

In the Supreme Court of the United States

FREDERICK S. SMITH, PETITIONER,

v.

WISCONSIN

*ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF WISCONSIN*

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether, under *Rodriguez v. United States*, 135 S. Ct. 1609 (2015), a police officer may complete the “ordinary inquiries” attendant to a traffic stop even if reasonable suspicion dissipates in the middle of the stop.

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INTRODUCTION

A police officer pulled over the vehicle that Petitioner was driving after the officer learned that the car was registered to a woman whose license had been suspended. The officer approached the driver's-side door and noticed that the driver, Petitioner, was a man. The officer asked Petitioner for his driver's license and then, during the ensuing encounter, learned that Petitioner had been driving while intoxicated at five times the legal limit. Petitioner sought to avoid the drunk-driving conviction resulting from this encounter by arguing that the officer violated the Fourth Amendment by asking him for his license. The Wisconsin Supreme Court rejected this argument, relying upon this Court's decision in *Rodriguez v. United States*, 135 S. Ct. 1609 (2015). Petitioner now asks this Court to review the Wisconsin Supreme Court's decision.

This Court should deny the Petition. In *Rodriguez*, this Court made clear that after lawfully initiating a traffic stop, an officer may conduct negligibly burdensome "ordinary inquiries," including driver's-license checks, in order to promote legitimate governmental interests in roadway safety and officer safety. *Id.* at 1615–16. Consistent with *Rodriguez*, the Wisconsin Supreme Court correctly held that the officer's request for Petitioner's driver's license was an "ordinary inquiry" pursuant to a lawful stop. Given that *Rodriguez* speaks to the issue in dispute here, it is unsurprising that Petitioner does not identify *any* post-*Rodriguez* decisions adopting his contrary view: that once reasonable suspicion dissipates in the middle of a traffic stop, the Fourth Amendment requires police to end the stop immediately without

completing ordinary inquiries. All of the cases that Petitioner points to as adopting his position were, predictably, decided before *Rodriguez* (or, in one case, decided under only state law). And even if this Court wanted to decide the Question Presented, this case is a poor vehicle because the officer had reasonable suspicion that Petitioner had violated the law at all relevant times.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution, reproduced in the Petition, Pet. 1, applies to the States through the Due Process Clause of the Fourteenth Amendment, *Mapp v. Ohio*, 367 U.S. 643, 655 (1961). Section 1 of the Fourteenth Amendment provides:

[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, § 1.

STATEMENT

A. On April 6, 2014, Sergeant Gonzalez was monitoring a Madison, Wisconsin neighborhood from his parked squad car. App. A-105, ¶ 4. At approximately 10:45 p.m., he saw a car stop in the middle of the road for a short time and thought it odd that the car did not pull to the curb. App. A-105, ¶ 4 & n.4. A passenger got out of the car and walked to a nearby apartment complex, and the car drove away. App. A-105, ¶ 4. Sergeant Gonzalez followed the car. App. A-105, ¶ 4. When he got close

enough to read the license plate, he ran the plate number through the Wisconsin Department of Transportation database on his squad computer. *See* App. A-105, ¶ 4. The car's registered owner was a woman whose driving privileges had been suspended. App. A-105, ¶ 4.

Sergeant Gonzalez, who could not see the driver at this point, decided to pull the vehicle over, activating his emergency lights to initiate a traffic stop. App. A-105, ¶ 4; E-185. The car did not pull over right away, and instead turned off the main street and turned again into a parking lot before pulling into a parking space in a lot next to the building where the driver lived. *See* App. A-105, ¶ 4; App. A-117, ¶ 20. Once the car stopped, Sergeant Gonzalez approached the car on foot. *See* App. A-106, ¶ 4. When about five to ten feet away from the driver's-side door, Sergeant Gonzalez observed that the driver appeared to be male. *See* App. A-105, ¶ 4. Sergeant Gonzalez continued walking to the driver's-side door, "as [he] would with any traffic stop." App. E-186.

