

25-6903  
No. \_\_\_\_\_

ORIGINAL

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In the  
Supreme Court of the United States

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FLOYD H. GREEN, JR.,  
Petitioner,

v.

UNITED STATES OF AMERICA,  
Respondent.

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

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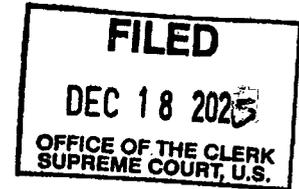
PETITION FOR WRIT OF CERTIORARI

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Floyd H. Green, Jr.,  
Petitioner/Defendant-Appellant  
USM/Reg# 04476-511  
Federal Correctional Complex - Low  
PO Box 1031  
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December 2025

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## QUESTION PRESENTED

The mission of a lawful traffic stop is typically to address the traffic violation which warranted the stop and attend to related safety concerns. A traffic stop's scope must be carefully tailored to its underlying justification. The officer's safety is a legitimate and weighty justification for an additional intrusion into a driver's personal liberty when the intrusion is outweighed by a legitimate concern for the officer's safety. Even when there is nothing unusual or suspicious about a driver's behavior and the officer does not suspect foul play, an additional intrusion may be justified. See *Pennsylvania v. Mimms*, 434 U.S. 106 (1977). When officers engage in unrelated criminal on-scene investigation, however, these officer safety interests and the state's interest in detecting crime differ in kind. While traffic stops are potentially dangerous and officers can take precautions to complete a stop safely, safety precautions taken to facilitate unrelated criminal investigations are not permissible. See *Rodriguez v. United States*, 575 U.S. 348 (2015).

Here, the Eleventh Circuit held that officers during a traffic violation stop can ask about the presence of illegal narcotics without reasonable suspicion as long as the questioning is related to officer safety and does not amount to a fishing expedition meant to investigate unrelated crimes. The officer can also simultaneously ask for consent to search without any reason to suspect the driver is armed and without any indication that there may be illegal narcotics in the vehicle.

The question presented is:

Does the concern for officer safety permit questioning about the presence of narcotics along with a request to search, during a traffic violation stop where there is no reasonable suspicion of criminal activity or any sign that the driver is armed?

## PARTIES TO THE PROCEEDING

Petitioner Floyd Green, Jr. was defendant in the district court and appellant in the court of appeals in No. 24-10274.

Respondent the United States was plaintiff in the district court and appellee in the court of appeals in No. 24-10274.

## CORPORATE DISCLOSURE STATEMENT

No publicly traded company or corporation has an interest in the outcome of this case

## RELATED PROCEEDINGS

The following proceedings are directly related to this petition under Rule 14.1(b)(iii):

United States Court of Appeals for the Eleventh Circuit:

United States v. Green, No. 24-10274 (Feb. 20, 2025)

United States District Court for the Middle District of Florida:

United States v. Green, No. 8:23-cr-70-TPB-NHA (Jan. 24, 2024)

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## PETITION FOR WRIT OF CERTIORARI

Petitioner Floyd Green, Jr. ("Petitioner" or "Mr. Green") respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

### OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit is unpublished and reproduced at App. 1-4.

The decision and judgment of the United States District Court for the Middle District of Florida are unpublished. The January 24, 2024 judgment is reproduced at App. 5-6. The July 17, 2023 order denying Mr. Green's motion to suppress and request for evidentiary hearing is available at 2023 WL 4562848 and reproduced at App. 7-9.

### JURISDICTION

The Eleventh Circuit issued its opinion on February 20, 2025. This Court has jurisdiction under 28 U.S.C. 1254(1).

### CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution, reproduced at App. 10, provides as follows:

"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."

## INTRODUCTION

The Fourth Amendment protects against unreasonable searches and seizures, and under the exclusionary rule evidence can not be used against a defendant in a criminal trial where the evidence was obtained via an encounter with law enforcement officers that violated the Fourth Amendment. A traffic stop is a seizure within the meaning of the Fourth Amendment, even if only for a brief period of time and for a limited purpose. An officer only needs reasonable suspicion to justify an automobile stop based on a traffic violation.

Police officers do not have unfettered authority to detain a person indefinitely during a lawful traffic stop, however. The detention must be limited both in scope and duration, and the officer(s) must conduct any investigation into a traffic violation diligently. The scope of the traffic stop must be carefully tailored to its underlying justification, and the seizure's mission determines what is a tolerable duration. A stop becomes unlawful when it lasts longer than is necessary to complete its mission, and that mission is typically to address the traffic violation that warranted the stop.

Another mission during a traffic stop is to attend to related safety concerns. When an officer has lawfully detained a driver, an additional intrusion into the driver's personal liberty is justified if it is outweighed by legitimate concerns for the officer's safety. This makes officer safety a legitimate and weighty justification, and traffic stops are not considered to be any less dangerous than other types of confrontations. Even when there may be nothing unusual or suspicious about a driver's behavior, or the officer does not suspect foul play, an additional intrusion may be justified.

When officers engage in unrelated on-scene criminal investigations, however, these officer safety interests and the state's interest in detecting crime differ in kind. Even though traffic stops can be dangerous for officers whereby they may take precautions to complete a stop safely, taking those precautions to facilitate unrelated criminal investigations is not permissible. The proper standard for addressing whether a traffic stop has been unlawfully prolonged involves three factors: The officer must (1) conduct an unrelated inquiry aimed at investigating other crimes, (2) add time to the stop, and (3) conduct the unrelated inquiry without reasonable suspicion.

