

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

FREDERICK S. SMITH

Petitioner,

vs.

STATE OF WISCONSIN,

Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of Wisconsin

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

After reasonable suspicion justifying a traffic stop has dissipated, do police violate a person's Fourth Amendment right to be free from unreasonable seizures when they continue to seize a driver in order to conduct ordinary inquiries—check the driver's license, registration, and insurance?

PARTIES IN THE COURT BELOW

Petitioner, Mr. Frederick S. Smith, and Respondent, the State of Wisconsin, were the only parties before the Wisconsin Supreme Court.

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Petitioner Frederick S. Smith respectfully petitions for a writ of certiorari to review the judgment of the Wisconsin Supreme Court in this case.

OPINIONS BELOW

The opinion of the Wisconsin Supreme Court, reported at 2018 WI 2, 379 Wis. 2d 86, 905 N.W.2d 353, is included as Appendix A. The opinion of the Wisconsin Court of Appeals, reported at 2016 WI App 80, 372 Wis. 2d 184, 888 N.W.2d 22, is unpublished and included as Appendix B.

JURISDICTION

The Wisconsin Supreme Court filed its opinion on January 9, 2018. This Court has jurisdiction pursuant to 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISION INVOLVED

This petition concerns the proper interpretation and application of the Fourth Amendment to the United States Constitution, which provides that:

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

1. The traffic stop

On the night of April 6, 2014, Sergeant Bernard Gonzalez of the Madison Police Department was parked in his squad car monitoring a neighborhood due to gang-related gunfire that occurred the night before. (App. A at 105; App. E at 182-183). He saw a car stop in the middle of the street for several seconds about a block away, a passenger got out and walked to a nearby apartment complex, and the car left. (App. A at 105; App. E at 183-184).

Sergeant Gonzalez followed the car, ran the license plate number, and learned that the owner of the car had a suspended driver's license. (App. A at 105; App. E at 184). Specifically, he learned the car was registered to a woman named Amber Smith, whose driving privileges were suspended. (App. A at 105; App. E at 184). At this point, Sergeant Gonzalez could not see who was driving the car. (App. E at 185).

Sergeant Gonzalez activated his squad car's emergency lights, and the car he was following turned into a parking lot and pulled into a stall. (App. A at 105; App. E at 185). He walked up to the car and, when he was about five to ten feet away, realized that the driver was male. (App. A at 105; App. E at 186, 194-195). Nonetheless, Sergeant Gonzalez walked up to the driver's side door, and motioned for the driver, Frederick S. Smith, to roll down his window. (App. A at 106; App. E at 203). Mr. Smith told

Sergeant Gonzalez he could not roll down the window or open the door because they were broken. (App. A at 106; App. E at 186). The officer and Mr. Smith were able to communicate through the closed door and window, without the officer having to repeat himself. (App. E at 186, 195-196, 198-199).

Sergeant Gonzalez then walked to the front passenger's side door and opened it. (App. A at 106; App. D at 176; App. E at 186-187). With the door open, Sergeant Gonzalez smelled alcohol, and observed that Mr. Smith had red, bloodshot eyes. (App. A at 107). After some further investigation, Mr. Smith was arrested for operating while intoxicated. (App. A at 106).

2. Dane County Circuit Court proceedings

Mr. Smith moved to suppress all evidence that police obtained from the traffic stop, arguing that Sergeant Gonzalez violated the Fourth Amendment by not ending the traffic stop when he saw a man, and not a woman, driving the car, because reasonable suspicion for the stop had dissipated. Further, he argued Sergeant Gonzalez violated the Fourth Amendment when he opened the passenger door without a lawful basis to do so.¹

The circuit court, relying on *State v. Williams*, 2002 WI App 306, 258 Wis. 2d 395, 655 N.W.2d 462, concluded that even though reasonable

¹ Although this issue was raised in the Wisconsin Court of Appeals and Wisconsin Supreme Court, Mr. Smith does not pursue it in his writ of certiorari.

suspicion had dissipated, Sergeant Gonzalez was permitted to approach and ask Mr. Smith for his license. (App. E at 170-174). The court also concluded that Sergeant Gonzalez could open the passenger side door to complete that task. (App. E at 174-175).

