NO._____

IN THE SUPREME COURT OF THE UNITED STATES

DENNYS RODRIGUEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

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PETITION FOR WRIT OF CERTIORARI

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Question Presented

This Court has held that, during an otherwise lawful traffic stop, asking a driver to exit a vehicle, conducting a drug sniff with a trained canine, or asking a few off-topic questions are "de minimis" intrusions on personal liberty that do not require reasonable suspicion of criminal activity in order to comport with the Fourth Amendment. This case poses the question of whether the same rule applies *after* the conclusion of the traffic stop, so that an officer may extend the already-completed stop for a canine sniff without reasonable suspicion or other lawful justification.

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DENNYS RODRIGUEZ,

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Dennys Rodriguez respectfully petitions the Court for a writ of certiorari to review the opinion and judgment entered by the United States Court of Appeals for the Eighth Circuit on January 31, 2014.

Opinions Below

The decision of the United States Court of Appeals affirming Rodriguez's conviction can be found at United States v. Rodriguez, 741 F.3d 905 (8th Cir. Jan. 31, 2014). A copy of the Eighth Circuit's opinion is appended to this Petition. (App. 1A) The District Court's Memorandum and Order is unpublished, but a copy of that Order is also contained in the Appendix. (App. 4A). The Magistrate Judge issued its Report and Recommendation from the bench. Its findings, and the Order accompanying it, are attached to this petition. (App. 9A)

Jurisdiction

The judgment of the Court of Appeals for the Eighth Circuit was entered on January

31, 2014. (App. 1A) Rodriguez invokes this Court's jurisdiction under 28 U.S.C. §1254(a), having timely filed this petition for a writ of certiorari within ninety days of the Court of Appeal's Judgment.

Constitutional Provisions Involved

Dennys Rodriguez's Petition for a Writ of Certiorari involves the Fourth Amendment's right to be free from unreasonable searches and seizures:

U.S. Const. Amend. IV

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Statement of the Case

Over the years, this Court has addressed what actions law enforcement officers may constitutionally undertake within the confines of a lawful traffic stop. In Pennsylvania v. Mimms, 434 U.S. 106 (1977), the Court held that an officer may ask a driver to step out of the car during the encounter. The Court held in Illinois v. Caballes, 543 U.S. 405, 408 (2005), that an officer may also deploy a drug-detection dog to sniff the outside of a vehicle during an otherwise-legitimate traffic stop. In Muehler v. Mena, 544 U.S. 93, 101 (2005), the Court held that an officer may inquire briefly into matters unrelated to the justification for the traffic stop without possessing reasonable suspicion of criminal activity.

A common caveat accompanied each of these cases: an expectation that the action taken by the officer would not meaningfully extend the otherwise-legitimate stop

or unduly intrude on a driver's personal liberty. See Mimms, 434 U.S. at 111; Caballes, 543 U.S. at 408-09; Muehler, 544 U.S. at 101. In the words of Mimms, these actions are permissible because none accounts for more than *"de minimis"* additional intrusion during an otherwise-justified stop. Mimms, 434 U.S. at 111.

The question presented in this case is whether the same justification can be used to uphold law enforcement actions that occur *after* the conclusion of the lawful traffic detention or whether, once the stop ends, an officer must have reasonable suspicion to take any of the steps that have so far been ratified by this Court.

1. The traffic stop

Dennys Rodriguez and his passenger, Scott Pollman, were driving home from Omaha, Nebraska to Norfolk, Nebraska just after midnight on March 27, 2012. They had been in Omaha to investigate the possibility of purchasing an older-model Mustang, but decided against buying the car when the owner could not produce the title. As Rodriguez was driving, he briefly crossed the fog line and drifted onto the shoulder of the road. Officer Morgan Struble of the Valley, Nebraska Police Department saw Rodriguez drive onto the shoulder and decided to stop Rodriguez for a traffic violation. He pulled Rodriguez's vehicle over at approximately 12:06 a.m.