When Sergeant Gonzalez reached the driver's-side door, he noticed that the driver, later identified as Petitioner, was shrugging his shoulders. App. A-105-06, ¶ 4; App. E-186. Sergeant Gonzalez motioned to Petitioner to roll down the window or open the door. App. E-203. Petitioner responded by telling Sergeant Gonzalez that he could neither roll down the window nor open the door because they were broken. App. A-106, ¶ 4. Sergeant Gonzalez then walked to the front passenger's-side door so that he could speak "more effectively" with Petitioner. App. A-106, ¶ 4. When he reached the door, Sergeant Gonzalez saw Petitioner lean toward the passenger's-side

door and thought Petitioner was trying to open it. App. A-106, ¶ 4; App. E-187. He and Petitioner opened the door together. App. A-106, ¶ 4.

Sergeant Gonzalez then noticed that Petitioner had red, bloodshot eyes, and that he smelled of alcohol. App. A-107, ¶ 6; App. E-187–88, 197. Sergeant Gonzalez asked Petitioner for his driver's license, and Petitioner responded that his license was revoked. App. A-107, ¶ 6. After conducting field sobriety tests, Sergeant Gonzalez arrested Petitioner on suspicion of drunk driving and took him to the police station. App. A-107, ¶ 6. A preliminary breath test revealed that Petitioner's estimated blood alcohol content was 0.38, almost five times the legal limit. *See* App. A-107, ¶ 6.

B. The State charged Petitioner with operating a motor vehicle while intoxicated, seventh offense. App. A-107, ¶ 6. Petitioner moved to suppress the evidence found as a result of the stop on the ground that Sergeant Gonzalez failed to end the stop immediately after Sergeant Gonzalez noticed that the driver appeared to be male. App. A-107, ¶ 7. After the circuit court denied the motion, Petitioner pleaded guilty, App. A-107–08, ¶ 7, and was sentenced to a term of six years, App. C-166 (three years' initial confinement, three years' extended supervision). He then appealed the denial of the motion to suppress. App. A-108, ¶ 8. The Wisconsin Court of Appeals reversed the circuit court's decision. App. A-108, ¶ 8.

The Wisconsin Supreme Court reversed, concluding that it was lawful for the officer to approach the car and ask the driver for identification, even though "the reasonable suspicion that formed the basis for the stop . . . ha[d] dissipated." App. A-103, ¶ 2. The court also noted that "other facts of record in this case support ongoing

reasonable suspicion that did not dissipate during this traffic stop” because Sergeant Gonzalez could have issued Petitioner a ticket for a different traffic violation: stopping his vehicle in the middle of the street. App. A-110, ¶ 11 n.10 (citing Wis. Stat. § 346.51). The court, however, decided to focus on reasonable suspicion only that the driver was driving with a suspended license. See App. A-110, ¶ 11. There was no dispute that the initial seizure, the traffic stop, was lawful. App. A-111, ¶ 13. And even if reasonable suspicion that the driver was driving with a suspended license had dissipated when Sergeant Gonzalez was five to ten feet from the driver’s-side door, the court reasoned, the Fourth Amendment did not require the officer to do an about-face and walk away. See App. A-112, ¶ 15.

The Wisconsin Supreme Court explained that under *Rodriguez v. United States*, 135 S. Ct. 1609 (2015), the mission of a “lawfully initiated traffic stop includes both considering whether to issue a ticket and conducting the ordinary inquiries” attendant to a traffic stop, App. A-117, ¶ 20, such as “checking the driver’s license, determining whether there are outstanding warrants against the driver, and inspecting the automobile registration and proof of insurance,” App. A-116, ¶ 19 (quoting *Rodriguez*, 135 S. Ct. at 1615). Because the “mission” of a traffic stop includes those ordinary inquiries attendant to it, the mission of this lawfully initiated traffic stop had not ended when Sergeant Gonzalez realized that the driver appeared to be a man. See App. A-118, ¶ 21. Moreover, such a request was reasonable because Wis. Stat. § 343.18(1) requires all drivers to have a license while driving and to “display it upon demand from any . . . traffic officer.” App. A-121, ¶ 23 & n.15 (citation

omitted). Thus, Sergeant Gonzalez did not violate the Fourth Amendment when he approached the car to make contact with the Petitioner and asked for his driver's license. App. A-118, ¶ 21.