In *Rodriguez v. United States*, 575 U.S. 348, 350-51 (2015), this Court held that a stop justified by a traffic violation transforms into an unconstitutional seizure "if it is prolonged beyond the time reasonably required to complete" the stop's dual mission. When an officer takes "measure[s] aimed at detect[ing] evidence of ordinary criminal wrongdoing," like searching for drugs or "safety precautions taken in order to facilitate" on-scene "investigations into other crimes," these measures can fall outside of the scope of the traffic stop's dual mission. *Id.* at 355-56. An inquiry that falls outside of that dual mission and prolongs the stop requires that the officer(s) must have developed "reasonable suspicion" of criminal activity independent of the traffic violation which justified the stop. *Id.* at 354-55.

The Eleventh Circuit distinguished this case from Rodriguez, pointing to the fact that there the officer impermissibly prolonged the traffic stop to conduct an unrelated criminal investigation after the original mission of the stop was completed. The court agreed with Mr. Green "that the district court here erred in finding that because the officer had not yet completed a records check or written a citation when he asked about the weapons and narcotics, there was no prolongation of the traffic stop," citing United States v. Campbell, 26 F.4th 860, 866 (11th Cir. 2022)(en banc). The court also noted that the set of questions from the officer here did not amount to a "fishing expedition," like in Campbell.

The Eleventh Circuit also addressed the "legitimate and weighty justification of protecting officer safety," referencing this Court's ruling in Pennsylvania v. Mimms, 434 U.S. 106, 110 (1977). The court noted that Mr. Green had "some merit" to argue that the officer could have alternatively performed a pat down frisk or ordered Mr. Green out of his vehicle for purposes of the window-tint investigation, referencing Mimms, Id.

The Eleventh Circuit's ruling here is in conflict with at least four circuits, particularly in how it is misapplying the framework provided by this Court in Rodriguez and Mimms. Left undisturbed, this split will remain unresolved and give rise to more confusion each time an officer detours from a traffic stop's dual mission.

The split here reflects the slow and steady increase of the constitutional latitude of the police, eroding the Fourth Amendment's protections beyond anything previously contemplated. It gives police the latitude to not only ask about the presence of weapons and drugs as a safety precaution but to use such a request to springboard into unrelated investigations. And this can be done without any reasonable or particularized suspicion. The Fourth Amendment is meant to protect against intrusions of law enforcement where they are unwarranted and inappropriate. It would appear that in other circuits this protection remains in effect, especially as it relates to the framework provided by this Court in Rodriguez and Mimms.

But it would also appear that for traffic stops in the Eleventh Circuit, officers can prolong a stop and take a detour from the stop's dual mission just because a citation has not yet been issued. And it seems that an officer in the Eleventh Circuit can conduct a pat-down or ask for consent to search without reasonable suspicion.

In short, this case involves a clear circuit conflict on a vitally important question regarding the ability of the police to violate constitutional rights during routine traffic stops, including stops for something as benign as a window-tint investigation.

The petition should be granted.

## STATEMENT OF THE CASE

### A. Legal Background

This Court has held that the protections of the Fourth Amendment extend to brief investigatory stops of persons or vehicles that would fall short of traditional arrest. See *United States v. Arvizu*, 534 U.S. 266, 273 (2002). This is because traffic stops are seizures, and so the Fourth Amendment requires that stops are reasonable under the factual circumstances. See *Whren v. United States*, 517 U.S. 806, 810 (1996). The mission of a stop as it relates to a traffic violation can involve determining whether to issue a traffic ticket, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance. See *Rodriguez*, 575 U.S. at 355; see also *Illinois v. Caballes*, 543 U.S. 405, 408 (2005). But officer safety is also part of the stop's mission, and so ordering a driver (and any passengers) out of the car can be permitted even if there's no articulable suspicion of danger to the officer. See *Maryland v. Wilson*, 519 U.S. 408, 414-15 (1997). Another example would be an officer ordering the driver to exit the vehicle and stand off on the side of the road, an additional intrusion characterized as "de minimis." See *Mimms*, 434 U.S. at 110-11.

The framework provided by this Court in *Rodriguez* establishes that a lawful stop which was justified at the outset by a traffic violation, like tinted windows, transforms into an unconstitutional seizure "if it is prolonged beyond the time reasonably required to complete" the dual mission of the stop, 575 U.S. at 350-51. There is no de minimis exception to the *Rodriguez* framework, meaning a stop becomes unlawful if any "off-mission task that measurably extend[s] the duration of the stop" is done without reasonable suspicion. *Id.* at 354-55. When tasks tied to a traffic violation, like a window-tint investigation, are or should have been completed, the officer's authority for the seizure ends. *Id.* at 354.

Under *Rodriguez*, safety precautions taken by the officer fall within the mission of the stop since there's always the risk of danger to the officer. *Id.* at 356. But the *Rodriguez* framework applies to off-mission tasks or "detours" from the traffic violation, including safety precautions taken in order to facilitate such detours. *Id.* Therefore, steps like ordering the driver to exit the vehicle, even without reasonable suspicion, help safely complete the traffic mission of the stop. *Id.* at 356; see also *Mimms*, 434 U.S. at 110.