Mr. Smith then pleaded guilty to operating a motor vehicle while intoxicated as a seventh offense, contrary to Wis. Stat. §346.63(1)(a). (App. C at 166). He filed an appeal with the Wisconsin Court of Appeals, challenging the circuit court's decision denying his motion to suppress.²

3. Wisconsin Court of Appeals' decision

The Wisconsin Court of Appeals reversed and remanded with directions to the circuit court to vacate the judgment of conviction, allow Mr. Smith to withdraw his guilty plea, and grant the suppression motion. (App. B at 164-165).

However, the court of appeals did not decide either of the issues that Mr. Smith presented in his motion to suppress and then raised on appeal. Instead, the court "assume[d], without deciding, that the officer was permitted to continue the stop, that is, continue the seizure, for the purpose of asking for the driver's identification and explaining why the officer initiated the stop." (App. B at 161-162). But, the court concluded the State of Wisconsin had not sufficiently rebutted Mr. Smith's argument that the

² Wisconsin Stat. §971.31(10) permits appeal of the denial of a suppression motion notwithstanding a guilty plea.

officer was not permitted to open the passenger side car door in its brief and reversed on that basis. (App. C at 162-164).

The Wisconsin Supreme Court granted the State's request to review the decision of the Court of Appeals.

4. Wisconsin Supreme Court decision

a. The majority decision

Relying on this Court's decision in *Rodriguez v. United States*, 135 S. Ct. 1609 (2015), the majority opinion of the Wisconsin Supreme Court authored by Justice Rebecca G. Bradley found that during *all* traffic stops police have two missions to complete: 1) determining whether to issue a traffic ticket, and 2) ordinary inquiries incident to the traffic stop—such as checking the driver's license, registration, and insurance. (App. A at 109, 11-12, 15). Citing *Rodriguez*, the court stated that “[a]s long as the initial stop was lawful, requesting identification is a permissible part of the dual mission of every traffic stop.” (App. A at 109).

In reaching its decision, the majority opinion relied heavily on “signals” it received from this Court. (App. A at 115-116). As the majority explained, this Court, in its 2014-15 term, had petitions for writ of certiorari in two related cases: *Rodriguez* and *People v. Cummings*, 2014 IL 115769, 6 N.E.3d 725 (hereinafter *Cummings I*) (App. A at 113). In *Cummings I*, the Illinois Supreme Court granted the defendant's motion to suppress evidence because it determined that an officer could not extend a traffic stop after

reasonable suspicion supporting the stop had dissipated to ask a driver for their identification. *Cummings I*, 6 N.E.3d 725 at ¶28. (App. A at 113). After this Court decided *Rodriguez*, it vacated the judgment in *Cummings I*, and remanded the case back to the Illinois Supreme Court for further consideration in light of *Rodriguez*. See *Illinois v. Cummings*, 135 S. Ct. 1892 (Mem) (Apr. 27, 2015). (App. A at 114). The majority in Mr. Smith's case saw this as significant and said, "[w]hen the Supreme Court vacated the judgment in Cummings I and remanded the case to the Illinois Supreme Court for further consideration in light of Rodriguez it *signaled* that 'ordinary inquiries' remain reasonable for the duration of an otherwise lawful stop." (App. A at 115-116) (emphasis added).

