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IN THE SUPREME COURT OF THE UNITED STATES

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DENNYS RODRIGUEZ, :

Petitioner : No. 13-9972

v. :

UNITED STATES. :

- - - - - x

Washington, D.C.

Wednesday, January 21, 2015

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 11:22 a.m.

APPEARANCES:

SHANNON P. O'CONNOR, ESQ., First Assistant Federal Public Defender, Neb.; on behalf of Petitioner.

GINGER D. ANDERS, ESQ., Assistant to the Solicitor General, Department of Justice, Washington, D.C.; on behalf of Respondent.

1	C O N T E N T S	
2	ORAL ARGUMENT OF	PAGE
3	SHANNON P. O'CONNOR, ESQ.	
4	On behalf of the Petitioner	3
5	ORAL ARGUMENT OF	
6	GINGER D. ANDERS, ESQ.	
7	On behalf of the Respondent	25
8	REBUTTAL ARGUMENT OF	
9	SHANNON P. O'CONNOR, ESQ.,	
10	On behalf of the Petitioner	53
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 P R O C E E D I N G S

2 (11:22 a.m.)

3 CHIEF JUSTICE ROBERTS: We'll hear argument
4 next this morning in Case 13-9972, Rodriguez v. The
5 United States.

6 Mr. O'Connor.

7 ORAL ARGUMENT OF SHANNON P. O'CONNOR

8 ON BEHALF OF THE PETITIONER

9 MR. O'CONNOR: Mr. Chief Justice, and may it
10 please the Court:

11 The big issue that starts in this case is
12 whether, after completing the task related to a traffic
13 stop, whether an officer without individualized
14 suspicion can hold the driver for a dog sniff. The
15 specific question in this case is whether Officer
16 Struble was entitled to piggyback an already completed
17 traffic offense with probable cause on to that piggyback
18 -- on to that traffic offense for an investigation of
19 Mr. Rodriguez involving nothing more than a hunch. That
20 is the question of the case.

21 JUSTICE GINSBURG: But that remains -- that
22 wasn't reached by the court of appeals. The district --
23 the district court, as you pointed out, rejected the
24 argument that there was probable cause saying if nothing
25 more than a hunch. But that was not reviewed by the

1 court of appeals. So that would still be open.

2 MR. O'CONNOR: The -- the decision of the
3 court of appeals, Your Honor, absolutely, that was a de
4 minimis ruling. They did not reach the question as to
5 whether there was reasonable suspicion, and left it just
6 based on their ruling of -- of whether, in fact, this
7 was a de minimis action.

8 CHIEF JUSTICE ROBERTS: Counsel, do you
9 concede that this would be all right if the dog sniff
10 took place during the traffic stop? In other words,
11 let's say, there were, you know, two -- two policemen
12 there already. One says, I'm going to go write you a
13 ticket and while that's taking place, the other
14 policeman walks around with the dog. No problem with
15 that?

16 MR. O'CONNOR: There'd be no problem,
17 Mr. Chief Justice, if -- if, in fact, all of that was
18 done before the traffic ticket was written. If, in
19 fact, the dog was written -- taken around the car prior
20 to the completion of the traffic stop and the ticket,
21 then, of course, it would be --

22 JUSTICE SOTOMAYOR: All right.

23 JUSTICE SCALIA: Mr. O'Connor --
24 Mr. O'Connor, it's frequent that a policeman, when he
25 stops somebody for a broken taillight or whatever, will

1 conduct some other inquiries, you know, where are you
2 going? Ask a lot of questions. He will -- he will
3 check whether the person is -- is driving a stolen car,
4 whether -- whether the person is properly licensed. All
5 of that has nothing to do with the broken taillight and
6 yet, that's permitted, right?

7 MR. O'CONNOR: Yes. Yeah.

8 JUSTICE SCALIA: Would it be permitted if he
9 did it after he wrote the ticket?

10 MR. O'CONNOR: It -- at that point in time,
11 no, he -- he would not --

12 JUSTICE SCALIA: Is that right? He -- he
13 can only do that before he writes the ticket.

14 MR. O'CONNOR: If assuming that --

15 JUSTICE SCALIA: What if he's not giving a
16 ticket, he's just going to give him a warning?

17 MR. O'CONNOR: When --

18 JUSTICE SCALIA: And he says to the man, you
19 shouldn't have done and you went a little bit over the
20 line. Be careful next time. By the way, let me -- let
21 me see your driver's license. That would be bad.

22 MR. O'CONNOR: Yes, Your Honor, that would
23 -- that would. It would be because that would be part
24 of the stop.

25 JUSTICE SCALIA: So --

1 MR. O'CONNOR: All -- all of those questions
2 would be -- once the stop is finished, then he should be
3 allowed to go no matter what the question was.

4 JUSTICE ALITO: Is it -- is it your argument
5 that -- that as soon as all of the steps that must be
6 taken in connection with the traffic stop are completed,
7 then the -- the stop must end? Or is it that nothing
8 more can be done after the ticket is issued? In other
9 words, is it the length of time or is it the formal act
10 of giving the ticket or the warning that -- that cuts
11 things off?

12 MR. O'CONNOR: Your Honor, it is the formal
13 act. Once the act of the traffic stop is done, which
14 would be the reason, which would be the purpose for the
15 stop, once that is done, that is the --

16 JUSTICE KENNEDY: Yes. But the -- the
17 "that" is done is -- is not clear. Two questions. In
18 Justice Scalia's hypothetical, the officer said, I'm not
19 going to give you a ticket, but I just want to ask you a
20 few questions. It seems to me that under your argument,
21 those questions are impermissible because he's made his
22 decision, he's not going to give a ticket.

23 On the other hand, as Justice Alito
24 indicated, suppose that he said, now, I finished your
25 ticket, but before I give it to you, I'm going to go

1 back to the police car and check to see if there are
2 warrants, is that all right?

3 MR. O'CONNOR: If it is the completion of
4 the --

5 JUSTICE KENNEDY: He says, I've finished
6 writing the ticket, I've folded my notebook, I'm going
7 to give you this ticket. But I'm first going to go back
8 and see if my radio check has come in to verify your
9 license plates. Is that permitted?

10 MR. O'CONNOR: If it is the end of the
11 traffic stop, it is not.

12 JUSTICE SOTOMAYOR: But first of all --

13 JUSTICE SCALIA: But that's what he was
14 asking.

15 JUSTICE SOTOMAYOR: -- these are
16 hypotheticals that have a wrong presumption, okay?
17 There are certain tasks involved in giving a traffic
18 ticket, correct?

19 MR. O'CONNOR: Yes, Your Honor. Yes.

20 JUSTICE SOTOMAYOR: And those include
21 checking for warrants, checking for tickets on the car,
22 checking identity, asking questions about that, and
23 generally with identity it also has to do with where are
24 you going and where are you coming from. Correct?

25 MR. O'CONNOR: Yes, Your Honor.

1 JUSTICE ALITO: And conducting a dog sniff.
2 That also, right?

3 JUSTICE SOTOMAYOR: I'm sorry?

4 CHIEF JUSTICE ROBERTS: Justice Sotomayor.

5 JUSTICE SOTOMAYOR: I didn't hear that.

6 My question for you -- and it can't be the
7 formal act of writing the ticket. It has to be the
8 formal -- it has to be the acts related to the mission.
9 When you finish those, that's when the stop ends.

10 MR. O'CONNOR: Yes, Your Honor, that is
11 exactly right.

12 JUSTICE SOTOMAYOR: Yes, but you've tied it
13 to just writing it -- handing over the ticket, but -- or
14 you're not even doing that, you're -- you're saying just
15 writing the ticket, which is crazy.

16 MR. O'CONNOR: If, in fact, that's -- that's
17 the impression that I gave, that -- that is wrong. It's
18 not -- the formal handing of the ticket is when the stop
19 is complete. Once the justification for the stop and
20 the purpose is complete, the ticket is done, whether it
21 is a warning, whether it is handed to them, at some
22 point in time the ticket is done and that's the
23 investigation of the stop.

24 JUSTICE SCALIA: Justice Sotomayor's
25 question assumes, and you apparently embrace the

1 assumption, that checking on whether you have a
2 private -- a proper license, checking whether the car is
3 stolen, all of these things are embraced within the
4 mission when the only basis for the stop is you have a
5 broken taillight. How does that have anything to do
6 with the broken taillight?

7 MR. O'CONNOR: Those are things, Your Honor,
8 that have been accepted as part of --

9 JUSTICE SCALIA: I see.

10 MR. O'CONNOR: -- the process.

11 JUSTICE SCALIA: Well, then maybe dog
12 sniffing should be too, right? Dog sniffing is
13 accepted, so long as it's done before what? Before
14 completion of --

15 MR. O'CONNOR: Before the completion of the
16 mission.

17 JUSTICE SCALIA: Which includes not just a
18 broken taillight, but also inquiring into your license,
19 inquiring into prior arrests? That's all part of the
20 mission?

21 MR. O'CONNOR: Yes, Your Honor, it is.

22 JUSTICE SCALIA: Why don't you make the dog
23 sniff part of the mission and that will solve the
24 problem?

25 MR. O'CONNOR: Well --

1 JUSTICE SCALIA: Part of the mission where
2 you stop somebody is not just the broken taillight, but,
3 you know, whether the car is stolen, whether you have
4 drugs on the car, so let's bring in a dog and do the car
5 sniff. I mean, you're willing to expand the mission to
6 everything up to but not beyond the dog sniff. Why do
7 you do that?

8 MR. O'CONNOR: You expand the mission, Your
9 Honor, for everything that comes within the tasks that
10 are part of the traffic stop. The dog sniff --

11 JUSTICE SCALIA: It's a broken taillight.
12 That's the only thing that comes within the traffic
13 stop. All the rest is added on. And you let them add
14 it on. Why do you let them add on the dog sniff? You
15 do so long as it occurs before the ticket is delivered;
16 is that right?

17 MR. O'CONNOR: You do if it's done before
18 the -- the traffic stop is done. Ticket would not be a
19 formal part of --

20 JUSTICE KENNEDY: But you see the problem is
21 how do you define the traffic stop, and you've already
22 indicated the traffic stop can include some of the
23 questioning. You're really, I think, much better off if
24 you stick with the formal rule. Once you hand the
25 ticket, that's the end of it. Then you have a formal

1 rule. You're not arguing that, and that leaves us open
2 to the question of why can't we include the dog sniff.

3 MR. O'CONNOR: Well, the dog sniff --

4 JUSTICE SOTOMAYOR: It's a policy question.
5 So answer -- answer it as a policy question. Don't tie
6 it to the stop or not. Tie it to something else.

7 MR. O'CONNOR: As a policy question, if you
8 could end it with the handing of the ticket, that would
9 be acceptable. If we tie -- if we tie the traffic
10 ticket as the end of the -- end of the justification for
11 the stop, then we --

12 JUSTICE ALITO: If we hold that it's okay to
13 have a dog sniff so long as it's before the ticket is
14 issued, then every police officer other than those who
15 are uninformed or incompetent will delay the handing
16 over of the ticket until the dog sniff is completed. So
17 what has that -- what does that accomplish?

18 MR. O'CONNOR: Well --

19 JUSTICE ALITO: I mean, it's great for your
20 client, but what does it do for the law?

21 MR. O'CONNOR: Your Honor, I think what it
22 does first, if you have officers that -- that wait, if
23 that's the -- if that's the question, Your Honor, if
24 they wait for the pocket, put the ticket in the pocket
25 for the dog --

1 JUSTICE ALITO: If we adopt a formal rule,
2 that's one of -- one of the options, a formal rule, once
3 you hand over the ticket, that's it, you can't do
4 anything more. The person has to be allowed to go. All
5 right? Is that your argument or not?

6 MR. KELLER: Yes. Yes, it is.

7 JUSTICE ALITO: That is your argument.

8 MR. O'CONNOR: Yes.

9 JUSTICE ALITO: Then what does it
10 accomplish?

11 MR. O'CONNOR: What it accomplishes is
12 the -- is the enforcement of the Fourth Amendment. Once
13 the stop is done, once the purpose is done, the
14 justification is done, the person should be free to go.

15 JUSTICE GINSBURG: But the question is, is
16 this -- is this very -- the easiest thing to get around
17 by simply saying, would the sequence in which I will do
18 this, I won't think of issuing the ticket until I've had
19 the dog sniff? So that's the problem. And what are you
20 accomplishing? Say, we make -- we make the handing over
21 the ticket the end of the legitimate stop.

22 JUSTICE SCALIA: Yes.

23 JUSTICE GINSBURG: Well, then the police can
24 just say, I'm going to defer that a few minutes until
25 the dog sniff occurs. It just seems that you're not

1 going to accomplish any protection for individuals if
2 that's your position, that -- that it was just a
3 question of when you do it. So if you do it during the
4 stop, before the ticket issued, it's okay and if you do
5 it two minutes after, it's not okay.

6 MR. O'CONNOR: Your Honor, it is -- it is
7 okay when the traffic stop is done. When the mission is
8 complete --

9 JUSTICE SCALIA: You can't possibly mean
10 that. You can't possibly mean that.

11 MR. O'CONNOR: Oh, yes, sir, I do.

12 JUSTICE SCALIA: The stopping officer says,
13 I'm done, I got my ticket here. It's all written out.
14 However, before I give it to you, I want to have a dog
15 sniff, I'm going to call in to headquarters. They're
16 going to send out a dog. It's going to take maybe 45
17 minutes. You just sit there because the traffic stop is
18 not -- is not terminated until I give you your ticket.
19 You're going to allow that?

20 MR. O'CONNOR: Well, again, if I -- if --
21 the formal -- the formal handing of the ticket is not
22 the end, in your example, Your Honor?

23 JUSTICE SCALIA: In my example, he hasn't
24 turned over the ticket yet. He says, I'm -- I'm not
25 going to give you the ticket until the dog comes and

1 that's going to take 45 minutes, and that's okay.

