserving the right to appeal the district court's ruling on her motion to suppress evidence, petitioner waived her right to a jury trial and agreed to proceed with a stipulated bench trial. At the bench trial, petitioner pleaded not guilty. After the government recited the stipulated facts, the district court found her guilty. Petitioner was

sentenced in May 2020 to 121 months' imprisonment, to be followed by five years of supervised release. Pet. App. 4.

Petitioner timely appealed, and argued that the district court reversibly erred by denying her motion to suppress evidence because the stop was unconstitutionally prolonged. Pet. App. 4. On May 17, 2022, the U.S. Court of Appeals for the Fifth Circuit affirmed her conviction.[1] The Fifth Circuit rejected petitioner's argument that "an officer unlawfully prolongs a traffic stop when he continues to detain someone after deciding not to issue a ticket for the traffic violations" as "contrary to not only the general principles of the Fourth Amendment reasonableness analysis by also the explicit language in" this Court's decision *Rodriguez v. United States*, 575 U.S. 348 (2015). Pet. App. 5.

The Fifth Circuit homed in on the following passage from *Rodriguez*, emphasizing the word "beyond":

> *Beyond* determining whether to issue a traffic ticket, an officer's mission includes "ordinary inquiries incident to [the traffic] stop." Typically such inquiries 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. These checks serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibility.

Pet. App. 6-7 (emphasis added by the Fifth Circuit). Having so defined the mission of a traffic stop to include not only the ticketing decision but also performing those other checks, the Fifth Circuit concluded that "[e]ach and every action Officer Ganey took comported with that mission." Pet. App. 7. The Fifth Circuit reasoned that, "[t]o hold

[1] Petitioner raised a second issue concerning a clerical error in the district court's written judgment. The Fifth Circuit remanded for the district court to correct that error.

otherwise—that an officer's single action of stating that he did not intend to issue a ticket for the initial infraction" rendered the continued detention unreasonable—would create an impermissible bright-line rule. Pet. App. 7. The Fifth Circuit then acknowledged but distinguished the cases on which petitioner had relied where courts had found traffic stops to be unconstitutionally prolonged after the officer had learned that the suspected traffic violation, like an expired registration sticker, had not occurred. Pet. App. 8. The Fifth Circuit ultimately concluded that "the district court did not err in finding that the stop lawfully continued beyond Officer Ganey's decision not to issue a ticket for the initial infractions." Pet. App. 8.

Petitioner now asks this Court to resolve an important question of constitutional law that implicates division among the lower courts on the proper interpretation of the Court's decision in *Rodriguez*: whether the Fourth Amendment prohibits a police officer from continuing his warrantless detention of a motorist after the officer has announced that he will not issue a ticket for the traffic violations that justified the initial seizure.

BASIS OF FEDERAL JURISDICTION IN THE UNITED STATES DISTRICT COURT

The district court had jurisdiction pursuant to 18 U.S.C. § 3231.

REASONS FOR GRANTING THE PETITION

The petition raises an important question of constitutional law, and implicates a division among the lower federal courts about the proper interpretation of this Court's decision in *Rodriguez v. United States*, 575 U.S. 348 (2018).

The Court should grant the petition to decide an important question of constitutional law that has arisen in the wake of this Court's decision in *Rodriguez v. United States*, 575 U.S. 348 (2018). There, the Court held that a traffic stop is unlawfully prolonged if the officer conducts activity that is unrelated to the stop. *Id.* at 350-51. But, as two circuits have recognized, lower courts have "adopted starkly divergent interpretations of *Rodriguez*." *United States v. Green*, 897 F.3d 173, 180 (3d Cir. 2018); *see also United States v. Frazier*, 30 F.4th 1165, 1173 n.2 (10th Cir. 2022). This Court's intervention is necessary to bring clarity and uniformity on a recurring issue of the permissible scope of traffic stops after *Rodriguez*.

A. In *Rodriguez*, this Court held that a traffic stop is unconstitutionally prolonged if it lasts longer than is necessary to effectuate the stop's purpose.