Accordingly, the Wisconsin Supreme Court held that a lawful traffic stop does not end when reasonable suspicion for the stop dissipates because police can, in all situations, still complete the ordinary inquiries incident to the traffic stop. (App. A at 103). Therefore, in Mr. Smith's case, the Wisconsin Supreme Court determined that even after reasonable suspicion supporting the traffic stop dissipated because Sergeant Gonzalez realized Mr. Smith was not the female owner of the car with a suspended driver's license, the officer could still check Mr. Smith's license, registration, and insurance. (App. A at 132-133).

b. The dissent

Justice Daniel J. Kelly authored a dissent, joined by Justices Shirley S. Abrahamson and Ann Walsh Bradley, which rejected the majority's finding that this Court's decision in *Rodriguez* created a "dual mission" traffic stop in which police can conduct ordinary inquiries even after reasonable suspicion justifying the stop had dissipated. (App. A at 159). The dissent explained:

The first mission we describe in our opinion is the conventional one, the one which we have always understood to be inexorably linked to the purpose for the traffic stop, and thus to the Constitution. Notwithstanding our suggestion to the contrary, *Rodriguez* didn't say a single word from which we may infer the existence of any other mission. It started with the broad observation that '[l]ike a Terry³ 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[.]'⁴ And it recognized that '[t]he scope of the detention must be carefully tailored to its underlying justification.'⁵ The underlying justification that defines the scope of the detention is the event that caused the officer to initiate the stop: 'Because addressing the infraction is the purpose of the stop, it may last no longer than is necessary to effectuate that purpose.'⁶ From this the *Rodriguez* Court concluded that the authority for a traffic stop cannot outlast its purpose: 'Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—

³ Referring to *Terry v. Ohio*, 392 U.S. 1 (1968).

⁴ Quoting *Rodriguez*, 135 S.Ct. at 1614.

⁵ Quoting *Rodriguez*, 135 S.Ct. at 1614 (quoting *Florida v. Royer*, 460 U.S. 491, 500 (1983) (plurality opinion)).

⁶ Quoting *Rodriguez*, 135 S.Ct. at 1614.

completed.’⁷ Most importantly to our decision today, Rodriguez confirmed that even if a seizure was constitutional when it began, it can lose this status if it continues after the purpose for the stop has been satisfied. ‘[A] traffic stop can become unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission of issuing a warning ticket.’⁸ Everything Rodriguez said about the traffic mission—everything—describes it in terms of the singular mission we have always ascribed to a valid traffic stop, to wit, the investigation of an officer's reasonable suspicion of wrongdoing.

(App. A at 143-144) (internal citations omitted). Thus, the dissent found that under *Rodriguez* and the Fourth Amendment, police could not continue to seize a person after reasonable suspicion supporting the traffic stop dissipated. (App. A at 154).

The dissent also discussed in greater detail the ordinary inquiries referenced in *Rodriguez*:

Rodriguez referred to these usual inquiries as ‘incident to the traffic stop.’⁹ So did Caballes, in which the court observed that ‘the duration of the stop in this case was entirely justified by the traffic offense and the ordinary inquiries incident to such a stop.’¹⁰

As ‘incidents’ to a traffic stop, the usual inquiries are logically and constitutionally subordinate to the purpose of the stop. An incident does not exist on the same plane as its premise. That is true as a matter of definition. An incident is something dependent upon, appertaining or subordinate to, or

⁷ Quoting *Rodriguez*, 135 S.Ct. at 1614.

⁸ Quoting *Rodriguez*, 135 S.Ct. at 1614-15 (quoting *Illinois v. Caballes*, 543 U.S. 405, 407 (2005)).

⁹ Quoting *Rodriguez*, 135 S.Ct. at 1615

¹⁰ Quoting *Caballes*, 543 U.S. at 408

accompanying something else of greater or principal importance. Because the usual inquiries, according to Rodriguez and Caballes, are incidents to a traffic stop, they can have no independent existence. In the world of logic, that's what it means to be dependent on something. That's why a seizure that begins with a constitutional basis can become unconstitutional: '[A] traffic stop can become unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission of issuing a warning ticket.'¹¹

Therefore, by main force of precedent and logic, the usual inquiries cannot be made after the purpose for the traffic stop—investigation of a reasonable suspicion of wrongdoing—no longer exists. The usual inquiries are thereby subjected to constitutional restraint, but only because they are subordinate to the purpose of the traffic stop, which is textually bound to the Fourth Amendment.

