No. 23-5743

In the Supreme Court of the United States

Xzavione Taylor,

Petitioner,

v.

United States of America,

Respondent.

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

Reply Brief for the Petitioner

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Table of Contents

Table of Authorities

Federal Constitution **Page(s)**

Federal Cases

State Cases

Reply Brief for the Petitioner

I. Review by this Court is needed to assure that, absent reasonable suspicion or safety concerns, officers cannot order a driver to exit his vehicle for an off-mission purpose when not engaged in an on-mission task.

The question before the Court is whether an officer's exit order impermissibly extends a traffic stop when issued solely to investigate a non-traffic offense.

The government's reliance on the Ninth Circuit's finding that reasonable suspicion supported the officer's actions taken to investigate a non-traffic offense is misplaced. Response in Opposition ("Resp."), p. 8. Courts cannot rely on reasonable suspicion that may have arisen *after* an exit order that prolongs the stop. The Ninth Circuit found that, *after* officers "observed Taylor fully outside of the vehicle" wearing his fanny pack, they possessed reasonable suspicion to further a gun possession investigation.[1] Petition Appendix ("App.") B, p. 15a. The Ninth Circuit's ultimate affirmance, therefore, solely turned on the perceived lawfulness of the exit order.

The government improperly truncates Officer Gariano's testimony about the purpose of the exit order, claiming he testified "that he asked [Taylor] to exit the car

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[1] The government incorrectly implies Taylor's fanny pack was visible to officers during the conversation with Taylor while Taylor was in the car. Resp., p. 2. But the Ninth Circuit found it was unclear if officers could see the fanny pack while Taylor was seated in the car: "About a minute and thirty seconds into their conversation, [Officer] Gariano asked Taylor to step out of the car. Taylor complied. Until that point, it is not clear how much the officers could see of Taylor's person. Gariano's bodycam footage showed that, at a minimum, Gariano likely could see a red strap on Taylor's left shoulder while Taylor remained seated in his car." App. B, p. 8a.

so that he could see if [Taylor] had a gun and safely investigate further." Resp., p. 4. A full reading of Gariano's testimony, however, reveals he admitted the exit order was "to safely conduct further investigation" into "something different than the original reason [for the stop], which was the traffic violation." Court of Appeals Excerpts of Record ("C.A. EOR"), pp. 251–22. Gariano's exit order was thus wholly unrelated to traffic-related tasks and issued only for a separate investigation. C.A. EOR, pp. 252 (Question: "[Y]ou're saying you're conducting a further investigation. That means to me that you're looking at something else; right? It's the possession of the gun when he told you he's a prior convicted felon; right?" Answer: "Yes.").

The government does not dispute or address this Court's holding in *Florida v. Royer*, 460 U.S. 491, 500 (1983), that the scope of a seizure must remain "carefully tailored to its underlying justification." Petition for Certiorari ("Pet."), p. 6. Permissible tasks for a traffic stop are "checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." Resp., p. 9. (citing *Rodriguez v. United States*, 575 U.S. 348, 355 (2015)). *Rodriguez* did not disturb this Court's precedent that detours from a traffic stop's tasks—here an investigation into a separate criminal offense—are not "part of the officer's traffic mission." *Florida*, 460 U.S. at 356. When—as here—the officers take "safety precautions . . . to facilitate such detours," by removing Taylor from the car, such detours lengthen the traffic stop and independent justification is required before the exit order. Pet., p. 8 (quoting *Rodriguez*, 575 U.S. at 355).

The government, like the Ninth Circuit, takes the position that officers may always issue an exit order for safety concerns regardless of whether they had reasonable suspicion of the off-task mission that allegedly gave rise to those concerns. Resp., p. 12. But, under *Rodriguez* and the Fourth Amendment, where officers issue an exit order to investigate a non-traffic offense for which they lack reasonable suspicion, the off-task exit order impermissibly extends the traffic stop. Pet., p. 8. "[S]afety precautions taken in order to facilitate [] detours" from the original traffic mission when such detours are unsupported by reasonable suspicion cannot be permitted. *Rodriguez*, 575 U.S. at 356.