The Court in *Mimms* also addressed when an officer is justified in conducting a limited search for weapons, 434 U.S. at 111. There, the officer noticed a bulge in the driver's jacket, which permitted the officer to conclude the driver "was armed and thus posed a serious and present danger to the safety of the officer." *Id.* at 112. The officer was justified in asking the driver to step out of the car and move onto the shoulder of the road "to ensure officer safety." *Id.* at 111. But it was the bulge in the driver's jacket that specifically warranted conducting a pat-down as an additional measure, since the bulge would "warrant a man of reasonable caution." *Id.* at 112. The Court also relied on its ruling in *Terry v. Ohio*, 392 U.S. 1, 22-23

22-23 (1968), where an officer approached three men who hovered and paced suspiciously near multiple store windows on a street corner. The Court noted that the officer was justified "in taking steps to assure himself that the person with whom he is dealing with is not armed with a weapon that could unexpectedly and fatally be used against him." *Id.* at 23. The Court also held that once an officer "is justified in believing that the individual whose suspicious behavior he is investigating" may be armed and present a danger to his safety, he can "take necessary measures to determine whether the person is in fact carrying a weapon" so as to "neutralize the threat of physical harm." *Id.* at 24.

#### B. Facts and Procedural History

Mr. Green was stopped by law enforcement officers from the Winter Haven Police Department on December 28, 2022. Officer Joey Ragusa conducted the stop, and informed Mr. Green that the windows of his truck were tinted too darkly. Using a tint meter, Officer Ragusa confirmed that the tint was too dark, and asked Mr. Green questions about the state of his driver's license. It was between 5:39:18 pm and 5:39:25 pm, after Officer Ragusa told Mr. Green to "sit tight" and began walking back to his vehicle, that he asked the following questions: "Is there anything in the truck we need to be concerned about -- guns, knives, grenades, any illegal narcotics, anything like that? Do you mind if we search?" Mr. Green responded "no" to these questions, which extended the duration of the stop by approximately 7-8 seconds. After searching the vehicle, the officers determined illegal narcotics were present, prompting them to handcuff Mr. Green. Later, a dog sniff and field testing resulted in a positive result for illegal narcotics, and Mr. Green was indicted for violating 21 U.S.C. section 841 (a)(1) on February 28, 2023. Mr. Green filed his "Motion to Suppress and Request for Evidentiary Hearing" on May 1, 2023. App. 7. The Government then filed its response on May 20, 2023, and Mr. Green's reply was filed on June 14, 2023. App. 7. On July 23, 2023, the District Court denied Mr. Green's "Motion to Suppress." Relying on the body camera footage of the traffic stop, the court explicitly noted that Officer Ragusa had not yet completed a records check or written a traffic ticket when he asked about weapons and requested consent to search. App. 9. The court determined, therefore, that "because Officer Ragusa had not yet completed his duties related to the traffic stop, there was no unlawful prolongation." App. 9. The court added that Officer Ragusa spent approximately 8 seconds asking Mr. Green "questions primarily related to the presence of weapons" and that "officers are permitted to address legitimate safety concerns by asking about the presence of weapons," meaning the stop was not unlawfully prolonged. App. 9. In addition, the court explicitly noted that Officer Ragusa's questions differed from the questions in *Campbell*, 26 F.4th at 885, because there the officer asked "wholly unrelated questions aimed at investigating other crimes without reasonable suspicion." App. 9. The court noted that the questions "primarily involved" the presence of weapons, with a very brief mention of illegal narcotics. App. 9. As such, the court held that Officer Ragusa's "mere reference" to illegal narcotics wouldn't change the outcome here. App. 9. The court

held that questions about illegal narcotics "are also related to officer safety since exposure to certain narcotics may present a risk to officers," pointing to two articles on the CDC's website about the danger of fentanyl and opioids to police and emergency responders. App. 9. The court added that "the focus of Officer Ragusa's inquiry was clearly on weapons, and the mere mention of narcotics does not render the entirety of the seizure unlawful." App. 9. The court also indicated that the facts were not contested, and thus "no hearing is required." App. 7.

Mr. Green was later found guilty as to count one of the indictment, and judgment as entered on January 24, 2024. App. 5-6. He was sentenced to 120 months imprisonment. App. 6.

The Eleventh Circuit affirmed the denial of Mr. Green's motion on February 20, 2025. App. 1. The panel agreed "that the district court here erred in finding that because the officer had not yet completed a records check or written a citation" when he inquired about weapons and narcotics, "there was no prolongation of the traffic stop." App. 3. But the panel also noted the district court's explicit finding that Officer Ragusa's questions were permissible as they related to officer safety, and cited *Mimms*. App. 3. The court thus disagreed with Mr. Green's argument "that the district court erred in allowing the stop to be prolonged to ask questions related to officer safety." App. 3. The panel "summarized the takeaway from *Rodriguez in Campbell*" to establish that an officer must "(1) conduct an unrelated inquiry aimed at investigating other crimes (2) that adds time to the stop (3) without reasonable suspicion," 26 F.4th at 884. App. 4. The panel added that "the traffic stop here is different from the one in *Rodriguez* because the stop and its purpose had not ceased when Officer Ragusa asked the questions at issue." App. 4. The panel also found Mr. Green's "argument that related safety concerns must be limited to solely ensuring vehicles are operated safely and responsibly" to be unavailing, "given the legitimate and weighty justification of protecting officer safety," citing *Mimms*. App. 3. The panel stated that Mr. Green had some merit in arguing that Officer Ragusa "could have alternatively performed a pat down or ordered Green out of the truck for the window tint investigation." App. 3. But the fact that the district court explicitly found "that questions about weapons and one reference to illegal narcotics are related to officer safety should not be disturbed by this court." App. 3. The panel then addressed that Officer Ragusa was not engaged in a "fishing expedition" like the one found improper in *Campbell*, and "kept his questions limited to items that may be reasonable understood to be related to officer safety, primarily focusing on weapons, with minimal questioning on drugs." App. 4. Lastly, the panel addressed Mr. Green's argument that officers cannot ask about the presence of drugs and weapons during a routine traffic stop without reasonable suspicion, based on *United States v. Boyce*, 351 F.3d 1102, 1111 (11th Cir. 2003). App. 4. The panel acknowledged that in *Boyce* it was deemed impermissible for an officer to ask a driver about contraband during a routine stop as it "exceeded the permissible scope of the traffic stop." App. 4. But the panel also observed that in *Boyce* "we did not consider whether the questions about