2 MR. O'CONNOR: No, the traffic stop is done.
3 Whether he hands the ticket to him at that point in
4 time, if the only reason --

5 JUSTICE SCALIA: He has not handed the
6 ticket over. He's -- he's kept the ticket.

7 MR. O'CONNOR: And the reason that he has
8 kept the ticket is for the dog to come.

9 JUSTICE SCALIA: Yeah.

10 MR. O'CONNOR: And -- but that is past
11 the -- that is past the traffic stop. The traffic
12 stop done --

13 JUSTICE SCALIA: So you're not -- you're not
14 applying a formal test. I thought you were saying it's
15 a formal test when you deliver the ticket is the
16 termination point, but it -- that's not right.

17 MR. O'CONNOR: No, that's -- no.

18 JUSTICE SCALIA: All right.

19 MR. O'CONNOR: The formal test --

20 JUSTICE SCALIA: So what is the test?

21 MR. O'CONNOR: The formal test --

22 JUSTICE SCALIA: How long a normal traffic
23 stop would take?

24 MR. O'CONNOR: The formal test -- no, your
25 Honor, that would not be the case at all. The formal

1 test is when the mission has been accomplished. If you
2 pull someone over for the traffic offense, and if, in
3 fact, you do all of the tasks that are necessary to
4 complete it, when it is completed, it is done.

5 CHIEF JUSTICE ROBERTS: What if the officer
6 says, I need to think about this for a while?

7 MR. O'CONNOR: Who?

8 CHIEF JUSTICE ROBERTS: What if the officer
9 says -- says, I need to think about this for a while?

10 MS. O'CONNOR: Well, whose --

11 CHIEF JUSTICE ROBERTS: The officer says, I
12 need to think about this for a while. I'm going to go
13 back and I'm going to ponder how long it took you. I'm
14 going to think about other tickets I've given in the
15 past, and, you know, the dogs are going to be here in
16 8 minutes. I think I need about 10 minutes to think
17 about it.

18 Is that -- is that okay, since he has not --
19 he hasn't written a ticket? He waits, you know, until
20 he's thought about it for a while to write the ticket.

21 MR. O'CONNOR: No, your Honor, that's --
22 that's not okay at all. If -- what has to happen is the
23 officer must be diligent. He must be diligent going
24 towards the investigation of the traffic stop.

25 And, again, I think we're putting -- and if

1 I'm the one that started the miss -- misleading of this,
2 I apologize. Handing of the ticket is not the end-all.
3 Handing of the ticket is when the tasks are done. I got
4 pulled over for a driving offense, then it -- it -- then
5 it is over.

6 In your example, Mr. Chief Justice, if he's
7 pondering, then he's not being diligent. If he's
8 pondering, you're not being diligent, then that's
9 when --

10 JUSTICE SCALIA: Gee, we ponder all the
11 time, and we think we're being diligent.

12 (Laughter.)

13 JUSTICE SCALIA: Pondering is not diligent.

14 MR. O'CONNOR: Unless the pondering is to
15 avoid the diligence, and that would be the question.
16 The question, then, is if -- if, in fact, the officer is
17 pocketing the ticket, he said, I'm going to wait until
18 the dog comes, you are then extending the time of the
19 stop; and it violates the rule that you have in the
20 laws.

21 JUSTICE SOTOMAYOR: You know, it really
22 looks --

23 CHIEF JUSTICE ROBERTS: You may have
24 answered this already, but I'm not sure.

25 Can he ask for the registration? Usually,

1 people have told me, when you're stopped, the officer
2 says, License and registration.

3 (Laughter.)

4 CHIEF JUSTICE ROBERTS: Is that okay?

5 MR. O'CONNOR: I've had -- I've had friends
6 that say -- say the same thing, Mr. Chief Justice.

7 Of course that's okay.

8 CHIEF JUSTICE ROBERTS: What about the
9 registration is pertinent to the traffic stop?

10 MR. O'CONNOR: Well, what's pertinent about
11 it is, part of the traffic stop is the vehicle itself as
12 well. Not only do you have the driver, but you're
13 looking at the driver, the driver's history, the car.
14 All of those things are part and parcel to the --

15 CHIEF JUSTICE ROBERTS: If you saw -- if you
16 saw --

17 MR. O'CONNOR: -- task towards the offense.

18 CHIEF JUSTICE ROBERTS: If you saw the car
19 swerve, what does that have to do with the car? The car
20 was just doing what the driver did. And I don't see why
21 you need the registration of the car.

22 MR. O'CONNOR: What you can do -- no, Your
23 Honor, I think -- Mr. Chief Justice, I think you do. I
24 think that is part of investigating the -- the --
25 traffic offense. Those are things that have been

1 accepted -- and "accepted" might -- might -- might not
2 be the right word -- adopted as things that you can do
3 in a traffic stop.

4 Now, there are certainly times when you go
5 beyond the traffic stop. And you have the Johnson case.
6 If, in fact, you go beyond the -- the -- the traffic
7 stop even measurably beyond it, then you have violated
8 the -- the -- the driver's rights, and it is
9 unconstitutional. The question in that case occurred
10 during the traffic stop.

11 JUSTICE GINSBURG: Mr. O'Connor, is this
12 particular traffic violation, was that an arrestable
13 offense?

14 MR. O'CONNOR: No. Under Nebraska law, no,
15 Your Honor, it was not.

16 JUSTICE GINSBURG: It was not.

17 MR. O'CONNOR: It's a traffic infraction.

18 JUSTICE GINSBURG: Because if it was an
19 arrestable offense, they could arrest the driver and
20 then impound the car and do an inventory search.

21 MR. O'CONNOR: If it was an arrestable
22 offense, yes, Your Honor, I think that's correct.

23 JUSTICE GINSBURG: But you say it's not an
24 arrestable offense.

25 MR. O'CONNOR: It is not. And regardless, I

1 mean, he was -- see, here's the -- here's the -- what we
2 do know about this case: Not only do we know the
3 mission is done because of the tasks that were
4 completed, you have the officer that says, I've done the
5 tasks, everything that needs to be done with this
6 offense or with this -- with this traffic stop is
7 finished. It's finished. There's no question about
8 that.

9 Then there's no more justification. In
10 order for the driver to be continued to be detained,
11 there must be new justification or consent, which you
12 did not get in this case; but you must let the driver go
13 because you are acting in, you are finished with the
14 traffic stop, you are finished with the reason that he
15 was detained in the first place, the purpose: Going
16 across the fog line.

17 JUSTICE SOTOMAYOR: Can I just ask you a
18 simple question? Yes, we've permitted a dog search; but
19 in the cases that we have, Caballes and others, it was
20 done simultaneous with the traffic stop. Correct?

21 MR. O'CONNOR: Correct.

22 JUSTICE SOTOMAYOR: You said in your brief:
23 A dog sniff is not a police entitlement to which the
24 Fourth Amendment limits must bend.

25 Is there a line that we should draw at how

1 long citizens should be kept by the side of the road?

2 MR. O'CONNOR: I think that the --

3 JUSTICE SOTOMAYOR: All right. So announce
4 what that line is. That's what I think everybody's been
5 asking you.

6 MR. O'CONNOR: The line is when -- I can --
7 I can start off with -- with, perhaps, the Johnson case
8 again. When the stop is basically -- when the stop is
9 done --

10 JUSTICE SOTOMAYOR: Why don't you just do a
11 simple test?

12 MR. O'CONNOR: I can give you --

13 JUSTICE SOTOMAYOR: If you're going to do a
14 -- if you're going to do a stop, you can't reasonably
15 extend or pass the time it takes to deal with a ticket,
16 correct?

17 MR. O'CONNOR: I think that --

18 JUSTICE SOTOMAYOR: That would be the simple
19 rule.

20 MR. O'CONNOR: I think that the simple rule,
21 if I -- if I may propose one, is the same one that
22 Professor LaFave has -- has proposed about a traffic
23 stop or a simple stop.

24 Basically what you do is the officer sees
25 the infraction; the officer pulls the person over; the

1 officer tells the person what the infraction is; he does
2 the license; he does the registration, runs the car.
3 Then when it's done, he gives him the ticket, the
4 warning ticket.

5 That is the end of the traffic stop.
6 There's no other reason to hold the person after that
7 point in time.

8 JUSTICE KENNEDY: You say he "runs the car."
9 He puts the license plate into the radio and waits for
10 the report from the station as to whether or not the
11 license is okay?

12 MR. O'CONNOR: Yes, Your Honor.

13 JUSTICE ALITO: Why is that part of the
14 mission and the dog sniff is not? That's the question.

15 If you're not going to have a formal rule,
16 you have to explain why -- somebody's pulled over for a
17 broken taillight, why the -- adding any time to the stop
18 in order to do a records check is part of the mission
19 but the dog sniff is not.

20 I mean, I could understand the rule, you
21 pull somebody over for a broken taillight, maybe you get
22 the registration to make sure you write out the ticket
23 to the right person. Then you give him the ticket, and
24 that's it.

25 No -- no time for the records check. What

1 does the records check have to do with pulling somebody
2 over for a broken taillight? I can understand that, but
3 is that your argument?

4 MR. O'CONNOR: Well, if that is -- that is
5 part of what the courts have accepted as part of the
6 stop. You are looking at the vehicle itself.

7 Now, the dog, Your Honor, is different. The
8 dog is different because the dog is not a task
9 related -- what the courts have accepted as related to a
10 traffic stop. It is a collateral offense -- or a
11 collateral event where you have the dog sniff and do
12 nothing more than look for drugs, any nothing more than
13 that.

14 JUSTICE ALITO: I mean, your answer is -- I
15 don't want to interrupt. Your answer is that the courts
16 have accepted that you can go -- you can prolong this a
17 little bit to do a records check. But then you have to
18 explain why the dog sniff is different.

19 MR. O'CONNOR: You're not prolonging it,
20 Your Honor, to do a records check. That is part of the
21 stop. As long as the person, the officer, is diligently
22 working towards the mission --

23 JUSTICE GINSBURG: Why -- why is it part?
24 As the question he has suggested, it's unrelated to the
25 traffic stop. You're looking to see if this person has

1 a record, committed other crimes, for example. What has
2 that got to do with whatever the traffic --

3 MR. O'CONNOR: No.

4 JUSTICE GINSBURG: -- infraction is? Not
5 stopping at a stop sign, what has checking to see if the
6 defendant has a criminal record got to do with that?

7 MR. O'CONNOR: That is something that the --
8 that the courts are looking at as to whether that is
9 something that you should be able to do. The courts
10 have generally accepted that.

11 What I can come back, and in this particular
12 case is not something that happened in this case,
13 because it is clear-cut. Now, that issue is extremely
14 important, but is something that I don't think can be
15 done today.

16 CHIEF JUSTICE ROBERTS: He can -- I mean,
17 one reason I think they do the records check, the
18 officer needs to know who he's dealing with. I think
19 one of the higher incidences of when officers are shot
20 or wounded is when they make a traffic stop.

21 So if you run the registration, you see it's
22 a stolen car, you need to know that before you go back
23 and deal with the driver and other occupants.

24 What if the police officer determines that
25 he's -- he's concerned about that, either as a general

1 matter or as a specific matter. He takes the license
2 and registration, but he's not going to go back to the
3 car until he has backup. Okay?

4 So he calls ahead and said, I would -- you
5 know, I would like backup. And the person says, you
6 know, it's going to take 25 minutes, and he says, fine.

7 Is that a legitimate reason? The traffic
8 stop isn't over, because he's -- he doesn't want to go
9 back because he's alone and he doesn't know who these
10 guys are.

11 MR. O'CONNOR: That is a legitimate reason.

12 CHIEF JUSTICE ROBERTS: So he can call back.
13 Now -- now, okay, what if the backup is a canine unit?
14 The canine unit gets there, you've told us it hasn't
15 been prolonged, and as the officer goes up to give him
16 the warning the dog walks around the car. Is that all
17 right?

18 MR. O'CONNOR: I think that that is all
19 right. And the reason that it's all right is because
20 you have the diligence of the officer. Officer safety
21 is certainly a reason to ask for backup. Once the
22 backup is there, the officer then completes the traffic
23 offense, everything is done, and before that, the dog
24 has run around, I don't think that there is a problem
25 with that, because the delay was for a legitimate

1 reason, not putting the ticket in -- in your pocket.

2 If there are no further questions, I will
3 request the remaining for rebuttal.

4 CHIEF JUSTICE ROBERTS: Thank you. Thank
5 you, counsel.

6 Ms. Anders.

7 ORAL ARGUMENT OF GINGER D. ANDERS

8 ON BEHALF OF RESPONDENT

9 MS. ANDERS: Mr. Chief Justice, and may it
10 please the Court:

11 In order to avoid the arbitrary results that
12 Petitioner's bright-line rule would -- would impose on
13 traffic stops, a dog sniff conducted during a traffic
14 stop should be subject to a reasonableness analysis.
15 Whether the --

16 JUSTICE SOTOMAYOR: How long is reasonable?
17 You keep saying in your -- in your papers you have to
18 look at the totality of the circumstances, but I don't
19 know what that means. I think that keeping me most of
20 the time, and Chief, I've been stopped -- keeping me
21 past --

22 MS. ANDERS: So have I.

23 JUSTICE SOTOMAYOR: Keeping me past giving
24 me the ticket is annoying as heck whether it's 5
25 minutes, 10 minutes, 45. But how do you define de

1 minimis? What are the circumstances that would make any
2 difference be -- in holding somebody 5 minutes or 45?
3 It all has to do with your needs, not the passenger's
4 needs.

5 MS. ANDERS: Well, if I could explain what
6 the reasonableness approach is. First of all, it's
7 not -- it's not a strict de minimis approach that
8 focuses just on the amount of time in isolation. It's
9 a -- it's a question about the objective reasonableness
10 of the length of the stop. And we think that --

11 JUSTICE SOTOMAYOR: To accomplish what?
12 Break into -- go into their home and search their home?
13 Is that okay?

14 MS. ANDERS: The reasonable length of a stop
15 is the amount of time that it -- a stop is reasonable,
16 even if it includes a dog sniff, if its duration is
17 within the amount of time -- the range of reasonably --
18 reasonable, routine traffic stops that don't involve dog
19 sniffs. So we're talking about a length of time that is
20 still tethered to the traffic violation purpose of the
21 stop.