II. The Ninth Circuit misapplied *Pennsylvania v. Mimms* and *Rodriguez v. United States*.

Making the same mistake as the Ninth Circuit, the government fails to read *Rodriguez* with *Pennsylvania v. Mimms*, 434 U.S. 106 (1977) (per curiam). When an exit order does not "stem[] from the mission of the stop itself," *Rodriguez*, 575 U.S. at 356, and lacks independent justification, it is impermissible. The government agrees. *See* Resp., pp. 9–10. Yet the government still asks this Court to disregard what occurred here—the issuance of an exit order that was not part of the traffic stop's tasks nor related to officer safety concerns arising from the traffic stop mission. We know this because Officer Gariano admitted as much. C.A. EOR, pp. 252.

Mimms examined a driver's detention due to an exit order and presumed the traffic stop remained lawful throughout the detention. *Mimms*, 434 U.S. at 111. *Rodriguez* picked up where *Mimms* left off and held that once the traffic stop is no

longer the justification for an exit order, the off-task exit order unaccompanied by reasonable suspicion for its issuance unlawfully extends the traffic stop. *Rodriguez*, 575 U.S. at 354. Both the government and the Ninth Circuit untether *Mimms* from *Rodriguez* by overlooking the admitted change in officer purpose here. This untethering impermissibly allows an exit order for all-purpose, generalized safety concerns, even when the officer is no longer pursuing the traffic stop and lacks reasonable suspicion for a separate investigation that allegedly gave rise to the safety concerns. This permits generalized safety concerns to erode the requirement that officers must have independent justification for off-task actions.

Rodriguez and *Mimms* ask what the police objectively did, not what they could have possibly done. The government, like the Ninth Circuit, is therefore incorrect in claiming that because officers can give an exit order for officer safety when conducting traffic stop tasks, any exit order is permissible. Resp., pp. 10–12. Instead, under *Rodriguez*, when the police "in fact" conduct "safety precautions . . . in order to facilitate such detours"—here being the investigation of a separate crime unsupported by reasonable suspicion—the stop at "that point is 'unlawful.'" Pet., p. 8 (quoting *Rodriguez*, 575 U.S. at 356–57).

The government does not dispute or address several of this Court's cases that require examination of "what the officer actually did and how he did it" to determine "whether the police diligently pursue[d] their investigation." Pet., p. 7 (citing *United States v. Place*, 462 U.S. 696, 709 (1983); *United States v. Sharpe*, 470 U.S. 675, 686 (1985); *Knowles v. Iowa*, 525 U.S. 113, 116–19 (1998). Nor does the government dispute or address several of this Court's cases that clarify whether an

officer *could* issue an exit order for safety concerns of the traffic stop differs from whether he *did*. Pet. p. 9, 12 (citing *United States v. Robinson*, 414 U.S. 218 (1973); *Knowles*, 525 U.S. at 118; *Minnesota v. Dickerson*, 508 U.S. 366 (1993)). Taylor thus continues to rely on this Court's holdings in these cases as detailed in his Petition. Pet., p.7, 9, 12.

The principle this Court upheld in *Mimms* and *Rodriguez* is that police must pursue traffic stop tasks during a driver's detention, barring reasonable suspicion to investigate another offense. The objective evidence—that officers detained Taylor through an exit order for a non-traffic purpose—is what drives the Fourth Amendment examination. But rather than engage the Fourth Amendment's reliance on objective evidence, *Whren v. United States*, 517 U.S. 806, 814 (1996), the government parrots the Ninth Circuit's opinion. Resp., p. 12 (citing App. B., p. 13a). The government claims that, when the officer learned about Taylor's previous felon in possession conviction, officer safety concerns as to the traffic stop arose. Resp., pp. 10–12. Not so. While learning about a prior firearm offense *can* give rise to safety concerns as to a traffic stop, that did not occur here. The objective evidence shows that, at the point of the exit order, the officers had abandoned the traffic stop to separately investigate a non-traffic related crime without reasonable suspicion. C.A. EOR, pp. 252 (Officer Gariano's testimony).

