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Reasonable in Time, Unreasonable in Scope: Maximizing Fourth Amendment Protections Under Rodriguez v. United States

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REASONABLE IN TIME, UNREASONABLE IN SCOPE: MAXIMIZING FOURTH AMENDMENT PROTECTIONS UNDER *RODRIGUEZ V. UNITED STATES*

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Abstract: In *Rodriguez v. United States*, the Supreme Court held that a law enforcement officer may not conduct a drug dog sniff after the completion of a routine traffic stop because doing so extends the stop without reasonable suspicion in violation of the Fourth Amendment's prohibition on unreasonable seizures. Tracing the background of *Rodriguez* from the Supreme Court's landmark decision in *Terry v. Ohio*, this Comment argues that *Rodriguez* is best understood as a reaction to the continued erosion of Fourth Amendment protections in the investigative stop context. Based on that understanding, this Comment argues for a strict reading of *Rodriguez*, under which any detour from a traffic stop's "mission" that extends the stop for any amount of time renders the stop an unreasonable seizure in violation of the Fourth Amendment.

While many courts have read *Rodriguez* in a similarly rigorous way, they differ on the question of whether every detour from a traffic stop's mission is unlawful, or if something more akin to a reasonableness approach is more appropriate. Additionally, even among those courts that have taken the approach this Comment advocates for, there has been significant difficulty formulating a workable framework for applying *Rodriguez*'s rule. To address those difficulties, this Comment draws on Idaho and Kentucky case law to construct a straightforward method for applying *Rodriguez* in the context of a motion to suppress evidence—the primary remedy for a Fourth Amendment violation.

INTRODUCTION

This Comment is about *Rodriguez v. United States*[2]—the decision itself, the doctrinal developments that birthed it, and how best to apply its holding. Penned by Justice Ruth Bader Ginsburg, *Rodriguez* held that conducting a drug dog sniff after the completion of a routine traffic stop extends the stop without reasonable suspicion, thus violating the Fourth Amendment's proscription against unreasonable seizures.[3] Under *Rodriguez*, if an officer detours from a traffic stop's "mission" in a way

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2.575 U.S. 348 (2015).

3.*Id.* at 350.

that extends the duration of the stop, the stop transforms into an unlawful Fourth Amendment seizure.[4]

Rodriguez is important for several reasons. First, it is an ideal case for tracing the evolution of investigative stops since they were first held lawful by the Supreme Court in *Terry v. Ohio*.[5] Second, it promulgates a rare, bright-line rule bucking the general "reasonableness" trend of Fourth Amendment jurisprudence, which analyzes police conduct based on a "totality of the circumstances" standard that resists the application of bright line rules.[6] Third, this bright-line rule, applied literally, is extremely unforgiving of certain police conduct—another rarity.[7]

The Court decided *Rodriguez* against a backdrop of continued erosion of Fourth Amendment protections in the investigative stop setting.[8] As a subset of investigative stops, traffic stops were subject to this erosion as well.[9] Over a series of decisions spanning multiple decades, the Court substantially watered down its early limitations on the acceptable duration of investigative stops while enlarging the scope of activities law enforcement officers can engage in during such stops.[10] Fundamentally, *Rodriguez* was a reaction to these developments: an attempt to place some meaningful limits on police actions in the traffic stop context by instituting harsh penalties for engaging in conduct unrelated to the stop's purpose. *Rodriguez* is significant, then, as an effort to rebalance *Terry*'s principles in a way that returned citizens some of the Fourth Amendment protections they had lost in the preceding years, at least in the traffic stop context. Cognizant of *Rodriguez*'s place in the broader landscape of Fourth Amendment jurisprudence, the goal of this Comment is to craft a methodology for applying *Rodriguez* that is both faithful to its text and

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4.*Id.* at 350–51.

5.392 U.S. 1 (1968).

6.*See, e.g.*, Maryland v. King, 569 U.S. 435, 448 (2013) ("[T]he 'touchstone of the Fourth Amendment is reasonableness.'" (quoting Samson v. California, 547 U.S. 843, 855 n.4 (2006))); Illinois v. Gates, 462 U.S. 213, 232 (1983) (describing probable cause as "a fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules").

7.Florida v. Jimeno, 500 U.S. 248, 250 (1991) (explaining that the "touchstone of the Fourth Amendment is reasonableness"); Ohio v. Robinette, 519 U.S. 33, 39 (1996) (citing cases and explaining that the Supreme Court has "consistently eschewed bright-line rules" in the Fourth Amendment context, "instead emphasizing the fact-specific nature of the reasonableness inquiry," which "is measured in objective terms by examining the totality of the circumstances").

8.*See generally* ERWIN CHEMERINSKY, PRESUMED GUILTY: HOW THE SUPREME COURT EMPOWERED THE POLICE AND SUBVERTED CIVIL RIGHTS 141–67, 209–30 (2021).

9.*See* Berkemer v. McCarty, 468 U.S. 420 (1984); Illinois v. Caballes, 543 U.S. 405 (2005).

10.*See* United States v. Place, 462 U.S. 696, 706–08 (1983); United States v. Sharpe, 470 U.S. 675, 688 (1985); *Caballes*, 543 U.S. at 409; Muehler v. Mena, 544 U.S. 93, 101 (2005); Arizona v. Johnson, 555 U.S. 323, 333–34 (2009). *But see* Florida v. Royer, 460 U.S. 491 (1983).

maximally protective of defendants. Doing so will allow citizens to get the most out of *Rodriguez*'s much needed protections against unreasonable seizures.