about contraband were permissible as related to reasonable officer safety concerns" because of the fact that the officer "never testified that it was his concern for his safety that prompted him to expand the scope of his questioning." App. 4. Turning back to the present case, the panel noted that "here, on the other hand, the district court made its finding about officer safety central to its denial of the motion to suppress." App. 4. Thus the panel distinguished this case from Rodriguez as there the stop's purpose had been completed, and because Officer Ragusa's questions were related to concerns for his own safety. App. 1.

The Eleventh Circuit's opinion was entered as judgment on September 24, 2025. App. 11-12.

## REASONS FOR GRANTING THE PETITION

### I. The Eleventh Circuit's Decision Creates a Circuit Split

The United States Courts of Appeals have answered the question presented in conflicting ways. Addressing materially similar facts, the First Circuit held that officers can prolong a stop, take safety precautions (including a pat-down), and search the vehicle provided there is a reasonable suspicion that the driver is armed. In *United States v. Pavao*, a driver stopped for his erratic driving admitted he had smoke marijuana earlier, trembled and fidgeted toward his waistband, grew agitated when the officer hold him to stop moving, and then tossed a bag of marijuana toward the officer, 134 F.4th 649 (1st Cir. 2025). The officer called for back-up, conducted a pat-down search, and searched the vehicle. The defendant moved to suppress, and the district court found that the officer unduly prolonged the stop and that the pat-down was unlawful. The First Circuit reversed, holding that the officer had reasonable suspicion to prolong the stop and call for back-up because the "sight and smell of marijuana furnished the basis" that the defendant "was committing a federal marijuana-related crime." As for the pat-down, the First Circuit found "that the district court afforded insufficient weight to the defendant's unusual behavior throughout the stop." The officer testified before the district court that the defendant's reaching, glancing, and fidgeting toward his waistband prompted him to advise the defendant to stop moving in that manner, a request that agitated the defendant. The combination of his behavior and his frustrated demeanor "lent credence to the suspicion that the defendant presented a threat to officer safety." The panel took into account the defendant's evolving behavior throughout the stop to reject the district court's finding that he was not agitated, and held that the "sum total of these facts comprises reasonable suspicion sufficient to justify the pat-down frisk."

Just over a month before *Pavao*, the Ninth Circuit held that "arguably investigatory questioning" by an officer is permissible if it occurs while he waits for the results of a criminal history check after observing possible signs of danger. In *United States v. Steinman*, the officer observed the defendant moving around in the cab of the vehicle and noticed an ammunition box, prompting him to conduct a criminal history check as he issued a traffic citation, 130 F.4th 693 (9th Cir. 2025). The motion to suppress evidence from the stop (namely, the records check) was granted, as the district court found that the stop was unlawfully prolonged by the officer's detailed questioning, and that the criminal records check did not fall under officer safety. The Ninth Circuit reversed, holding that the officer's actions in requesting the defendant's criminal history was justified by a concern for officer safety and did not prolong the stop as he was still filling out the traffic citation. The panel noted that even where the district court concluded that the officer (who testified) admitted the criminal history check was not "routine" for traffic stops, it was a justified officer safety precaution taken due to what was observed.

Just months later, the Sixth Circuit held that placing a driver in a patrol car is a reasonable safety precaution, and asking questions about illicit substances does not prolong the stop if it occurs while the officer awaits the results of routine checks. In *United States v. King*, the officer asked the defendant about drugs during routine checks, asked for consent to search, and then took actions as part of an unrelated investigation for drug possession and drug trafficking, 2025 U.S. App. LEXIS 19403 (6th Cir. 2025). The defendant's motion to suppress was denied after the officer testified that he acted on information from a detective that there may be narcotics in the vehicle, and his belief that the defendant was under the influence of drugs. Moreover, the defendant was unresponsive when asked about specific drugs, and gave dubious answers when asked about the specifics of his travel plans. The Sixth Circuit affirmed, noting that the totality of the circumstances supported the existence of reasonable suspicion "that criminal activity was afoot." The panel held that placing the defendant in the patrol car was motivated by officer safety concerns, while expanding the stop to obtain consent to search was not unreasonable, as the officer's questions about drugs took place as he completed routine checks.

The following month, the Third Circuit held that off-mission inquiries cannot be characterized as relating to roadway safety if they are designed to detect crimes like drug trafficking. In *United States v. Ross*, an officer's questioning which started out as "small talk" progressed to the officer safety "lane" and then merged into investigative territory based on "independent reasonable suspicion," 151 F.4th 487 (3rd Cir. 2025). The Third Circuit established a framework to categorize questions during traffic stops into four categories: (1) small talk; (2) infraction-related inquiries; (3) safety-related inquiries; and (4) off-mission inquiries. The panel noted that asking about the presence of anything illegal is related to officer safety, but "questions designed to uncover criminal conduct" without reasonable suspicion are only permitted if they do not prolong the stop. The panel specified that such questioning can occur simultaneously with on-mission tasks, whereby the officer could be multi-tasking, citing the Ninth Circuit's decision in *Steinman*, 130 F.4th at 707.