Three Justices dissented, concluding that “the usual inquiries cannot be made after the purpose for the traffic stop—investigation of the reasonable suspicion of wrongdoing—no longer exists.” App. A-147, ¶ 66 (Kelly, J., dissenting). The dissenters were concerned that including the ordinary inquiries attendant to a traffic stop as a part of the mission of the stop would “free[] traffic stops from constitutionally-defined limitations,” App. A-150, ¶ 71, and untie the “duration of the traffic stop [from] its purpose” of deciding whether to issue a traffic ticket, *see* App. A-151, ¶ 72. Thus, the dissenters concluded that the ordinary inquiries attendant to a traffic stop are constitutionally permissible only if reasonable suspicion of wrongdoing had yet to dissipate. App. A-145–47, ¶¶ 62–66. In their view, Sergeant Gonzalez should have made contact with the driver, explained the situation, and notified him that he was free to go. App. A-157–58, ¶ 85 & n.18.¹

¹ Two of these three Justices also dissented on whether the opening of Petitioner's passenger's-side door violated the Fourth Amendment, *see* App. A-134, ¶ 39 (A.W. Bradley, J., dissenting), an issue that Petitioner does not raise here.

REASONS FOR DENYING THE PETITION

I. In Light Of This Court's Decision In *Rodriguez*, The Wisconsin Supreme Court Correctly Held That "Ordinary Inquiries" Were Permissible Attendant To An Indisputably Lawful Traffic Stop

The Fourth Amendment, incorporated against the States under the Fourteenth Amendment, *Mapp*, 367 U.S. at 655, protects citizens from "unreasonable searches and seizures," U.S. Const. amend. IV. The "touchstone" of the Fourth Amendment is reasonableness. *Pennsylvania v. Mimms*, 434 U.S. 106, 108–09 (1977) (per curiam). When assessing reasonableness, this Court generally balances "the degree to which [the government action] intrudes upon an individual's privacy" and "the degree to which it is needed" to promote "legitimate government interests." *Virginia v. Moore*, 553 U.S. 164, 171 (2008) (citation omitted). Although this is a totality-of-the-circumstances analysis, see *Mimms*, 434 U.S. at 109 (quoting *Terry v. Ohio*, 392 U.S. 1, 19 (1968)), some of these "encounters" fall into certain "discrete categor[ies]," *Florida v. Royer*, 460 U.S. 491, 506 (1983) (plurality op.), such as traffic stops, *Rodriguez*, 135 S. Ct. at 1614; *Maryland v. Wilson*, 519 U.S. 408, 411 (1997); *Mimms*, 434 U.S. 106; see also *Delaware v. Prouse*, 440 U.S. 648, 658–60 (1979).

When an officer pulls a driver over for a traffic violation, the officer effectuates a "seizure" for Fourth Amendment purposes, "analogous" to a "so-called '*Terry* stop.'" *Rodriguez*, 135 S. Ct. at 1614 (quoting *Knowles v. Iowa*, 525 U.S. 113, 117 (1998)). As a result, this Court analyzes law enforcement's actions in the traffic-stop context under the *Terry* framework: "whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified

the interference in the first place.” *Terry*, 392 U.S. at 19–20; see *Rodriguez*, 135 S. Ct. at 1614. Minimally intrusive measures that promote the legitimate and “vital” governmental interest in roadway safety, see *Prouse*, 440 U.S. at 658, or the “weighty” interest in “officer safety” are reasonable under *Terry*, assuming the original stop was justified by reasonable suspicion, *Rodriguez*, 135 S. Ct. at 1615 (citation omitted); *Wilson*, 519 U.S. at 410; *Mimms*, 434 U.S. at 109. This Court has held that, as part of a traffic stop, police can order drivers to step out of “lawfully stopped” vehicles because this “incremental” intrusion promotes officer safety. *Mimms*, 434 U.S. at 109. The “incremental” intrusion of stepping out of a car is “at most a mere inconvenience,” while the risks to officers from persons “seated in an automobile” with whom the officer must interact and the “hazard of accidental injury from passing traffic” are substantial. *Id.* at 110–11.

Most relevant for purposes of the present Petition, this Court’s recent decision in *Rodriguez* clarified that, after a lawfully initiated stop based upon reasonable suspicion, officers can conduct the “ordinary inquiries” attendant to the stop. 135 S. Ct. at 1615 (citing *Prouse*, 440 U.S. at 658–60). In *Rodriguez*, this Court held that officers violated the Fourth Amendment when they detained a driver for seven to eight minutes after a traffic stop to conduct a dog sniff without reasonable suspicion of another crime, *id.* at 1612–13, because the dog sniff was not part of “the officer’s traffic mission,” *id.* at 1615. In reaching this conclusion, this Court explained important principles that settle the issues in dispute in the present case. The officer’s “traffic mission,” *Rodriguez* explained, included “determining whether to issue a

traffic ticket” and conducting the “ordinary inquiries”: “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 1615 (citing *Illinois v. Caballes*, 543 U.S. 405, 408 (2005)). The ordinary inquiries are part of *every* stop’s “mission” because they “serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely[,] responsibly,” and by only qualified drivers. *Id.* at 1615 (citing *Prouse*, 440 U.S. at 658–59). Importantly for this case, these “negligibly burdensome” inquiries serve the “legitimate and weighty” interest in “officer safety” by providing information about the vehicle’s occupants. *Id.* at 1615–16 (citation omitted).

The Wisconsin Supreme Court correctly applied these precedents, especially *Rodriguez*, in the present case to conclude that Sergeant Gonzalez’s request for Petitioner’s license was reasonable under the Fourth Amendment (even assuming *arguendo* that reasonable suspicion dissipated, *but see infra* pp. 15–16). Sergeant Gonzalez’s initial stop of Petitioner’s vehicle was indisputably lawful, based upon reasonable suspicion. App. A-111, ¶ 13; *see Mimms*, 434 U.S. at 109. And Sergeant Gonzalez’s subsequent request for Petitioner’s license was a minimal intrusion, App. A-121, ¶ 23 & n.15, which served the governmental interest in officer safety under *Rodriguez*. In particular, the request forwarded the interest in Sergeant Gonzalez’s safety by providing information about the individual with whom the officer was interacting. *See* App. A-126, ¶ 31; App. A-131–32, ¶ 35; *Rodriguez*, 135 S. Ct. at 1616. This interest in officer safety remained applicable after the reasonable

suspicion had dissipated. See App. A-115, ¶ 18; App. A-116, ¶ 19 & n.13; App. A-126, ¶ 31. For example, an outstanding-warrants check could indicate that a driver is likely to engage in violent behavior. See *Rodriguez*, 135 S. Ct. at 1616 (citing *United States v. Holt*, 264 F.3d 1215, 1221–22 (10th Cir. 2001) (en banc)). In light of this weighty interest, conducting a “negligibly burdensome” license check was wholly reasonable. *Id.* at 1615–16.