This Comment proceeds in four parts. Part I traces the key rules and concepts that, taken together, form the basis for the Court's decision in *Rodriguez*. Bringing these threads together, Part II turns to *Rodriguez v. United States*, framing the Eighth Circuit's original decision[11] against the relevant legal debate before moving on to a close examination of *Rodriguez* itself. Part III surveys how federal and state appellate courts apply the *Rodriguez* rule. After using the experience in the federal circuits to understand what makes *Rodriguez* difficult to apply, Part III turns to the Idaho and Kentucky Supreme Courts for lessons in crafting a framework for making that application more workable. Part IV concludes by proposing a straightforward framework, drawn from Idaho and Kentucky case law, for applying *Rodriguez* in the context of a motion to suppress evidence—the primary remedy for a Fourth Amendment violation.

By grafting Kentucky's "scope" analysis onto Idaho's "duration" analysis, this framework aims to provide a fully fleshed out rule that obeys both the letter and spirit of *Rodriguez*, while providing defendants with the greatest protection possible. However, even at its most protective, *Rodriguez*'s scope analysis is fundamentally open-ended and leaves courts with a great deal of latitude to determine the kinds of actions an officer can lawfully engage in during a traffic stop. This Comment will close by arguing that the indeterminate nature of *Rodriguez*'s scope analysis is a serious flaw that leaves it vulnerable to manipulation. By failing to put meaningful constraints around the scope of traffic stops, *Rodriguez* allows courts to continually widen that scope, which in turn makes it more difficult to take advantage of *Rodriguez*'s duration-based protections.

I. The Background for Rodriguez*:* Terry *Stops, Traffic Stops, and Dog Sniffs*

This Part offers a genealogy of the key legal doctrines underlying the Supreme Court's 2015 decision in *Rodriguez v. United States*. On its face, *Rodriguez* confronted the question of whether delaying a routine traffic stop to conduct a dog sniff transformed the stop into an unlawful seizure under the Fourth Amendment.[12] But on a more fundamental level, *Rodriguez* addressed the limits on the scope and duration of

11.United States v. Rodriguez, 741 F.3d 905, 907 (8th Cir. 2014).

12.*Id.* at 350.

investigative stops as they have developed since the Court's decision in *Terry v. Ohio*.[13]

This genealogy focuses on both the "scope" and "duration" aspects of *Rodriguez* and can be broken into four distinct jurisprudential threads.[14] First, the Court's landmark decision in *Terry v. Ohio*,[15] which defined the parameters of an investigative stop, along with the Court's subsequent choice to analogize traffic stops to *Terry* stops for the purposes of Fourth Amendment analysis.[16] Second, the unique legal status of drug dog sniffs, which, while not searches,[17] are a means of detecting "ordinary criminal wrongdoing."[18] Third, the erosion of *Terry*'s early "brevity" requirement in favor of a more flexible "diligence" standard,[19] played out through the trilogy of *Florida v. Royer*,[20] *United States v. Place*,[21] and *United States v. Sharpe*.[22] Fourth, and last, the expansion of the traffic stop's scope to allow for dog sniffs;[23] the Court's acknowledgment that dog sniffs may unreasonably prolong traffic stops;[24] and the subsequent shift—driven by Justice Ginsburg—from a soft "unreasonably prolonged"[25] standard for traffic stops to a strict "measurable extension" standard.[26] Tracing this genealogy explains the legal trends that Justice Ginsburg reacted to when Ginsburg penned the majority opinion in *Rodriguez*. Understanding this dynamic, in turn, sheds light on how *Rodriguez*'s holding is best understood and applied.

A. Some Fourth Amendment Basics: Rights and Remedies

The Fourth Amendment protects against unreasonable searches and seizures and provides that no search or arrest warrant may issue without probable cause supported by particularized suspicion.[27] Probable cause

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13.*Id.* at 366–67; Terry v. Ohio, 392 U.S. 1 (1968).

14.*Rodriguez*, 575 U.S. at 364.

15.*Terry*, 392 U.S. at 1.

16.*See* Berkemer v. McCarty, 468 U.S. 420, 439 (1984).

17.United States v. Place, 462 U.S. 696, 706–08 (1983).

18.Indianapolis v. Edmond, 531 U.S. 32, 40–41 (2000).

19.*See infra* section I.D.

20.460 U.S. 491 (1983).

21.462 U.S. 696 (1983).

22.470 U.S. 675 (1985).

23.*See* Illinois v. Caballes, 543 U.S. 405, 410 (2005).

24.*See id.* at 407–08.

25.*See id.*; Muehler v. Mena, 544 U.S. 93, 101 (2005).

26.*See* Arizona v. Johnson, 555 U.S. 323, 333 (2009) (explaining that officers may ask questions unrelated to the purpose of the stop so long as they do not "measurably extend" the stop).

27.U.S. CONST. amend. IV.

"is a reasonable ground for belief of guilt."[28] A law enforcement officer has probable cause to conduct a search or make an arrest when the totality of the circumstances would lead a reasonable person to believe that a crime has been, or is about to be, committed.[29] Put more simply, probable cause exists when, viewed objectively, the facts available to law enforcement indicate a "fair probability" of criminal activity.