As Officer Struble approached Rodriguez's vehicle from the passenger's side, he noticed a strong but pleasant odor of air freshener. At the vehicle, he spoke first with Rodriguez. He requested Rodriguez's license, registration, and proof of insurance, and asked why Rodriguez had driven onto the shoulder. Rodriguez said he had swerved to avoid a pothole, and seemed agitated when Officer Struble informed him that crossing

the white line was a traffic violation.

Officer Struble asked Rodriguez to accompany him to his patrol car so that the officer could complete some paperwork. Rodriguez asked if he was obligated to leave his car. When Officer Struble said "no," Rodriguez said he would rather just sit in his own vehicle. Officer Struble found Rodriguez's response suspicious, as he believed that was a sign that the vehicle might contain contraband.

Officer Struble returned to his cruiser and called in a request for a records check on Rodriguez. He then returned to Rodriguez's vehicle and began talking with the passenger, Scott Pollman. Officer Struble had noticed from the outset of the traffic stop that Pollman seemed nervous. Pollman wore his cap low over his eyes, was smoking a cigarette and avoided eye contact with Struble. As he talked with Pollman, Officer Struble's suspicion grew. Pollman said they had not viewed any pictures of the Ford Mustang they were thinking of purchasing before making the two-hour trip to Omaha to see the car. Since this is not something Officer Struble would do, Officer Struble found that strange.

After obtaining Pollman's driver's license, Struble again returned to his cruiser. It was 12:19 a.m.–about 13 minutes into the traffic stop. By this time, because of his suspicions, Officer Struble had decided to walk a drug-detection dog around Rodriguez's vehicle. Struble had the canine in his car, but felt he needed a second officer as a backup for officer safety reasons. Officer Struble requested a records check on Struble's license, and then contacted a second officer. Officer Struble then began writing a warning ticket for Rodriguez.

Officer Struble returned to Rodriguez's vehicle for a third time, where he returned

all of the documents to Rodriguez and Pollman. Officer Struble then issued a written warning to Rodriguez for driving on the shoulder of the road. Officer Struble completed the warning at 12:25 a.m. and said he gave it to Rodriguez a minute or two later. At that time, all parties agree that the initial traffic detention had concluded. Nevertheless, Officer Struble did not allow Rodriguez to leave. Instead, as the government explained at the motion to suppress hearing, Officer Struble "detained [Rodriguez] . . . for another officer to arrive." (Tr. 49, 69: 20-24)

While waiting for the other officer, Officer Struble asked Rodriguez for permission to walk his dog around Rodriguez's vehicle. Rodriguez refused that permission. Officer Struble then directed Rodriguez to turn off the ignition, get out of his vehicle, and stand in front of the cruiser until the second officer arrived. That officer, Deputy Decals, arrived at 12:33 a.m., or approximately 6-7 minutes after the traffic stop had concluded. About one minute later, Struble walked his dog around the vehicle. The dog alerted on the vehicle, and a search revealed a large bag of methamphetamine.

2. District Court proceedings

The United States charged Rodriguez with possession with intent to distribute 50 grams or more of methamphetamine in violation of 21 U.S.C. § 841(a)(1) and (b)(1). Rodriguez filed a motion to suppress the drug evidence, arguing that the dog sniff occurred during an unlawful detention that was not supported by reasonable suspicion of criminal activity. After hearing evidence, the Magistrate Judge denied the motion. Although Magistrate Judge acknowledged that the sniff came up to eight minutes *after* the traffic stop had concluded, he believed the Eighth Circuit would consider such a

delay a "de minimis intrusion on the defendant's Fourth Amendment rights." (Tr. 80: 12-14) While the Magistrate Judge personally disagreed with that position, he believed that Eighth Circuit precedent such as United States v. Morgan, 270 F.3d 625 (8th Cir. 2001), United States v. 404,905.00 in Currency, 182 F.3d 643 (1999), and United States v. Martin, 411 F.3d 998 (8th Cir. 2005), allowed for up to ten minutes of suspicionless detention following a traffic stop for officers to conduct a dog sniff. (Tr. 80: 22-23)

The district court adopted the Magistrate Judge's findings and its legal conclusion that the post-stop detention and dog sniff did not violate the Fourth Amendment. The district court stated, "The magistrate judge concluded that the initial stop of 19 minutes, plus the 7 to 10 minutes for the dog to alert thereafter, was not of constitutional significance. The court agrees with the findings of fact and conclusions of law in this regard." (Memorandum & Order p. 4, App. ___) It then denied Rodriguez's motion to suppress the evidence discovered after the dog sniff of Rodriguez's vehicle. Rodriguez subsequently entered a conditional guilty plea to the indictment, reserving his right to appeal the denial of his motion to suppress.