Petitioner's case addresses *Rodriguez* and *Mimms* just like *Pavao*, *Steinman*, *King*, and *Ross* did. Yet all four of them reached a diametrically opposite result. This cannot be explained by the facts, since there was no reasonable suspicion established here. If anything, Mr. Green presents a stronger case factually, especially where the district court never heard any testimony from Officer Ragusa explaining the reason why he included drugs in his question about weapons, or why he then asked for consent to search. App. 7. In addition, where both *Pavao* and *Steinman* reversed the district court, it is not clear why the Eleventh Circuit insisted on not "disturbing" the district court's officer safety finding even though it agreed that the stop here was prolonged and acknowledged he had merit to suggest that Officer Ragusa could have conducted a pat-down or had him stand outside the vehicle as a safety precaution. App. 3. The result here can only be explained by a different interpretation of this Court's precedent. And only this Court can resolve that clear divide.

## II. The Eleventh Circuit's Approach Is Incorrect.

### A. The Eleventh Circuit Misapplied Rodriguez.

The Eleventh Circuit's decision is not only in tension with the precedent of the other circuits above but also with this Court's precedent. Although the Eleventh Circuit cited Rodriguez in reaching its decision, its application shows why the other circuits have cut the other way.

In Rodriguez, the Court held that while traffic stops are dangerous for officers such that they may take safety precautions, those precautions cannot facilitate unrelated criminal investigations, 575 U.S. at 356-57. The officer wrote a warning ticket for a traffic violation, and then conducted a dog sniff for drugs even though the justification for the stop had ceased. *Id.* at 351-52.

The Eleventh Circuit differentiated this case from Rodriguez "because the stop and its purpose had not ceased when Officer Ragusa asked the questions at issue." App. 3. The panel noted that "Officer Ragusa was about to return to his patrol car to complete checking the database records when he asked about weapons, narcotics, and searched" the vehicle. App. 4.

The Sixth's Circuit's decision in King noted that the officer's questioning about drug possession did not unreasonably prolong the stop because he was in the process of verifying the defendant's information. The officer's body camera footage showed him using his computer in the patrol car to conduct routine checks which under Rodriguez are "ordinary inquiries incident to [the traffic] stop," 575 U.S. at 355. The Sixth Circuit specifically noted that even unrelated questions are permitted as long as the questioning takes place during the "dead time" that can take place while the officer awaits the results of routine checks. Here, Officer Ragusa was not in the process of using his computer to look up information about Mr. Green's driver's license, insurance, vehicle registration, or looking up his name for warrants or anything criminal related. Instead, he asked about weapons and drugs before conducting checks, and then asked for consent to search.

The Ninth Circuit raised the same point in Steinman when it ruled that the officer's investigatory questions took place while he was waiting for the results of the criminal history check. He was also filling out the traffic citation, meaning he did not measurably extend the duration of the traffic stop. The Ninth Circuit even noted that "this is not a case where, for example, completing a traffic citation was suspended for the purpose of questioning or questioning occurred after the traffic stop had been effectively completed." The latter example rings more like Rodriguez, where the dog sniff occurred after the mission of the stop had been completed, but the facts here clearly show that the routine checks and the traffic citation were both suspended for the purpose of questioning. Moreover, the Third Circuit in Ross held that off-mission questions designed to uncover unrelated criminal conduct are permitted, even without reasonable suspicion, during situations in which the questions occur whereby the officer is "multi-tasking" between asking the questions and completing routine tasks, citing Steinman.

The Third Circuit also differentiated the facts in *Ross* from stops where "one officer expeditiously completes all traffic-related tasks while another officer makes the off-mission inquiries," citing *Arizona v. Johnson*, 555 U.S. 323, 333 (2009). Here, the Eleventh Circuit distinguished the facts from *Rodriguez* specifically because the stop along with its mission and justification had not yet ceased. The panel even agreed with Mr. Green "that the district court here erred in finding that because the officer had not yet completed a records check or written a citation when he asked about the weapons and narcotics, there was no prolongation of the traffic stop." App. 3. The panel agreed that the stop was prolonged, but held that the questions about weapons and drugs were a safety precaution and still within the stop's mission because the justification for the stop had not yet ceased. That runs counter to *King*, *Steinman*, and *Ross*. Officer Ragusa was not multi-tasking, he was not in the process of issuing a traffic citation for window-tint investigation, nor was he waiting for the results of routine checks about Mr. Green or his license (or vehicle). He was not completing those tasks and simultaneously asking Mr. Green about the presence of anything dangerous or illegal in the vehicle, nor was he attending to routine checks while another officer asked safety-related questions like the stop in *Arizona*. His questioning, followed by the immediate request for consent to search, suspended the traffic mission of the stop. It stopped him from going to the car and completing routine checks, and once Mr. Green consented, the stop took an unrelated detour away from the window-tint investigation altogether. As the Third Circuit noted in *Ross*, an objective inquiry under *Rodriguez* is context-dependent, and certain questions would hardly serve any other purpose than facilitating an unrelated investigation for the purpose of detecting crimes like "drug trafficking in particular," 575 U.S. at 356-57.

The Eleventh Circuit rejected Mr. Green's argument that the traffic stop should not have been prolonged to ask officer safety related questions. App. 3. Again, the panel disagreed with the district court that the stop was not prolonged, but it agreed with the court that the questions were permissible as related to officer safety. App. 3.