22 So in addition to not exceeding the sort of
23 heartland of -- of routine traffic stop durations, the
24 officer also has to be reasonably diligent which means
25 that he needs to be focused overall.

1 JUSTICE SCALIA: What's the heartland of
2 routine traffic stops? You have a minute criteria?
3 What is it, half an hour?

4 MS. ANDERS: I think within the universe of
5 routine traffic stops, there's a range. I mean, the
6 courts have applied a reasonableness analysis to routine
7 traffic stops for 30 years. There is --

8 JUSTICE SCALIA: What is it? What is it? I
9 want to know what it is so I can complain when it's
10 longer.

11 (Laughter.)

12 MS. ANDERS: Well, it depends on the
13 circumstances that are presented during the stop. So
14 for instance, a stop might reasonably take longer if
15 there are more people in the car so that the officer has
16 to check the -- the criminal histories of more people in
17 the car. He has to be more worried about officer
18 safety. It --

19 JUSTICE SCALIA: How many minutes when there
20 are three people in the car?

21 MS. ANDERS: The courts -- courts
22 asserted --

23 JUSTICE SCALIA: I mean, you've got to pick
24 a minute. Don't you have to pick a minute sooner or
25 later to decide these cases?

1 MS. ANDERS: No, I think in -- in every --
2 in every case the Court -- the Court has to look to the
3 totality of the circumstances presented.

4 JUSTICE SCALIA: And pick a minute.

5 MS. ANDERS: And so it's not possible to
6 pick a minute in the abstract because even -- as this
7 Court said in --

8 JUSTICE SCALIA: What more do you need?
9 There are three people in the car and he's stopped for a
10 broken taillight.

11 MS. ANDERS: Well, as we said in our brief,
12 when that situation occurs, courts have upheld stops of
13 up to, you know, 35 minutes, something like that.

14 JUSTICE BREYER: The problem -- I have a
15 great idea. Why don't we say, taking your test, that
16 the stop, you can -- you can do it, you know, whatever
17 is normal there, but it cannot be prolonged more than
18 the time reasonably required to complete the mission,
19 which happens to be giving a temporary -- a traffic
20 ticket. Or we could say it cannot last longer than is
21 necessary to effectuate the purpose of the stop.

22 What an original idea I had. It happens to
23 be language from two cases that we've already said. And
24 are you saying anything different? I don't think so.
25 If so, what? And if not -- since this is a case where

1 apparently the lower courts have said it did last longer
2 than was reasonably necessary because the policeman
3 said, that's why I -- I mean, in effect said, according
4 to the judge -- Hey, I called the dog after the stop was
5 over, or something like that -- we cite those two cases,
6 say those are the tests. Affirm -- or reverse, I guess;
7 QED. Good-bye, we say, to all the litigants, and hope
8 that you are happy.

9 Now, when -- when -- when I hear you say
10 that it sound -- what you've said sounds -- sounds
11 that's what you think we should do.

12 MS. ANDERS: We think --

13 JUSTICE BREYER: But I suspect you don't,
14 but I want to know why.

15 MS. ANDERS: Well, we think the amount of
16 time reasonably required to complete the traffic stop
17 is -- is the duration it takes, looking toward --
18 looking to other similar stops, it's the duration
19 that --

20 JUSTICE BREYER: It is the time necessary to
21 effectuate the purpose of the stop or it is the time
22 that is reasonably required to complete the mission. We
23 can't do better than that. How can we? We are not
24 traffic policemen, and our experience on stops comes
25 from, unfortunately, being the stoppee rather than the

1 stopper.

2 MS. ANDERS: Right. And a stop can fall
3 within that reasonably required time frame --

4 JUSTICE BREYER: Yeah.

5 MS. ANDERS: -- even if it includes some
6 delay that is attributable to --

7 JUSTICE BREYER: Of course, if it's in the
8 middle of it, you call the dog and so forth, but you
9 can't prolong it beyond the time reasonably necessary.
10 Now, I've said that several times. I think you may
11 agree with that.

12 MS. ANDERS: No, it --

13 JUSTICE BREYER: And then if you do agree
14 with it, here, it was prolonged more than reasonably
15 necessary -- at least that's what they found -- end of
16 case. Now --

17 MS. ANDERS: I think looking -- looking to
18 whether the dog sniff occurs before or after the traffic
19 ticket is given will accord dispositive significance to
20 the officer's sequencing decision when he gives the
21 ticket. As I understand Petitioner's position, it is
22 that if, in the midst of a traffic stop that, say, lasts
23 10 minutes, the officer spends 1 minute on a dog sniff,
24 that is okay even though it has incrementally --

25 JUSTICE BREYER: Yeah, that's right --

1 MS. ANDERS: -- increased the length of the
2 stop. But then you have that very same stop where the
3 officer gives the ticket first and then adds a minute
4 for a dog sniff --

5 JUSTICE BREYER: There are a lot of
6 problems --

7 MS. ANDERS: -- 11-minute stops and --

8 JUSTICE BREYER: There are a lot of problems
9 with any rule based on reasonableness, and, of course,
10 there will be difficult problems. But here we've said
11 twice that once the stop is over, i.e., goes beyond the
12 time reasonably necessary to complete the mission, you
13 cannot call in the dogs; and before, you can.

14 Now, of course there will be anomalies in
15 that respect. Of course there can be bad-faith
16 exercises. Of course there can be confusion as to which
17 is which. But that's inevitable in the situation and we
18 can't do anything about it.

19 Now, what can you suggest that would just
20 help us and show we could do something about it?

21 MS. ANDERS: Well, I think it's a pretty
22 serious anomaly when --

23 JUSTICE BREYER: Well, it may be --

24 MS. ANDERS: -- when --

25 JUSTICE BREYER: -- but I'm asking you

1 what -- what is it that we could say better than the
2 language of the two cases? I mean, I'm not -- I'm not
3 denying there is a problem with what you just said;
4 there is. You might do it -- decide to do this
5 beforehand and do all kinds of excuses. You know,
6 people every day of the week make up reasons, they go
7 about -- but if you want a better rule than the one laid
8 down in the two cases, what?

9 MS. ANDERS: Well, I think there are two
10 ways to understand the language in the two cases you're
11 referring to in Caballas. One is, as I think you're
12 suggesting, that the time reasonably required to
13 complete the traffic violation means that time and
14 nothing else, so that any delay attributable to a dog
15 sniff as opposed to other --

16 JUSTICE BREYER: No, I don't think you have
17 to do that. I mean, you know, you get into arguments
18 about it; was it reasonably necessary or not? It's the
19 cannot be prolonged beyond the time what is reasonably
20 necessary. It is difficult sometimes --

21 MS. ANDERS: Well, the one --

22 JUSTICE BREYER: -- to decide what is
23 reasonably necessary.

24 MS. ANDERS: One -- once we accept that --
25 that a stop can be incrementally prolonged for purposes

1 of a dog sniff if that dog sniff occurs during the stop,
2 so that the officer is doing nothing but that dog sniff,
3 he's adding a 1-minute to a 10-minute dog sniff, then
4 the question would be whether that 11-minute total stop
5 is reasonable. Then that's the exact same intrusion
6 that would occur if the officer decided to do all of the
7 traffic-related tasks first, that took 10 minutes, and
8 then he did a dog sniff immediately afterwards. That's
9 an 11-minute traffic stop.

10 JUSTICE KAGAN: Can I just --

11 MS. ANDERS: It's exactly the same intrusion
12 and it should be subject to a reasonableness analysis.

13 JUSTICE KAGAN: Could I just get a little
14 clarification on your argument? If I understand what
15 you've been saying, you are accepting the idea, aren't
16 you, that the dog sniff is something that's extraneous
17 to the mission of the stop; is that correct?

18 MS. ANDERS: We're not suggesting that it
19 is -- it is an ordinary incident of the traffic stop
20 that you'd have to take time to stop --

21 JUSTICE KAGAN: It's not an ordinary
22 incident.

23 MS. ANDERS: But since the Court said in
24 Caballas that a dog sniff is permissible to perform at
25 stops sometimes, we think that the analysis as to when

1 it is permissible --

2 JUSTICE KAGAN: Wait, I'm not getting there
3 yet. I just want to understand -- because that's not
4 what the questions are focused on, like, what is a stop?
5 What's the mission of the stop? What's entailed in a
6 normal stop? And you're not contesting that a dog sniff
7 is not something that's entailed in a normal stop even
8 though there might be occasions where you can do a dog
9 sniff attendant to a stop.

10 MS. ANDERS: I think that's right, but as
11 other members of the Court have suggested, once there's
12 probable cause to stop someone for --

13 JUSTICE BREYER: What about --

14 JUSTICE SCALIA: Suppose you have a police
15 department that -- it's in a small state, they have --
16 every -- every police cruiser has a -- has a canine, and
17 they make it just -- just as common to, you know, to
18 check on the -- the license plate, call in to see if a
19 person has any -- any prior convictions. So, also, they
20 always take the dog around the car.

21 MS. ANDERS: I think it would be --

22 JUSTICE SCALIA: It's a routine part of --
23 of a traffic stop.

24 MS. ANDERS: It would be permissible for
25 them to do that as long as in each stop, it fell within

1 the reasonable amount of time that -- that it would take
2 for a routine traffic stop if the officer --

3 JUSTICE SCALIA: Including the time for the
4 dog sniff.

5 MS. ANDERS: I think we would -- we would
6 not include the time for a dog sniff --

7 JUSTICE SCALIA: Ah.

8 MS. ANDERS: -- in the baseline that we
9 would use.

10 JUSTICE SCALIA: Why not? Why not?

11 MS. ANDERS: Well, I think -- I think -- I
12 think it --

13 JUSTICE SCALIA: That -- that's what a
14 routine traffic stop is for that jurisdiction.

15 MS. ANDERS: Well, I think our point is that
16 once there's probable cause to perform a set of
17 legitimate investigative inquiries, then if the officer
18 can do other investigations during that time such as a
19 dog sniff or unrelated questionings, then it ought to be
20 constitutionally reasonable to do that. And that's what
21 actually the Courts of Appeals for the most part have
22 held with respect --

23 JUSTICE BREYER: Okay. But that's where --
24 I thought that position that I've tried to -- let me
25 state it more clearly, I think. It is unlawful to have

1 the dog sniff where the dog sniff unreasonably prolongs
2 the stop, is that -- does -- is that okay if I write --
3 with the government -- if I write those words in an
4 opinion?

5 MS. ANDERS: That's right. But we don't
6 think that a dog sniff performed right after the ticket
7 per se unreasonably prolongs the stop. And if I could
8 give you a hypothetical that --

9 JUSTICE BREYER: Ah. Well, how -- if the
10 ticket-writing is over and there is nothing else to do
11 and the policeman says, hey, this is over, at that point
12 has it not unreasonably prolonged the stop if the sniff
13 takes place afterwards?

14 MS. ANDERS: I don't think so. I mean, just
15 imagine --

16 JUSTICE BREYER: Because?

17 JUSTICE SCALIA: Because that takes only two
18 minutes and that's not unreasonable, right?

19 MS. ANDERS: That's right. And it doesn't
20 take into account how he stops --

21 JUSTICE SCALIA: Big deal. The dog walks
22 around the car for two minutes. That's --

23 CHIEF JUSTICE ROBERTS: It's only a
24 violation of the Fourth Amendment for two minutes,
25 right?

1 (Laughter.)

2 CHIEF JUSTICE ROBERTS: I mean, the reason I
3 don't understand -- I don't understand when you're
4 talking about prolonging the stop, are you talking about
5 here's the amount of time that you are -- needed for the
6 traffic stop and you're allowed to prolong it sometime
7 after that? Or is it that the -- the sniff is part of
8 the time for the stop so you're not prolonging it at
9 all? You're including it, you're wrapping it up in the
10 stop.

11 MS. ANDERS: No, I think -- I think we -- we
12 admit that the -- that the dog sniff can prolong the
13 traffic stop, that it is not a routine part of every
14 single traffic stop. We're not trying to make that
15 argument. But I do think that just because a dog sniff
16 prolongs the traffic stop by some, you know, incremental
17 amount of time doesn't mean that the stop is per se
18 unreasonable.

19 JUSTICE SCALIA: It can prolong it a little
20 bit.

21 MS. ANDERS: It can prolong it a reasonable
22 amount of time --

23 JUSTICE GINSBURG: And what else -- what
24 else besides -- we have the extraneous dog sniff. It
25 doesn't relate to the traffic violation. What else?

1 Could -- could the police say, I've taken the time I've
2 needed to look into this traffic violation, but we're in
3 a high crime neighborhood, so I'd like to keep this
4 driver a bit longer so I can just interrogate him about
5 what other things he might have been doing. And it's
6 not going to take -- it's only going to take eight
7 minutes. But traffic stop, you've taken care of that.
8 And now instead of having the dog come, the police
9 officer says, I have a few questions I want to ask you.

10 MS. ANDERS: Yes. The Court held -- the
11 Court held in Arizona v. Johnson that that questioning
12 about an unrelated matter is not -- like a dog sniff --
13 it is not an independent Fourth Amendment intrusion.
14 So, again, I think the only interest at stake from the
15 individual's point of view is the interest against
16 unreasonable delay. And since that is the case, I think
17 that the officer can incrementally extend the stop so
18 long as the ultimate duration of the stop is --

19 JUSTICE GINSBURG: So you say that --

20 JUSTICE BREYER: Well, wait. Now, what
21 about this? See, I see your problem is, you said, well,
22 it can't prolong the stop, the traffic stop more than
23 reasonably -- you know, it has to be -- take the time
24 reasonably required to complete the mission. That's
25 what it says, complete the mission. So we have the

1 intermission prolongation, which has to be reasonable,
2 and we have complete the mission. So complete the
3 mission. Once the mission's completed, it's over.
4 That's language from the opinion, too. Complete,
5 complete. Good-bye. Over. At that point it becomes a
6 violation of the Fourth Amendment.

