

No. 18-\_\_\_\_\_

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**In the Supreme Court of the United States**

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*Julia Augusta Constan Macri, Petitioner*

v.

*Illinois*

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On Petition for a Writ of Certiorari to the Illinois  
Court of Appeals for the Fifth District

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**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTION PRESENTED

Under this Court's Fourth Amendment decisions, an officer is prohibited from prolonging a traffic stop beyond its original purpose without "reasonable suspicion" of criminal activity. See, e.g., *Illinois v. Caballes*, 543 U.S. 405, 407 (2005); *Rodriguez v. U.S.*, 135 S.Ct. 1609, 1615 (2015). But the Court has not clearly defined what constitutes such "reasonable suspicion" or when such suspicion must be formed. As a result, state courts of last resort as well as federal circuit courts have created different standards and are now split over when an officer must form a reasonable suspicion.

The question presented is:

Whether under the Fourth Amendment the reasonable articulable suspicion necessary to extend a traffic stop must be formed before the officer's deviation from the stop's original mission?

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## INTRODUCTION

One of the most fundamental rights guaranteed by the United States Constitution is the Fourth Amendment right against unreasonable search and seizure. This Court has refined the definition of “reasonable” on multiple occasions. However, federal circuits and state courts still arrive at vastly different conclusions on what constitutes reasonable suspicion and when it must be formed.

In the case of Petitioner, Julia Macri, this inconsistency across jurisdictions has resulted in police officers depriving Macri of her fundamental Fourth Amendment protections under the law. The decision below interprets this Court’s precedent in *Rodriguez v U.S.*, 135 S.Ct. 1609 (2015), incorrectly. *Rodriguez* demands that all information included in a reasonable suspicion analysis, in the pretextual traffic stop context, must be information learned before an officer prolongs the stop beyond its original purpose. Some jurisdictions, like the Iowa and Nevada Supreme Courts and the Seventh Circuit, have strictly followed this precedent. However, the decision below and other jurisdictions, like the First and Eighth Circuits, have deviated from this precedent by including information acquired after the stop is prolonged.

This split on an important Fourth Amendment issue is ripe for resolution by this Court, and this case is an excellent vehicle with which to do so.

## OPINIONS BELOW

The Illinois Appellate decision is reprinted at 1a. The order denying rehearing by the Illinois Supreme Court is reprinted at 16a. The district court’s opinion denying the motion to suppress is reprinted at 17a.

## JURISDICTION

The Illinois Appellate Court issued its opinion on May 9, 2018. The Illinois Supreme Court denied rehearing on September 26, 2018. Justice Kavanaugh granted two extensions, one to January 25, 2019, and the second to February 25, 2019. This Court has jurisdiction under 28 U.S.C.1254(1).

## CONSTITUTIONAL PROVISION INVOLVED

U.S. Const. Amend. IV provides:

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

### A. Legal Framework

This Court has correctly construed the Fourth Amendment to protect against searches of vehicles absent reasonable suspicion. *Terry v. Ohio*, 392 U.S. 1, 20 (1968). In *Terry*, this Court held that “reasonable suspicion” requires more than a hunch. *Id.* at 22. Instead, an officer must point to specific and articulable facts that would reasonably justify the search. *Id.* at 21.

This Court has also allowed officers to make vehicle stops for pretextual justifications. *Whren v. U.S.*, 517 U.S. 806, 813 (1996). While this Court has required only probable cause of a traffic violation to detain a vehicle, it has not allowed officers free range in the course of the detention. Instead, this Court has required that tasks

related to investigating the potential traffic violation should be completed expeditiously.

In *Rodriguez*, this Court prohibited extending a traffic stop—beyond the necessary time to complete the original purpose of the stop—without new reasonable suspicion. 135 S.Ct. at 1615. The Court expressly rejected the government’s assertion that incrementally prolonging a stop is permissible if the officer diligently pursues the purpose of the stop and the completed time is no longer than a normal reasonable stop. *Id.* at 1616. That rejection indicates that the Fourth Amendment severely limits police officers’ use of pretextual stops to conduct warrantless searches.