In *Steinman*, where the officer conducted a criminal history check as a safety precaution, the Ninth Circuit ruled that the stop was not unlawfully prolonged. Even where the stop was prolonged after the officer received the results of the criminal history check, none of the actions taken up until the point he reviewed the defendant's criminal history unlawfully prolonged the stop. This suggests that Officer Ragusa's question about the presence of weapons and drugs could be deemed part of "officer safety" mission of the stop, but it still suspended routine checks, and Officer Ragusa did not just ask about the mere presence of weapons or drugs. He immediately asked for consent to search.

In *King*, the Sixth Circuit noted that the officer's questions were unrelated to the traffic stop, while his obtaining of consent to search (along with the search itself) "constituted an extension of the authorized seizure affected by the initial traffic stop." As such, the Sixth Circuit assessed whether the officer "developed reasonable suspicion of criminal activity sufficient

to justify extending the seizure. Officer Ragusa's question about the presence of anything dangerous in the vehicle may have been an on-mission safety precaution, but obtaining consent to search (and then search itself) extended the seizure. And according to the Eleventh Circuit's "takeaway from Rodriguez in Campbell," the extension of the seizure in King "diverts from the stop's purpose and adds time to the stop in order to investigate other crimes." App. 3.

The Third Circuit in Ross differentiated "safety-related inquiries" and "off-mission inquiries." Asking about any past arrests, the driver's criminal record, along with questions about the presence of weapons, all help to assess any potential risks to the officer. Citing Rodriguez, the Third Circuit noted that officers should not use a driver's answer to an on-mission question related to safety as a "springboard to justify further inquiry or facilitate" a detour into unrelated investigations, 575 U.S. at 356. Officer Ragusa asked about the presence of weapons and drugs, then immediately asked for consent to search, and then detoured away from the window-tint investigation to conduct the search.

The Eleventh Circuit held that Officer Ragusa's question about the presence of weapons was an on-mission safety-related inquiry. That does not conflict with Rodriguez. But his immediate and subsequent request for consent to search conflicts with the way Rodriguez was applied in King, Steinman, and Ross. As for whether asking about the presence of narcotics (along with weapons) switched from a safety precaution to an off-mission inquiry, there needed to be "objectively reasonable" safety concerns (like in Ross) based on the Officer Ragusa's observation of "possible signs of danger" (like in Steinman). There also needed to be a reasonable suspicion of criminal activity if Officer Ragusa sought to investigate Mr. Green for drug possession or drug trafficking (like in King).

Citing Rodriguez and Campbell, the Eleventh Circuit noted that stops cannot be prolonged for inquiries meant for unrelated investigation without reasonable suspicion. App. 3. The panel also asserted that Officer Ragusa was not engaged in a "fishing expedition" like the inquiries in Campbell, and noted that Campbell "did not create a total prohibition on asking about contraband," 26 F.4th at 885. App. 4.

The Third Circuit in Ross noted that the officers had "objectively reasonable safety concerns," namely that the defendant "exhibited clear signs of extreme anxiety and nervousness, including shaking hands, stammering voice, quivering lips, heavy breathing, profuse sweating, and a refusal to make eye contact." He also "kept making abnormal hand movements, including erratically shifting his jacket across the seats and center console and fumbling around the interior of his car." In Pavao, the First Circuit noted the defendant's trembling and fidgeting "with his waistband -- as if trying to hide or to move an object there -- so many times" that the officer had to instruct him to stop. In Steinman, the officer saw the defendant's "furtive movements" in the vehicle, observed an ammunition box in the vehicle, and saw a blanket covering a number of items in the back seat. These observations prompted safety-related precautions related to officer safety, like calling for

backup (Pavao), running a criminal history check (Steinman), asking questions meant to defuse tension and assess demeanor, (Ross), or asking the driver to sit in the patrol car (Steinman & King). Here, there was no connection made between Officer Ragusa's questioning and anything he noticed about Mr. Green (or in the vehicle) that gave him objectively reasonable safety concerns. And even if nothing suspicion needed to be observed to inquire about the presence of weapons, there was nothing objectively reasonable about including narcotics within the safety-related question. The officers in Ross, Steinman, King and Pavao all avoided a "Rodriguez moment" because the safety precautions they took were all based on observable safety concerns, and the precautions they took did not serve as a springboard into an unrelated investigation. Officer Ragusa's inclusion of drugs in his questioning was not based on anything he observed (he never testified), and it was followed by the request to search after Mr. Green answered "no" about the presence of anything dangerous.

The Eleventh Circuit failed to assess whether Officer Ragusa developed reasonable suspicion of criminal activity sufficient to justify extending the seizure here. Even where a reasonable suspicion may have not been required to ask about the presence of weapons, there was no reasonable suspicion established here to justify asking about narcotics, nor was there any suspicion established to obtain consent to search. Obtaining consent extended the seizure, it was aimed to facilitate an unrelated investigation into drug possession or drug trafficking. And the question on the presence of narcotics, despite being included in the on-mission safety-related inquiry about weapons, served as a springboard to obtain the consent to search. The inquiry about the presence of weapons and narcotics may not have constituted a "Rodriguez moment," but the combination of that safety-related inquiry with then obtaining consent to search (along with the search) all served to prolong the stop, suspend routine checks, and take a detour away from the window-tint investigation. The Eleventh Circuit misapplied Rodriguez by only focusing on how the purpose of the stop had not ceased, along with treating the inclusion of narcotics in the initial question about weapons as an on-mission safety-related inquiry.