Whether a traffic stop is a reasonable and thus constitutional intrusion is examined under the two-pronged analysis described in *Terry v. Ohio*, 392 U.S. 1 (1968). First, courts consider "whether the officer's action was justified at its inception," *Id.* at 20, for example, when an officer observes a suspected violation of the traffic code. Second, courts determine whether the stop "was reasonably related in scope to the circumstances which justified the interference in the first place." *Id.*

This Court provided guidance on the second *Terry* prong in *Rodriguez v. United*

States, 575 U.S. 348 (2015). The Court explained, "Like a *Terry* stop, the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission'—to address the traffic violation that warranted the stop . . . and attend to related safety concerns." *Rodriguez*, 575 U.S. at 354 (citations omitted). "Because addressing the infraction is the purpose of the stop, it may 'last no longer than is necessary to effectuate th[at] purpose.'" *Id.* (alteration in original) (quoting *Florida v. Royer*, 460 U.S. 491, 500 (1983) (plurality op.)). A stop becomes unlawful "if it is prolonged beyond the time reasonably required to complete the mission" of the stop. *Id.* at 349 (citation omitted). And for the stop to pass constitutional muster, officers "always ha[ve] to be reasonably diligent" in their investigations as well. *Id.* at 357.

The Court emphasized that it does not matter whether an officer's off-purpose activity occurs before or after the mission of a stop is completed; all that matters is whether the off-purpose activity "adds time" to the stop beyond the "time reasonably required to complete [the stop's] mission." *Id.* (quoting *Illinois v. Caballes*, 543 U.S. 405, 407 (2005)) (internal quotation marks omitted). The Court rejected the argument that *de minimis* extensions of a traffic stop should be an exception to this rule.

The Eighth Circuit had evaluated the traffic stop in *Rodriguez* using a *de minimis* exception, concluding that a slight additional intrusion upon the motorist was permissible. *See id.* at 353. The Supreme Court rejected that *de minimis* exception, finding that such an exception should only apply in situations where intrusion is necessary to ensure officer safety. *Id.* at 356-57. The Court stated, "On-scene investigation into other crimes, however, detours from that mission [of completing the traffic stop.]" *Id.* at 357. Having eschewed a

de minimis exception, the Court concluded that the "critical question" is whether off-purpose activity "prolongs" the stop. *Id.*

B. The Fifth Circuit misinterpreted *Rodriguez* in petitioner's case to hold that a police officer did not impermissibly prolong the traffic stop after he announced at the outset that he would not issue a ticket.

Like in *Rodriguez*, the constitutionality of the traffic stop of petitioner rests on the second *Terry* prong, whether the stop was reasonably related in scope to its justifying purpose. Although the officer had reasonable suspicion for the initial seizure based on suspected traffic violations, petitioner argued that the stop was unconstitutionally prolonged when the officer continued the seizure after announcing that he would not issue a ticket for the traffic violations.

The Fifth Circuit primarily relied on a misinterpretation of *Rodriguez* to hold that the stop was not unconstitutionally prolonged after the officer's "decision not to issue a ticket for the initial infractions." Pet. App. 8. The Fifth Circuit isolated the following passage from *Rodriguez*:

> *Beyond* determining whether to issue a traffic ticket, an officer's mission includes "ordinary inquiries incident to [the traffic] stop."

Pet. App. 6 (emphasis added by the Fifth Circuit) (quoting *Rodriguez*, 575 U.S. at 355). The Fifth Circuit went on to quote the next two lines of *Rodriguez*, in which the Court described the ordinary inquires: "Typically such inquiries 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. These checks serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are

operated safely and responsibility." Pet. App. 6-7 (quoting *Rodriguez*, 575 U.S. at 355). The Fifth Circuit's emphasis on the word "beyond" and the court's subsequent analysis reveal that the Fifth Circuit misread *Rodriguez* to conclude that a traffic's stop mission includes not only the ticketing decision but also the checks for license, warrants, registration, and insurance, even if the officer abandoned any investigation into the basis for the stop because he decided not to issue a ticket at the outset of the seizure. *See* Pet. App. 6-8.