Petitioner’s contrary position would prevent officers from taking needed safety precautions during traffic stops, although they must interact with pulled-over drivers even after reasonable suspicion dissipates. Petitioner concedes that after reasonable suspicion dissipates, an officer would, at minimum, have to explain the situation to a pulled-over driver and tell him that he was free to go. See Pet. 19; accord App. A-112, ¶ 15; App. A-158, ¶ 85 n.18 (Kelly, J., dissenting). This Court has recognized that such interactions, even brief ones, pose a potential threat to the safety of police officers, *Mimms*, 434 U.S. at 110; see *Wilson*, 519 U.S. at 414, and that “negligibly burdensome” license checks can help ameliorate those threats, see *Rodriguez*, 135 S. Ct. at 1616. This Court has properly refused to “require [] police officers [to] take [] unnecessary risks in the performance of their duties.” *Mimms*, 434 U.S. at 110 (quoting *Terry*, 392 U.S. at 23); see *Rodriguez*, 135 S. Ct. at 1616.

Contrary to Petitioner’s suggestion, the decision below is consistent with this Court’s decisions in *Caballes*, *Prouse* and *Royer*. Pet. 20–21. *Caballes* held that a dog sniff conducted during a traffic stop—while the officer was issuing a warning ticket to the driver—did not violate the Fourth Amendment. 543 U.S. at 406–07, 410.

Police unconstitutionally prolong a traffic stop if they detain the occupants of a car “beyond the time reasonably required to complete [the traffic stop’s] mission.” *Id.* at 407. A traffic stop’s “mission” goes “[b]eyond determining whether to issue a traffic ticket” to “include[] [the] ordinary inquiries.” *Rodriguez*, 135 S. Ct. at 1614 (citation omitted); see *Caballes*, 543 U.S. at 408. Here, Sergeant Gonzalez’s request for Petitioner’s license was an “ordinary inquiry.” See *supra* p. 8. *Prouse* held that *random* traffic stops—implicating the “evil” of “standardless and unconstrained discretion”—for the sole purpose of checking a driver’s license and registration violated the Fourth Amendment. 440 U.S. at 650, 661. In this case, Sergeant Gonzalez’s decision to pull Petitioner over was not random, but based upon reasonable suspicion of Petitioner’s criminal activity. App. A-111, ¶ 13. And *Royer* involved police tactics that were so “intrusive” that they “went beyond the limited restraint of a *Terry* investigative stop.” 460 U.S. at 500–01 (plurality op.). Here, Sergeant Gonzalez’s request to see Petitioner’s driver’s license was a “negligibly burdensome,” “ordinary inquir[y].” *Rodriguez*, 135 S. Ct. at 1616.

II. After *Rodriguez*, There Is No Longer Any Division Of Authority Over The Question Presented

As described above, see *supra* pp. 8–9, *Rodriguez* made clear that the mission of a traffic stop involves “negligibly burdensome” license checks, in order to forward officer safety, 135 S. Ct. at 1616. It is thus unsurprising that Petitioner does not point to any post-*Rodriguez* case holding that officers cannot complete ordinary inquiries after a valid, suspicion-based traffic stop, even if reasonable suspicion

dissipates. At the very minimum, if there is any dispute as to the proper resolution of the Question Presented after *Rodriguez*, further percolation is justified. See *McCray v. New York*, 461 U.S. 961, 963 (1983) (Stevens, J., respecting the denial of petitions for writs of certiorari) (“[I]t is a sound exercise of discretion for the Court to allow the various States to serve as laboratories in which the issue receives further study before it is addressed by this Court.”).

After *Rodriguez*, the only court of last resort to have opined on the Question Presented took the same position as the Wisconsin Supreme Court did below. In *Illinois v. Cummings*, 46 N.E.3d 248 (Ill. 2016), a police officer pulled a vehicle over because there was a warrant out for the female registered owner’s arrest. *Id.* at 249. As the officer approached the vehicle, reasonable suspicion dissipated because the officer noticed that the driver was a man. *Id.* The Illinois Supreme Court initially held that the officer’s subsequent actions in asking for the driver’s license violated the Fourth Amendment, *Illinois v. Cummings*, 6 N.E.3d 725 (Ill. 2014), but after this Court vacated that decision and remanded the case in light of *Rodriguez*, see *Illinois v. Cummings*, 135 S. Ct. 1892 (2015), the Illinois Supreme Court held that the inquiries were valid under *Rodriguez*, 46 N.E.3d at 252–53. *Rodriguez*, the court explained, permitted the “ordinary inquiries” not because of their relationship to the underlying violation, but because such inquiries promote the governmental interest in “officer safety.” 46 N.E.3d at 251–52 (citing *Rodriguez*, 135 S. Ct. at 1614–16). That is why, for example, the officer in *Rodriguez* could have checked for “outstanding warrants against the driver,” 135 S. Ct. at 1615, because the check would better

