No. 23-5743

IN THE SUPREME COURT OF THE UNITED STATES

XZAVIONE TAYLOR, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record

NICOLE M. ARGENTIERI
Assistant Attorney General

BRENDAN B. GANTS
Attorney

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether the court of appeals correctly determined that petitioner's traffic stop was not unreasonably prolonged when officers asked him to exit his car.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 3a-21a) is reported at 60 F.4th 1233. The order of the district court (Pet. App. 22a-34a) is not published in the Federal Supplement but is available at 2021 WL 664835.

JURISDICTION

The judgment of the court of appeals was entered on March 1, 2023. A petition for rehearing was denied on July 7, 2023 (Pet. App. 1a-2a). The petition for a writ of certiorari was filed on October 5, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a conditional guilty plea in the United States District Court for the District of Nevada, petitioner was convicted on one count of possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1) and 924(a)(2). Judgment 1. The district court sentenced him to 20 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3. The court of appeals affirmed petitioner's conviction and remanded to the district court to conform the written judgment to its oral pronouncement of sentence with respect to two special conditions of petitioner's supervised release. Pet. App. 3a-21a.

1. On July 10, 2020, Las Vegas police officers Anthony Gariano and Brandon Alvarado initiated a traffic stop after observing a car with no license plates or temporary registration tags. Pet. App. 7a. Officer Gariano spoke with petitioner, the driver and sole occupant of the car, who was wearing a fanny pack slung across his upper body. Id. at 7a-8a, 23a-24a. Petitioner acknowledged that he knew why he had been stopped and claimed that he had just acquired the car from his aunt. Id. at 7a. Petitioner could not provide a driver's license or any other form of identification. Ibid. Officer Gariano asked petitioner if there were any "guns/knives/drugs" in the car, and petitioner said that there were not. Ibid. Officer Gariano asked petitioner if he had been arrested before, and petitioner said he was on parole after a conviction for possessing a firearm as a felon. Ibid.

After taking down petitioner's name, Social Security number, and date of birth, Officer Gariano asked petitioner to step out of the car, which he did. Pet. App. 7a-8a. When petitioner did so, the officers observed that petitioner's fanny pack was unzipped and apparently empty and asked him to remove it. Id. at 8a. Officer Gariano then returned to the patrol car and ran a records check while Officer Alvarado spoke with petitioner and patted him down. Id. at 8a-9a. The records check confirmed petitioner's identity and prior felony convictions. Id. at 9a. Officer Gariano exited the patrol car and asked petitioner for consent to search the car, which petitioner gave. Ibid. After searching petitioner's car for less than a minute, Officer Gariano found a handgun under the driver's seat, at which point the officers placed petitioner under arrest and read him his Miranda rights. Ibid. Petitioner admitted that the gun was his, explaining that he normally placed it in the fanny pack but kept it under the seat while driving. Ibid.

2. A federal grand jury returned an indictment charging petitioner with one count of possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1) and 924(a)(2). Indictment 1-2. Petitioner filed a motion to suppress the gun and his incriminating statements, claiming that the officers had violated the Fourth Amendment by prolonging the traffic stop to investigate non-traffic offenses for which they lacked reasonable suspicion. C.A. E.R. 482-484.

A magistrate judge held an evidentiary hearing at which both officers testified. Officer Gariano testified that when a driver has no license, he typically asks the driver to exit the car and stand in front of his patrol vehicle while he checks the driver's information for flight-prevention and safety reasons, and so that he can see the person whose identity he is attempting to confirm. 11/30/20 Tr. (Tr.) 16-17. Officer Gariano also testified that he runs a records check on "every single traffic stop," Tr. 61, and that when he is concerned a person might have a gun, he typically asks that person to exit the car while he does so, Tr. 79-80.

As to the stop of petitioner, Officer Gariano agreed with defense counsel's characterization that "everything changed" for him after learning that petitioner was on parole for a felon-in-possession conviction because he had a heightened concern that petitioner might have a gun, explaining that "with firearms, it's a little different because * * * we want to be safe and we want to confirm that there's actually no firearms." Tr. 47. Officer Gariano testified that he asked petitioner to exit the car so that he could see if petitioner had a gun and safely investigate further. Tr. 54. And Officer Gariano and Officer Alvarado both testified that they considered the fanny pack slung around petitioner's upper body suspicious because, in their experience, people often, and lately in increasing numbers, conceal firearms in such packs. Tr. 25-26, 95.