3. The Decision of the Court of Appeals

The lower courts' prediction of what the Eighth Circuit would find acceptable proved to be correct. Rodriguez appealed the denial of his motion to suppress, but the Eighth Circuit affirmed. Citing this Court's decision in Illinois v Caballes, 543 405, 408 (2005), the Eighth Circuit started with the proposition that "a dog sniff may be the product of an unconstitutional seizure, 'if the traffic stop is unreasonably prolonged before the dog is employed.'" Martin, 411 F.3d at 1002 (citing Caballes, 543 U.S. at 407). The Eighth Circuit then continued:

> A brief delay to employ a dog does not unreasonably prolong the stop, however, and we have repeatedly upheld dog sniffs that were conducted minutes after the traffic stop concluded. See, e.g., United States v. Alexander, 448 F.3d 1014, 1017 (8th Cir. 2006) (four-minute delay upheld as a *de minimis* intrusion on personal liberty); Martin, 411 F.3d at 1002 (two-minute delay upheld); United States v. Morgan, 270 F.3d 625, 632 (8th Cir. 2001) (delay of "well under ten minutes" upheld); 404,905.00 in U.S. Currency, 182 F.3d at 649 (two-minute delay upheld).
>
> Although the dog was located in the patrol car, Struble waited to employ it until a second officer arrived, explaining that he did so for his safety because there were two persons in Rodriguez's vehicle. The resulting seven-or-eight-minute delay is similar to the delay that we have found to be reasonable in other circumstances. See Morgan, 270 F.3d at 632 ("We do not believe that the few minutes difference between the time in this case and $404,905 has constituitonal significance.") We thus conclude that it constituted a *de minimis* intrusion on Rodriguez's personal liberty.

United States v. Rodriguez, 741 F.3d 905, 907-08 (8th Cir. 2014). Having decided that the traffic stop was not unreasonably prolonged, the court did not even address whether the circumstances of the stop gave rise to reasonable suspicion to detain Rodriguez in any event.

Rodriguez believes that the Eighth Circuit's has misinterpreted the meaning of a "prolonged" stop in Illinois v. Caballes, and that the Fourth Amendment prohibits even a "de minimis" post-stop detention without reasonable suspicion or probable cause. He seeks a writ of certiorari from the Eighth Circuit's decision.

Reasons for Granting the Writ

State and federal courts of appeals are divided over whether the Fourth Amendment permits a "de minimis" extension of an otherwise-concluded traffic stop in order to facilitate a canine sniff. Both sides of this conflict start with this Court's decisions on what is permissible within the confines of lawful traffic stop. However, they

diverge when they examine what should happen after the officer has issued a traffic ticket and ended the stop. Some courts consider any detention after this time a separate seizure requiring separate justification. Others, like the Eighth Circuit, find an officer's act of ending the stop merely incidental, and permit extensions of up to ten minutes with no additional suspicion.

This Court should use this case to resolve this conflict and clear up the lingering confusion over the constitutional limits of routine traffic stops. These stops play a central role in many criminal prosecutions and, more importantly, in the day-to-day lives of the traveling public. If not properly contained, permitting "de minimis" intrusions on personal liberties could swallow the protections of the Fourth Amendment entirely. To prevent such a result, this Court should grant certiorari.

I. Federal and state courts are divided over whether the Fourth Amendment permits a "de minimis" extension of an otherwise-concluded traffic stop in order to facilitate a canine sniff.