(App. A at 146-147) (internal citations and quotes omitted). This reasoning led the dissent to conclude that police could not perform ordinary inquiries after reasonable suspicion justifying a traffic stop had dissipated. (App. A at 148-149).

Further, the dissent stated that the majority's opinion "should shock us" because "[t]his is the stuff of our deepest bedrock principles: [A person] may not be detained even momentarily without reasonable, objective grounds for doing so." (App. A at 148-149) (internal citations and quotes omitted).

¹¹ Quoting *Rodriguez*, 135 S.Ct. at 1614-15 (quoting *Caballes*, 543 U.S. at 407).

Mr. Smith now asks the Supreme Court of the United States to grant his petition for writ of certiorari.

REASONS FOR GRANTING REVIEW

I. Courts are divided over whether police can conduct ordinary inquiries after reasonable suspicion supporting a traffic stop has dissipated.

Cases from throughout the United States decided both before and after this Court's decision in *Rodriguez* reveal that lower courts have struggled with the important constitutional question of whether police can continue to seize a person during a traffic stop after reasonable suspicion has dissipated to conduct ordinary inquiries—such as getting the driver's license.

Notably, prior to this Court's decision in *Rodriguez*, many courts throughout the country held that police could not prolong a traffic stop after reasonable suspicion supporting the stop had dissipated. For example, in *State v. Diaz*, the Florida Supreme Court encountered a case where police stopped a car because they could not read a temporary tag on the car's rear window. 850 So. 2d 435, 436 (Fla. 2003). After an officer walked up to Diaz's car, he realized there was nothing wrong with the temporary tag and reasonable suspicion for the stop dissipated. *Id.* However, the officer continued the detention and asked Diaz for information, which led to Diaz being charged with driving with a suspended license. *Id.*

The Florida Supreme Court concluded police unlawfully prolonged the traffic stop after reasonable suspicion had dissipated under the Fourth Amendment. *Id.* at 440. The court stated:

Under *Prouse*¹² and *Royer*¹³, it appears that once a police officer has totally satisfied the purpose for which he has initially stopped and detained the motorist, the officer no longer has any reasonable grounds or legal basis for continuing the detention of the motorist.

Id. at 438.

Further, the Florida Supreme Court indicated that the continued detention of Diaz “equated to nothing less than an indiscriminate, baseless detention, not unlike that held to be inappropriate and unconstitutional by the United States Supreme Court in *Prouse*.” *Id.* And, “under *Royer*, when the officer clearly determined the validity of the tag, the purpose for the stop was satisfied, and the continued detention of [the defendant] was improper.” *Id.* at 438-39.

The Florida Supreme Court recognized the important stakes of its decision under the United States Constitution:

It would be dangerous precedent to allow overzealous law enforcement officers to place in peril the principles of a free society by disregarding the protections afforded by the Fourth Amendment. To sanction further detention after an officer has clearly and unarguably satisfied the stated purpose for an

¹² Referring to *Delaware v. Prouse*, 440 U.S. 648 (1979).

¹³ Referring to *Florida v. Royer*, 460 U.S. 491 (1983) (plurality opinion).

initial stop would be to permit standardless, unreasonable detentions and investigations. Further, detentions such as that which occurred here are not sufficiently productive for law enforcement purposes, any more so than the random stops declared unconstitutional in *Prouse*. Allowing such investigations would result in boundless interrogations by law enforcement officers, unrecognized by the Court before, and also an erosion of Fourth Amendment protections.