The magistrate judge recommended granting the motion to suppress on the theory that the officers lacked reasonable suspicion of a gun crime when Officer Gariano "admitted his focus changed from a traffic stop to a concern that Defendant was illegally in possession of a gun." C.A. E.R. 100. The magistrate judge also recognized, however, that Officer Gariano was lawfully permitted to order petitioner out of the car, and found that when he did so, Officer Gariano wanted to determine whether petitioner had a gun both for safety reasons and to investigate a possible weapons offense. Id. at 90, 103.

3. The district court denied petitioner's suppression motion, finding that the traffic stop was not impermissibly prolonged. Pet. App. 22a-34a. Observing that "Officer Gariano's shift in focus does not necessarily equate to a deviation from the traffic stop's mission," the court saw "[n]othing about" the records searches that Officer Gariano ran that "deviated from the ordinary inquiries made by officers during a typical traffic stop; Officer Gariano was checking for outstanding warrants and identifying the driver, both of which are actions aimed at ensuring road safety." Id. at 27a-28a. The court also found that the patdown did not prolong the stop because it occurred simultaneously with the records search. Id. at 29a. And the court determined that, in any event, even if the traffic stop had been prolonged, "the facts known to Officer Gariano" amounted to reasonable suspicion to prolong it. Id. at 32a.

Petitioner subsequently entered a conditional guilty plea, preserving his right to appeal the district court's denial of his suppression motion. Pet. App. 10a. The court sentenced him to 20 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3.

4. The court of appeals affirmed the denial of the suppression motion. Pet. App. 3a-21a.

The court of appeals agreed with the district court that the officers did not unreasonably prolong the stop. Pet. App. 11a-12a, 14a-17a. The court of appeals noted that Officer Gariano "became concerned that [petitioner] might be armed" when he learned that petitioner had a felon-in-possession conviction, id. at 8a, and observed that this Court's precedents "made clear that officers could have [petitioner] exit his vehicle in the interest of officer safety," id. at 13a. The court emphasized that it did not matter whether the officers "may have subjectively believed they were on to something more than a vehicle lacking license plates" because the relevant point for Fourth Amendment purposes was "the objective reasonableness of their actions." Ibid.

The court of appeals also determined that the officers' conduct after petitioner exited the vehicle -- including the patdown and criminal history check -- was consistent with the Fourth Amendment for two independent reasons. Pet. App. 14a. First, the court explained that under this Court's decisions in Pennsylvania v. Mimms, 434 U.S. 106 (1977) (per curiam) and Arizona

v. Johnson, 555 U.S. 323 (2009), such precautions are permissible as part of a traffic stop "'if the officer reasonably concludes that the driver "might be armed and presently dangerous."'" Pet. App. 15a (quoting Johnson, 555 U.S. at 331). The court of appeals observed that the reasonable suspicion necessary under those decisions "is less than probable cause," and found that reasonable suspicion existed here in light of the "circumstances taken as a whole," including petitioner's past conviction for possessing a firearm as a felon, his "curiously empty and unzipped" fanny pack, and the officers' experience that fanny packs "are commonly used to store weapons." Id. at 15a-16a.

Second, the court of appeals found that "even if officers prolonged the encounter beyond the original mission of the traffic stop, they had a sufficient basis to do so." Pet. App. 17a. Specifically, the court determined that "under the totality of the circumstances," the officers had "reasonable suspicion of an independent offense: [petitioner's] unlawful possession of a gun." Ibid.

Having affirmed petitioner's conviction, the court of appeals remanded to allow the district court to modify its written judgment regarding certain conditions of supervised release in order to conform to the oral pronouncement of sentence. Pet. App. 20a-21a.

ARGUMENT

Petitioner contends (Pet. 5-16) that the decision below is inconsistent with this Court's decision in Rodriguez v. United States, 575 U.S. 348 (2015), and conflicts with the decisions of other courts applying that precedent. Petitioner's contentions lack merit. The court of appeals correctly applied this Court's precedents, and its factbound decision does not conflict with any decision of this Court, another court of appeals, or a state court of last resort. No further review is warranted.

1. The court of appeals correctly determined that Officer Gariano did not violate petitioner's Fourth Amendment rights when he asked petitioner to exit his car.

a. In Pennsylvania v. Mimms, 434 U.S. 106 (1977) (per curiam), this Court held that a police officer may as a matter of course order the driver of a lawfully stopped car to exit his vehicle. See id. at 111 n.6. In so holding, the Court emphasized the "legitimate and weighty" interest in officer safety, especially in light of the "inordinate risk" posed by traffic stops, and found the additional intrusion of being ordered out of a vehicle that was lawfully stopped to be "de minimis." Id. at 110-111 (emphasis omitted). The Court also addressed a "second question" of whether an officer may conduct a patdown after the person has exited the vehicle, and explained that such a patdown is justified so long as the totality of the facts known to the officer -- from both before and after the person exited the car

-- allows the officer to "reasonably conclude[] that the person whom he had legitimately stopped might be armed and presently dangerous." Id. at 111-112; see id. at 109; see also Arizona v. Johnson, 555 U.S. 323, 332 (2009).