The Court of Appeals' decision in Rodriguez is consistent with a long line of Eighth Circuit precedent stretching back to United States v. $404,905.00 in Currency, supra, 182 F.3d at 643. There, the Eighth Circuit confronted what it considered to be "a novel issue concerning the Fourth Amendment interplay between traffic stops and canine sniffs." Id. at 645. Specifically, the Eighth Circuit addressed whether officers violated a motorist's Fourth Amendment rights when, after completing its investigation of a routine traffic violation, the investigating officer took less than two minutes to conduct a canine sniff around the exterior of the motorist's vehicle. Id. at 646. The traffic stop was unquestionably complete by the time the dog sniff occurred, and the

sniff was done "without reasonable suspicion to believe there were drugs in this particular vehicle." Id. at 649. Nonetheless, the court held that the officer's actions had not violated the motorist's constitutional rights, stating:

> [W]hen a police office makes a traffic stop and has at his immediate disposal the canine resources to employ this uniquely limited investigative procedure, it does not violate the Fourth Amendment to require that the offending motorist's detention be momentarily extended for a canine sniff of the vehicle's exterior.

Id. at 648.

The court gave three reasons for its decision in $404,905 in U.S. Currency. First, while length of detention is an important factor in the analysis of Terry investigative stops, where officers must "diligently pursue" a given means of investigation, that limitation does not similarly apply to traffic stops. Id. at 648. "Given the myriad situations in which traffic stops occur," the Eighth Circuit said, "it is not reasonable to subject them to the length-of-detention analysis we use in evaluating investigatory stops." Id. Second, the court asserted, "the line [marking completion of a traffic stop] is quite artificial." Id. "When the constitutional standard is reasonableness measured by the totality of the circumstances, we should not be governed by artificial distinctions." Id. Finally, "[the officer's] conduct on the whole was not constitutionally unreasonable." Id. According to the Eighth Circuit, a two-minute extension of a traffic stop is a "de minimis" intrusion on a person's liberty. Id.

The Eighth Circuit's decision in $404,905.00 in U.S. Currency preceded this Court's most analogous case on dog sniffs and traffic stops, Illinois v. Caballes, supra, 543 U.S. at 405. In Caballes, the narrow question was whether, *in the midst* of a traffic stop, an officer could use a drug-detection dog to sniff a vehicle without possessing

reasonable suspicion of criminal activity. Id. at 407. The Court held that such a dog sniff would not violate the Fourth Amendment provided that the stop was "lawful at its inception and otherwise executed in a reasonable manner." Id. at 408. The Court noted, however, that the answer would be different if the dog sniff occurred "during an unreasonably prolonged traffic stop" or the driver was otherwise being "unlawfully detained." Id. at 408.

After the decision in Caballes, defendants asked the Eighth Circuit to reconsider its position on the legality of dog sniffs after a traffic stop had concluded. See, e.g., United States v. Alexander, 448 F.3d 1014, 1017 (8th Cir. 2006); United States v. Norwood, 377 F.3d 580 (8th Cir. 2010). These defendants argued that a dog sniff that occurred after an otherwise-concluded traffic stop would fall outside of the parameters approved in Caballes. However, the Eighth Circuit has stood firm on its "de minimis" rule. The court stated:

> [W]e see no inconsistency between Caballes and [our prior cases]. Because the parties agreed in Caballes that the dog sniff occurred during a legitimate traffic stop, the Court was not called upon to address the question of the length of time that a dog sniff can constitutionally be conducted following the conclusion of a legitimate stop. 543 U.S. at 407, 125 S.Ct. 834. Moreover, the Court noted that "conducting a dog sniff would not change the character of a traffic stop that is lawful at its inception and otherwise conducted in a reasonable manner." Id. at 408, 125 S.Ct. 834. It is precisely this reasonableness inquiry that led us to recognize in $404,905.00 that the artificial line marking the end of a traffic stop does not foreclose the momentary extension of the detention for the purpose of conducting a canine sniff of the vehicle's exterior. 182 F.3d at 649.

Alexander, 448 F.3d at 1017.