The aforementioned circuits properly applied Rodriguez because they distinguished safety-related questions (or precautions) from questions meant to springboard into an unrelated investigation. They also distinguish safety-related questions from obtaining consent to search (and searching), whereby it is the consent to search that requires reasonable suspicion. The officers in Ross had objectively reasonable safety concerns based on the defendant's demeanor and his answers to their questions which were meant to calm him down and assess the possible danger. They later developed a reasonable suspicion based on a totality of the circumstances. The officer in Steinman made observations that justified running a criminal history check, and the results along with the totality of the circumstances supported his actions.

But it was the officer in Pavao who took the safety precaution of calling for backup based not only on the driver's demeanor but on the sight and smell of marijuana in the vehicle. The totality of the circumstances gave the officer the reasonable

suspicion sufficient to justify a pat-down frisk, especially after the defendant kept moving toward his waistband such that the officer suspected he was possibly armed. In King, the totality of the circumstances supported the existence of reasonable suspicion to justify asking the defendant questions in the patrol car (while conducting routine checks) and to obtain consent to search. The officer was already acting on the tip that the defendant may have been trafficking narcotics, and he suspected that the defendant was under the influence of drugs. The defendant then sat in silence when asked about drugs and gave dubious answers about his travel plans. The officer in King took an on-mission safety precaution (having the defendant sit in the patrol car), but what justified electing to obtain consent to search was the existence of a reasonable suspicion based on the tip from a detective along with observable factors during the stop.

The four examples above (Ross, Steinman, Pavao & King) all include on-mission safety precautions (or inquiries) that are backed up by observed safety concerns. The precautions taken did not suspend routine checks, rather they occurred simultaneously with traffic-related tasks. Any additional steps to extend the seizure, including obtaining consent to search, were justified by the existence of a reasonable suspicion. And each officer testified and provided both the context and the totality of the circumstances supporting their suspicion. Moreover, Rodriguez was cited and applied in all four examples, with a focus on the need for officers to avoid a "Rodriguez moment." So either these examples all misapplied Rodriguez, or the Eleventh Circuit did.

According to Rodriguez, officers cannot make unrelated investigation inquiries such that they prolong the stop, 575 U.S. at 354. Officer Ragusa asked about the presence of weapons and narcotics, immediately asked for consent to search, and then suspended the window-tint investigation. That prolonged the stop, and Rodriguez prohibits unrelated investigations even if they result in a "de minimis" prolongation of the roadside detention. *Id.* at 355-56. Such an investigation detours from the traffic stop, and that applies to "safety precautions taken in order to facilitate detours" as well. *Id.* at 356. Officer Ragusa's question about weapons and narcotics may have been a safety precaution, but it was taken in order to facilitate the consent to search and the stop's detour away from routine checks and processing a traffic citation.

The Eleventh Circuit focused on the stop not having ceased, the lack of a "fishing expedition" to the extent in Campbell, and the question about drugs fitting in with the on-mission concern for officer safety. That approach was wrong. The Eleventh Circuit should have looked to whether Officer Ragusa had a reasonable safety concern to include drugs within his questioning about weapons, and whether the totality of the circumstances then justified his request for consent to search (and the search itself). The panel focused on the initial question without considering whether it served as a springboard to obtain consent and facilitate an unrelated investigation. This Court should grant review and correct the Eleventh Circuit's error.

## B. The Eleventh Circuit Misapplied *Mimms*

The Eleventh Circuit's decision, which was based on officer safety concerns and cited *Mimms*, is in conflict with this Court's approach in that decision. And despite relying on *Mimms*, the Eleventh Circuit's approach in applying this Court's precedent put it in tension with the other circuits above.

In *Mimms*, this Court held that an officer can order a driver to exit his vehicle, since there is always a risk of assault when approaching a person sitting in a vehicle, 434 U.S. at 110. Such precautions taken for the officer's safety is a de minimis intrusion that addresses hazards like an armed driver and passing traffic. *Id.* at 110-11. And because officer safety is a legitimate and weighty justification, safety precautions are justified "even when there is nothing suspicious about a driver's behavior and the officer does not suspect foul play."

The Eleventh Circuit noted the district court's finding that Officer Ragusa's questions were permissible as related to officer safety, citing *Mimms*. App. 3. The panel rejected Mr. Green's argument that "related safety concerns must be limited to solely ensuring vehicles are operated safely and responsibly," citing *Mimms*. App. 3. The panel also noted that Mr. Green had "some merit" in arguing that Officer Ragusa could have alternatively conducted a pat down or ordered him out of the vehicle as part of the window-tint investigation.

The focus here was on Officer Ragusa's initial question about the presence of weapons and drugs, an inquiry that can very well qualify as an on-mission safety precaution. In *Mimms*, the safety precaution at issue was asking "the driver of the vehicle to step out of the car and off onto the shoulder of the road," so the stop can proceed "with greater safety to both" the driver and the officer. *Id.* at 111. But *Mimms* did not just involve that safety precaution, as there remained "the second question of the search," or the "pat down" frisk that also occurred during the same stop. *Id.* This Court in *Mimms* noted that the officer noticed a bulge in the driver's jacket, and that "the bulge in the jacket permitted the officer to conclude that *Mimms* was armed and thus posed a serious and present danger to the safety of the officer." *Id.* at 112. The Court also based its approach in *Mimms* on its decision in *Terry*, which also involved whether a pat down search following a lawful traffic stop was reasonable as it relates to officer safety, 392 U.S. at 27. In both of these cases, the pat down frisk was deemed justified by a reasonable suspicion based on something the officer observed about the defendant.