In Rodriguez v. United States, the Court held that "the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission' -- to address the traffic violation that warranted the stop and attend to related safety concerns." 575 U.S. at 354 (citations omitted). The Court made clear that "[b]eyond determining whether to issue a traffic ticket, an officer's mission includes 'ordinary inquiries incident to the traffic stop,'" which "[t]ypically" encompass "checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." Id. at 355 (brackets and citation omitted).

The Court further explained -- reiterating its holding in Mimms allowing officers to "requir[e] a driver, already lawfully stopped, to exit the vehicle" -- that actions in furtherance of the "'legitimate and weighty' interest in officer safety," including "criminal record and outstanding warrant checks" as well as asking the driver to step out of his car, likewise "stem[] from the mission of the stop itself," and are accordingly permissible. 575 U.S. at 356 (quoting Mimms, 434 U.S. at 110-111). But the Court held that "[a]uthority for the seizure * * * ends when

tasks tied to the traffic infraction are -- or reasonably should have been -- completed." Id. at 354. Thus, where officers prolong a stop to conduct "[o]n-scene investigation into other crimes," they must have "reasonable suspicion of criminal activity" to justify continued detention "beyond completion of the traffic infraction investigation." Id. at 356-358.

b. The court of appeals correctly applied this Court's precedents to the facts of this case in determining that Officer Gariano did not unreasonably prolong the traffic stop when he asked petitioner to exit the vehicle. The court explained that "[i]n this case, Mimms and its progeny made clear that officers could have [petitioner] exit his vehicle in the interest of officer safety" because, regardless of their subjective motivations or beliefs, that action was objectively reasonable. Pet. App. 13a.

While petitioner (Pet. 8) characterizes the court of appeals' decision as holding "that an officer may always order a driver out of his car, regardless of whether the order served solely as a safety precaution for an unrelated investigation," the court in fact determined that the order was part of the traffic stop itself. See Pet. App. 14a-15a. Specifically, it found that "[t]he officers here did not abandon the traffic stop," continued to "perform[] actions that are permissibly within the mission of a traffic stop," and "were within the lawful scope of" the traffic stop when they required him to step out of his car. Ibid. Petitioner likewise errs in suggesting (e.g., Pet. 8) that the court disregarded

Rodriguez; in fact, the court cited that decision repeatedly in determining that the officers' actions were within the lawful scope of the stop. Pet. App. 10a-12a, 14a.

The same mistaken premises undermine petitioner's contention (Pet. 8) that the court of appeals "[u]ntether[ed] Mimms's rule from its predicate requirement" of "continued lawful detention," so as to give officers "carte blanche to remove a driver anytime once stopped." The Constitution did not require the officers in this case to allow petitioner -- who was driving, without a license, a car displaying no plates -- to leave before they had even verified his identity. In contrast, the court of appeals has separately concluded post-Rodriguez -- in a decision that it cited below, Pet. App. 11a, 17a -- that the Fourth Amendment was violated where a stop "was no longer lawful by the time the officers ordered [the defendant] to leave the car." United States v. Landeros, 913 F.3d 862, 870 (9th Cir. 2019). But this case did not present that circumstance; as the decision below explains, petitioner's detention remained lawful throughout because the officers continued to pursue the traffic stop's mission. Pet. App. 14a-15a.

Nor did the court of appeals err, as petitioner contends (Pet. 10-12), by finding his argument about Officer Gariano's subjective motivations to be "misplaced." As an initial matter, petitioner is incorrect in contending (Pet. 12) that the court accepted his disputed factual claim that "the exit order was given solely as a

safety measure to facilitate a separate investigation." To the contrary, the court of appeals viewed Officer Gariano's testimony about his reaction to learning of petitioner's felon-in-possession conviction as a reason that Officer Gariano "became concerned that [petitioner] might be armed." Pet. App. 8a. Concern that a person encountered during a traffic stop might be armed is a well-recognized officer-safety concern. See, e.g., Rodriguez, 575 U.S. at 356; Mimms, 434 U.S. at 110-111; Terry v. Ohio, 392 U.S. 1, 27 (1968).

