

EXHIBIT B

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 24-1293

United States of America

Appellee

v.

Billy Puckett

Appellant

Appeal from U.S. District Court for the Western District of Missouri - Springfield
(6:21-cr-03108-MDH-1)

ORDER

The petition for rehearing en banc is denied. The petition for panel rehearing is also denied.

Judge Kelly and Judge Grasz would grant the petition for rehearing en banc.

GRASZ, Circuit Judge, dissenting from the denial of rehearing en banc.

The Federal Rules of Appellate Procedure suggest en banc review is warranted if one of four criteria is satisfied. Fed. R. App. P. 40(b)(2). While I believe the petition in this case meets all four, satisfaction of two of the criteria is readily apparent. First, the petition involves a question of exceptional importance—the proper application of the Fourth Amendment in traffic-stop cases, and specifically, whether *Rodriguez v. United States*, 575 U.S. 348 (2015), prohibits an

officer conducting a traffic stop from diverting from the mission of the stop to start an unrelated criminal investigation that extends the stop unless that investigation is supported by reasonable suspicion. *See* Fed. R. App. P. 40(b)(2)(D). Second, the panel decision conflicts with the authoritative decision of another circuit. *See United States v. Campbell*, 26 F.4th 860, 885 (11th Cir. 2022) (en banc) (determining it was a violation of the Fourth Amendment for an officer to ask investigatory questions unrelated to the purpose of the traffic stop, which “extended the stop by approximately twenty-five seconds”); Fed. R. App. P. 40(b)(2)(C). In fact, it appears to conflict with a majority of all the other circuits. *See United States v. Frazier*, 30 F.4th 1165, 1180 (10th Cir. 2022); *United States v. Whitley*, 34 F.4th 522, 529–32 (6th Cir. 2022); *United States v. Hurtt*, 31 F.4th 152, 161–63 (3d Cir. 2022); *United States v. Reyes*, 24 F.4th 1, 18–19 (1st Cir. 2022); *United States v. Landeros*, 913 F.3d 862, 867–68 (9th Cir. 2019); *United State v. Gomez*, 877 F.3d 76, 90–92 (2d Cir. 2017).

Analysis of the other two criteria — whether the panel decision conflicts with a decision of the United States Supreme Court and other decisions of this court — is more complicated but, in my view, certainly justifies en banc consideration in this case. *See* Fed. R. App. P. 40(b)(2)(A)–(B).

In *Rodriguez*, the Supreme Court rejected our circuit’s then-existing “*de minimis* intrusion” standard for Fourth Amendment challenges to traffic stops. *Rodriguez*, 575 U.S. at 357. The Court stated, “The critical question . . . is not whether [investigatory activity unrelated to the purpose of the traffic stop] occurs before or after the officer issues a ticket . . . but whether conducting the [unrelated investigatory activity] ‘prolongs’—*i.e.* adds time to—‘the stop.’” *Id.* This is a straightforward test. Accordingly, we subsequently recognized that any delay that adds time to the stop “to conduct investigatory actions unrelated to the purpose of the stop is impermissible unless it is supported by reasonable suspicion.” *United States v. Sanchez*, 955 F.3d 669, 674 (8th Cir. 2020) (quoting *Rodriguez*, 575 U.S. at 357). Elsewhere, we explained, “*Rodriguez* expressly 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.” *United States v. Callison*, 2 F.4th 1128, 1131 (8th Cir. 2021) (quoting *Rodriguez*, 575 U.S. at 350). We recognized that *Rodriguez* rejected “reasoning then followed in this circuit that *de minimis* extensions to traffic stops are acceptable to allow for dog sniffs or other investigative measures.” *Id.* at 1131.

In my view, the panel’s formulation of the standard in this case for determining whether an officer impermissibly prolonged a traffic stop nevertheless allows for *de minimis* extensions caused by unrelated criminal investigations. This cannot be reconciled with our prior statements in *Sanchez* and *Callison* or, more importantly, with the Supreme Court’s clearly-stated test in *Rodriguez*. According to the panel opinion, Trooper Rorie’s questioning passed constitutional muster because he “had not completed his traffic-stop related duties when he requested consent to search.” *United States v. Puckett*, 139 F.4th 730, 739 (8th Cir. 2025). Expanding on this concept, the opinion notes Trooper Rorie had not yet issued a citation, and his twenty seconds of questioning was “within the reasonable period of the traffic stop’s original purpose,” and “did not impermissibly prolong it.” *Id.* at 738–39. As I see it, this analysis ignores the pertinent question of whether the officer’s unrelated investigation delayed the completion of the traffic stop’s mission. Perhaps Trooper Rorie’s unrelated investigation did not extend the stop beyond the time frame of a “reasonable” traffic stop. But, under *Rodriguez*, the proper inquiry is whether the mission of the challenged stop itself would have been completed sooner had the officer not engaged in unrelated investigation. The panel’s focus on the length of a generic reasonable stop, rather than how long this stop should have taken, employs reasoning akin to that rejected by the Supreme Court in *Rodriguez*. The Supreme Court expressly rejected the notion that an officer can prolong a stop and conduct investigatory activity unrelated to the purpose of the stop if “the overall duration of the stop remains reasonable in relation to the duration of other traffic stops involving similar circumstances.” *Rodriguez*, 575 U.S. at 357. Here, Trooper Rorie paused his duties related to the purpose of the stop and began a new criminal investigation without reasonable suspicion. *See Puckett*, 139 F.4th at 735–36. The panel approved this detour unconnected to the purpose of the stop based on reasoning

similar to that rejected by *Rodriguez*. Regardless of whether the duration of the detour would fit within the time it takes to complete the mission of an average stop, there is no avoiding the fact the detour added time to the stop, which contradicts *Rodriguez*, 575 U.S. at 357. An officer does not get “bonus time” by “completing all traffic-related tasks expeditiously,” whether during the mission or afterwards. *See id.* Thus, in my view, the panel’s formulation of the test is not consistent with Supreme Court precedent. As we have previously recognized, “[a] delay that ‘prolongs—*i.e.*, adds time to—the stop’ . . . to conduct investigatory actions unrelated to the purpose of the stop is impermissible unless it is supported by reasonable suspicion.” *Sanchez*, 955 F.3d at 674 (quoting *Rodriguez*, 575 U.S. at 357). Our prior statement of the law is in accord with the majority of the other circuits and is true to *Rodriguez*. *See, e.g., Campbell*, 26 F.4th at 885.

Rehearing in this case would have allowed clarification of this question of exceptional importance and allowed us to address the disconnect between the panel’s analysis and *Rodriguez* as well as our statement of the law in *Sanchez*. I respectfully dissent.

July 29, 2025

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Susan E. Bindler