When an officer conducts a search or seizure in a way that violates the Fourth Amendment, the principal remedy is to exclude any evidence obtained as a result of the violation.[30] This exclusionary rule was established at the federal level by *Weeks v. United States*[31] and extended to the states half a century later in *Mapp v. Ohio*.[32] At an operational level, the exclusionary remedy is effected through a motion to suppress evidence, which identifies—and seeks to exclude—any evidence obtained as a result of the Fourth Amendment violation.[33]

B. Terry v. Ohio *and its Progeny: the Lawful Scope of a Traffic Stop*

In *Terry v. Ohio*,[34] the Supreme Court defined a special category of seizures that are less intrusive than arrests and may be initiated without probable cause if the degree of intrusion is sufficiently balanced by the government interest involved.[35] *Terry* held that a police officer was justified in initiating an "investigatory stop"[36] of Terry and companions and frisking their outer clothing for weapons where the officer had reasonable suspicion that the suspects were armed and preparing to engage in criminal activity.[37]

28.Brinegar v. United States, 338 U.S. 160, 175 (1949) (quotation marks omitted).

29.*See id.* at 175 (quoting Carroll v. United States, 267 U.S. 132, 162 (1925)).

30.*See* WAYNE R. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 11.2 (6th ed. 2022).

31.232 U.S. 383, 398 (1914).

32.367 U.S. 643, 655 (1961).

33.LAFAVE, *supra* note 29.

34.392 U.S. 1 (1968).

35.*Id.* at 27–31.

36.*Id.* at 8 (quotation marks omitted). *Terry* itself used the term "investigatory stop" to refer to a stop initiated based only on reasonable suspicion, and today such stops are commonly referred to as "investigative stops," "investigative detentions," or "*Terry* Stops." *See, e.g.*, STEVEN L. ARGIRIOU, FED. L. ENFORCEMENT TRAINING CTR., *TERRY* STOP UPDATE: THE LAW, FIELD EXAMPLES AND ANALYSIS 1, https://www.fletc.gov/sites/default/files/imported_files/training/programs/legal-division/downloads-articles-and-faqs/research-by-subject/4th-amendment/terrystopupdate.pdf [https://perma.cc/XM75-SFHC] (noting that "*Terry* stop" equally refers to "investigative detention"). Throughout, this Comment will use all three terms interchangeably.

37.*Terry*, 392 U.S. at 30.

In reaching this holding, the Court announced a dual inquiry for determining whether a search or seizure is justified under the Fourth Amendment.[38] First, a court must ask "whether the officer's action was justified at its inception," and second, "whether [the action] was reasonably related in scope to the circumstances which justified the interference in the first place."[39] The Court found the officer's initial stop justified because there was reasonable suspicion that a crime was imminent,[40] and found the subsequent pat down justified because the officer had reasonable suspicion that the suspects were potentially armed and dangerous.[41] The Court found the scope of the pat down—frisking the suspects' outer layer of clothing—reasonable because the officer "carefully restricted his search to what was appropriate to the discovery of [weapons]."[42]

Terry confined its holding to its own specific facts,[43] but its early progeny established that an investigative stop predicated on reasonable articulable suspicion—a lesser standard than probable cause—must be brief, restricted to investigating the circumstances that aroused the officer's suspicion, and conducted at the scene where it was initiated.[44] A lengthy stop unconfined to the place where it was initiated was considered too intrusive to be an investigative stop and properly classified as an arrest instead.[45]

While the Supreme Court had previously applied *Terry*'s principles in the traffic stop context,[46] this analogy was not formalized until *Berkemer v. McCarty*.[47] There, the Court wrote that traffic stops are "more

38.*Id.* at 19–20.

39.*Id.* at 20.

40.*Id.* at 22–23, 28.

41.*Id.* at 23–24, 28.

42.*Id.* at 29–30.

43.*Id.* at 30.

44.*See* Adams v. Williams, 407 U.S. 143, 146 (1972) ("A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time."); United States v. Brignoni-Ponce, 422 U.S. 873, 881 (1975) (holding that officer may stop and investigate vehicle on reasonable suspicion that it is transporting undocumented immigrants "because of the importance of the governmental interest at stake, the minimal intrusion of a brief stop, and the absence of practical alternatives for policing the border"); Dunaway v. New York, 442 U.S. 200, 209, 212 (1979) (describing a *Terry* stop as a "brief, on-the-spot stop on the street and a frisk for weapons," and holding that the suspect was subjected to an arrest rather than mere investigative detention where, "[i]n contrast to the brief and narrowly circumscribed intrusions involved in [*Terry* and its progeny] . . . , he was taken from a neighbor's home to a police car, transported to a police station, and placed in an interrogation room").

45.*See Dunaway*, 442 U.S. at 212–13.

46.*See Brignoni-Ponce*, 422 U.S. at 881.