The Fifth Circuit's misinterpretation of *Rodriguez*'s "beyond" passage led it to disregard as inapposite pre-*Rodriguez* cases in which courts had found that officers impermissibly prolonged stops by continuing the detention after finding that the suspected traffic violation had not occurred. *See* Pet. App. 8. For example, in *United States v. Trestyn*, 646 F.3d 732 (10th Cir. 2011), the traffic stop was for an invalid registration sticker, and the court held that the officer unlawfully continued the detention beyond the point at which he reasonably should have known that the registration sticker was in fact invalid. *Id.* at 743. The Tenth Circuit reached that conclusion even though the officer had yet to ask about the vehicle occupants' travel plans or requested their licenses. *Id.* at 744. Petitioner had argued that, just as the officer who learned that the suspected violation had not taken place no longer had a valid reason to continue the detention, the officer in petitioner's case lacked a valid reason to continue to detain her after he had decided not to issue a ticket for the stop's underlying justification. The Fifth Circuit, relying on *Rodriguez*, disagreed. *See* Pet. App. 6-8.

Citing *Ohio v. Robinette*, 519 U.S. 33 (1996), the Fifth Circuit also found that

petitioner "implicitly ask[ed] [the court] to introduce an officer's subjective beliefs into the objective reasonableness analysis" by "founding her challenge solely on the statement" from Officer Ganey to the translating officer "that Officer Ganey did not intend to issue a ticket for the initial traffic violations." Pet. App. 5-6. According to the Fifth Circuit, Officer Ganey's statement at the outset of the traffic stop that he was not going to write a ticket or anything "represent[ed] Officer Ganey's subjective intentions to exercise discretion and not issue a ticket during the stop. The fact that he subjectively thought, or even articulated, an intent not to ticket her is irrelevant here." Pet. App. 6 (emphasis omitted). But again the Fifth Circuit's reasoning runs counter to *Rodriguez*. There, the Court clearly explained that a seizure's reasonableness "depends on what the police in fact do," agreed with the government's position that an officer must always be reasonably diligent, and observed, "How could diligence be gauged other than by noting what the officer actually did and how he did it?" *Rodriguez*, 575 U.S. at 357. The Fifth Circuit mistakenly treated the officer's announcement that he would not issue a ticket as irrelevant, when in fact that statement not only sheds significant light on what he was actually doing but also matched his actions during the stop of not pursuing any investigation into the traffic violations for which he initiated the stop.

This is not the only case in which the Fifth Circuit has misinterpreted *Rodriguez* to expand, rather than contract, the reasonable scope of a seizure. In *United States v. Tello*, 924 F.3d 782 (5th Cir.), *cert. denied*, 140 S. Ct. 172 (2019), the defendant was stopped at a U.S. Border Patrol interior immigration checkpoint in south Texas. *Id.* at 785. The agent asked the defendant whether he was a U.S. citizen, to which he replied that he was a

naturalized citizen. *Id.* The agent found that answer to be satisfactory and thus did not ask for any documentation. *Id.* Yet the agent continued to detain the defendant and asked him what he was hauling in his trailer, to give another agent additional time for a canine to sniff the tractor-trailer. *Id.* The defendant argued that the agent's continued detention of him was unreasonable under *Rodriguez* because the immigration purpose of the checkpoint was complete when the agent was satisfied with the defendant's answer to his citizenship inquiry. *Id.* at 787.