In holding the purpose of an officer's actions never matters in the traffic stop context—even where, as here, it is undisputed the exit order was given solely as a safety measure to facilitate a separate investigation—the Ninth Circuit contravened *Rodriguez* and *Mimms*.

III. Review is necessary to resolve a circuit split regarding *Mimms*'s applicability to exit orders.

Fourth Amendment protections for exit orders during traffic stops are inconsistent throughout the nation. Review is necessary by this Court because *Taylor* conflicts with other court of appeals.

The Sixth Circuit is clear in its holding that when officers require an individual to exit a vehicle for safety reasons, those "safety measures taken to facilitate a different investigation are not tasks incident to the initial stop." *United States v. Whitley*, 34 F.4th 522, 530 (6th Cir. 2022) (alteration omitted) (citing *United States v. Street*, 614 F.3d 228, 232 (6th Cir. 2010)). Said differently, a request to exit for safety measures "is still a detour that requires independent reasonable suspicion" if "the request facilitated the investigation into [other matters] and did not pertain to the original traffic stop." *Id.*

The Eleventh Circuit agrees that an exit order "taken to pursue an unjustified detour," constitutes "an impermissible extension" of the stop absent reasonable suspicion. *Baxter v. Roberts*, 54 F.4th 1241, 1262 (11th Cir. 2022) (explaining *Mimms*'s application after this Court's holding in *Rodriguez* as to the traffic stop's lawful scope).

The Ninth Circuit holds otherwise, splitting with its sister circuits. Here, the Ninth Circuit held "officers could have Taylor exit his vehicle in the interest of officer safety," whether or not the order was given to facilitate a task within the scope of the traffic stop's mission or supported by reasonable suspicion to support a separate mission. App. B, p. 12a (citing *Mimms*, 434 U.S. 106, and *Whren*, 517 U.S.

at 814). The Ninth Circuit's holding gives officers unrestricted authority to remove a driver *anytime* once stopped if it qualifies as a generalized safety measure. App. B., p. 12a.

The Sixth and Eleventh Circuits correctly interpret the effect of *Rodriguez* and *Mimms*: if officers initiate a traffic stop, but then detour from the mission of prosecuting that stop, any safety measures taken to further the detour are off-mission and require reasonable suspicion. *Rodriguez*, 575 U.S. at 356. Because the Ninth Circuit permits officers to remove drivers with no tether to the mission of the stop, it conflicts with *Rodriguez*, the Sixth, and Eleventh Circuits.

The government incorrectly argues that the Sixth Circuit's *Whitley* decision aligns with *Taylor* because the Ninth Circuit held "asking petitioner to exit the car was part of the traffic stop itself, not a separate investigation." Resp., p. 14. The government assumes a vital step that *Taylor* is missing. *Taylor* did not determine whether the exit order was part of the mission of the traffic stop. App. B., p. 17a. Instead, *Taylor* categorically holds ordering a defendant to exit a car as a safety measure does not require a link to the purpose of the traffic stop. Thus, *Whitley*, which requires a tether to the original traffic stop's mission or independent reasonable suspicion, contradicts *Taylor*. *See Whitley*, 34 F.4th at 530 *("*Even if asking Whitley to exit the vehicle is properly considered a safety measure, it is still a detour that requires independent reasonable suspicion because the request facilitated the investigation into the scale and did not pertain to the original traffic stop."). For the same reasons, *Taylor* is contrary to the Eleventh Circuit's *Baxter* decision, which specifically found "a reasonable jury could conclude that [the

officer's] order to exit the truck came after the stop's mission either had or should have been completed." 54 F.4th at 1261.

Further, the government's reliance on *United States v. Burwell*, 763 F. App'x 840, 850 (11th Cir. 2019), an unpublished case, is unhelpful because the Eleventh Circuit chose not to exercise its discretion to affirm on the prolongation issue not raised below. The panel only suggested that, were it to consider the prolongation issue, the officer's order to exit the car and pat down qualified as officer safety related to the mission of the traffic stop. *Id*. Therefore, the government relies on unpersuasive dicta.