7 MS. ANDERS: And that would lead to
8 arbitrary results. And if I could just give you one
9 scenario where that could occur and then tell you why
10 practically officers often end up or need to do the dog
11 sniff after the tickets.

12 So the hypothetical that I propose is that
13 if you imagine you have two officers conducting a stop
14 and the first officer is explaining the ticket and
15 what's happening with the ticket to the person, to the
16 driver. While he's doing that, the second officer is
17 performing the dog sniff around the car. If the officer
18 who's explaining the ticket ends first and the dog sniff
19 takes another 30 seconds, I don't think there's any
20 reason to say that that stop, which maybe lasted a total
21 of ten minutes has -- has gone on for longer than
22 reasonably required to complete the traffic ticket.

23 JUSTICE SOTOMAYOR: Well, I have a -- I have
24 a real fundamental question, because this line drawing
25 is only here because we've now created a Fourth

1 Amendment entitlement to search for drugs by using dogs,
2 whenever anybody's stopped. Because that's what you're
3 proposing. And is that really what the Fourth Amendment
4 should permit?

5 MS. ANDERS: I don't think it's an
6 entitlement, Justice Sotomayor. I think once the Court
7 said in Caballes that -- that it is permissible in some
8 circumstances to perform a dog sniff during a traffic
9 stop, then --

10 JUSTICE SOTOMAYOR: Well, in some
11 circumstances. So why don't -- why don't we keep it
12 cabin to Caballes, which is when it's being done
13 simultaneous with writing the ticket. If it's not, then
14 it's unlawful.

15 MS. ANDERS: Well, because that leads to
16 arbitrary results as I was explaining with
17 Justice Breyer, I think in that hypothetical --

18 JUSTICE SOTOMAYOR: It's not arbitrary. The
19 Fourth Amendment is arbitrary by its nature. It says
20 you can't search unless you have probable cause to
21 search.

22 MS. ANDERS: Well, Petitioner's rule would
23 say that the hypothetical I proposed is impermissible in
24 every circumstance; that even a 30-second extension of a
25 short traffic stop is always unreasonable even if that

1 stop falls within the amount of time it usually takes to
2 do routine traffic stops --

3 JUSTICE KAGAN: Ms. Anders -- I'm sorry.
4 Please.

5 MS. ANDERS: -- and the officer is
6 reasonably diligent with respect to the traffic mission.

7 JUSTICE KAGAN: You know, I -- I think I
8 read Caballes differently than you. Here's what I think
9 agrees with you on and here's what I think Caballes
10 doesn't. Caballes definitely agrees with you on that a
11 dog sniff is not part of the traffic stop. So I think
12 that you and Caballes are definitely in the same place
13 there. And Caballes definitely says that even though a
14 dog sniff is not part of the mission of the traffic
15 stop, we're going to allow a dog sniff if the dog sniff
16 doesn't extend the traffic stop. It's like, you know,
17 there are two officers or there's some other reason why
18 you're not being detained a moment longer because of the
19 dog sniff and Caballes basically says, sure, no harm, no
20 foul on that one, right?

21 But then you're saying Caballes gives you
22 this extra leeway to detain people even though it is
23 longer than an ordinary traffic stop would take, and I
24 think that's just not right. I mean, I think that
25 reasonableness language in Caballes is all about -- it's

1 an extra limitation the Court says. It says, like,
2 don't think just because this officer was really slow
3 and it took a really long time to do the traffic stop,
4 and he was able because of that to get another officer
5 in and do a dog sniff and it was all with -- it's like
6 an additional limitation that, no, you have to be
7 diligent and you have to be reasonable in the way you
8 conduct the traffic stop. And if you're not, the dog
9 sniff can't come in even though it was conducted during
10 the time the traffic stop occurred. But it -- that's --
11 that's an additional constraint. It's not some kind of
12 extra leeway for the police officers to do things
13 outside the bounds of the traffic stop itself.

14 MS. ANDERS: Well, I think that's one way to
15 read Caballes's language. The reason we don't think
16 that that's the right way is that we know after Caballes
17 that a dog sniff is not an independent Fourth Amendment
18 intrusion. It's not a search. We also know that it
19 doesn't impose -- it doesn't violate any independent
20 scope limitation on traffic stops.

21 JUSTICE KAGAN: It is not a search, but
22 the -- but the theory of Caballes and of all of our
23 questions is that you can't -- and of all of our
24 cases -- is that you really can't detain somebody if you
25 don't have some kind of objective reasonable basis for

1 doing so. And that any detention -- and, you know, it
2 might be ten minutes or it might be five minutes or it
3 might be two minutes -- without that kind of basis is a
4 Fourth Amendment violation.

5 MS. ANDERS: But once the individual is
6 already being detained for a traffic stop on probable
7 cause, I think the implication of Caballes is that --
8 that if the dog sniff takes any time, then the intrusion
9 we're talking about is the incremental delay. It's a
10 temporal intrusion. And so from the individual's
11 perspective, her interest in -- it's the same in
12 avoiding the dog sniff as it is in avoiding a warrant
13 check or any other incident of a stop. It's the
14 interest against unreasonable delay. And so because
15 that's the case, we think the delays attributable to a
16 dog sniff should be treated like delays attributable to
17 a warrant check or anything else. They should be
18 subject to --

19 CHIEF JUSTICE ROBERTS: You say -- you've
20 said several times the phrase "incremental." My -- I
21 sense that it being less than, right? I mean, if the
22 actual traffic stop is 5 minutes, then you wouldn't say
23 a 15-minute dog sniff is incremental. So doesn't the
24 dog sniff have to be less than the traffic stop?

25 MS. ANDERS: I think that -- I think that

1 one of the things that courts should look to is the
2 relative proportion of time of the dog sniff to the rest
3 of the stop. And I -- the reason I think that is
4 relevant is that the officer -- this is the case in
5 routine traffic stops as well -- the officer has to be
6 reasonably diligent. And so, I think reasonably
7 diligent can take into account whether the officer is
8 predominantly working on resolving the traffic
9 violation. But if he is able to a dog sniff within a
10 reasonable amount of time and not have the traffic stop
11 exceed the duration of a reasonable, routine traffic
12 stop, then he ought to be able to do that.

13 CHIEF JUSTICE ROBERTS: Is that almost
14 always the case, that the dog sniff is going to take
15 longer than the traffic stop? I mean, I would assume
16 so. The officer says license and registration, goes
17 back, checks, comes back and gives you the ticket. The
18 dog sniff is something else altogether. Assuming the
19 dog is there, they've got to get -- you know, walk
20 around the car. If you're -- if it really has to be
21 incremental, I'm not sure -- it's hardly ever going to
22 be reasonable.

23 MS. ANDERS: Well, the dog sniff itself, I
24 think, is a matter of seconds. I think in the cases it
25 takes anywhere from 30 seconds to 90 seconds to do a dog

1 sniff. So it is something that can be an incremental
2 delay as I --

3 CHIEF JUSTICE ROBERTS: If the dog happens
4 to be there, I guess.

5 MS. ANDERS: Well, even in a situation where
6 the dog isn't there already, I mean, the officer calls
7 for the dog early enough and the dog arrives. I mean,
8 there are situations in cases -- we cited this in
9 Footnote 20 of our brief where you have the dog arriving
10 just as the officer is about to give the ticket. So
11 that is a scenario -- that that can occur.

12 And I do think there are several reasons why
13 an officer may want to give the ticket first and then do
14 the dog sniff immediately. And one of them is officer
15 safety. I think everything that an officer does during
16 a traffic stop, how he orders his tasks and how he
17 performs them, is infused with officer safety
18 considerations. And so it can be a safer thing to ask
19 -- to use the ticket, to explain the ticket as a non-
20 confrontational way of seeing about the car.

21 JUSTICE BREYER: Well, I see that. What
22 about -- another aspect is I was seeing it the way
23 Justice Kagan described it. And one virtue of that,
24 now, but you may not think it does work, is
25 administrative. What do you tell the police department?

1 Say, well, when you're in traffic stops can you use dogs
2 to sniff? Yeah, you can. But remember, once it's over,
3 the traffic stop, it's over, done, finished. And by the
4 way, if it isn't over yet, you still well may get into
5 trouble if you've unreasonably prolonged the stop just
6 to get the sniff.

7 Now, that seems pretty easy to explain.
8 It's fairly bright-line. And as soon as you get into
9 this other -- you know, just leaving it totally open,
10 there's no check, really, on the -- on the or not too
11 much of one. What -- you -- now, I'm putting that to
12 you to get your response.

13 MS. ANDERS: So as I understand it you're
14 saying that -- that, again, this is subject to a
15 reasonableness analysis, that the officer can do the dog
16 sniff and he can prolong the stop either before or after
17 --

18 JUSTICE BREYER: No, I was saying two parts.
19 Part one, traffic stoppers, you can use a dog sniff when
20 you stop, but not once the stop is over, period, unless
21 you have cause or something. And during the stop,
22 that's part two, you can't prolong it but for a reason.
23 You have to do it all within a reasonable time, okay?
24 You can't unreasonably prolong it to get your dog in.
25 See? You tell them those two things. Once you've told

1 them the two things, they've got it in their heads.

2 When this is over, good-bye dog.

3 MS. ANDERS: Well, it's not --

4 JUSTICE BREYER: When it's not over, they
5 better be careful not to unreasonably prolong it. Now,
6 they'll understand that, and it will be both protecting
7 what the Fourth Amendment protects and also, I think,
8 giving them enough leeway to conduct a traffic stop.

9 MS. ANDERS: Well, so that makes the
10 officer's sequencing decision entirely dispositive of
11 whether the dog sniff can occur. If it happens before
12 the stop, then it's fine; and after the stop, not. I
13 think that does create arbitrary results from the
14 perspective of the intrusion on the individual. But
15 from the officer's perspective, I think there's an
16 interest in officers having some leeway to sequence the
17 traffic stop.

18 JUSTICE SOTOMAYOR: But the way Justice
19 Breyer has said this -- what he's saying is you can't
20 unreasonably prolong. You can't hold a person any --
21 any measurable time that would allow to get the dog.
22 And, yes, it has to do with the resources of the police
23 department, but we can't keep bending the Fourth
24 Amendment to the resources of law enforcement.
25 Particularly when this stop is not -- is not incidental

1 to the purpose of the stop. It's purely to help the
2 police get more criminals, yes. But then the Fourth
3 Amendment becomes a useless piece of paper.

4 JUSTICE SCALIA: I didn't understand --

5 JUSTICE BREYER: I think if I take what I
6 said and take your answer, I have to say your answer is
7 right. It's just a bad effect of my rule. And -- and
8 the virtue of the, you know, the two-part rule is what
9 we said was the virtue of it. And it's like in many
10 cases; there just isn't much more to say. You have to
11 say, am I willing to run this -- they might purposely
12 change the sequence. They might, that's true. Somebody
13 might. And I don't know what to do about that. The
14 answer is I couldn't do anything about it.

15 MS. ANDERS: Well, we think there is a law
16 enforcement interest in officers having some leeway to
17 sequence the stop as they see fit. And I was explaining
18 the reasons that an officer might want to give a ticket
19 contemporaneously with or before doing a dog sniff.

20 JUSTICE SOTOMAYOR: Well, he said --

21 JUSTICE KAGAN: Suppose, Ms. Anders, that --
22 it's a hypothetical -- police pulls somebody over and
23 starts the process and then the police officer says, you
24 know, I'd like a cigarette break now? A cigarette
25 probably takes about as long as the dog sniff took in

1 this -- and just, you know, smokes a cigarette and he
2 goes back to work. All right? Would you say that that
3 was unconstitutional prolongation of the stop.

4 MS. ANDERS: Well, an officer always has to
5 be reasonably diligent. So at a certain point if the
6 officer takes breaks for no valid law enforcement
7 reason, that is going to be dilatory and so the stop
8 would become unreasonable.

9 JUSTICE KAGAN: Okay.

10 MS. ANDERS: But, so I --

11 JUSTICE KAGAN: So it would become
12 unreasonable because there he was, he wasn't doing
13 anything related to the mission of the stop. That's
14 true if he gave the ticket and then said, I want you to
15 stay while I take a cigarette break, or it's true if he
16 did it before he gave the ticket, either way.

17 I guess what I'm saying to you is I kind of
18 think it's the same thing, is that once you've
19 acknowledge that the dog sniff is something that's
20 extraneous to the stop itself -- it's obviously more
21 helpful to the police than a cigarette break -- but it's
22 extraneous to the stop itself -- then the same rules
23 apply as if the police officer had just taken a
24 moratorium on the stop in the middle in order to conduct
25 his own business.

1 MS. ANDERS: I think when a traffic stop is
2 occurring, when an officer has someone stopped, we don't
3 expect them to ignore potential evidence of criminal
4 behavior. In fact, we think they'd be remiss if they
5 did. And so we think that if the officer is able to do
6 a dog sniff within a reasonable time, and still is
7 reasonably diligent with respect to the traffic stop
8 violation, it ought to be constitutionally permissible.

9 JUSTICE KAGAN: But then you really are
10 saying because we have a reason to pull you over for a
11 traffic stop, that gives us some extra time to start
12 questioning you about other law enforcement-related
13 things and to do other law enforcement-related business.
14 And I never thought that that was the rule. I always
15 thought is that once the objective basis -- you know,
16 for the stop, dissipated, that was it.