The Fifth Circuit disagreed, noting that it has "avoided scrutinizing the questions a Border Patrol agent asks at the checkpoint, instead focusing on the duration of the stop." *Id.* at 786. The Fifth Circuit concluded that it was undisputed that the stop lasted about 30 seconds, and that the agent's questions about his citizenship, cargo, and travel were all permissible, because the Fifth Circuit had previous stated that travel-related questions are "commonplace for an agent to ask during an immigration inspection." *Id.* at 787 (quoting *United States v. Alvarez*, 750 Fed. Appx. 311, 313 (5th Cir. 2018) (unpublished)). As to *Rodriguez*, the Fifth Circuit focused on the facts that the overall length of the stop in *Rodriguez* was 29 minutes, and about seven or eight minutes passed from the time the officer issued the warning ticket to the time the canine arrived. *Id.* at 788. The Fifth Circuit further framed *Rodriguez* as "simply allow[ing] for stops of a 'tolerable duration'—a duration that is circumscribed by the reason for the stop" and stated that this Court had recognized in *United States v. Martinez-Fuerte*, 428 U.S. 543, 557 (1976), "that an immigration stop may take up to five minutes." *Tello*, 924 F.3d at 789.

The Fifth Circuit's focus in *Tello* on the duration of the seizure is contrary to

Rodriguez. The Court in *Rodriguez* specifically rejected the principle that the reasonableness of the length of a stop could be judged by reference to some objective standard of the length of time a particular sort of stop should take, but rather must be judged by the officer's actual diligence in pursuing the purpose of the stop. *See Rodriguez*, 575 U.S. at 357. The Court held that "[t]he reasonableness of a seizure . . . depends on what the police in fact do." *Id.* (citing *Knowles v. Iowa*, 525 U.S. 113, 115-17 (1998)). If an officer can compete inquiries related to the underlying justification for the stop "expeditiously," then "that is the amount of 'time reasonably required to complete the stop's mission.'" *Id.* (citing *Caballes*, 543 U.S. at 407). The Court rejected the government's argument that an officer may earn "bonus time" by completing the original mission of the stop more quickly than usual, and then using that additional time to pursue an unrelated investigation. *Id.*

C. The Fifth Circuit is not alone in its misinterpretation of *Rodriguez*.

Other circuits have taken a similar approach to the Fifth Circuit. The Sixth Circuit in *United States v. Collazo*, 818 F.3d 247 (6th Cir. 2016), found that a 21-minute traffic stop was not unreasonable, and that no constitutional violation had occurred when "most of the questions" the officer asked "were related to the traffic stop, and none of them extended the traffic stop beyond a reasonable time." *Id.* at 257. In support, the court quoted the same lines from *Rodriguez* that the Fifth Circuit relied on in petitioner's case: "Beyond determining whether to issue a traffic ticket, an officer's mission includes ordinary inquiries incident to the traffic stop. Typically such inquiries 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.* at 258. The court also

cited its own pre-*Rodriguez* decision stating that "[q]uestions relating to travel plans, the driver's authority to operate the vehicle, or the safety of the officer 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." *Id.* (quoting *United States v. Lyons*, 687 F.3d 754, 770 (6th Cir. 2012)).

Over a dissent, the *en banc* Seventh Circuit purported to apply the framework from *Rodriguez* to reach its holding that an officer permissibly asked detailed travel-related questions after stopping a motorist for following too closely to another vehicle. *United States v. Cole*, 21 F.4th 421, 425-26, 432-33 (7th Cir. 2021), *cert. denied*, 142 S. Ct. 1420 (2022). The *en banc* court went so far as to expand the mission of a traffic stop to include travel-related inquiries. *Id.* at 429. The dissenting opinion vigorously disagreed, and would have held that the officer's detailed travel-related questioning violated *Rodriguez* and impermissibly prolonged the stop. *Id.* at 434-35 (Hamilton, J., joined by Rovner and Wood, JJ., dissenting). The dissenters interpreted *Rodriguez* as this Court taking "an important step to make . . . effective" the limit from *Caballes* that a stop becomes unreasonable if "prolonged beyond the time reasonably required to complete" the stop's initial mission. *Id.* at 438 (quoting *Caballes*, 543 U.S. at 407).

D. Other courts have properly read *Rodriguez* as placing limits on the constitutionally permissible scope of a traffic stop.