### **B. Factual History**

The core of this dispute is that the lower court included facts discovered after Macri’s traffic stop was prolonged in its determination of reasonable suspicion. If the lower court had not done so, the other circumstances would not have been sufficient to lawfully prolong the traffic stop.

On October 22, 2015, Macri was stopped by an Officer Thebeau for an expired registration tag on I-70 eastbound. Macri was given a written warning and then was released on her way. Officer Thebeau felt Macri was uncooperative and communicated this fact to Deputy McElroy. Officer Thebeau indicated Macri had Utah plates and that he was suspicious of her travel plans but had no narcotics dog available at the time.

Deputy McElroy began to follow Macri down the interstate until she allegedly committed a traffic violation, which happened to be driving too close to the car in front

of her. Prior to the stop, Deputy McElroy called Sheriff Smith and asked him to prepare a narcotics dog in case it was needed. Deputy McElroy stopped Macri at 2:55 pm.

When Deputy McElroy approached the vehicle and explained the traffic violation, Macri rolled down the window about six inches and expressed her irritation about already being stopped by officers. She declined to step out of the vehicle when requested to do so. However, at that initial approach Macri provided Deputy McElroy with her rental agreement and travel plans.

Deputy McElroy approached the vehicle a second time at 3:06 pm. He asked Macri questions about her travel plans while he waited for her background check to complete. When Deputy McElroy suspected the rental agreement and travel plans were inconsistent, Macri permitted him to call the rental company. While he was on the phone, the narcotics dog approached the vehicle and confirmed the presence of drugs. The total length of the traffic stop was 23 minutes. After the narcotics dog alerted Deputy McElroy of a drug presence, the car was searched, and a quantity of cannabis was recovered.

Deputy McElroy's stated basis for reasonable suspicion of criminal activity was as follows. First, he indicated that the fact that Macri only partially rolled her window down was, in his experience, a way to mask the smell of narcotics. Second, he stated that the lived-in condition of the car and amount of luggage were indicators, in his experience, of criminal activity. Finally, Macri's agitated demeanor and travel plans also piqued Deputy McElroy's suspicion.

### **C. The Decisions Below**

Macri was arrested and appeared before a stipulated bench trial on April 13, 2016. The district court found Macri guilty of unlawful possession and distributing or manufacturing more than 5000 grams of cannabis. The district court denied Macri's motion to suppress evidence. She was sentenced to 8 years in prison. The Illinois Appellate Court affirmed Macri's conviction on May 5, 2018. The Illinois Supreme Court denied rehearing on September 26, 2018.

When denying the motion to suppress, the district court reasoned that Deputy McElroy had probable cause of a traffic violation to pull Macri over. The court also found that Deputy McElroy's interaction with the rental company was appropriate police action. Finally, the court found the dog sniff permissible because it coincided with the time it took Deputy McElroy to contact the rental company.

The Court of Appeals took a similar approach to the motion to suppress. Using the analysis in *Rodriguez*, the court found that Deputy McElroy did prolong the stop. However, the court also found that he had reasonable suspicion to do so. The court based that suspicion in Macri's irritation with being stopped a second time in one night; her out-of-state license plate; her willingness to roll the window down only halfway; the large amount of luggage in the car, including black duffle bags; and her inconsistent travel plans.

## REASONS FOR GRANTING THE PETITION

Review should be granted to resolve the varying interpretations of *Rodriguez* by both the federal circuits and state supreme courts. This question, which has divided the lower courts in just the last four years, is important in ensuring that government officials do not overstep the bounds of individual privacy set by the Fourth Amendment.

This issue is important not only because it impacts every driving citizen, but also because the split deprives some citizens of a fundamental right. This Court has recognized the right to be free from government constraint as the most “sacred” and “carefully guarded” right. *Terry*, 392 U.S. at 9. Resolving variations amongst the jurisdictions would keep this right “carefully guarded.”