Id. at 439-440.¹⁴

Federal circuit courts have also found that a stop cannot be prolonged after reasonable suspicion has dissipated. In *United States v. McSwain*, the United States Court of Appeals for the Tenth Circuit found that police could not prolong a traffic stop after reasonable suspicion supporting the stop dissipated. 29 F.3d 558, 561-62 (10th Cir. 1994). In that case, a police officer pulled a car over because he could not read the date on a registration sticker. *Id.* at 560. As the officer walked up to the car, he took a closer look at the registration sticker and realized it was valid. *Id.* Nonetheless, the officer approached McSwain, the driver, asked some questions, and for his

¹⁴ Pre-*Rodriguez*, state appellate courts in Colorado, Utah, Indiana, Kansas, Ohio, South Carolina, Maryland, Washington, South Dakota, and Oklahoma came to similar conclusions. See *People v. Redinger*, 906 P.2d 81, 85-86 (Colo. 1995); *Holly v. State*, 918 N.E.2d 323, 326 (Indiana 2009); *State v. Diaz-Ruiz*, 211 P.3d 836, 844 (Kansas Ct. App. 2009); *Ferris v. State*, 735 A.2d 491, 500 (Maryland Ct. App. 1999); *State v. Chatton*, 463 N.E.2d 1237, 1240-41 (Ohio 1984); *State v. Pichardo*, 623 S.E.2d 840, 852 (Ct. App. South Carolina 2005); *State v. Morris*, 259 P.3d 116, 124 (Utah 2011); *State v. DeArman*, 774 P.2d 1247, 1249 (Washington Ct. App. 1989); *State v. Hayen*, 751 N.W.2d 306, 307, 311 (South Dakota 2008); *McGaughey v. State*, 37 P.3d 130, 141-42 (Oklahoma Crim. App. 2001).

identification and registration, and continued to detain McSwain and the other occupants of the car. *Id.*

The Tenth Circuit concluded that once the officer “approached the vehicle on foot and observed that the temporary sticker was valid and had not expired, the purpose of the stop was satisfied.” *Id.* at 561. The officer’s “further detention of the vehicle to question [McSwain] about his vehicle and travel itinerary and to request his license and registration exceeded the scope of the stop’s underlying justification.” *Id.*

The Tenth Circuit in *McSwain* recognized the important distinction between police conducting ordinary inquiries in cases with and without continuing reasonable suspicion of a traffic violation:

Though we have held in several cases that an officer conducting a routine traffic stop may inquire about identity and travel plans, and may request a driver’s license and vehicle registration, run a computer check, and issue a citation, these cases—cited by the government—are inapposite. They all involve situations in which the officer, at the time he or she asks questions or requests the driver’s license and registration, still has some objectively reasonable articulable suspicion that a traffic violation has occurred or is occurring.

Id. (internal quotes and citations omitted).¹⁵

¹⁵ Before *Rodriguez*, other federal courts also concluded that police violate the Fourth Amendment by prolonging a traffic stop and continuing to detain a driver after reasonable suspicion supporting the stop has dissipated. See *United States v. Valdez*, 267 F.3d 395, 398 (5th Cir. 2001); *United States v. Jenkins*, 452 F.3d 207, 214 (2d Cir. 2006); *United States v. Edgerton*, 438 F.3d 1043, 1044-45 (10th Cir. 2006); *United States v. Pena-Montes*, 589 F.3d 1048, 1058 (10th Cir. 2009); *United States v. Trestyn*, 646 F.3d 732, 736, 744 (10th Cir. 2011).

These pre-*Rodriguez* cases demonstrate how well-settled the law in this country was and how courts answered the important constitutional question of whether police could extend a stop after reasonable suspicion supporting the stop had dissipated. They could not.