In this case, petitioner had a criminal history that would render any current gun possession a crime. But that fact did not have the perverse effect of depriving officers of their ability to protect themselves, or otherwise convert an otherwise lawful safety precaution into an impermissible "separate investigation." Pet. 12. Instead, as the court of appeals correctly stated, "officers could have [petitioner] exit his vehicle in the interest of officer safety * * * regardless of whether the officers may have subjectively believed" that some crime other than a traffic violation might also be afoot. Pet. App. 13a (citation omitted).

2. Contrary to petitioner's contention (Pet. 13-15), the decision below does not conflict with the decision of any other court of appeals or any state court of last resort. Unlike the officers' safety-related attempt here to determine whether petitioner was armed, the decisions on which petitioner relies all

involved investigations into drug-related offenses unrelated to the lawful purposes of a traffic stop.

In United States v. Whitley, 34 F.4th 522 (2022), the Sixth Circuit concluded that a defendant's detention "objectively exceeded the relevant scope of the traffic stop" when officers had "totally abandoned their investigation of the traffic violation" immediately prior to the exit order. Id. at 530. The officers there had collected the defendant's identification documents, but after noticing a scale on his lap they never examined those documents, nor did they run the defendant's name through a database or do anything else to investigate the traffic violation. Ibid. The Sixth Circuit found that when officers explicitly identified their purpose by telling the defendant they "wanted to 'investigate the scale real quick,'" they had "left the materials relevant to the traffic stop behind." Ibid.

Significantly, Whitley distinguished an earlier decision, United States v. Lash, 665 Fed. Appx. 428 (6th Cir. 2016), in which an officer's request to review a driver's rental-car agreement was within the scope of the initial traffic stop. As Whitley noted, the officer in Lash testified that he had been about to let the driver go when he noticed a plastic bag sticking out of the driver's trousers, and that he asked to see the rental-car agreement to give himself the time and opportunity to "investigate a little further." Whitley, 34 F.4th at 531 (quoting Lash, 665 Fed. Appx. at 429-430). That request, the Whitley court explained,

nevertheless did not "objectively exceed[] the scope of the traffic stop" because the officer did not (as in Whitley itself) abandon any traffic-related purpose; rather, the request to review the rental agreement "was directly related to the traffic violation." Id. at 532. The Sixth Circuit's decision in Whitley is thus consistent with the decision below, which found that asking petitioner to exit the car was part of the traffic stop itself, not a separate investigation.

Similarly to Whitley, the Eleventh Circuit in Baxter v. Roberts, 54 F.4th 1241 (2022), concluded that a reasonable jury could find that by the time the deputy sheriff gave an exit order there, he had already finished checking the driver's registration, license, and insurance, run a records check, and written a warning citation -- and that when the deputy held off on issuing the citation and instead ordered the driver out of the car for a dog sniff, that constituted an impermissible extension to pursue an unjustified detour. See id. at 1260-1262. In an earlier (nonprecedential) case, in contrast, the Eleventh Circuit had recognized that an officer's exit order and call for backup were "related to the mission of the traffic stop, that is, ensuring officer safety," and that the officer's testimony that one reason he called for backup was "because he thought something was up and he wanted to investigate it further" was irrelevant to the reasonableness of the officer's actions. United States v. Burwell,

763 Fed. Appx. 840, 851 & n.5 (per curiam), cert. denied, 140 S. Ct. 579 (2019).

Petitioner's cursory and largely undeveloped suggestion (Pet. 14-15) of a conflict involving state courts of last resort is also mistaken. The decisions that petitioner cites simply reached different outcomes based on the different fact patterns presented in particular cases, upholding exit orders issued while a detention remained lawful, see State v. Pylican, 477 P.3d 180, 189 (Idaho 2020); State v. Brown, 945 N.W.2d 584, 592 (Wis.), cert. denied, 141 S. Ct. 881 (2020), but finding a constitutional violation where exit orders were given after a stop already had been unlawfully prolonged, see Mills v. State, 458 P.3d 1, 11 (Wyo. 2020).* None of those decisions supports petitioner's position or establishes any conflict of authority.

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* Petitioner also characterizes two Montana Supreme Court decisions as holding that "an exit order remains subject to Rodriguez's purpose-driven inquiry" (Pet. 14), but one predates Rodriguez, which reiterated the validity of officer-safety concerns during a stop, and in the other the exit order was irrelevant because the issue pertained to what happened after the driver had already exited the vehicle and was seated in the officer's patrol car. State v. Noli, 529 P.3d 813, 842 (Mont. 2023).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General

NICOLE M. ARGENTIERI
Assistant Attorney General

BRENDAN B. GANTS
Attorney

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