### **I. This Court should resolve the split over when a new reasonable suspicion must arise to justify extending a traffic stop.**

This Court’s review is needed because, in the short three years after *Rodriguez*, some jurisdictions have veered from the spirit of that decision, by including information learned after unlawfully prolonging a stop into their reasonable suspicion analysis. *Rodriguez* holds that a traffic stop may not be prolonged by tasks unrelated to the original reason for the stop absent new reasonable suspicion. 135 S. Ct. at 1615. There, this Court indicated that the authority for a seizure ceases as soon as the reasonable time to complete the tasks related to the original traffic infraction expires. *Id.* The Court also reaffirmed previous holdings that allow

unrelated inquiries outside the traffic stop to be conducted only if they do not lengthen the time of the traffic stop. *Id.*

This Court gave examples of those related, ordinary inquiries. They include examining drivers' licenses, ensuring there are no outstanding warrants against the driver, and checking the vehicle's registration and proof of insurance. *Id.* Investigations like dog sniffs are outside ordinary inquiries. *Id.* Further, activities outside ordinary inquiries that extend the traffic stop must be justified by reasonable suspicion. *Id.* However, some jurisdictions have included in their reasonable suspicion analyses information that the officer learned *only* after already prolonging the stop, while other jurisdictions have rejected that approach.

#### **A. The Incorrect Step-By-Step Approach**

Some jurisdictions do not require fully developed reasonable suspicion before permitting an officer to prolong a traffic stop. For example, the First Circuit in *U.S. v. Dion* has adopted a principle that a police officer may increase his or her investigation by degrees. 859 F.3d 114, 125 (1st Cir. 2017). There, the court determined that the officer was justified in asking questions about the driver's travel itinerary and doing a Google Maps search when the driver had Colorado plates, though he presented an Arizona driver's license. *Id.* at 125-26.

After the discussion of travel plans, the officer brought the driver back to the police cruiser where the officer found suspicious the fact that the driver volunteered to have his vehicle searched. *Id.* at 126. This then led the officer to ask questions about the driver's criminal history. *Id.* at 127. Both the district court and the First Circuit

found the traffic stop was not unreasonably prolonged because the officer was developing reasonable suspicion bit-by-bit throughout the traffic stop. *Id.* at 128.

This method contradicts this Court's reasoning in *Illinois v. Caballes*, 543 U.S. 405, 407 (2005). There this Court indicated that a dog sniff could not prolong a traffic stop absent new reasonable suspicion. *Id.* This Court reasoned that a stop justified by a traffic violation cannot be extended beyond that investigation if it lengthens the stop, otherwise the execution of the stop is a constitutional violation. *Id.*

Yet, under the First Circuit's reasoning, a police officer may extend a traffic stop as long as he believes that extension will *lead* to new reasonable suspicion. This logic undermines the protections of the Fourth Amendment.

The Eighth Circuit agrees with the First Circuit. *U.S. v. Murillo-Salgado*, 854 F.3d 407, 419 (8th Cir. 2017). In *Murillo-Salgado*, a police officer detained a vehicle for twenty-three minutes before searching it and discovering drugs. *Id.* at 412. When the officer stopped the vehicle, he asked the driver to join him in the patrol car while he was preparing the warning citation. *Id.* While the Court determined that the officer did not deviate from his mission, as he was doing routine tasks while he questioned the driver, questions were asked about the driver's profession, destination, and route which were outside the scope of the original mission. *Id.* It was only through these questions, which resulted in an unusually long traffic stop, that the officer discovered information leading to reasonable suspicion. *Id.* at 416.

The Eighth Circuit sets a precedent that motivates officers to complete routine tasks slowly, so they are permitted to ask questions outside of the scope of the stop.