Other jurisdictions have joined the Eighth Circuit in holding that a brief extension of a traffic stop for a dog sniff is not constitutionally unreasonable. See, e.g., United

States v. Williams, Nos. 1:12-cr-00264-1 & 1:12-cr-00264-2, 2013 WL 1435199 (M.D. N.C. April 9, 2013) (relying on multiple Eighth Circuit cases, including $404,905.00 in U.S. Currency, in approving post-stop canine sniff); United States v. Sellars, 630 S.E.2d 208 (Ct. App. N.C. 2012) (dog sniff which extended stop after issuance of warning ticket is "de minimis" extension that requires no additional justification); Hugueley v. Dresden Police Dep't, 469 F.Supp.2d 507, 512 (W.D. Tenn. 2007) (citing Eighth Circuit precedent in holding that a brief detention for a dog sniff beyond the completion of a traffic stop does not violate the Fourth Amendment); State v. Box, 73 P.3d 623, 629 (Ariz. Ct. App. 2003) (adopting "de minimis" exception for suspicionless dog sniffs conducted immediately after a legitimate traffic stop); State v. De La Rosa, 657 N.W.2d 683, 689 (S.D. 2003) (allowing extension of "short duration" for dog sniff after conclusion of a traffic stop). These courts have concluded, like the Eighth Circuit, that separating an officer's actions into distinct sequences is an artificial enterprise, and that brief extensions are permissible when measured by the standard of overall "constitutional reasonableness." DeLaRosa, 657 N.W.2d at 688 (citing $404,905 in U.S. Currency).

A number of other jurisdictions disagree, however. In fact, had this case been litigated in a Nebraska state court rather than a Nebraska federal court, the outcome would have been different. In State v. Louthan, 744 N.W.2d 454 (Neb. 2008), the Nebraska Supreme Court considered an appeal from a motorist who had been stopped for a traffic violation and then held briefly after the completion of the traffic stop so that an officer could take his drug detection dog around the vehicle. Id. at 459. Only 4 minutes elapsed from the time that the officer concluded the traffic investigation and the

time that the dog alerted. Id. at 459-60.

In Louthan, there was no question that the initial stop for expired license plates was valid. Therefore, the only issue on appeal was "whether Louthan's Fourth Amendment rights were violated when a law enforcement officer prolonged [the] traffic stop for several minutes in order to deploy a drug dog." Id. at 101, 744 N.W.2d at 458. The Nebraska Supreme Court held that they were. The court specifically distinguished Louthan's case from Caballes, where the dog sniff occurred in the middle of the investigation into the initial traffic violation. The drug detection dog in Louthan's case "was not deployed until *after* the investigative steps incident to the traffic stop had been completed." Id. at 460. (emphasis added). The state downplayed the distinction, and urged the court to adopt the "de minimis" standard employed in $404,905 in U.S. Currency. Id. at 461. However, unlike the Eighth Circuit, the Nebraska Supreme Court declined. The court stated:

> We are not persuaded to abandon the reasonable suspicion standard in favor of the "de minimis rule" advocated by the State. In Caballes, the Court specifically noted a distinction between a dog sniff occurring during a routine traffic stop and one occurring during an "unreasonably prolonged traffic stop."
>
> . . . While the detention for the dog sniff was not lengthy, that is but one factor in the Fourth Amendment analysis, which requires the dual inquiries of "whether the officer's action was justified at its inception, and whether it was reasonably related in scope in the circumstances which justified the interference in the first place." . . . We agree that "the *threshold* question . . . is whether the officer had an appropriate basis upon which to detain the citizen" after concluding the routine traffic stop. We conclude that the "reasonable suspicion" test if the appropriate, necessary, and correct standard for resolving that question.

Id. at 462 (internal citations omitted).

Several other state and federal courts have rejected the "de minimis " exception

for dogs sniffs and adopted the Nebraska Supreme Court's position. See, e.g., United States v. Stepp, 680 F.3d 651, 661-62 (6th Cir. 2012) ("When the initial traffic stop has concluded, we have adopted a bright-line rule that any subsequent prolonging, even de minimis, is an unreasonable extension of an otherwise lawful stop") United States v. Wood, 106 F.3d 942, 946 (10th Cir. 1997) (invalidating dog sniff that occurred after lawful traffic stop concluded); State v. Baker, 229 P.3d 650 (Utah 2010) (dog sniff is legal only when it is performed during the course of a lawful stop, not after lawful purposes of stop have concluded); D.K. v. State, 736 N.E.2d 758 (Ind. App. 2000) (invalidating suspicionless dog sniff that occurred minutes after conclusion of traffic stop). To these courts, it makes no difference that the detention may be brief. They subscribe to the Sixth Circuit's position that, under the Fourth Amendment, "even the briefest of detentions is too long if the police lack a reasonable suspicion of specific criminal activity." United States v. Urrieta, 520 F.3d 569, 572 (6th Cir. 2008).