47.468 U.S. 420 (1984).

analogous to a so-called '*Terry* stop' than to a formal arrest."[48] The Court explained that traffic stops are "presumptively temporary and brief" and "less 'police dominated'" than custodial interrogations or arrests because they typically occur in public and involve only one or two officers.[49]

While *Berkemer* clarified that traffic stops should be analyzed under the same principles as investigative detentions,[50] a separate line of cases fleshed out the permissible scope of an officer's actions during routine traffic stops. In *Pennsylvania v. Mimms*,[51] the Supreme Court held that police officers can order a driver out of their vehicle during a traffic stop in the interest of officer safety because the intrusion on the driver's personal liberty is "*de minimis*,"[52] meaning it is too inconsequential for the court to consider.[53] The Court eventually extended the power to order occupants out of a vehicle to passengers as well[54] and authorized officers to conduct searches of compartments in the vehicle's passenger area under certain circumstances.[55]

The Court found each of these actions lawful due to their connection to officer safety; but the Court has clarified that this officer safety rationale justifies only the minimal intrusions identified above and "does not by itself justify the often considerably greater intrusion attending" a full-blown search.[56]

C. Narcotics Dog Sniffs in Investigative Stops

While an officer may not conduct a full-blown search during an investigative stop based only on reasonable suspicion, *United States v. Place* significantly weakened this protection by holding that narcotics dog sniffs are not searches under the Fourth Amendment.[57] In *Place*, the

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48.*Id.* at 439 (citation omitted).

49.*Id.* at 437–39 (quoting Miranda v. Arizona, 384 U.S. 436, 445 (1966)); *see also* Knowles v. Iowa, 525 U.S. 113, 117 (1998) (noting that routine traffic stops pose less threat to officer safety than custodial arrests).

50.*Berkemer*, 468 U.S. at 436–39.

51.434 U.S. 106 (1977).

52.*Id.* at 110–11; *see also* Delaware v. Prouse, 440 U.S. 648, 663 (1979) (holding that an officer may stop a vehicle and detain the driver to check license and registration only if there is at least articulable and reasonable suspicion that a traffic offense or other crime has been committed).

53.According to *Black's Law Dictionary*, "*de minimis*" is a Latin phrase that means "of a trifling consequence and a matter that is so small that the court does not wish to even consider it." *De minimis*, BLACK'S LAW DICTIONARY (2d ed. 1910).

54.Maryland v. Wilson, 519 U.S. 408, 413–15 (1997).

55.Michigan v. Long, 463 U.S. 1032, 1049 (1983).

56.Knowles v. Iowa, 525 U.S. 113, 117 (1998).

57.United States v. Place, 462 U.S. 696, 706–07 (1983).

Supreme Court determined that a dog sniff of a person's luggage is a one-of-a-kind investigative procedure because it "discloses only the presence or absence of narcotics."[58] Therefore, the Court held that a drug dog sniff of the defendant's luggage did not constitute a search under the Fourth Amendment and thus did not require probable cause or reasonable suspicion.[59]

The Court's resolution of the dog sniff issue, unprompted by the briefing or the lower court's decision,[60] was immediately controversial. Justices Blackmun and Brennan each criticized the majority's haste to decide what standard should govern dog sniffs,[61] and Justice Brennan expressed the view that, at least in certain situations, they should be considered full-blown searches.[62] This discomfort with the legal status of dog sniffs did not end with the Burger Court,[63] and it is a crucial piece of background to the Court's later decision in *Rodriguez*.

D. Watering Down Terry*'s Early Brevity Requirement*

Terry and its progeny firmly established the importance of brevity in assessing the legality of an investigative stop.[64] Over a trio of cases—*Florida v. Royer*, *United States v. Place*, and *United States v. Sharpe*—the Supreme Court fleshed out this brevity requirement and declined to place a bright-line limitation on the duration of investigative detentions, imposing a flexible diligence-based standard instead.

In *Royer*, the Court held that the stop of a suspected drug smuggler escalated into a warrantless arrest when officers took the suspect's plane ticket, identification, and luggage; brought the suspect to an enclosed room forty feet from where the suspect was first stopped; and conducted a search of the suspect's luggage without informing the suspect that consent was not required.[65] Reviewing the law as it had developed since *Terry*, the Court commented on the acceptable parameters of an investigative detention:

58.*Id.* at 707.

59.*Id.* at 706–07.

60.*Id.* at 719 (Brennan, J., concurring); *id.* at 723 (Blackmun, J., concurring).

61.*Id.* at 719 (Brennan, J., concurring); *id.* at 723 (Blackmun, J., concurring). Justice Marshall joined both concurrences.

62.*Id.* at 720 (Brennan, J., concurring).

63.*See, e.g.*, Illinois v. Caballes, 543 U.S. 405, 410–17 (2005) (Souter, J., dissenting) (noting that a dog sniff to determine the presence of marijuana in a car trunk during a speeding stop was unjustified); *id.* at 419–25 (Ginsburg, J., dissenting) (noting that the drug sniff conducted during a speeding stop violated the Fourth Amendment).

64.*See supra* text accompanying notes 43–44.

65.Florida v. Royer, 460 U.S. 491, 494–95, 502–03 (1983).

> The predicate permitting seizures on suspicion short of probable cause is that law enforcement interests warrant a limited intrusion on the personal security of the suspect. The scope of the intrusion permitted will vary to some extent with the particular facts and circumstances of each case. This much, however, is clear: *an investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop*. Similarly, the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a *short* period of time.[66]

While the Court noted the significance of an investigative stop's duration, it did not elaborate on this factor.[67] However, it did emphasize that the government failed to show that it could not have used a drug sniffing dog to investigate the contents of Royer's luggage more expeditiously, suggesting that the stop might have been legal had it done so.[68]

The Court dealt with the duration factor again in *United States v. Place*.[69] There, DEA agents confronted defendant Place as they deplaned at LaGuardia Airport in New York.[70] The agents suspected Place had narcotics in their luggage and had been informed of Place's impending arrival.[71] Failing to obtain Place's consent to search the luggage, the agents seized the luggage and, roughly ninety minutes later, conducted a drug dog sniff that led to the discovery of cocaine.[72] After holding that the drug dog sniff was not a Fourth Amendment search,[73] the Court found for Place nonetheless, concluding that the ninety minute detention of Place's luggage without probable cause was an unlawful seizure.[74]

The Court explained that "[t]he length of the detention . . . alone precludes the conclusion that the seizure was reasonable in the absence of probable cause."[75] At first blush, this statement bears the appearance of a bright-line rule disallowing any investigative detention that lasts ninety minutes. But what the Court said next complicates this reading.