17 MS. ANDERS: Well, I -- I think if you take
18 unrelated questioning, for instance, questioning about
19 other -- you know, other crime, other criminal activity,
20 I think there's a strong law enforcement interest in
21 officers having some leeway to pursue this within a stop
22 as long as it still is reasonable --

23 JUSTICE GINSBURG: You told me the officer
24 could do that. At least that's what I understood your
25 answer to be.

1 MS. ANDERS: That's right, the officer can
2 do that. And I think it's important that the officer
3 have some leeway so long as the overall time remains
4 reasonable. If you think about questioning -- if the
5 officer starts questions about where the person is going
6 and that kind of thing, you don't -- we don't want
7 officers to have to make finely-tuned judgements in the
8 moment about whether the next question he wants to ask
9 is sufficiently related to the traffic mission or not.
10 That's why we think there needs some leeway for the
11 officers to take some time to pursue -- to pursue the
12 things that they observe. As long as they can do that
13 within the amount of time that would be reasonable in a
14 routine traffic stop, then we think it should be
15 constitutionally reasonable to do that. And I would say
16 that I think the reasonableness analysis -- it allows
17 courts to calibrate based on the nature and severity of
18 the intrusion.

19 Under Petitioner's view, even a 30-second
20 extension of a traffic stop for a dog sniff would be
21 unreasonable in every case. But if you have a
22 reasonable analysis --

23 JUSTICE KAGAN: But what your -- where your
24 rule is going to lead to, Ms. Anders, is something along
25 the lines of, like, everybody will decide 30 minutes or

1 40 minutes, I think you say at one point in your brief,
2 is reasonable for a traffic stop. And if you see a
3 taillight violation, that's 40 minutes of free time for
4 the police officers to investigate any crimes that they
5 want, because they can do it all in the range of what
6 you've decided is kind of the reasonable traffic stop.

7 MS. ANDERS: I don't think that's how we
8 envision the analysis going, because the ultimate length
9 of time has to be within the duration of a routine
10 traffic stop that doesn't involve a dog sniff. And
11 that's going to vary based on the circumstances because
12 routine traffic stops, what's reasonable varies based on
13 the circumstances. So what we think courts can do is
14 they can look at what the officer actually did and they
15 can look to stops involving similar circumstances but
16 not dog sniffs, and determine whether the officer was
17 able to do the whole thing within a reasonable amount of
18 time.

19 I think that's essentially what the Court
20 contemplated in Ornelas, that with these Fourth
21 Amendment inquiries they're fact-specific, but, you
22 know, the harder cases will be appealed and -- and there
23 will start being guidelines, the courts can look to
24 similar indications.

25 We think the same thing can happen here, and

1 indeed it already has happened with respect to unrelated
2 questioning. There, the vast majority of the courts of
3 appeals have said that you can extend a traffic stop for
4 unrelated questioning, and the courts have looked to how
5 much time does the questioning take, how long is the
6 overall stop, and was the officer reasonably diligent
7 with respect to the traffic mission.

8 And we think the same thing should happen
9 here, whether the dog sniff is before or after the
10 ticket. That's the only rule that avoids arbitrary
11 results.

12 If there are no further questions --

13 CHIEF JUSTICE ROBERTS: Thank you,
14 Ms. Anders.

15 Mr. O'Connor, you have six minutes left.

16 REBUTTAL ARGUMENT OF SHANNON P. O'CONNOR

17 ON BEHALF OF THE PETITIONER

18 MR. O'CONNOR: Thank you.

19 Justice Breyer was much better than I said
20 it. I think the point was well made.

21 JUSTICE BREYER: Well, then, what do you
22 think about her response? Because I thought it was -- I
23 mean, she has an interesting point -- I mean, an
24 important point. She said, you know, the trouble with
25 what I said -- which of course you think is okay -- she

1 said it's -- it's -- here's what's really going to
2 happen, is that the police will -- will think: Gee, I
3 just better be sure those dogs get here in time, and so
4 what they'll do is tend to prolong the stops, and
5 they'll want to be sure the dogs get there.

6 And so if you really added all this up
7 and thought about it, even experimentally, the class of
8 stopped drivers where there are hunches is going to end
9 up waiting longer and being in custody, in a sense,
10 longer than if we follow her approach. And her approach
11 is just to say: Hey, apply reasonableness across the
12 board; a few extra minutes isn't that big a deal.

13 I took her answer to be something like that
14 and I thought it was, and it's a point. It's a -- it's
15 a point. So what do you think?

16 MR. O'CONNOR: Well, we hope that if you
17 look at officers' diligence there are things that will
18 help enforce that. One is the community. Will the
19 community start to accept 40-minute stops? Will the law
20 enforcement officer himself expect that, I'm going to
21 stop being a police officer for 2, 3, 4 minutes when
22 there's other things going on? I think that's very,
23 very, very significant.

24 Reasonableness -- reasonableness stops when
25 you have the stop end. At that point in time,

1 reasonableness has nothing more to do with it because
2 the person should be released until there is another
3 reason, another purpose for the stop, a reasonable
4 articulable suspicion, or you have consent. Otherwise,
5 it is done.

6 Here's the problem with the reasonableness.
7 There was the -- the statement that was made that it's
8 not reasonable, doesn't give the officers enough time.
9 We're not talking about the Fourth Amendment and the
10 officers and open season on the officers and what the
11 officers can do. We're talking about the Fourth
12 Amendment and the protections that it has on the driver.
13 You don't look at, well, it's only going to be a minute
14 longer if you do it this way. The Fourth Amendment
15 shuts it off when it is done.

16 JUSTICE ALITO: What do you say about the
17 questioning that took place in this case? Where are you
18 going? Are you going to buy a car someplace? All of
19 that, was that -- is that part of the mission?

20 MR. O'CONNOR: We didn't raise that, Your
21 Honor. Is that part of -- of the mission? It is
22 something that hasn't been -- that hasn't been
23 challenged. It has been accepted as being part of the
24 mission. I will tell you that's what the courts say,
25 that it has been accepted as part of the mission.

1 The -- I have lots of questions before as to what is
2 part of the mission and how far you go. That's for the
3 courts to -- to determine.

4 My response, Your Honor --

5 JUSTICE ALITO: Well, one of those courts is
6 this Court and what -- that's what I don't understand
7 about your position, is the definition of the mission.
8 I don't understand -- I can understand a definition that
9 says, just what you need to do to resolve the traffic
10 violation, period. But if it includes other things like
11 questioning about where are you going to buy a car and
12 all of that or doing a records check, then I really
13 don't see why. I want -- I want to know what the
14 difference is between that and having a dog -- a dog
15 sniff.

16 MR. O'CONNOR: Well, the other -- the other
17 things that are tasked in part of the traffic offense
18 where there is no doubt -- and that could be
19 questionable -- but there's no doubt that a dog sniff is
20 not part of the offense. That's collateral and it's
21 nothing but an -- an investigation.

22 Now, the other -- the last thing that --
23 that I would like to do, Justice Ginsburg, is an --
24 answer your question as to the Eighth Circuit, and the
25 Eighth Circuit did not make a decision as to the

1 probable cause. But you do have a court that did. The
2 trial level court did make that decision. It made the
3 decision that it was probable cause.

4 JUSTICE GINSBURG: It was only a hunch, but
5 that would ordinarily be reviewable by the court of
6 appeals. The court of appeals didn't get to it, so it's
7 an open question for the court of appeals.

8 MR. O'CONNOR: If it can go to the court of
9 appeals, but this is -- I mean, you have the question
10 that it was based on a hunch, but you give the
11 discretion to the magistrate who heard the evidence.
12 And the magistrate had a question as to the credibility
13 of this witness, and if you have a question as to the
14 credibility of the witness then there is not sufficient
15 facts to -- able to make a determination as to whether
16 in fact there is probable cause.

17 We would ask the Court to adopt the finding
18 that there is no probable cause. That is something that
19 you can do as a reviewing court, because the facts have
20 been established. We know that the -- that the judge
21 had problems with the credibility of the witness. The
22 facts that are left is not enough to -- to establish any
23 type of reasonable suspicion.

24 What we do for judicial economy is you make
25 the decision here, now, because the Eighth Circuit would

1 have to do the same thing. The Eighth Circuit would
2 have to make a decision based on the magistrate's
3 finding of lack of -- of credibility, and that's what I
4 would ask the Court to do today.

5 CHIEF JUSTICE ROBERTS: Thank you, counsel.

6 The case is submitted.

7 (Whereupon, at 12:23 p.m., the case in the
8 above-entitled matter was submitted.)

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19
20
21
22
23
24
25

A				
a.m 1:13 3:2	administrative 45:25	31:7,21,24	2:2,5,8 3:3,7	57:10 58:2
able 23:9 42:4	admit 37:12	32:9,21,24	3:24 6:4,20	baseline 35:8
44:9,12 50:5	adopt 12:1	33:11,18,23	12:5,7 22:3	basically 20:8
52:17 57:15	57:17	34:10,21,24	25:7 33:14	20:24 41:19
above-entitled	adopted 18:2	35:5,8,11,15	37:15 53:16	basis 9:4 42:25
1:11 58:8	Affirm 29:6	36:5,14,19	arguments	43:3 50:15
absolutely 4:3	agree 30:11,13	37:11,21 38:10	32:17	behalf 1:16,19
abstract 28:6	agrees 41:9,10	39:7 40:5,15	Arizona 38:11	2:4,7,10 3:8
accept 32:24	Ah 35:7 36:9	40:22 41:3,5	arrest 18:19	25:8 53:17
54:19	ahead 24:4	42:14 43:5,25	arrestable 18:12	behavior 50:4
acceptable 11:9	Alito 6:4,23 8:1	44:23 45:5	18:19,21,24	bend 19:24
accepted 9:8,13	11:12,19 12:1	46:13 47:3,9	arrests 9:19	bending 47:23
18:1,1 22:5,9	12:7,9 21:13	48:15,21 49:4	arrives 45:7	better 10:23
22:16 23:10	22:14 55:16	49:10 50:1,17	arriving 45:9	29:23 32:1,7
55:23,25	56:5	51:1,24 52:7	articulable 55:4	47:5 53:19
accepting 33:15	allow 13:19	53:14	asking 7:14,22	54:3
accomplish	41:15 47:21	announce 20:3	20:5 31:25	beyond 10:6
11:17 12:10	allowed 6:3 12:4	annoying 25:24	aspect 45:22	18:5,6,7 30:9
13:1 26:11	37:6	anomalies 31:14	asserted 27:22	31:11 32:19
accomplished	allows 51:16	anomaly 31:22	Assistant 1:15	big 3:11 36:21
15:1	altogether 44:18	answer 11:5,5	1:17	54:12
accomplishes	Amendment	22:14,15 48:6	assume 44:15	bit 5:19 22:17
12:11	12:12 19:24	48:6,14 50:25	assumes 8:25	37:20 38:4
accomplishing	36:24 38:13	54:13 56:24	assuming 5:14	board 54:12
12:20	39:6 40:1,3,19	answered 16:24	44:18	bounds 42:13
accord 30:19	42:17 43:4	anybody's 40:2	assumption 9:1	break 26:12
account 36:20	47:7,24 48:3	apologize 16:2	attendant 34:9	48:24 49:15,21
44:7	52:21 55:9,12	apparently 8:25	attributable	breaks 49:6
acknowledge	55:14	29:1	30:6 32:14	Breyer 28:14
49:19	amount 26:8,15	appealed 52:22	43:15,16	29:13,20 30:4
act 6:9,13,13 8:7	26:17 29:15	appeals 3:22 4:1	avoid 16:15	30:7,13,25
acting 19:13	35:1 37:5,17	4:3 35:21 53:3	25:11	31:5,8,23,25
action 4:7	37:22 41:1	57:6,6,7,9	avoiding 43:12	32:16,22 34:13
activity 50:19	44:10 51:13	APPEARAN...	43:12	35:23 36:9,16
acts 8:8	52:17	1:14	avoids 53:10	38:20 40:17
actual 43:22	analysis 25:14	applied 27:6		45:21 46:18
add 10:13,14	27:6 33:12,25	apply 49:23	B	47:4,19 48:5
added 10:13	46:15 51:16,22	54:11	back 7:1,7 15:13	53:19,21
54:6	52:8	applying 14:14	23:11,22 24:2	brief 19:22
adding 21:17	Anders 1:17 2:6	approach 26:6,7	24:9,12 44:17	28:11 45:9
33:3	25:6,7,9,22	54:10,10	44:17 49:2	52:1
addition 26:22	26:5,14 27:4	arbitrary 25:11	backup 24:3,5	bright-line
additional 42:6	27:12,21 28:1	39:8 40:16,18	24:13,21,22	25:12 46:8
42:11	28:5,11 29:12	40:19 47:13	bad 5:21 48:7	bring 10:4
adds 31:3	29:15 30:2,5	53:10	bad-faith 31:15	broken 4:25 5:5
	30:12,17 31:1	arguing 11:1	based 4:6 31:9	9:5,6,18 10:2
		argument 1:12	51:17 52:11,12	10:11 21:17,21