Contrary to the Fifth Circuit's reading of *Rodriguez* in petitioner's case, other courts have properly read *Rodriguez* as placing limits on the constitutionally permissible scope of a traffic stop. The Second Circuit, for instance, had held in *United States v. Harrison*, 606

F.3d 42 (2d Cir. 2010), that an officer's questioning of a motorist for five-to-six minutes on matters unrelated to the traffic violations for which the officer had initiated the stop did not run afoul of the Fourth Amendment *Id.* at 45. But later the Second Circuit, in an opinion that had been circulated to all Second Circuit judges before publication, held that *Rodriguez* abrogated *Harrison*. *United States v. Gomez*, 877 F.3d 76, 81 & n.1 (2d Cir. 2017).

The Second Circuit correctly recognized that its prior analysis in *Harrison* did not survive *Rodriguez*. In *Harrison*, the officer initiated the traffic stop for a defective light, and the Second Circuit had approved of the stop's extension for the officer to question the passengers on topics unrelated to the defective light, even though the officer had "testified that he 'had all of the information needed to issue the traffic ticket before he first approached' the car's passengers." *Id.* at 87-88 (quoting *Harrison*, 606 F.3d at 45). The Second Circuit in *Harrison* had explained that the extension to ask about "the passengers' comings and goings" was reasonable because it lasted "only five to six minutes," which was a shorter duration than other circuits had "deemed tolerable." *Id.* at 88 (quoting *Harrison*, 606 F.3d at 45). But in *Rodriguez*, this Court had rejected such a *de minimis* rule. *Id.* at 94.

The Second Circuit gleaned several important principles from *Rodriguez*. First, a "police stop 'exceeding the time needed to handle the matter for which the stop was made' violates the Fourth Amendment absent independent reasonable suspicion of another offense." *Id.* at 90 (quoting *Rodriguez*, 575 U.S. at 350). Second, a seizure's reasonableness "'depends on what the police in fact do,'" rather than a comparison to the duration of a hypothetically expeditious seizure or the duration of a seizure in similar circumstances."

Id. (quoting *Rodriguez*, 575 U.S. at 357). Third, an officer "may not obtain 'bonus time to pursue an unrelated criminal investigation'" by effectuating the stop's mission expeditiously. *Id.* (quoting *Rodriguez*, 575 U.S. at 357). And fourth, "if such an investigation does in fact 'prolong—*i.e.*, add time to—the stop,' the seizure is unconstitutional absent reasonable suspicion of the other offense." *Id.* (cleaned up) (quoting *Rodriguez*, 575 U.S. at 357).

In light of those principles, the Second Circuit held that *Harrison*'s holding—that an officer with all the information needed to issue the ticket could approach the passengers to ask about travel plans—"conflict[ed] with, and thus must yield to, *Rodriguez*'s holding: unrelated inquiries that prolong or add time to a traffic stop violate the Fourth Amendment absent reasonable suspicion of a separate crime." *Id.* In addition, applying *Rodriguez* to the facts before it in *Gomez*, the Second Circuit found that the stop in *Gomez* was also unconstitutionally prolonged. *Id.* at 91. Although the stop had a relatively short overall duration of five minutes, the officers immediately detoured from the stop's mission to investigate traffic violations by asking unrelated questions to conduct a drug-trafficking investigation. *Id.* at 80, 91-92.

The Third Circuit in *Green* surveyed other circuit's case law and concluded that *Caballes* and *Rodriguez* were "difficult to apply beyond their facts," resulting in "inconsistent application in the lower courts." *Green*, 897 F.3d at 181. The court further thought that "*Rodriguez*'s language c[ould] be interpreted in a variety of ways" on the "critical question" of whether the off-purpose activity prolonged the stop. *Id.* at 180. The court adopted *arguendo* what it called "a restrictive reading of *Rodriguez*" to find that an

officer had measurably prolonged a traffic stop to call his colleague to talk about suspected drug trafficking, not about the suspected traffic violation that had initially justified the seizure. *Green*, 897 F.3d at 182. At the suppression hearing, the officer admitted that, by the time he made that call, he was intent on searching the vehicle, "and no longer concerned with the moving violation." *Id.* The court noted the "uncertainty in applying *Rodriguez*" and "erred on the side of caution" by not applying the "more lenient approach" to *Rodriguez* followed in other circuits, but ultimately held that the officer had the requisite reasonable suspicion to extend the stop. *Id.*