This allows them to keep the clock running longer, giving them more time to gather information that might constitute reasonable suspicion separate from that of the original stop. The Eighth Circuit even acknowledged that the *Rodriguez* rule may be narrower than the Eighth Circuit’s own interpretation, recognizing that the exclusionary rule is based on this Court’s case law. *Id.* (“*Rodriguez* may be read to impose limitations greater than those reflected in our cases”). As some members of this Court have recognized, “The officer deepens the breach [of Fourth Amendment protection] when he prolongs the detention just to fish further for evidence of wrongdoing.” *Utah v. Strieff*, 136 S.Ct. 2056, 2065 (2006) (Sotomayor, J., dissenting).

Now is the time for this Court to clarify the correct standard governing the reasonable suspicion analysis for prolonging traffic stops.

### **B. The Correct Standard**

In other jurisdictions, by contrast, courts have correctly followed the reasoning in *Rodriguez* by including only information learned *before* a stop was prolonged in their reasonable suspicion analyses.

For example, the Iowa Supreme Court refused to include two factors proposed by the State in a reasonable suspicion analysis. *In re Pardee*, 872 N.W.2d 384, 393 (Iowa 2015). In *Pardee*, the court found that the officer developed suspicion about the driver and passenger’s criminal histories and their inconsistent travel plans only *after* he extended the traffic stop to investigate those issues. *Id.* The court dismissed those factors and only looked to the following factors, all of which were observable at the time of the stop: the nervousness of the driver and passenger, the lived-in look of the

vehicle, and the presence and strong odor of air freshener. *Id.* These factors combined were not sufficient for reasonable suspicion. *Id.*

The Seventh Circuit has also refused to include information gleaned after the stop has been prolonged. *U.S. v. Rodriguez-Escalera*, 884 F.3d 661, 671 (7th Cir. 2018). In *Rodriguez-Escalera*, the court found that all necessary time and information needed to complete the traffic citation was completed within eleven minutes of the stop. *Id.* at 664. However, the officer slowly proceeded with the process of issuing the citation, so he could have more time to ask questions and develop reasonable suspicion. *Id.* at 665. That court found that none of the information learned between the eleven minutes when the stop should have ended and the twenty-two minutes when the narcotics dog came could not be used in the analysis because the stop had been impermissibly prolonged. *Id.* at 671.

Even before *Rodriguez*, some jurisdictions followed this same rule. *State v. Beckman*, 305 P.3d 912, 916 (Nev. 2013). In *Beckman*, an officer pulled over a vehicle and received the driver's license and registration and then returned to his police vehicle. *Id.* at 915. The officer told the training officer in his vehicle that he suspected the driver was carrying drugs because he seemed nervous and was driving through the night. *Id.* After the officer returned the license and registration back to the driver, he asked the driver about drugs and for permission to search the car. *Id.* When the driver refused, the officer detained the driver anyway to wait for a drug canine to arrive. *Id.* When analyzing the officer's state of mind, the Nevada court only looked to factors the officer knew about before he further detained the driver. *Id.* at 918. The

court did not even consider the information the officer learned in his subsequent conversation after returning the license or the refusal of consent to search the vehicle.

*Id*

This split is especially troubling considering the interstate travel involved in many cases with *Rodriguez* implications. Officers often cite out-of-state plates as a factor giving them reasonable suspicion. *See Dion*, 859 F.3d at 125. If jurisdictions continue to apply the reasonable suspicion standard inconsistently, drivers crossing state lines will not be informed about what standard police officers are held to. Further, what would violate a constitutional right in one state, would not be considered such a violation in another. This weakens the protection against unreasonable search and seizure, as it is not consistently applied in the whole country. And this split has arisen—and deepened—in just four years, illustrating how frequently similar situations arise.

This Court should follow the reasoning of the Iowa and Nevada Supreme Courts and the Seventh Circuit, making it clear that an officer may not prolong a stop in intervals to develop step-by-step reasonable suspicion. This will give officers and drivers clarity about their Fourth Amendment rights..