66.*Id.* at 500 (emphasis added) (citing United States v. Brignoni-Ponce, 422 U.S. 873, 881–82 (1975); Adams v. Williams, 407 U.S. 143, 146 (1972)).

67.*Royer*, 460 U.S. at 500.

68.*Id.* at 505–06.

69.United States v. Place, 462 U.S. 696 (1983).

70.*Id.* at 698–99.

71.*Id.* at 698.

72.*Id.* at 699.

73.*Id.* at 706–07.

74.*Id.* at 710.

75.*Id.* at 709.

Noting first that an investigative stop need not be "momentary," the Court reaffirmed what it had indicated in *Royer*, explaining: "the brevity of the [detention] is an important factor in determining whether the seizure is so minimally intrusive as to be justifiable on reasonable suspicion. Moreover, in assessing *the effect of the length of the detention,* we take into account *whether the police diligently pursue their investigation*."[76] This statement is puzzling. For example, what is the difference between the length of a detention and the "*effect* of the length of the detention"?[77] And what does it mean in this context for an officer to "diligently pursue their investigation"?

By way of an answer, the Court simply "note[d]" that the DEA agents knew Place was coming well in advance and therefore could have "minimized the intrusion" by arranging for an expeditious, on-scene investigation.[78] Then, declining to adopt a firm time limitation on investigative stops, the Court returned to where it began, reiterating that it had never approved a ninety minute seizure and "[could not] do so on the facts presented by this case."[79]

The *Place* Court left open more questions than it answered. If "[t]he length of the detention . . . alone precludes the conclusion that the seizure was reasonable in the absence of probable cause,"[80] how could the Court "decline to adopt any outside time limitation" for investigative stops?[81] Had it not just explained that ninety minutes was such a limitation? These questions compel another question: in light of this apparent contradiction, to what extent did the "effect of the length of the detention," measured by "whether the police diligently pursue[d] their investigation," control the Court's decision? In other words, what matters more in the Court's brevity analysis: the stop's duration or the officer's diligence?

The Court answered these questions in *United States v. Sharpe*, where it reformulated its brevity analysis to privilege law enforcement's diligence over the stop's duration.[82] Overturning the Fourth Circuit's holding that a twenty minute detention to investigate suspected drug trafficking violated the Fourth Amendment,[83] the Court returned to

76.*Id.* (emphasis added).

77.United States v. Sharpe, 470 U.S. 675, 685 (1985).

78.*Id.*; *see also* Florida v. Royer, 460 U.S. 491, 506 (1983) ("If [a drug dog] had been used, Royer and his luggage could have been momentarily detained while this investigative procedure was carried out.").

79.*Id.* at 709–10.

80.*Id.* at 709.

81.*Id.* 709–10.

82.470 U.S. 675 (1985).

83.*Id.* at 688.

Place. The Court stated that the rationale underlying *Place*'s conclusion that the length of the detention alone made the seizure unlawful "was premised on the fact that the police" failed to diligently pursue the investigation.[84] Thus, the Court recast *Place*'s holding as resting primarily on the officers' lack of diligence, *not* the detention's ninety minute length.

Having made clear that the "effect of the length of the detention," measured by "whether the police diligently pursue[d] their investigation," controlled the outcome in *Place*, the Court acknowledged that its prior investigative stop cases, "considered together, may in some instances create difficult line-drawing problems in distinguishing an investigative stop from a *de facto* arrest."[85] Nonetheless, the Court rejected the Fourth Circuit's decision because it "would effectively establish a *per se* rule that a 20-minute detention is too long to be justified under the *Terry* doctrine."[86]

Instead of a *per se* rule centered around the actual duration of the stop, the Court announced that the diligence inquiry is paramount in the analysis, writing that "[i]n assessing whether a detention is too long in duration to be justified as an investigative stop, we consider it appropriate to examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly."[87] Applying this standard, the Court found that the DEA agent pursued the investigation with the requisite diligence[88] because during the twenty minute detention, the agent was attempting to contact a patrol officer, communicating with local law enforcement, and investigating suspicions regarding the defendant's truck.[89] Therefore, the Court held that agent did not "unnecessar[ily]" delay the stop, and there was no Fourth Amendment violation.[90]

Fundamentally, the effect of *Sharpe* is not so much to detach duration from the brevity analysis as it is to turn duration into a mere function of diligence. After *Sharpe*, the appropriate duration of an investigative stop (which includes traffic stops) is determined by whether the officer acted diligently in conducting it, not by the amount of time the stop actually takes—i.e., *its duration*. Thus, anyone wishing to argue that an investigative stop's duration rendered it unconstitutional would have to

84.*Id.* at 684–85.

85.*Id.* at 685.

86.*Id.* at 686.

87.*Id.*

88.*Id.* at 687–88.