Thereafter, this Court rendered its decision in *Rodriguez*. 135 S. Ct. 1609. In *Rodriguez*, the defendant was stopped for driving on the shoulder of a highway. *Id.* at 1612. During the stop, the police gathered Rodriguez's license, registration, and proof of insurance, and ran a records check on Rodriguez and a passenger in the car. *Id.* at 1613. Police issued Rodriguez a warning citation for the traffic violation, and then asked if they could walk a drug-sniffing dog around his car. *Id.* Although Rodriguez declined, police ordered the occupants out and led the dog around the car. *Id.* The dog indicated on the car, which police then searched, finding a large quantity of methamphetamine. *Id.*

This Court determined that absent some other reason to justify the extension of the traffic stop, police unlawfully prolonged the traffic stop to conduct the dog sniff because the mission of the stop—to write a warning traffic ticket—was over. *Id.* at 1616-17. The Court held that “a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures. A seizure justified only by a police-observed traffic violation, therefore, ‘become[s] unlawful if it is prolonged beyond the time reasonably required to

complete th[e] mission' of issuing a ticket for the violation." *Id.* at 1612 (citing *Illinois v. Caballes*, 543 U.S. 405, 407(2005)). Although the dog sniff violated the Fourth Amendment, the Court stated that police could conduct ordinary inquiries—checking a driver's license, registration, and insurance—incident to a traffic stop. *Rodriguez*, 135 S. Ct. at 1615.

Since this Court's decision in *Rodriguez*, courts have grappled with the language of *Rodriguez* and whether it permits police to conduct ordinary inquiries even in traffic stops where reasonable suspicion supporting the stop has dissipated. For instance, in *State v. Coleman*, the Iowa Supreme Court determined that ordinary inquiries are only permissible in ongoing, valid traffic stops supported by continuous reasonable suspicion. 890 N.W.2d 284, 285, 301 (Iowa 2017). In that case, police ran the license plate of a car, and the check revealed that the female registered owner had a suspended license. *Id.* at 285. Police pulled the car over, and as an officer walked towards the car, he realized that the driver was male, not female. *Id.* Instead of ending the stop at that point, the officer asked the driver for his license, registration, and proof of insurance. *Id.* The driver gave the officer identification, which allowed the officer to determine the driver was driving while barred under Iowa state law. *Id.*

The Iowa Supreme Court held that once reasonable suspicion for a traffic violation dissipates, the traffic stop must end and police must allow the driver to go. *Id.* at 285, 301. Additionally, the court concluded that when

reasonable suspicion supporting a traffic stop has dissipated, police cannot conduct ordinary inquiries such as requiring the defendant to produce a license, registration, and proof of insurance. *Id.* at 300-301. In reaching this conclusion, the court observed that the decision in *Rodriguez* supported this result because this Court in *Rodriguez* was “referring to a valid, ongoing traffic stop, not a traffic stop in which the underlying reasons for the stop has been satisfied” when it discussed the ordinary inquiries that were permissible incident to a traffic stop. *Id.* at 300.

In contrast, in *People v. Cummings*, the Illinois Supreme Court found that under *Rodriguez* police may ask a driver for his or her license during a traffic stop even after reasonable suspicion for the traffic stop has dissipated. 2016 IL 115769, ¶18, 46 N.E.3d 248 (hereinafter referred to as *Cummings II*). In *Cummings II*, the defendant was driving a vehicle registered to a woman who police knew had a warrant. *Id.* at ¶3. An officer encountered the vehicle and initiated a traffic stop based on the warrant. *Id.* The officer was unaware that the driver was a man until after he stopped the vehicle. *Id.* After realizing the driver, Cummings, was a male the officer asked for his driver’s license and proof of insurance. *Id.* Cummings responded that he did not have a license and was ultimately cited for driving with a suspended license. *Id.*

After the Illinois Supreme Court initially held that the license request impermissibly prolonged the traffic stop, the State of Illinois

petitioned for writ of certiorari and while the petition was pending, this Court decided *Rodriguez*. *Id.* at ¶¶1, 5, 6. On remand, the Illinois Supreme Court concluded that while the Court in *Rodriguez* drew a bright line against prolonging a stop beyond its original scope or mission without reasonable suspicion to do so, it also concluded that *Rodriguez* permitted ordinary inquiries in traffic stops, as those inquiries are part of the mission of all traffic stops because they promote officer safety. *Id.* at ¶¶7, 18.