The Eleventh Circuit properly applied *Mimms* as it relates to Officer Ragusa's question about the presence of weapons, and to a lesser extent, illegal narcotics. While there was nothing suspicious about Mr. Green or anything that Officer Ragusa observed in the vehicle, it was out of a concern for his safety to at least inquire about the presence of anything dangerous (or illegal) in the vehicle. This is consistent with the officer in *Steinman and King* asking the defendant to sit in the patrol car as a safety precaution, based on *Mimms*, 343 U.S. at 110. It is also consistent with the questions posed in *Ross*, where

the defendant was acting suspicious and the on-mission safety related questions were meant to both ease him and assess any reaction for possible danger. The Eleventh Circuit therefore properly applied *Mimms* as it relates to Officer Ragusa's initial question about the presence of anything dangerous or illegal in Mr. Green's vehicle, insofar as he was simply acting out of an abundance of caution.

The problem with the Eleventh Circuit's approach then, has to do with the second question of this Court's review in *Mimms*, *Id.* at 111. The moment Mr. Green responded "no" to the question about the presence of weapons or drugs, Officer Ragusa immediately followed up with his request for consent to search. But there was no reasonable suspicion established here as to what Officer Ragusa saw, or anything Mr. Green said or did, that prompted him to take the additional step of trying to obtain the consent to search. This is where the Eleventh Circuit broke away from *Mimms*, as the officer did not just take a safety precaution, he then conducted a pat-down of the driver because he noticed the bulge in the driver's jacket and that established a reasonable suspicion that he was armed. *Id.* at 112. Officer Ragusa never testified, so there's no explanation as to why he asked for consent to search as a follow up to his initial question. There is nothing establishing any suspicion that Mr. Green was armed or that he possessed drugs to merit the additional step beyond the mere question about the presence of anything illegal or dangerous.

The facts here also differ from *Steinman*, *King*, *Ross*, and *Pavao* because the officers took on-mission safety measures along with additional measures based on observed suspicious behavior. *Steinman* and *King* applied *Mimms* in that the driver was asked to sit in the patrol car, and it was his answers to questions (*King*) and a criminal history check (*Steinman*) that gave the officer reasonable suspicion to obtain the consent to search. In *Ross*, there were clear signs the driver was acting odd, so the officers engaged in conversation aimed to ease tension which led to suspicious answers. And in *Pavao*, the stop was based on the driver's erratic driving, and it was his suspicious movements that prompted a pat down frisk along with the sight and smell of marijuana that prompted a search. There was nothing suspicious identified by Officer Ragusa to justify his initial question, or his request for consent to search.

The Eleventh Circuit focused on Officer Ragusa's initial questioning which included weapons and a "minimal reference" to narcotics, and the fact that *Mimms* allows for safety precautions even without reasonable suspicion. That approach was wrong. In applying *Mimms*, the panel should have looked not just to the first aspect of *Mimms* (the safety precaution) but to the second aspect (the pat-down). Even where Officer Ragusa could ask Mr. Green about anything dangerous out of concern for his safety, he needed a reasonable suspicion to conduct a pat-down, and he needed a reasonable suspicion to obtain the consent to search. That would have been the proper application of *Mimms* even if he only asked Mr. Green about the presence of weapons, and so it applies just the same (if not more) when that initial questioning included both weapons and narcotics.

### III. This Case is an Ideal Vehicle for Resolving an Important Legal Issue

This petition allows the Court to cleanly address a clear circuit split on an important question of law. The Eleventh Circuit acknowledged that the district court was wrong to rule that Officer Ragusa did not prolong the stop away from the window-tint investigation because it happened prior to routine checks. It also agreed that there was merit to the argument that Officer Ragusa could have addressed any safety concerns by asking Mr. Green to exit the vehicle. The panel refused to disturb the district court's central finding about officer safety, citing *Boyce*, even when Officer Ragusa never testified to provide both the context and the totality of the circumstances supporting why he included narcotics in his questioning, or why he then asked for consent to search. The panel thus asserted that his questioning was reasonably related to officer safety, focusing, it seems, on the initial question about the presence of weapons and narcotics. But that question was followed by the request for consent to search, which detoured the stop away from infraction-related tasks.

The difference between the outcome here and the four cases above (*Ross*, *Steinman*, *Pavao*, & *King*) more than demonstrates that officers in the Eleventh Circuit can ask about the presence of drugs under the guise of on-mission safety-related concerns and immediately springboard into an unrelated investigation. And they can do this without objectively reasonable safety concerns and without reasonable suspicion based on anything observed about the driver or the vehicle. This runs counter to *Rodriguez*, because it creates a way for officers to engage in the kind of unrelated investigatory tactic that in other circuits is known as a "Rodriguez moment." Moreover, the Eleventh Circuit's approach runs counter to *Mimms*, because while an officer can take a safety precaution without suspecting any foul play, a pat-down frisk or a search is what requires reasonable suspicion. The difference between this case and the other circuits is based purely on law; the factual distinctions are minimal and where they differ it still appears that Mr. Green's motion to suppress would have been granted outside of the Eleventh Circuit.

The importance of this issue cannot be overstated. There are thousands of traffic stops in the Eleventh Circuit that could produce a result just like this one, simply a few questions over the course of mere moments in the name of safety with no objective safety concern or reasonable suspicion required. Whether those affected will have the same recourse and protection as those in circuits where *Rodriguez* and *Mimms* are properly (and consistently) applied is a serious matter. This Court should not stand by. The Eleventh Circuit should not be permitted to deny Mr. Green his constitutional protection from unreasonable searches and seizures when it is apparent that other circuits would agree those rights were violated.

CONCLUSION

For the foregoing reasons, Mr. Green's petition for a writ of certiorari should be granted by this Court.

Respectfully submitted,



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