89.*Id.*

90.*Id.*

show that it was unnecessarily prolonged due to a lack of officer diligence.

E. From "Unreasonably Prolonged" to "Measurably Extended"

Where *Sharpe* hampered defendants' ability to challenge a traffic stop's legality based on duration, *Illinois v. Caballes* impeded their ability to challenge a traffic stop's legality based on scope.[91] *Caballes* is also *the key* case that set the stage for the Court's later decision in *Rodriguez*.

In *Caballes*, a police officer pulled the defendant, Caballes, over for speeding.[92] When the officer radioed dispatch to report the stop, a second officer overheard the report on the radio and drove to the scene with a drug detection dog.[93] While the stopping officer wrote Caballes a warning ticket, the K-9 officer[94] walked the drug dog around Caballes's car.[95] The dog alerted to the presence of narcotics, leading the officers to search the car and find marijuana, for which they arrested Caballes.[96]

Reversing the Illinois Supreme Court's judgment, *Caballes* held that the Fourth Amendment does not require reasonable suspicion to justify using a drug-detection dog to sniff a vehicle during an otherwise lawful traffic stop.[97] Chiding the Illinois Supreme Court for "characteriz[ing] the dog sniff as the cause rather than the consequence of a constitutional violation," the Court wrote that "conducting a dog sniff would not change the character of a traffic stop that is lawful at its inception and otherwise executed in a reasonable manner, unless the dog sniff itself infringed [a person's] constitutionally protected interest in privacy."[98] And because a drug dog sniff does not infringe on a legitimate privacy interest, the use of a drug dog during a routine traffic stop does not violate the Fourth Amendment.[99]

Crucial to the Court's holding was the *complete simultaneity* between the dog sniff and the traffic stop.[100] The K-9 officer arrived at the scene

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91.Illinois v. Caballes, 543 U.S. 405, 421 (2005) (Ginsburg, J., dissenting).

92.*Id.* at 406.

93.*Id.*

94.This Comment uses the term "K-9 officer" to refer to law enforcement officers who are trained to handle drug sniffing dogs. *See, e.g.*, *K-9 Officers*, EUGENE POLICE DEP'T, https://www.eugene-or.gov/927/K-9 [https://perma.cc/5VHL-FX64] (describing various roles of K-9 officers).

95.*Caballes*, 543 U.S. at 406.

96.*Id.*

97.*Id.* at 410.

98.*Id.* at 408.

99.*See id.* at 409–10.

100.*Id.* at 405.

after overhearing the stopping officer radio dispatch and conducted the entire dog sniff while the stopping officer wrote the warning ticket.[101] In an echo of *Sharpe*, the Court wrote that "[a] seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission,"[102] but deferred to the state courts' determination that the stopping officer did not "improperly extend[] the . . . stop to enable the dog sniff to occur."[103]

A careful reading of *Caballes* reveals several important points that help frame the Court's reasoning in *Rodriguez*. First, the holding itself: that an officer may, without reasonable suspicion, use a drug dog to sniff the exterior of a vehicle during an otherwise lawful traffic stop.[104] Second, a dog sniff cannot itself be the *source* of a constitutional violation, only the consequence of one, as the Court alluded to when it reviewed the Illinois Supreme Court's treatment of the problem.[105] Third, a dog sniff conducted during a routine traffic stop violates the Constitution if it occurs as a result of the traffic stop being "prolonged beyond the time reasonably required to complete that mission," or law enforcement "improperly extend[s] the duration of the stop to enable the dog sniff to occur."[106]

This last point is reminiscent of *Sharpe*, which explained that a stop is unnecessarily prolonged (or unreasonably prolonged, or improperly extended) when law enforcement fails to conduct it with adequate diligence.[107] The facts of *Caballes*, however, would have required applying the diligence standard to a routine traffic stop, a situation not analyzed in *Sharpe*, *Place*, or *Royer*.[108] Because the *Caballes* Court deferred to the lower court's finding that there was no improper extension of the stop, it did not engage with this question.[109] But the Court *would* confront this question in *Rodriguez*, where these threads were finally brought together.

101.*Id.* at 406.

102.*Id.* at 407.

103.*Id.* at 408.

104.*Id.* at 410.

105.*Id.* at 408.

106.*Id.* at 407–08.

107.United States v. Sharpe, 470 U.S. 675, 686–88 (1985).

108.*Caballes*, 543 U.S. at 406 (defendant pulled over for speeding); Florida v. Royer, 460 U.S. 491, 494–95, 502–03 (1983) (stop of suspected drug smuggler at airport); United States v. Place, 462 U.S. 696, 698–99 (1983) (same); *Sharpe*, 470 U.S. at 677–78 (stop of suspected drug trafficker involving high-speed police chase on highway).

109.*See Caballes*, 543 U.S. at 408–09.