<p>22:2 28:10 business 49:25 50:13 buy 55:18 56:11</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>C 2:1 3:1 Caballas 32:11 33:24 Caballes 19:19 40:7,12 41:8,9 41:10,12,13,19 41:21,25 42:16 42:22 43:7 Caballes's 42:15 cabin 40:12 calibrate 51:17 call 13:15 24:12 30:8 31:13 34:18 called 29:4 calls 24:4 45:6 canine 24:13,14 34:16 car 4:19 5:3 7:1 7:21 9:2 10:3,4 10:4 17:13,18 17:19,19,21 18:20 21:2,8 23:22 24:3,16 27:15,17,20 28:9 34:20 36:22 39:17 44:20 45:20 55:18 56:11 care 38:7 careful 5:20 47:5 case 3:4,11,15 3:20 14:25 18:5,9 19:2,12 20:7 23:12,12 28:2,25 30:16 38:16 43:15 44:4,14 51:21 55:17 58:6,7 cases 19:19</p>	<p>27:25 28:23 29:5 32:2,8,10 42:24 44:24 45:8 48:10 52:22 cause 3:17,24 34:12 35:16 40:20 43:7 46:21 57:1,3 57:16,18 certain 7:17 49:5 certainly 18:4 24:21 challenged 55:23 change 48:12 check 5:3 7:1,8 21:18,25 22:1 22:17,20 23:17 27:16 34:18 43:13,17 46:10 56:12 checking 7:21 7:21,22 9:1,2 23:5 checks 44:17 Chief 3:3,9 4:8 4:17 8:4 15:5,8 15:11 16:6,23 17:4,6,8,15,18 17:23 23:16 24:12 25:4,9 25:20 36:23 37:2 43:19 44:13 45:3 53:13 58:5 cigarette 48:24 48:24 49:1,15 49:21 Circuit 56:24,25 57:25 58:1 circumstance 40:24 circumstances 25:18 26:1 27:13 28:3</p>	<p>40:8,11 52:11 52:13,15 cite 29:5 cited 45:8 citizens 20:1 clarification 33:14 class 54:7 clear 6:17 clear-cut 23:13 clearly 35:25 client 11:20 collateral 22:10 22:11 56:20 come 7:8 14:8 23:11 38:8 42:9 comes 10:9,12 13:25 16:18 29:24 44:17 coming 7:24 committed 23:1 common 34:17 community 54:18,19 complain 27:9 complete 8:19 8:20 13:8 15:4 28:18 29:16,22 31:12 32:13 38:24,25 39:2 39:2,4,5,22 completed 3:16 6:6 11:16 15:4 19:4 39:3 completes 24:22 completing 3:12 completion 4:20 7:3 9:14,15 concede 4:9 concerned 23:25 conduct 5:1 42:8 47:8 49:24 conducted 25:13 42:9 conducting 8:1 39:13</p>	<p>confrontational 45:20 confusion 31:16 connection 6:6 consent 19:11 55:4 considerations 45:18 constitutionally 35:20 50:8 51:15 constraint 42:11 contemplated 52:20 contemporane... 48:19 contesting 34:6 continued 19:10 convictions 34:19 correct 7:18,24 18:22 19:20,21 20:16 33:17 counsel 4:8 25:5 58:5 course 4:21 17:7 30:7 31:9,14 31:15,16 53:25 court 1:1,12 3:10,22,23 4:1 4:3 25:10 28:2 28:2,7 33:23 34:11 38:10,11 40:6 42:1 52:19 56:6 57:1,2,5,6,7,8 57:17,19 58:4 courts 22:5,9,15 23:8,9 27:6,21 27:21 28:12 29:1 35:21 44:1 51:17 52:13,23 53:2 53:4 55:24 56:3,5 crazy 8:15 create 47:13</p>	<p>created 39:25 credibility 57:12 57:14,21 58:3 crime 38:3 50:19 crimes 23:1 52:4 criminal 23:6 27:16 50:3,19 criminals 48:2 criteria 27:2 cruiser 34:16 custody 54:9 cuts 6:10</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>D 1:17 2:6 3:1 25:7 D.C 1:8,18 day 32:6 de 4:3,7 25:25 26:7 deal 20:15 23:23 36:21 54:12 dealing 23:18 decide 27:25 32:4,22 51:25 decided 33:6 52:6 decision 4:2 6:22 30:20 47:10 56:25 57:2,3,25 58:2 defendant 23:6 Defender 1:16 defer 12:24 define 10:21 25:25 definitely 41:10 41:12,13 definition 56:7,8 delay 11:15 24:25 30:6 32:14 38:16 43:9,14 45:2 delays 43:15,16 deliver 14:15 delivered 10:15 DENNYS 1:3</p>
---	---	--	---	--

<p>denying 32:3 department 1:18 34:15 45:25 47:23 depends 27:12 described 45:23 detain 41:22 42:24 detained 19:10 19:15 41:18 43:6 detention 43:1 determination 57:15 determine 52:16 56:3 determines 23:24 difference 26:2 56:14 different 22:7,8 22:18 28:24 differently 41:8 difficult 31:10 32:20 dilatory 49:7 diligence 16:15 24:20 54:17 diligent 15:23 15:23 16:7,8 16:11,13 26:24 41:6 42:7 44:6 44:7 49:5 50:7 53:6 diligently 22:21 discretion 57:11 dispositive 30:19 47:10 dissipated 50:16 district 3:22,23 dog 3:14 4:9,14 4:19 8:1 9:11 9:12,22 10:4,6 10:10,14 11:2 11:3,13,16,25 12:19,25 13:14 13:16,25 14:8</p>	<p>16:18 19:18,23 21:14,19 22:7 22:8,8,11,18 24:16,23 25:13 26:16,18 29:4 30:8,18,23 31:4 32:14 33:1,1,2,3,8,16 33:24 34:6,8 34:20 35:4,6 35:19 36:1,1,6 36:21 37:12,15 37:24 38:8,12 39:10,17,18 40:8 41:11,14 41:15,15,19 42:5,8,17 43:8 43:12,16,23,24 44:2,9,14,18 44:19,23,25 45:3,6,7,7,9,14 46:15,19,24 47:2,11,21 48:19,25 49:19 50:6 51:20 52:10,16 53:9 56:14,14,19 dogs 15:15 31:13 40:1 46:1 54:3,5 doing 8:14 17:20 33:2 38:5 39:16 43:1 48:19 49:12 56:12 doubt 56:18,19 draw 19:25 drawing 39:24 driver 3:14 17:12,13,20 18:19 19:10,12 23:23 38:4 39:16 55:12 driver's 5:21 17:13 18:8 drivers 54:8 driving 5:3 16:4</p>	<p>drugs 10:4 22:12 40:1 duration 26:16 29:17,18 38:18 44:11 52:9 durations 26:23</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>E 2:1 3:1,1 early 45:7 easiest 12:16 easy 46:7 economy 57:24 effect 29:3 48:7 effectuate 28:21 29:21 eight 38:6 Eighth 56:24,25 57:25 58:1 either 23:25 46:16 49:16 embrace 8:25 embraced 9:3 end-all 16:2 ends 8:9 39:18 enforce 54:18 enforcement 12:12 47:24 48:16 49:6 50:20 54:20 enforcement-r... 50:12,13 entailed 34:5,7 entirely 47:10 entitled 3:16 entitlement 19:23 40:1,6 envision 52:8 ESQ 1:15,17 2:3 2:6,9 essentially 52:19 establish 57:22 established 57:20 event 22:11 everybody 51:25 everybody's</p>	<p>20:4 evidence 50:3 57:11 exact 33:5 exactly 8:11 33:11 example 13:22 13:23 16:6 23:1 exceed 44:11 exceeding 26:22 excuses 32:5 exercises 31:16 expand 10:5,8 expect 50:3 54:20 experience 29:24 experimentally 54:7 explain 21:16 22:18 26:5 45:19 46:7 explaining 39:14,18 40:16 48:17 extend 20:15 38:17 41:16 53:3 extending 16:18 extension 40:24 51:20 extra 41:22 42:1 42:12 50:11 54:12 extraneous 33:16 37:24 49:20,22 extremely 23:13</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>fact 4:6,17,19 8:16 15:3 16:16 18:6 50:4 57:16 fact-specific 52:21</p>	<p>facts 57:15,19 57:22 fairly 46:8 fall 30:2 falls 41:1 far 56:2 Federal 1:15 fell 34:25 finding 57:17 58:3 fine 24:6 47:12 finely-tuned 51:7 finish 8:9 finished 6:2,24 7:5 19:7,7,13 19:14 46:3 first 1:15 7:7,12 11:22 19:15 26:6 31:3 33:7 39:14,18 45:13 fit 48:17 five 43:2 focused 26:25 34:4 focuses 26:8 fog 19:16 folded 7:6 follow 54:10 Footnote 45:9 formal 6:9,12 8:7,8,18 10:19 10:24,25 12:1 12:2 13:21,21 14:14,15,19,21 14:24,25 21:15 forth 30:8 foul 41:20 found 30:15 Fourth 12:12 19:24 36:24 38:13 39:6,25 40:3,19 42:17 43:4 47:7,23 48:2 52:20 55:9,11,14 frame 30:3</p>
--	---	--	--	---

free 12:14 52:3	56:2 57:8	28:22 45:3	hypotheticals	10:22
frequent 4:24	goes 24:15 31:11	47:11	7:16	indications
friends 17:5	44:16 49:2	happy 29:8	<hr/>	52:24
fundamental	going 4:12 5:2	harder 52:22	I	individual 43:5
39:24	5:16 6:19,22	harm 41:19	i.e 31:11	47:14
further 25:2	6:25 7:6,7,24	headquarters	idea 28:15,22	individual's
53:12	12:24 13:1,15	13:15	33:15	38:15 43:10
<hr/>	13:16,16,19,25	heads 47:1	identity 7:22,23	individualized
G	14:1 15:12,13	hear 3:3 8:5	ignore 50:3	3:13
G 3:1	15:14,15,23	29:9	imagine 36:15	individuals 13:1
Gee 16:10 54:2	16:17 19:15	heard 57:11	39:13	inevitable 31:17
general 1:18	20:13,14 21:15	heartland 26:23	immediately	infraction 18:17
23:25	24:2,6 38:6,6	27:1	33:8 45:14	20:25 21:1
generally 7:23	41:15 44:14,21	heck 25:24	impermissible	23:4
23:10	49:7 51:5,24	held 35:22 38:10	6:21 40:23	infused 45:17
getting 34:2	52:8,11 54:1,8	38:11	implication 43:7	inquiries 5:1
GINGER 1:17	54:20,22 55:13	help 31:20 48:1	important 23:14	35:17 52:21
2:6 25:7	55:18,18 56:11	54:18	51:2 53:24	inquiring 9:18
Ginsburg 3:21	good-bye 29:7	helpful 49:21	impose 25:12	9:19
12:15,23 18:11	39:5 47:2	hey 29:4 36:11	42:19	instance 27:14
18:16,18,23	government	54:11	impound 18:20	50:18
22:23 23:4	36:3	high 38:3	impression 8:17	interest 38:14
37:23 38:19	great 11:19	higher 23:19	incidences 23:19	38:15 43:11,14
50:23 56:23	28:15	histories 27:16	incident 33:19	47:16 48:16
57:4	guess 29:6 45:4	history 17:13	33:22 43:13	50:20
give 5:16 6:19	49:17	hold 3:14 11:12	incidental 47:25	interesting
6:22,25 7:7	guidelines 52:23	21:6 47:20	include 7:20	53:23
13:14,18,25	guys 24:10	holding 26:2	10:22 11:2	intermission
20:12 21:23	<hr/>	home 26:12,12	35:6	39:1
24:15 36:8	H	Honor 4:3 5:22	includes 9:17	interrogate 38:4
39:8 45:10,13	half 27:3	6:12 7:19,25	26:16 30:5	interrupt 22:15
48:18 55:8	hand 6:23 10:24	8:10 9:7,21	56:10	intrusion 33:5
57:10	12:3	10:9 11:21,23	including 35:3	33:11 38:13
given 15:14	handed 8:21	13:6,22 14:25	37:9	42:18 43:8,10
30:19	14:5	15:21 17:23	incompetent	47:14 51:18
gives 21:3 30:20	handing 8:13,18	18:15,22 21:12	11:15	inventory 18:20
31:3 41:21	11:8,15 12:20	22:7,20 55:21	increased 31:1	investigate 52:4
44:17 50:11	13:21 16:2,3	56:4	incremental	investigating
giving 5:15 6:10	hands 14:3	hope 29:7 54:16	37:16 43:9,20	17:24
7:17 25:23	happen 15:22	hour 27:3	43:23 44:21	investigation
28:19 47:8	52:25 53:8	hunch 3:19,25	45:1	3:18 8:23
go 4:12 6:3,25	54:2	57:4,10	incrementally	15:24 56:21
7:7 12:4,14	happened 23:12	hunches 54:8	30:24 32:25	investigations
15:12 18:4,6	53:1	hypothetical	38:17	35:18
19:12 22:16	happening	6:18 36:8	independent	investigative
23:22 24:2,8	39:15	39:12 40:17,23	38:13 42:17,19	35:17
26:12 32:6	happens 28:19	48:22	indicated 6:24	involve 26:18