Because the Ninth Circuit now permits exit orders as a generalized safety precaution, without the need for determining whether that order is a detour from the mission of the stop, it distinctly splits from its sister circuits that require an exit order be tethered to the traffic stop's purpose or independent reasonable suspicion. *See United States v. Williams*, 68 F.4th 304, 307 (6th Cir. 2023) (affirming *Whitley* and quoting *Rodriguez*).

Not only are the circuits split, but this division also affects state courts of last resort. In *State v. Roy*, the Supreme Court of Montana holds an exit order from a car is legal because the officer had reasonable suspicion the defendant was committing an offense involving marijuana and wanted to separate him from the "masking effect of the vehicle deodorizer." 296 P.3d 1169, 1174 (Mont. 2013). This follows the purpose-driven inquiry in *Rodriguez* because the particularized suspicion that the defendant was trafficking illegal drugs "was one of the two justifications upon which the traffic stop was predicated." *Id.*; *see also State v. Noli*, 529 P.3d 813, 840 (Mont.

2023) (relying on *Rodriquez* to hold the officer "detoured from the lawful purpose and mission of the stop to subject Noli to . . . unrelated questioning," and then "to similarly question her isolated passenger, all for the manifest and acknowledged purpose of trying to observe and develop facts sufficient for a particularized suspicion of unrelated illegal drug activity."). Similarly, in *Mills v. State*, the Supreme Court of Wyoming found law enforcement prolonged a traffic stop "beyond the time reasonably needed to effectuate its purpose" when "[i]nstead of returning Mr. Mills' documents and allowing him to leave, . . . [the officer] retained them and asked Mr. Mills to exit his vehicle, thereby extending the detention." 458 P.3d 1, 11 (Wyo. 2020).

Conversely, in *State v. Pylican*, the Supreme Court of Idaho holds ordering a defendant and the passenger to exit the vehicle and then conducting a "dog sniff while the deputy checked Pylican's information" did not prolong the stop because "the scope of the stop could be lawfully expanded to include an unrelated check without independent reasonable suspicion." 477 P.3d 180, 189 (Idaho 2020) (cleaned up). And *State v. Brown*, holds ordering the driver to exit a vehicle during a traffic stop is "a per se rule" and that when a ticket has not been issued, "leaving part of the traffic stop's mission uncompleted[,]" "officer safety remain[s] a viable concern and the per se rule of *Mimms* fully applies." 945 N.W.2d 584, 591–92 (Wis. 2020). These courts do not consider an exit order an extension or detour from the mission of the stop, unlike Montana and Wyoming. The government attempts to minimize this state split as the result of different fact patterns. Resp., p 15. But that is

incorrect. These cases show a split exists as to whether an exit order must be mission driven, requiring resolution by this Court.

IV. The Ninth Circuit's opinion is of exceptional importance and presents a purely legal issue for review.

The government does not dispute this case presents an issue in context of the most common interaction between the public and the police—traffic stops. Pet., p. 15. Nor does the government dispute the Ninth Circuit's holding affects the largest and most populous federal circuit. Pet., p. 15. Thus, this commonly affected constitutional protection, that is now divided among the circuits, requires this Court's review to maintain consistency and ensure traffic stops are reasonable under the Fourth Amendment.

This case involves a straight-forward legal question, contrary to the government assertion it is "factbound." Resp., p. 8. The reasonable suspicion found by the Ninth Circuit for a gun possession investigation, did not arise until *after* the exit order. Pet., p. 16 (citing App. B, p. 15a). The Ninth Circuit's ultimate affirmance, therefore, solely turned on the perceived lawfulness of the exit order.

Thus, the purely legal question for this Court is whether an officer may always remove a driver from his vehicle during a traffic stop, even if the removal exclusively furthered an off-mission investigation unsupported by reasonable suspicion or amounted to a safety precaution facilitating the same.

Conclusion

This Court should grant the petition for a writ of certiorari.

Dated: January 24, 2024.

Respectfully submitted,

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