Dissenting from the majority's decision in *Caballes*, Justice Ginsburg recalled *Terry*'s two-part test for investigatory detentions, which commands that "the officer's action [must be] justified at its inception and . . . reasonably related in scope to the circumstances which justified the interference in the first place."[110] Applying this test, Ginsburg argued that regardless of whether the dog sniff lengthened the duration of the stop, it expanded "the scope of the investigation" "from a routine traffic stop to a drug investigation" in violation of the reasonable-relation prong of the *Terry* test.[111]

Justice Ginsburg's analysis mirrored that of the Illinois Supreme Court.[112] Lamenting the majority's rejection of that approach, Ginsburg wrote that the Court had functionally held "that a dog sniff does not render a seizure that is reasonable in time unreasonable in scope."[113] In essence, Ginsburg's criticism of the majority's decision is that it creates an overly forgiving scope analysis for traffic stops, leaving duration as the only meaningful constraint. By allowing for dog sniffs during routine traffic stops, the Court drastically expanded the scope of acceptable law enforcement activities, permitting unrelated investigations so long as they do not run afoul of the Court's duration analysis. Ginsburg's recognition of this dynamic informed the opinion Ginsburg authored in *Rodriguez*. Recognizing—and perhaps disliking—that every avenue for challenging the legality of the kind of dog sniff at issue in *Caballes* had been cut off, *except* for challenging the stop's duration as unreasonably prolonged, Ginsburg sought to create a clear path for doing so.

Two more cases carried *Caballes*'s logic forward, setting the stage for *Rodriguez*. In *Muehler v. Mena*,[114] the Court cited *Caballes* to hold that police officers did not need reasonable suspicion to ask a lawfully detained individual questions about their name, date of birth, and immigration status.[115] The Court concluded that because the detention was not prolonged by the questioning, there was "no additional seizure within the meaning of the Fourth Amendment."[116]

In both *Caballes* and *Mena*, the Court spoke of detentions being unreasonably prolonged,[117] but *Arizona v. Johnson*[118] subtly altered this

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110.*Id.* at 419 (Ginsburg, J., dissenting) (quoting Terry v. Ohio, 392 U.S. 1, 20 (1968)).

111.*Id.* at 420–21 (Ginsburg, J., dissenting).

112.State v. Caballes, 802 N.E.2d 202, 205 (Ill. 2003) (concluding that because the dog sniff was performed absent "specific and articulable facts" suggesting drug-related activity, it "unjustifiably enlarg[ed] the scope of a routine traffic stop into a drug investigation").

113.*Caballes*, 543 U.S. at 421 (Ginsburg, J., dissenting).

114.544 U.S. 93 (2005).

115.*Id.* at 100–01.

116.*Id.*

language. Holding that an officer's questioning of a passenger did not turn a stop into a consensual encounter, Justice Ginsburg, now writing for the majority, relied on *Mena* to articulate the acceptable scope and duration of a traffic stop: "An officer's inquiries into matters unrelated to the justification for the traffic stop, this Court has made plain, do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not *measurably extend* the duration of the stop."[119]

The shift from "unreasonably prolonged" to "measurably extended" is significant. Where the meaning of "unreasonably prolonged" is malleable in the hands of its interpreter, "measurably extended" is cold and inflexible. Where "unreasonably prolonged" is sensitive to the circumstances, "measurably extended" counts the seconds.

Johnson's bright-line language would reappear in *Rodriguez*, where Ginsburg—again penning the majority opinion—wrote that the key question in determining whether a dog sniff violated the Fourth Amendment is whether conducting the dog sniff "adds time to" the stop.[120] Given that fact, and given Justice Ginsburg's criticisms of the majority's holding in *Caballes*, it is difficult to avoid the conclusion that Ginsburg inserted the "measurably extended" language into *Johnson* with the intention of one day redeploying it—and then Ginsburg did so in *Rodriguez*. Through Justice Ginsburg's sleight of hand in *Johnson*, Ginsburg opened a path for putting guardrails around *Caballes* and laid the groundwork for *Rodriguez*.

II. THE DENOUEMENT: *RODRIGUEZ V. UNITED STATES*

In *Rodriguez v. United States*, the Supreme Court addressed the question of "whether the Fourth Amendment tolerates a dog sniff conducted after completion of a traffic stop."[121] The Court held that it did not because "a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures."[122] This Part examines the Court's decision in *Rodriguez*, exploring its background and holding before tying it back to the Court's earlier traffic stop cases.

117.*Caballes*, 543 U.S. at 407 ("A seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission."); *see also* Mena, 544 U.S. at 101 (using similar language).

118.555 U.S. 323 (2009).

119.*Id.* at 333 (citing *Mena*, 544 U.S. at 100–01) (emphasis added).

120.Rodriguez v. United States, 575 U.S. 348, 357 (2015).

121.*Id.* at 350.

122.*Id.*

A. The Background

In *Rodriguez*, an officer pulled Dennys Rodriguez over after observing Rodriguez's car swerve slowly onto the shoulder of the highway before jerking back onto the road.[123] The officer asked Rodriguez for identification and briefly questioned Rodriguez and Rodriguez's passenger, and then issued a written warning.[124] After giving Rodriguez the warning, the officer asked for consent to walk a narcotics detection dog around the car, and when Rodriguez refused, the officer ordered Rodriguez and Rodriguez's passenger to exit the car and wait while a second officer drove to the scene.[125] Once the second officer arrived, the stopping officer walked the dog around Rodriguez's car, conducted a search after the dog alerted to the presence of narcotics, and uncovered a large bag of methamphetamine.[126]

The district court denied Rodriguez's motion to suppress and the Eighth Circuit affirmed, relying on its precedent holding that "a brief delay to employ a dog does not unreasonably prolong the stop" because such a delay represents only a "*de minimis* intrusion on personal liberty."[127] Adhering to this principle, the Eighth Circuit concluded that because the "seven- or eight-minute delay [to conduct the dog sniff] is similar to the delay[s] that we have found to be reasonable in other circumstances," it constituted only "a *de minimis* intrusion on Rodriguez's personal liberty," and was thus not an unreasonable seizure under the Fourth Amendment.[128] Rodriguez petitioned for certiorari, and a 6-3 Court reversed the Eighth Circuit.[129]

B. The Holding

As Justice Ginsburg did in the *Caballes* dissent, Ginsburg began by centering *Terry*.[130] Noting first the longstanding analogy between *Terry* stops and traffic stops, Ginsburg wrote that "[l]ike a *Terry* stop, the tolerable duration of police inquiries in the traffic-stop context is

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123.*Id.* at 351.