<p>52:10 involved 7:17 involving 3:19 52:15 isolation 26:8 issue 3:11 23:13 issued 6:8 11:14 13:4 issuing 12:18</p> <hr/> <p style="text-align: center;">J</p> <p>January 1:9 Johnson 18:5 20:7 38:11 judge 29:4 57:20 judgements 51:7 judicial 57:24 jurisdiction 35:14 Justice 1:18 3:3 3:9,21 4:8,17 4:22,23 5:8,12 5:15,18,25 6:4 6:16,18,23 7:5 7:12,13,15,20 8:1,3,4,4,5,12 8:24,24 9:9,11 9:17,22 10:1 10:11,20 11:4 11:12,19 12:1 12:7,9,15,22 12:23 13:9,12 13:23 14:5,9 14:13,18,20,22 15:5,8,11 16:6 16:10,13,21,23 17:4,6,8,15,18 17:23 18:11,16 18:18,23 19:17 19:22 20:3,10 20:13,18 21:8 21:13 22:14,23 23:4,16 24:12 25:4,9,16,23 26:11 27:1,8 27:19,23 28:4 28:8,14 29:13</p>	<p>29:20 30:4,7 30:13,25 31:5 31:8,23,25 32:16,22 33:10 33:13,21 34:2 34:13,14,22 35:3,7,10,13 35:23 36:9,16 36:17,21,23 37:2,19,23 38:19,20 39:23 40:6,10,17,18 41:3,7 42:21 43:19 44:13 45:3,21,23 46:18 47:4,18 47:18 48:4,5 48:20,21 49:9 49:11 50:9,23 51:23 53:13,19 53:21 55:16 56:5,23 57:4 58:5</p> <p>justification 8:19 11:10 12:14 19:9,11</p> <hr/> <p style="text-align: center;">K</p> <p>Kagan 33:10,13 33:21 34:2 41:3,7 42:21 45:23 48:21 49:9,11 50:9 51:23 keep 25:17 38:3 40:11 47:23 keeping 25:19 25:20,23 KELLER 12:6 KENNEDY 6:16 7:5 10:20 21:8 kept 14:6,8 20:1 kind 42:11,25 43:3 49:17 51:6 52:6 kinds 32:5</p>	<p>know 4:11 5:1 10:3 15:15,19 16:21 19:2,2 23:18,22 24:5 24:6,9 25:19 27:9 28:13,16 29:14 32:5,17 34:17 37:16 38:23 41:7,16 42:16,18 43:1 44:19 46:9 48:8,13,24 49:1 50:15,19 52:22 53:24 56:13 57:20</p> <hr/> <p style="text-align: center;">L</p> <p>lack 58:3 LaFave 20:22 laid 32:7 language 28:23 32:2,10 39:4 41:25 42:15 lasted 39:20 lasts 30:22 Laughter 16:12 17:3 27:11 37:1 law 11:20 18:14 47:24 48:15 49:6 50:12,13 50:20 54:19 laws 16:20 lead 39:7 51:24 leads 40:15 leaves 11:1 leaving 46:9 leeway 41:22 42:12 47:8,16 48:16 50:21 51:3,10 left 4:5 53:15 57:22 legitimate 12:21 24:7,11,25 35:17 length 6:9 26:10</p>	<p>26:14,19 31:1 52:8 let's 4:11 10:4 level 57:2 license 5:21 7:9 9:2,18 17:2 21:2,9,11 24:1 34:18 44:16 licensed 5:4 limitation 42:1,6 42:20 limits 19:24 line 5:20 19:16 19:25 20:4,6 39:24 lines 51:25 litigants 29:7 little 5:19 22:17 33:13 37:19 long 9:13 10:15 11:13 14:22 15:13 20:1 22:21 25:16 34:25 38:18 42:3 48:25 50:22 51:3,12 53:5 longer 27:10,14 28:20 29:1 38:4 39:21 41:18,23 44:15 54:9,10 55:14 look 22:12 25:18 28:2 38:2 44:1 52:14,15,23 54:17 55:13 looked 53:4 looking 17:13 22:6,25 23:8 29:17,18 30:17 30:17 looks 16:22 lot 5:2 31:5,8 lots 56:1 lower 29:1</p> <hr/> <p style="text-align: center;">M</p>	<p>magistrate 57:11,12 magistrate's 58:2 majority 53:2 man 5:18 matter 1:11 6:3 24:1,1 38:12 44:24 58:8 mean 10:5 11:19 13:9,10 19:1 21:20 22:14 23:16 27:5,23 29:3 32:2,17 36:14 37:2,17 41:24 43:21 44:15 45:6,7 53:23,23 57:9 means 25:19 26:24 32:13 measurable 47:21 measurably 18:7 members 34:11 middle 30:8 49:24 midst 30:22 minimis 4:4,7 26:1,7 minute 27:2,24 27:24 28:4,6 30:23 31:3 55:13 minutes 12:24 13:5,17 14:1 15:16,16 24:6 25:25,25 26:2 27:19 28:13 30:23 33:7 36:18,22,24 38:7 39:21 43:2,2,3,22 51:25 52:1,3 53:15 54:12,21 misleading 16:1 mission 8:8 9:4</p>
---	--	--	---	---

<p>9:16,20,23 10:1,5,8 13:7 15:1 19:3 21:14,18 22:22 28:18 29:22 31:12 33:17 34:5 38:24,25 39:2,3 41:6,14 49:13 51:9 53:7 55:19,21 55:24,25 56:2 56:7 mission's 39:3 moment 41:18 51:8 moratorium 49:24 morning 3:4</p> <hr/> <p style="text-align: center;">N</p> <p>N 2:1,1 3:1 nature 40:19 51:17 Neb 1:16 Nebraska 18:14 necessary 15:3 28:21 29:2,20 30:9,15 31:12 32:18,20,23 need 15:6,9,12 15:16 17:21 23:22 28:8 39:10 56:9 needed 37:5 38:2 needs 19:5 23:18 26:3,4,25 51:10 neighborhood 38:3 never 50:14 new 19:11 non 45:19 normal 14:22 28:17 34:6,7 notebook 7:6</p>	<hr/> <p style="text-align: center;">O</p> <p>O 2:1 3:1 O'Connor 1:15 2:3,9 3:6,7,9 4:2,16,23,24 5:7,10,14,17 5:22 6:1,12 7:3 7:10,19,25 8:10,16 9:7,10 9:15,21,25 10:8,17 11:3,7 11:18,21 12:8 12:11 13:6,11 13:20 14:2,7 14:10,17,19,21 14:24 15:7,10 15:21 16:14 17:5,10,17,22 18:11,14,17,21 18:25 19:21 20:2,6,12,17 20:20 21:12 22:4,19 23:3,7 24:11,18 53:15 53:16,18 54:16 55:20 56:16 57:8 objective 26:9 42:25 50:15 observe 51:12 obviously 49:20 occasions 34:8 occupants 23:23 occur 33:6 39:9 45:11 47:11 occurred 18:9 42:10 occurring 50:2 occurs 10:15 12:25 28:12 30:18 33:1 offense 3:17,18 15:2 16:4 17:17,25 18:13 18:19,22,24 19:6 22:10</p>	<p>24:23 56:17,20 officer 3:13,15 6:18 11:14 13:12 15:5,8 15:11,23 16:16 17:1 19:4 20:24,25 21:1 22:21 23:18,24 24:15,20,20,22 26:24 27:15,17 30:23 31:3 33:2,6 35:2,17 38:9,17 39:14 39:16,17 41:5 42:2,4 44:4,5,7 44:16 45:6,10 45:13,14,15,17 46:15 48:18,23 49:4,6,23 50:2 50:5,23 51:1,2 51:5 52:14,16 53:6 54:20,21 officer's 30:20 47:10,15 officers 11:22 23:19 39:10,13 41:17 42:12 47:16 48:16 50:21 51:7,11 52:4 54:17 55:8,10,10,11 Oh 13:11 okay 7:16 11:12 13:4,5,7 14:1 15:18,22 17:4 17:7 21:11 24:3,13 26:13 30:24 35:23 36:2 46:23 49:9 53:25 once 6:2,13,15 8:19 10:24 12:2,12,13 24:21 31:11 32:24 34:11 35:16 39:3 40:6 43:5 46:2</p>	<p>46:20,25 49:18 50:15 open 4:1 11:1 46:9 55:10 57:7 opinion 36:4 39:4 opposed 32:15 options 12:2 oral 1:11 2:2,5 3:7 25:7 order 19:10 21:18 25:11 49:24 orders 45:16 ordinarily 57:5 ordinary 33:19 33:21 41:23 original 28:22 Ornelas 52:20 ought 35:19 44:12 50:8 outside 42:13 overall 26:25 51:3 53:6</p> <hr/> <p style="text-align: center;">P</p> <p>P 1:15 2:3,9 3:1 3:7 53:16 p.m 58:7 PAGE 2:2 paper 48:3 papers 25:17 parcel 17:14 part 5:23 9:8,19 9:23 10:1,10 10:19 17:11,14 17:24 21:13,18 22:5,5,20,23 34:22 35:21 37:7,13 41:11 41:14 46:19,22 55:19,21,23,25 56:2,17,20 particular 18:12 23:11 Particularly</p>	<p>47:25 parts 46:18 pass 20:15 passenger's 26:3 people 17:1 27:15,16,20 28:9 32:6 41:22 perform 33:24 35:16 40:8 performed 36:6 performing 39:17 performs 45:17 period 46:20 56:10 permissible 33:24 34:1,24 40:7 50:8 permit 40:4 permitted 5:6,8 7:9 19:18 person 5:3,4 12:4,14 20:25 21:1,6,23 22:21,25 24:5 34:19 39:15 47:20 51:5 55:2 perspective 43:11 47:14,15 pertinent 17:9 17:10 Petitioner 1:4,16 2:4,10 3:8 53:17 Petitioner's 25:12 30:21 40:22 51:19 phrase 43:20 pick 27:23,24 28:4,6 piece 48:3 piggyback 3:16 3:17 place 4:10,13 19:15 36:13</p>
---	---	--	---	---

<p>41:12 55:17 plate 21:9 34:18 plates 7:9 please 3:10 25:10 41:4 pocket 11:24,24 25:1 pocketing 16:17 point 5:10 8:22 14:3,16 21:7 35:15 36:11 38:15 39:5 49:5 52:1 53:20,23,24 54:14,15,25 pointed 3:23 police 7:1 11:14 12:23 19:23 23:24 34:14,16 38:1,8 42:12 45:25 47:22 48:2,22,23 49:21,23 52:4 54:2,21 policeman 4:14 4:24 29:2 36:11 policemen 4:11 29:24 policy 11:4,5,7 ponder 15:13 16:10 pondering 16:7 16:8,13,14 position 13:2 30:21 35:24 56:7 possible 28:5 possibly 13:9,10 potential 50:3 practically 39:10 predominantly 44:8 presented 27:13 28:3 presumption</p>	<p>7:16 pretty 31:21 46:7 prior 4:19 9:19 34:19 private 9:2 probable 3:17 3:24 34:12 35:16 40:20 43:6 57:1,3,16 57:18 probably 48:25 problem 4:14,16 9:24 10:20 12:19 24:24 28:14 32:3 38:21 55:6 problems 31:6,8 31:10 57:21 process 9:10 48:23 Professor 20:22 prolong 22:16 30:9 37:6,12 37:19,21 38:22 46:16,22,24 47:5,20 54:4 prolongation 39:1 49:3 prolonged 24:15 28:17 30:14 32:19,25 36:12 46:5 prolonging 22:19 37:4,8 prolongs 36:1,7 37:16 proper 9:2 properly 5:4 proportion 44:2 propose 20:21 39:12 proposed 20:22 40:23 proposing 40:3 protecting 47:6 protection 13:1</p>	<p>protections 55:12 protects 47:7 Public 1:16 pull 15:2 21:21 50:10 pulled 16:4 21:16 pulling 22:1 pulls 20:25 48:22 purely 48:1 purpose 6:14 8:20 12:13 19:15 26:20 28:21 29:21 48:1 55:3 purposely 48:11 purposes 32:25 pursue 50:21 51:11,11 put 11:24 puts 21:9 putting 15:25 25:1 46:11</p> <hr/> <p>Q</p> <p>QED 29:7 question 3:15,20 4:4 6:3 8:6,25 11:2,4,5,7,23 12:15 13:3 16:15,16 18:9 19:7,18 21:14 22:24 26:9 33:4 39:24 51:8 56:24 57:7,9,12,13 questionable 56:19 questioning 10:23 38:11 50:12,18,18 51:4 53:2,4,5 55:17 56:11 questionings 35:19</p>	<p>questions 5:2 6:1,17,20,21 7:22 25:2 34:4 38:9 42:23 51:5 53:12 56:1</p> <hr/> <p>R</p> <p>R 3:1 radio 7:8 21:9 raise 55:20 range 26:17 27:5 52:5 reach 4:4 reached 3:22 read 41:8 42:15 real 39:24 really 10:23 16:21 40:3 42:2,3,24 44:20 46:10 50:9 54:1,6 56:12 reason 6:14 14:4 14:7 19:14 21:6 23:17 24:7,11,19,21 25:1 37:2 39:20 41:17 42:15 44:3 46:22 49:7 50:10 55:3 reasonable 4:5 25:16 26:14,15 26:18 33:5 35:1,20 37:21 39:1 42:7,25 44:10,11,22 46:23 50:6,22 51:4,13,22 52:2,6,12,17 55:3,8 57:23 reasonableness 25:14 26:6,9 27:6 31:9 33:12 41:25 46:15 51:16</p>	<p>54:11,24,24 55:1,6 reasonably 20:14 26:17,24 27:14 28:18 29:2,16,22 30:3,9,14 31:12 32:12,18 32:19,23 38:23 38:24 39:22 41:6 44:6,6 49:5 50:7 51:15 53:6 reasons 32:6 45:12 48:18 rebuttal 2:8 25:3 53:16 record 23:1,6 records 21:18 21:25 22:1,17 22:20 23:17 56:12 referring 32:11 regardless 18:25 registration 16:25 17:2,9 17:21 21:2,22 23:21 24:2 44:16 rejected 3:23 relate 37:25 related 3:12 8:8 22:9,9 49:13 51:9 relative 44:2 released 55:2 relevant 44:4 remaining 25:3 remains 3:21 51:3 remember 46:2 remiss 50:4 report 21:10 request 25:3 required 28:18 29:16,22 30:3 32:12 38:24</p>
--	--	---	--	---