As this survey of cases demonstrates, the conflict among the courts on the question of "de minimis" extensions of traffic stops is deep and intractable. Because of the importance of the constitutional issue involved, and because canine sniffs occur in countless stops across the country on a daily basis, uniformity among the courts is necessary. See Fuller v. Oregon, 417 U.S. 40, 42 (1974) (noting importance of resolving conflicts over constitutional questions). This Court should therefore grant certiorari.

II. The Eighth Circuit's "de minimis" exception to the Fourth Amendment stands in conflict with this Court's precedent.

Contrary to the Eighth Circuit's position, this Court's precedent does not permit

the suspicionless, "de minimis" extensions of traffic stops that the Eighth Circuit has endorsed. This Court has always guarded against prolonging traffic stops absent particularized suspicion of criminal activity. And while the Court has allowed law allowed "de minimis" deviations from the business of the traffic investigation *during* a lawful stop, it has never allowed those deviations to override the parameters of the stop itself.

The idea of a traffic stop as a brief, well-contained detention is central to several of this Court's decisions. This concept motivated the decision in Berkemer v. McCarty, 468 U.S. 420 (1984), for example, when the Court held that Miranda warnings need not be given prior to questioning during a routine traffic stop. According to the Court, traffic stops are distinguishable from full custodial arrests in important aspects. Most importantly, unlike arrests, "detention of a motorist pursuant to a traffic stop is presumptively temporary and brief." Id. at 438. Motorists should typically be detained only as long as is required for the officer to check his license and registration and issue a citation or warning. Id.

The Court reinforced this concept in Knowles v. Iowa, 525 U.S. 113 (2000). There, the Court held that the issuance of a citation for a traffic stop does not permit a full search of the vehicle stopped. Again, the Court described a traffic stop as a relatively brief encounter analogous to a Terry stop. Id. at 117. Thus, like a Terry stop, any investigation during a traffic stop must be limited in both duration and scope. Id.

Consistent with the principle of a traffic stop as a limited detention, the Court has warned that any investigation that prolongs a traffic stop beyond its natural conclusion must be supported by individualized suspicion. This warning accompanied the Court's

decision in Illinois v. Caballes. While the Court in Caballes held that a dog sniff *during* a reasonably-executed stop will not violate the Fourth Amendment, it was quick to point out that reasonable suspicion would be required for any sniff occurring *"*during an *unreasonably prolonged* traffic stop." Id. at 407-08 (emphasis added). Similarly, in Muehler v. Mena, the Court held that questions that do not go directly to the purpose of the initial traffic violation are permissible only as long as they do not prolong the stop. 544 U.S. at 101. If the questioning prolongs a stop, it must be supported by particularized suspicion. Id. at 101 & n. 3.

The Eighth Circuit is concerned that identifying when a traffic stop is "prolonged" is an exercise in artificial line-drawing. Alexander, 448 F.3d at 1017. This Court, however, has had no problem defining when a traffic stop ends. According to this Court, a traffic stop normally ends "when the police have no further need to control the scene." Arizona v. Johnson, 555 U.S. 323, 333 (2009). That moment is most often communicated to the driver and any passengers through the issuance of a traffic or warning ticket and the return of any and all documents. See, e.g.,United States v. Villa, 589 F.3d 1334, 1339 (10th Cir. 2009) ("Once an officer returns the driver's license and registration, the traffic stop has ended and questioning must cease; at that point, the driver must be free to leave"); United States v. Singh, 363 F.3d 347, 356 (4th Cir.2004) (after an officer issues a warning or citation and returns a driver's license and registration, the driver may "proceed on his way, without being subject to further delay by police for additional questioning"); United States v. Santiago, 310 F.3d 336, 342 (5th Cir. 2002) ("Once a computer check is completed and the officer either issues a citation or determines that no citation should be issued, the detention should end and the driver