The *en banc* Eleventh Circuit, similar to the Second Circuit in *Gomez*, recognized that *Rodriguez* had abrogated prior circuit precedent. *See United States v. Campbell*, 26 F.4th 860, 883 (11th Cir. 2022). Before *Rodriguez*, the Eleventh Circuit had held in *United States v. Griffin*, 696 F.3d 1354, 1357 (11th Cir. 2012), that an officer asking unrelated questions during a *Terry* stop was not a constitutional violation so long as the overall duration of the stop was reasonable. *Campbell*, 26 F.4th at 883 (citing *Griffin*, 696 F.3d at 1357). But *Griffin*'s reasoning did not survive *Rodriguez*, which had "rejected the overall reasonableness standard." *Id.* at 884. The court in *Griffin* had held that the unrelated questions were permissible because the officer had "acted diligently." *Id.* (quoting *Griffin*, 696 F.3d at 884).

But under *Rodriguez*, "diligence does not provide an officer with cover to slip in a few unrelated questions." *Id.* Moreover, although the 30-second prolongation in *Griffin* exceeded the seven-to-eight extra minutes in *Rodriguez*, the Eleventh Circuit held that "the length of time is immaterial" because this Court in *Rodriguez* had "rejected the Eighth

Circuit's *de minimis* rule, under which minor extensions of seizures were tolerated." *Id.*

Turning to the facts of the case before it, the Eleventh Circuit in *Campbell* found that the officer's questions about travel plans were permissible because they related to the purpose of the traffic stop, which was to investigate the traffic violation of a malfunctioning turn signal. *Id.* at 885. The officer pulled the vehicle over for a rapidly blinking turn signal and, in the officer's experience, rapid blinking "indicated that a bulb is either out or is about to go out." *Id.* Because the driver's plan to travel a long distance increased "the chances that his turn signal would stop working while he was driving," questions about "travel plans was a related and prudent part of investigating his malfunctioning turn signal." *Id.* However, the officer's questions about contraband in the car were "fairly obviously" not related to the stop's purpose to investigate traffic violations. *Id.* The court easily concluded that the 25 seconds of questioning about contraband therefore "unlawfully prolonged the stop." *Id.*

Had petitioner's prosecution arisen in the Second, Third, or Eleventh Circuits, the court would have found that the traffic stop was unlawfully prolonged. Similar to the officer in *Harrison* who had all the information he needed to issue a ticket but took a detour to ask about travel plans, the officer in petitioner's case did not need any further information about the basis for the stop, the traffic infractions, because he decided at the outset that he was not going to issue a ticket. Like the officer in *Green*, the officer in petitioner's case was "no longer concerned with the moving violation" for which he had initiated the stop, since he had decided not to issue a ticket. And similar to the officers in *Griffin* and *Campbell* who unlawfully prolonged the stops by asking unrelated questions,

petitioner was necessarily detained for questioning unrelated to the purpose of the traffic stop, because the officer had no need inquire about the traffic violations since he had already decided to not issue a ticket.

This case presents an ideal vehicle for the Court to resolve this division among the lower courts about how to interpret *Rodriguez*. The question presented was fully litigated in the district court and on appeal, and so no procedural hurdles hinder review of the question presented. Moreover, the fact that petitioner eventually consented to the search is of no significance, given the well-established rule that consent is invalid if it is not an independent act of free will. *See, e.g.*, *United States v. Macias*, 658 F.3d 509, 523-24 (5th Cir. 2011). Petitioner's consent was not independent; it was obtained during the unconstitutionally prolonged detention. Finally, the question is important and recurring, since police officers conduct millions of traffic stops per year. *See, e.g.*, The Stanford Open Policing Project, *Findings*, https://openpolicing.stanford.edu/findings ("Police pull over more than 50,000 drivers on a typical day, more than 20 million motorists every year.") (last visited Aug. 12, 2022).

CONCLUSION

The petition for a writ of certiorari should be granted.

Date: August 15, 2022

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