<p>39:22 resolve 56:9 resolving 44:8 resources 47:22 47:24 respect 31:15 35:22 41:6 50:7 53:1,7 Respondent 1:19 2:7 25:8 response 46:12 53:22 56:4 rest 10:13 44:2 results 25:11 39:8 40:16 47:13 53:11 reverse 29:6 reviewable 57:5 reviewed 3:25 reviewing 57:19 right 4:9,22 5:6 5:12 7:2 8:2,11 9:12 10:16 12:5 14:16,18 18:2 20:3 21:23 24:17,19 24:19 30:2,25 34:10 36:5,6 36:18,19,25 41:20,24 42:16 43:21 48:7 49:2 51:1 rights 18:8 road 20:1 ROBERTS 3:3 4:8 8:4 15:5,8 15:11 16:23 17:4,8,15,18 23:16 24:12 25:4 36:23 37:2 43:19 44:13 45:3 53:13 58:5 Rodriguez 1:3 3:4,19 routine 26:18,23 27:2,5,6 34:22</p>	<p>35:2,14 37:13 41:2 44:5,11 51:14 52:9,12 rule 10:24 11:1 12:1,2 16:19 20:19,20 21:15 21:20 25:12 31:9 32:7 40:22 48:7,8 50:14 51:24 53:10 rules 49:22 ruling 4:4,6 run 23:21 24:24 48:11 runs 21:2,8</p> <hr/> <p style="text-align: center;">S</p> <p>S 2:1 3:1 safer 45:18 safety 24:20 27:18 45:15,17 saw 17:15,16,18 saying 3:24 8:14 12:17 14:14 25:17 28:24 33:15 41:21 46:14,18 47:19 49:17 50:10 says 4:12 5:18 7:5 13:12,24 15:6,9,9,11 17:2 19:4 24:5 24:6 36:11 38:9,25 40:19 41:13,19 42:1 42:1 44:16 48:23 56:9 SCALIA 4:23 5:8,12,15,18 5:25 7:13 8:24 9:9,11,17,22 10:1,11 12:22 13:9,12,23 14:5,9,13,18 14:20,22 16:10 16:13 27:1,8</p>	<p>27:19,23 28:4 28:8 34:14,22 35:3,7,10,13 36:17,21 37:19 48:4 Scalia's 6:18 scenario 39:9 45:11 scope 42:20 se 36:7 37:17 search 18:20 19:18 26:12 40:1,20,21 42:18,21 season 55:10 second 39:16 seconds 39:19 44:24,25,25 see 5:21 7:1,8 9:9 10:20 17:20 19:1 22:25 23:5,21 34:18 38:21,21 45:21 46:25 48:17 52:2 56:13 seeing 45:20,22 sees 20:24 send 13:16 sense 43:21 54:9 sequence 12:17 47:16 48:12,17 sequencing 30:20 47:10 serious 31:22 set 35:16 severity 51:17 SHANNON 1:15 2:3,9 3:7 53:16 short 40:25 shot 23:19 show 31:20 shuts 55:15 side 20:1 sign 23:5 significance</p>	<p>30:19 significant 54:23 similar 29:18 52:15,24 simple 19:18 20:11,18,20,23 simply 12:17 simultaneous 19:20 40:13 single 37:14 sir 13:11 sit 13:17 situation 28:12 31:17 45:5 situations 45:8 six 53:15 slow 42:2 small 34:15 smokes 49:1 sniff 3:14 4:9 8:1 9:23 10:5,6 10:10,14 11:2 11:3,13,16 12:19,25 13:15 19:23 21:14,19 22:11,18 25:13 26:16 30:18,23 31:4 32:15 33:1,1,2,3,8,16 33:24 34:6,9 35:4,6,19 36:1 36:1,6,12 37:7 37:12,15,24 38:12 39:11,17 39:18 40:8 41:11,14,15,15 41:19 42:5,9 42:17 43:8,12 43:16,23,24 44:2,9,14,18 44:23 45:1,14 46:2,6,16,19 47:11 48:19,25 49:19 50:6 51:20 52:10 53:9 56:15,19</p>	<p>sniffing 9:12,12 sniffs 26:19 52:16 Solicitor 1:17 solve 9:23 somebody 4:25 10:2 21:21 22:1 26:2 42:24 48:12,22 somebody's 21:16 someplace 55:18 soon 6:5 46:8 sooner 27:24 sorry 8:3 41:3 sort 26:22 Sotomayor 4:22 7:12,15,20 8:3 8:4,5,12 11:4 16:21 19:17,22 20:3,10,13,18 25:16,23 26:11 39:23 40:6,10 40:18 47:18 48:20 Sotomayor's 8:24 sound 29:10 sounds 29:10,10 specific 3:15 24:1 spends 30:23 stake 38:14 start 20:7 50:11 52:23 54:19 started 16:1 starts 3:11 48:23 51:5 state 34:15 35:25 statement 55:7 States 1:1,6,12 3:5 station 21:10 stay 49:15 steps 6:5 stick 10:24</p>
---	--	---	--	--

stolen 5:3 9:3 10:3 23:22	51:14,20 52:2 52:6,10 53:3,6	taillight 4:25 5:5 9:5,6,18 10:2	tests 29:6	50:1,4,5,17,20
stop 3:13 4:10 4:20 5:24 6:2,6	54:21,25 55:3	10:11 21:17,21	tethered 26:20	51:2,4,10,14
6:7,13,15 7:11	stopped 17:1	22:2 28:10	Thank 25:4,4	51:16 52:1,7
8:9,18,19,23	25:20 28:9	52:3	53:13,18 58:5	52:13,19,25
9:4 10:2,10,13	40:2 50:2 54:8	take 13:16 14:1	theory 42:22	53:8,20,22,25
10:18,21,22	stoppee 29:25	14:23 24:6	they'd 50:4	54:2,15,22
11:6,11 12:13	stopper 30:1	27:14 33:20	thing 10:12	thought 14:14
12:21 13:4,7	stoppers 46:19	34:20 35:1	12:16 17:6	15:20 35:24
13:17 14:2,11	stopping 13:12	36:20 38:6,6	45:18 49:18	50:14,15 53:22
14:12,23 15:24	23:5	38:23 41:23	51:6 52:17,25	54:7,14
16:19 17:9,11	stops 4:25 25:13	44:7,14 48:5,6	53:8 56:22	three 27:20 28:9
18:3,5,7,10	26:18 27:2,5,7	49:15 50:17	58:1	ticket 4:13,18,20
19:6,14,20	28:12 29:18,24	51:11 53:5	things 6:11 9:3,7	5:9,13,16 6:8
20:8,8,14,23	31:7 33:25	taken 4:19 6:6	17:14,25 18:2	6:10,19,22,25
20:23 21:5,17	36:20 41:2	38:1,7 49:23	38:5 42:12	7:6,7,18 8:7,13
22:6,10,21,25	42:20 44:5	takes 20:15 24:1	44:1 46:25	8:15,18,20,22
23:5,20 24:8	46:1 52:12,15	29:17 36:13,17	47:1 50:13	10:15,18,25
25:14 26:10,14	54:4,19,24	39:19 41:1	51:12 54:17,22	11:8,10,13,16
26:15,21,23	strict 26:7	43:8 44:25	56:10,17	11:24 12:3,18
27:13,14 28:16	strong 50:20	48:25 49:6	think 10:23	12:21 13:4,13
28:21 29:4,16	Struble 3:16	talking 26:19	11:21 12:18	13:18,21,24,25
29:21 30:2,22	subject 25:14	37:4,4 43:9	15:6,9,12,14	14:3,6,6,8,15
31:2,2,11	33:12 43:18	55:9,11	15:16,16,25	15:19,20 16:2
32:25 33:1,4,9	46:14	task 3:12 17:17	16:11 17:23,23	16:3,17 20:15
33:17,19,20	submitted 58:6	22:8	17:24 18:22	21:3,4,22,23
34:4,5,6,7,9,12	58:8	tasked 56:17	20:2,4,17,20	25:1,24 28:20
34:23,25 35:2	sufficient 57:14	tasks 7:17 10:9	23:14,17,18	30:19,21 31:3
35:14 36:2,7	sufficiently 51:9	15:3 16:3 19:3	24:18,24 25:19	36:6 39:14,15
36:12 37:4,6,8	suggest 31:19	19:5 33:7	26:10 27:4	39:18,22 40:13
37:10,13,14,16	suggested 22:24	45:16	28:1,24 29:11	44:17 45:10,13
37:17 38:7,17	34:11	tell 39:9 45:25	29:12,15 30:10	45:19,19 48:18
38:18,22,22	suggesting 32:12	46:25 55:24	30:17 31:21	49:14,16 53:10
39:13,20 40:9	33:18	tells 21:1	32:9,11,16	ticket-writing
40:25 41:1,11	suppose 6:24	temporal 43:10	33:25 34:10,21	36:10
41:15,16,23	34:14 48:21	temporary	35:5,11,11,12	tickets 7:21
42:3,8,10,13	Supreme 1:1,12	28:19	35:15,25 36:6	15:14 39:11
43:6,13,22,24	sure 16:24 21:22	ten 39:21 43:2	36:14 37:11,11	tie 11:5,6,9,9
44:3,10,12,15	41:19 44:21	tend 54:4	37:15 38:14,16	tied 8:12
45:16 46:3,5	54:3,5	terminated	39:19 40:5,6	time 5:10,20 6:9
46:16,20,20,21	suspect 29:13	13:18	40:17 41:7,8,9	8:22 14:4
47:8,12,12,17	suspicion 3:14	termination	41:11,24,24	16:11,18 20:15
47:25 48:1,17	4:5 55:4 57:23	14:16	42:2,14,15	21:7,17,25
49:3,7,13,20	swerve 17:19	test 14:14,15,19	43:7,15,25,25	25:20 26:8,15
49:22,24 50:1		14:20,21,24	44:3,6,24,24	26:17,19 28:18
50:7,11,16,21		15:1 20:11	45:12,15,24	29:16,20,21
	T	28:15	47:7,13,15	30:3,9 31:12
	T 2:1,1		48:5,15 49:18	32:12,13,19

33:20 35:1,3,6 35:18 37:5,8 37:17,22 38:1 38:23 41:1 42:3,10 43:8 44:2,10 46:23 47:21 50:6,11 51:3,11,13 52:3,9,18 53:5 54:3,25 55:8 times 18:4 30:10 43:20 today 23:15 58:4 told 17:1 24:14 46:25 50:23 total 33:4 39:20 totality 25:18 28:3 totally 46:9 traffic 3:12,17 3:18 4:10,18 4:20 6:6,13 7:11,17 10:10 10:12,18,21,22 11:9 13:7,17 14:2,11,11,22 15:2,24 17:9 17:11,25 18:3 18:5,6,10,12 18:17 19:6,14 19:20 20:22 21:5 22:10,25 23:2,20 24:7 24:22 25:13,13 26:18,20,23 27:2,5,7 28:19 29:16,24 30:18 30:22 32:13 33:9,19 34:23 35:2,14 37:6 37:13,14,16,25 38:2,7,22 39:22 40:8,25 41:2,6,11,14 41:16,23 42:3 42:8,10,13,20 43:6,22,24	44:5,8,10,11 44:15 45:16 46:1,3,19 47:8 47:17 50:1,7 50:11 51:9,14 51:20 52:2,6 52:10,12 53:3 53:7 56:9,17 traffic-related 33:7 treated 43:16 trial 57:2 tried 35:24 trouble 46:5 53:24 true 48:12 49:14 49:15 trying 37:14 turned 13:24 twice 31:11 two 4:11,11 6:17 13:5 28:23 29:5 32:2,8,9 32:10 36:17,22 36:24 39:13 41:17 43:3 46:18,22,25 47:1 two-part 48:8 type 57:23	uninformed 11:15 unit 24:13,14 United 1:1,6,12 3:5 universe 27:4 unlawful 35:25 40:14 unreasonable 36:18 37:18 38:16 40:25 43:14 49:8,12 51:21 unreasonably 36:1,7,12 46:5 46:24 47:5,20 unrelated 22:24 35:19 38:12 50:18 53:1,4 upheld 28:12 use 35:9 45:19 46:1,19 useless 48:3 usually 16:25 41:1	unrelated 22:24 35:19 38:12 50:18 53:1,4 upheld 28:12 use 35:9 45:19 46:1,19 useless 48:3 usually 16:25 41:1	<hr/> W <hr/> wait 11:22,24 16:17 34:2 38:20 waiting 54:9 waits 15:19 21:9 walk 44:19 walks 4:14 24:16 36:21 want 6:19 13:14 22:15 24:8 27:9 29:14 32:7 34:3 38:9 45:13 48:18 49:14 51:6 52:5 54:5 56:13,13 wants 51:8 warning 5:16 6:10 8:21 21:4 24:16 warrant 43:12 43:17 warrants 7:2,21 Washington 1:8 1:18 wasn't 3:22 49:12 way 5:20 42:7 42:14,16 45:20 45:22 46:4 47:18 49:16 55:14 ways 32:10 We'll 3:3 we're 15:25 16:11 26:19 33:18 37:14 38:2 41:15 43:9 55:9,11 we've 19:18 28:23 31:10 39:25 Wednesday 1:9 week 32:6	wait 11:22,24 16:17 34:2 38:20 waiting 54:9 waits 15:19 21:9 walk 44:19 walks 4:14 24:16 36:21 want 6:19 13:14 22:15 24:8 27:9 29:14 32:7 34:3 38:9 45:13 48:18 49:14 51:6 52:5 54:5 56:13,13 wants 51:8 warning 5:16 6:10 8:21 21:4 24:16 warrant 43:12 43:17 warrants 7:2,21 Washington 1:8 1:18 wasn't 3:22 49:12 way 5:20 42:7 42:14,16 45:20 45:22 46:4 47:18 49:16 55:14 ways 32:10 We'll 3:3 we're 15:25 16:11 26:19 33:18 37:14 38:2 41:15 43:9 55:9,11 we've 19:18 28:23 31:10 39:25 Wednesday 1:9 week 32:6	went 5:19 willing 10:5 48:11 witness 57:13,14 57:21 word 18:2 words 4:10 6:9 36:3 work 45:24 49:2 working 22:22 44:8 worried 27:17 wouldn't 43:22 wounded 23:20 wrapping 37:9 write 4:12 15:20 21:22 36:2,3 writes 5:13 writing 7:6 8:7 8:13,15 40:13 written 4:18,19 13:13 15:19 wrong 7:16 8:17 wrote 5:9	<hr/> X <hr/> x 1:2,7	<hr/> Y <hr/> Yeah 5:7 14:9 30:4,25 46:2 years 27:7	<hr/> Z <hr/> <hr/> 0 <hr/> <hr/> 1 <hr/>	1 30:23 1-minute 33:3 10 15:16 25:25 30:23 33:7 10-minute 33:3 11-minute 31:7 33:4,9 11:22 1:13 3:2 12:23 58:7 13-9972 1:4 3:4
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15-minute 43:23				
<hr/>				
2				
<hr/>				
2 54:21				
20 45:9				
2015 1:9				
21 1:9				
25 2:7 24:6				
<hr/>				
3				
<hr/>				
3 2:4 54:21				
30 27:7 39:19				
44:25 51:25				
30-second 40:24				
51:19				
35 28:13				
<hr/>				
4				
<hr/>				
4 54:21				
40 52:1,3				
40-minute 54:19				
45 13:16 14:1				
25:25 26:2				
<hr/>				
5				
<hr/>				
5 25:24 26:2				
43:22				
53 2:10				
<hr/>				
6				
<hr/>				
7				
<hr/>				
8				
<hr/>				
8 15:16				
<hr/>				
9				
<hr/>				
90 44:25				