should be free to leave"). Any action that takes place after that moment both logically and necessarily "prolongs" the encounter. In a prolonged encounter, the "de minimis" intrusions that are permissible within the parameters of a traffic stop are no longer acceptable. Caballes, 543 U.S. at 407-08. The Fourth Amendment applies to the encounter and requires, at a minimum, "articulable and reasonable suspicion" to support an investigative traffic stop. Delaware v. Prouse, 440 U.S. 648, 663 (1979).

Separating the two encounters in the way the Court has separated them is not only constitutionally required, it makes sense from a policy standpoint. When a stop is ongoing, the Court is understandably wary of "micromanag[ing] an officer's control of the stop." Sellars, supra, 296 P.3d at n. 4. Concerns of officer safety pervade and, since the driver is already lawfully detained, his or her personal liberty is already compromised. Mimms, 434 U.S. at 111.; see also Maryland v. Wilson, 519 U.S. at 408, 413 (1997). In this context, "de minimis" intrusions do not change the character of the stop and can therefore be tolerated. Id.

The same cannot be said, however, of a post-stop encounter. Although officer safety remains important, the officer has lessened his or her control over the encounter by concluding the business of the traffic stop and returning the occupants' documents. Johnson, 555 U.S. at 332. And, unless the officer can identify reasonable suspicion of criminal activity, the driver should be free to leave. In these circumstances, officers are initiating a new seizure when they seek to conduct a canine sniff. Liberty is compromised not because of the traffic violation that permitted the stop in the first instance but because of the officer's own curiosity or hunch. When that is the case, the length of detention is irrelevant. "The Fourth Amendment applies to all seizures of the

person, including seizures that involve only a brief detention short of traditional arrest." Davis v. Mississippi, 394 U.S. 721 (1969); see also Terry v. Ohio, 392 U.S. at 1 (1968). With a new seizure comes the requirement of new justification.

In summary, there is a fundamental distinction between what acts law enforcement can take once an individual is lawfully seized what is required to *seize* an individual in the first place. Mena, 544 U.S. at n. 3. Under this Court's cases, the question of whether an intrusion was "de minimis" is relevant only when an officer is still in the midst of a lawful traffic stop. Otherwise, the brevity of any additional intrusion is irrelevant. The Eighth Circuit's caselaw is not compatible with this precedent. To reconcile this conflict, this Court should grant certiorari.

III. The question of whether the Fourth Amendment tolerates "de minimis" violations is a question of exceptional importance.

The issue presented in this petition is important to both law enforcement officers and to the citizens they detain. Though the Eighth Circuit laments rules based on "artificial" lines, the "de minimis" exception itself introduces an ambiguity that is detrimental to effective law enforcement. In the Eighth Circuit alone, the amount of time considered a "de minimis" extension appears to be anywhere from the 2 minutes permitted in $404,905 in U.S. Currency to up to ten minutes. United States v. Morgan, 270 F.3d 625, 631-32 (8th Cir. 2001).The ambiguity inherent in the "de minimis" exception makes it difficult for law enforcement officers to know with certainty that they are operating within constitutional bounds. See Berghuis v. Thompkins, 130 S.Ct. 2250, 2260 (2010) (ambiguous standards hinder law enforcement officers' ability to make decisions in the field).

The issue presented in Rodriguez's case is also significant because of its potential ramifications in other areas of Fourth Amendment jurisprudence. While the "de minimis" exception was originally announced in a traffic stop case, the manner in which the Eighth Circuit has defined it makes it applicable to other contexts as well. If a "de minimis" intrusion is simply measured by length of time and not, as in Mimms and Caballes, by the within-stop context in which it occurs, virtually any brief encounter can fall outside of the Fourth Amendment's protections. To stem any further erosion of the Fourth Amendment's safeguards, this Court should grant certiorari.

Conclusion

For the foregoing reasons, this Court should grant the Petition for Writ of Certiorari.

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