In short, this Court should follow *Rodriguez* to its logical conclusion, by eliminating information learned after the officer prolonged the stop in the reasonable suspicion analysis.

## **II. This case is an excellent vehicle for resolving the split.**

Not only is the question presented worthy of certiorari, but this case is an excellent vehicle for resolving that question.

First, this petition presents a question clarifying the scope of reasonable suspicion required of police officers, particularly in the traffic context. Because different contexts change the nature of reasonable suspicion, this will allow the court to limit its holding to the context of traffic stops.

Second, the facts of this case provide an especially good context in which to clarify the meaning of reasonable suspicion. For example, the court below recognized that the stop was prolonged, but did not even question if the analysis should include the information learned after Deputy McElroy prolonged the stop. This Court would not have to address issues like whether or not the stop was actually prolonged but could instead focus on the reasonable suspicion analysis.

Third, there can be no question that the outcome would be different if the court below had applied the correct rule—that is, the rule applied by the Seventh Circuit and the Iowa Supreme Court.

Here, the lower court listed the elements that comprised Officer McElroy's reasonable suspicion including: Macri's irritation with being stopped a second time in one night; her out-of-state license plate; Macri's willingness to roll the window down only halfway; the large amount of luggage in the car, including black duffle bags; and her inconsistent travel plans. However, Officer McElroy did not discover the inconsistency of Macri's travel plans until after he prolonged the traffic stop. The lower

court recognized that, in the twelve minutes Officer McElroy was investigating Macri's travel plans and waiting for the dog sniff, he had detoured from the original mission and had prolonged the stop. But information about Macri's travel plans was not developed before Officer McElroy prolonged the stop.

Though Macri's articulated plans did not coincide with the terms of the rental agreement, this could be explained by a mistake on the agreement or a change of plans requiring Macri to keep the rental longer than originally anticipated. Officer McElroy did not have tangible reason to suspect Macri's travel plans until he found they conflicted with what the "rental car company told Deputy McElroy during their conversation." If Officer McElroy had not called the rental car company—which required him to prolong the stop—he would not have had sufficient information to constitute reasonable suspicion—assuming he was correct in concluding that the rental company had given him reasonable suspicion.

Looking to the factors in Macri's case before the stop was prolonged, there was not enough evidence to establish reasonable suspicion. First, Deputy McElroy referenced Macri's irritation as a factor. Demeanor is a factor courts take into consideration when analyzing reasonable suspicion, looking to things like nervousness of the driver. *Beckman*, 305 P.3d at 918. However, that nervousness must go beyond the normal nervousness experienced by a person who has been pulled over by a police officer. Similarly, Macri's irritation derived from being stop twice by police officers in a short period of time. This does not exceed the normal amount of irritation a reasonable person would experience under similar circumstances.

Second, Officer McElroy focused on Macri's unwillingness to fully roll the window down and the amount and type of luggage in her car. But in other cases, very similar actions have not been enough to constitute reasonable suspicion. For example, in *In Re Pardee* the Iowa Supreme Court found that nervousness, air freshener, the lived-in condition of the car, and out of state license plates did not amount to reasonable suspicion. 872 N.W.2d at 394. Likewise, another court found that the pungent smell of air fresheners, the nervousness of the driver, discrepancies in travel plans also did not amount to reasonable suspicion. *Rodriguez-Escalera*, 884 F.3d at 671.

Slipping in information learned after an officer prolongs the stop goes against the spirit of *Rodriguez*, and harms Macri, individuals like Macri, and all citizens who are subject to a stop by police whether or not they have committed more than a traffic violation. Accordingly, this court should accept this petition for certiorari.

## CONCLUSION

This petition presents, in a clean and compelling vehicle, a question of great importance to all citizens concerning the requisite reasonable suspicion required to impose on a driver's right to be free from unreasonable search and seizure, and specifically, when that suspicion must be acquired in the context of an extended traffic stop.

The petition should therefore be granted.

Respectfully submitted,

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