inform him whether the driver “might engage in violent activity during the stop,” *Cummings*, 46 N.E.3d at 252 (citation omitted). In *Cummings*, the interest in “officer safety” justified the license check because the officer was entitled “to know the identity of a driver with whom he is interacting.” *Id.*

The only post-*Rodriguez* case that Petitioner relies upon, Pet. 15, to support his position, *Iowa v. Coleman*, 890 N.W.2d 284 (Iowa 2017), decided the issue on state constitutional grounds. In *Coleman*, the Iowa Supreme Court held that an officer violated the Iowa Constitution when he asked a driver for his license, registration, and proof of insurance after noticing that he was not the female registered owner with a suspended license. 890 N.W.2d at 285. The court explicitly declined “to follow *Rodriguez*” in reaching this conclusion, although the court (erroneously) believed that “nothing in *Rodriguez*” contradicted its conclusion. *Id.* at 299–300. Nevertheless, contrary to *Rodriguez*, the court rejected any argument that the “officer[-]safety” interest permitted ordinary inquiries, *see id.* at 301, and instead focused on “the potential for arbitrary government action on the state’s roads,” *id.* at 300. Three Justices powerfully dissented, arguing that “United States Supreme Court precedent explicitly allow[s] officers to check the driver’s license, vehicle registration, and proof of insurance as part of the routine mission of any traffic stop.” *Id.* at 302 (Waterman, J., dissenting).

Petitioner discusses a pre-*Rodriguez* division of authority over whether the Fourth Amendment permits “ordinary inquiries” after reasonable suspicion of a traffic violation dissipated, Pet. 10–14, but the split is now irrelevant because

Rodriguez clarified the law, *see* Sup. Ct. R. 10(c). Some pre-*Rodriguez* courts adopted Petitioner's position, concluding that once reasonable suspicion for the underlying violation dissipated, the police could not detain the driver to conduct ordinary inquiries, including license checks. *See United States v. McSwain*, 29 F.3d 558, 561–62 (10th Cir. 1994); *Holly v. Indiana*, 918 N.E.2d 323, 326 (Ind. 2009); *South Dakota v. Hayen*, 751 N.W.2d 306, 311 (S.D. 2008); *Florida v. Diaz*, 850 So. 2d 435, 440 (Fla. 2003); *McGaughey v. Oklahoma*, 37 P.3d 130, 141 (Okla. Crim. App. 2001); *Colorado v. Redinger*, 906 P.2d 81, 85 (Colo. 1995); *Ohio v. Chatton*, 463 N.E.2d 1237, 1240 (Ohio 1984) (*per curiam*). Other pre-*Rodriguez* courts disagreed, explaining that it was reasonable for officers to intrude minimally on already-stopped drivers in order to serve legitimate governmental interests, even if reasonable suspicion no longer existed. *See Hart v. Texas*, 235 S.W.3d 858, 861 (Tex. Ct. App. 2007); *Maine v. Gulick*, 759 A.2d 1085, 1088–90 (Me. 2000); *Maine v. Hill*, 606 A.2d 793, 795 (Me. 1992); *Idaho v. Godwin*, 826 P.2d 452, 456–57 (Idaho 1992).