Overall, this survey of cases exemplifies why this Court should grant certiorari. First, the pre-*Rodriguez* cases demonstrate how well-settled the answer to the constitutional question posed in this case was before the *Rodriguez* decision—police could not extend a traffic stop to do ordinary inquiries after reasonable suspicion supporting the stop had dissipated. This Court should grant certiorari to clarify whether *Rodriguez* created a monumental shift in how courts should analyze what is reasonable under the Fourth Amendment and when a traffic stop should end.

Second, the recent decisions from the Iowa and Illinois Supreme Courts, and the Wisconsin Supreme Court's narrowly split 4-3 decision in Mr. Smith's case, highlights the divide among courts and appellate jurists post-*Rodriguez* over whether police are permitted to conduct "ordinary inquiries" *after* reasonable suspicion supporting a traffic stop has dissipated. This division has occurred because courts must try to reconcile *Rodriguez's* holding—that a seizure justified only by a police-observed

traffic violation becomes unlawful if it is prolonged beyond the time reasonably required to complete the mission of issuing a ticket for the violation—with this Court’s statement that an officer’s mission during a traffic stop includes ordinary inquiries *incident* to the stop. *Rodriguez*, 135 S.Ct. at 1612, 1615. It is unclear from the *Rodriguez* opinion if this means ordinary inquiries are part of *any* traffic stop initially justified by reasonable suspicion of wrongdoing or *only* incident to traffic stops supported by continuous reasonable suspicion of wrongdoing. This division is likely to increase as more courts address cases that are factually similar to Mr. Smith’s because, as the survey of cases cited above demonstrates, it is not uncommon for reasonable suspicion to dissipate during a traffic stop. The division will also only grow as some of the courts who, prior to *Rodriguez*, decided that prolonging a stop after reasonable suspicion dissipated was unreasonable must revisit whether their prior decisions were wrong under the Fourth Amendment. Because of the importance of the constitutional issue involved, uniformity among the courts is necessary. See *Fuller v. Oregon*, 417 U.S. 40, 42 (1974). Therefore, this Court should grant certiorari.

Third, as highlighted by the discord among courts, the question of whether prolonging a traffic stop to conduct ordinary inquiries is of exceptional importance to both law enforcement officers and the public. For citizens, the question is whether their liberty can continue to be curtailed

after reasonable suspicion for a traffic stop has vanished merely because the stop was initially justified.

For law enforcement, it is difficult for officers to know with certainty that they are working within the bounds of the Fourth Amendment during a traffic stop. A decision from this Court would inform police, with certainty, whether they have to tell a driver stopped for a traffic violation they are free to go once they realize there is no violation or other reasonable suspicion of wrongdoing, or if they can continue to seize the driver and run a check on their license. Moreover, a decision would also establish the bounds of ordinary inquiries under the Fourth Amendment. If ordinary inquiries are indeed permissible in a situation where reasonable suspicion for a traffic stop has dissipated, law enforcement needs to know the permissible extent of those ordinary inquiries. To provide guidance to the police and the public, on this important Fourth Amendment issue, this Court should grant certiorari.

II. The Wisconsin Supreme Court's decision to allow police to conduct ordinary inquiries after reasonable suspicion supporting a traffic stop has dissipated stands in direct conflict with this Court's precedent.

Contrary to the Wisconsin Supreme Court's decision, this Court's precedent does not permit an officer to conduct ordinary inquiries during a traffic stop after reasonable suspicions supporting the stop has dissipated. This Court has placed tight restrictions on the duration of traffic stops. For example, in *Delaware v. Prouse*, this Court held that police could not perform random traffic stops to check a driver's license and registration without reasonable suspicion or probable cause that a violation of the law was occurring. 440 U.S. 648, 650 (1979). This Court emphasized:

[T]hat except in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law, stopping an automobile and detaining the driver in order to check his driver's license and the registration of the automobile are unreasonable under the Fourth Amendment.