Rodriguez clarified the law by explaining that investigating the underlying traffic offense was not the sole purpose of a traffic stop—the stop's "mission" also included the "ordinary inquiries," 135 S. Ct. at 1615–16—thereby resolving any pre-*Rodriguez* division on the issue in dispute here. Under *Rodriguez*, the "mission" of every stop includes the "ordinary inquiries" because they promote the governmental interests in "roadway safety" and "officer safety." *Id.* License and outstanding-warrant checks provide officers with more information about the occupant of the stopped vehicle, with whom they need to interact, thus forwarding officer safety. *See*

id. at 1616; *supra* pp. 8–9, 12. That is why Petitioner is unable to identify any court of last resort to adopt his position on the Question Presented after *Rodriguez*.

III. This Case Is A Poor Vehicle For Addressing The Question Presented

This case is a poor vehicle for deciding whether police may complete “ordinary inquiries” attendant to a traffic stop after reasonable suspicion has dissipated because Sergeant Gonzalez continued to have reasonable suspicion that Petitioner had broken two other laws (beyond his suspicion that the car’s driver was operating without a valid license).

First, as the Wisconsin Supreme Court noted, “other facts of record in this case support” the conclusion that Sergeant Gonzalez “could have issued a ticket to [Petitioner] under Wis. Stat. § 346.51 for stopping his car ‘upon the roadway.’” App. A-110, ¶ 11 n.10. Wisconsin law prohibits drivers from “stop[ping] . . . any vehicle, whether attended or unattended, upon the roadway . . . outside a . . . residence district when it is practical to park, stop or leave such vehicle standing off the roadway.” Wis. Stat. § 346.51(1). Petitioner stopped in the middle of the street for ten seconds to three minutes without parking the vehicle or pulling to the curb before Sergeant Gonzalez pulled him over, which Sergeant Gonzalez observed. App. A-105, ¶ 4 & n.4. Sergeant Gonzalez thus had ongoing reasonable suspicion of a traffic violation when he asked for Petitioner’s license.

Second, reasonable suspicion existed for an additional offense at the time that Sergeant Gonzalez asked for Petitioner’s license. Wisconsin law prohibits people from operating vehicles while intoxicated. Wis. Stat. § 346.63(1)(a). The moment

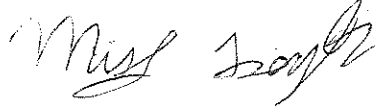
Sergeant Gonzalez came face-to-face with Petitioner, he noticed that Petitioner had “red, bloodshot eyes, and smelled of alcohol.” App. A-107, ¶ 6; App. E-187–88, 197 (Sergeant Gonzalez testimony). Sergeant Gonzalez *then* asked Petitioner for his driver’s license. App. A-107, ¶ 6. Importantly, both the dissenting Justices below and Petitioner agree that Sergeant Gonzalez could have walked up to the car to explain the situation to Petitioner and let him know that he was free to go. See Pet. 19; App. A-157–58, ¶ 85 & n.18 (Kelly, J., dissenting). That inevitable “interaction” would have provided Sergeant Gonzalez with reasonable suspicion that Petitioner was operating a vehicle while intoxicated. App. A-157–58, ¶ 85 & n.18 (Kelly, J., dissenting). Although the Wisconsin Supreme Court did not base its decision on this ground, the State explained below that Sergeant Gonzalez would have reasonably suspected that Petitioner was driving drunk from the first moment he looked at him face-to-face, *see* Brief of the Plaintiff-Respondent-Petitioner at 29–30, *Wisconsin v. Smith*, No. 2015AP756 (Feb. 22, 2017), and the Wisconsin Supreme Court noted that Sergeant Gonzalez “saw signs that [Petitioner] was driving drunk” when he came “face-to-face” with him, App. A-125–26, ¶ 31.

CONCLUSION

This Court should deny the Petition.

Respectfully submitted,

BRAD D. SCHIMEL
Attorney General

A handwritten signature in dark ink, appearing to read "Misha Tseytlin", written over the printed name.

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