Id. at 663.

Following the decision in *Prouse*, this Court, in *Florida v. Royer*, clarified the limited scope and duration of an investigatory stop. 460 U.S. 491, 500 (1983). The scope of an investigatory stop "must be carefully tailored to its underlying justification" and "last no longer than is necessary to effectuate the purpose of the stop." *Id.* The Court underscored that a

person “may not be detained even *momentarily* without reasonable, objective grounds for doing so.” *Id.* at 498. (emphasis added).

Further, in *Illinois v. Caballes*, the Court expounded on the legal requirement that an investigatory traffic stop be limited in its duration. 543 U.S. 405, 407 (2005). The Court explained that when police detain occupants of a car during a traffic stop to issue a traffic ticket, the seizure can become “unlawful if it is prolonged beyond the time reasonably required to complete that mission.” *Id.*

The Wisconsin Supreme Court’s decision in Mr. Smith’s case—that police are permitted to conduct ordinary inquiries even after reasonable suspicion supporting a traffic stop has dissipated—is not compatible with this Court’s precedent. Continuing the detention of a driver after reasonable suspicion justifying the traffic stop has dissipated prolongs a traffic stop beyond the point in which police have reasonable, objective grounds for detaining the car’s occupants. *See Royer*, 460 U.S. at 498. Moreover, when a driver is detained after reasonable suspicion dissipates, *Royer*’s finding that police cannot detain a person even *momentarily* without reasonable suspicion is violated. *See Royer*, 460 U.S. at 498.

In addition, the holding in *Rodriguez* requires the conclusion that ordinary inquiries incident to a traffic stop are only permissible in ongoing, valid traffic stops supported by continuing reasonable suspicion of a traffic violation. Advancing on the *Caballes* Court’s statement that it is unlawful

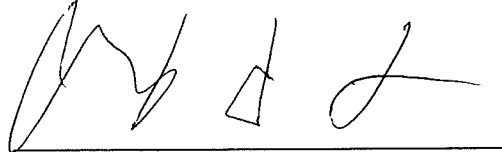
for police to prolong a traffic stop beyond the time needed to complete the mission of writing a traffic ticket, this Court in *Rodriguez* held that a traffic stop cannot exceed the “time needed to handle the matter for which the stop was made,” and police cannot prolong a stop justified only by an alleged traffic violation beyond the time required to issue a ticket. *Rodriguez*, 135 S. Ct. at 1612. Accordingly, once reasonable suspicion of a traffic violation has dissipated, the traffic stop is handled and the police mission is over, because police do not need additional time to write a ticket. Allowing police to continue with the traffic stop and perform ordinary inquiries after reasonable suspicion supporting the stop has dissipated directly contradicts *Rodriguez*’s holding because this would result in the duration of the stop extending beyond the time needed to handle the traffic violation.

In summary, under this Court’s cases, a seizure of a person during a traffic stop can last only as long as reasonable suspicion of wrongdoing lasts and a traffic ticket is issued. Otherwise, the seizure becomes unreasonable, as a person’s liberty is restricted without a constitutional basis under the Fourth Amendment to do so. The Wisconsin Supreme Court’s decision is not harmonious with this precedent. In essence, the Wisconsin Supreme Court’s decision says that police *may* continue to seize a person without reasonable, objective grounds for doing so. To reconcile this conflict, this Court should grant certiorari.

CONCLUSION

For these reasons, Mr. Frederick S. Smith respectfully requests that this Court grant his petition for certiorari.

Dated this 3rd day of April, 2018.

A handwritten signature in black ink, appearing to read 'C. D. Sobic', written over a horizontal line.

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