124.*Id.* at 352.

125.*Id.*

126.*Id.*

127.United States v. Rodriguez, 741 F.3d 905, 907–08 (8th Cir. 2014) (first citing United States v. Alexander, 448 F.3d 1014, 1017 (8th Cir. 2006); then citing United States v. Martin, 411 F.3d 998, 1002 (8th Cir. 2005); then citing United States v. Morgan, 270 F.3d 625, 632 (8th Cir. 2001); and then citing United States v. $404,905.00 in U.S. Currency, 182 F.3d 643, 649 (8th Cir. 1999)).

128.*Id.* at 907–08.

129.*Rodriguez*, 575 U.S. at 353, 358.

130.*See id.* at 354.

determined by the seizure's 'mission'—to address the traffic violation that warranted the stop and attend to related safety concerns."[131] Therefore, a traffic stop may "last no longer than is necessary to effectuate th[e] purpose" of the stop.[132]

In addition to determining whether to issue a ticket, the purpose or mission of a traffic stop includes "ordinary inquiries incident to [the traffic] stop," such as checking the driver's license, registration, and warrant status,[133] as well as taking "negligibly burdensome [safety] precautions."[134] However, any "negligibly burdensome [safety] precautions" the officer takes must ultimately be tied to the stop's traffic-based mission.[135]

Acknowledging that the Court's prior decisions in *Caballes* and *Johnson* allow for "certain unrelated investigations," Ginsburg cautioned that officers may not conduct such investigations "in a way that *prolongs* the stop" absent reasonable suspicion.[136] Leading up to this statement, the Court quoted both *Caballes*'s "unreasonably prolonged" language, and *Johnson*'s "measurably extend[ed]" language.[137] The Court's use of the unmodified "prolongs" suggests an adherence to *Johnson*'s "measurable extension" formulation, and the Court's holding bears this interpretation out. Concluding, Justice Ginsburg wrote that because dog sniffs are "a measure aimed at 'detect[ing] evidence of ordinary criminal wrongdoing,'"[138] they constitute detours from the stop's mission.[139] Therefore, the question is "not whether the dog sniff occurs before or after the officer issues a ticket . . . , but whether conducting the sniff 'prolongs'—*i.e.*, adds time to—the stop."[140]

Applying this framework, the Court found that because the officer initiated the dog sniff after completing the traffic stop's mission, the dog sniff added time to the stop.[141] Therefore, the dog sniff was the product of an unreasonable seizure unless the officer had reasonable suspicion to continue detaining Rodriguez.[142] The Court then vacated the Eighth

131.*Id.* (citation omitted) (citing Illinois v. Caballes, 543 U.S. 405, 407 (2005)).

132.*Id.* (quoting *Caballes*, 543 U.S. at 420 (Ginsburg, J., dissenting)).

133.*Id.* at 355 (alteration in original) (quoting Caballes, 543 U.S. at 408).

134.*Id.* at 356.

135.*Id.* ("[A]n officer may need to take certain negligibly burdensome precautions *in order to complete his mission* safely." (emphasis added)).

136.*Id.* at 354–55 (emphasis added).

137.*Id.*

138.*Id.* at 355 (alteration in original) (quoting Indianapolis v. Edmond, 531 U.S. 32, 40–41 (2000)).

139.*Id.* at 355–57.

140.*Id.* at 357 (quotation marks omitted).

141.*See id.* at 357–58.

142.*See id.*

Circuit's judgment, but left the question of whether detaining Rodriguez for the dog sniff was supported by reasonable suspicion open on remand.[143]

C. The Implications of Rodriguez

Although *Rodriguez* framed the question as "whether the Fourth Amendment tolerates a dog sniff conducted *after* completion of a traffic stop,"[144] its holding makes clear that the order of events does not matter on its own terms.[145] The fact that the dog sniff occurred after the stop's traffic-based mission concluded only matters because the dog sniff necessarily added time to the stop.[146] Thus, *Caballes* is consistent with *Rodriguez* not because the *Caballes* dog sniff occurred during, as opposed to after, the stop, but because in *Caballes* there was complete simultaneity between the traffic stop and the dog sniff.[147] Unlike in *Rodriguez*,[148] in *Caballes* the officer who conducted the dog sniff chose to drive to the scene after overhearing the stopping officer report the stop to dispatch, and the dog alerted to the presence of drugs *while* the original officer was still writing the ticket—that is, while the officer was still attending to the stop's mission.[149] In short, the *Rodriguez* dog sniff added time to the stop,[150] but the *Caballes* dog sniff did not.[151]

In its briefing, the government suggested that "an officer may 'incremental[ly]' prolong a stop to conduct a dog sniff so long as the officer is reasonably diligent in pursuing the traffic-related purpose of the stop, and the overall duration of the stop remains reasonable in relation to the duration of other traffic stops involving similar circumstances."[152] This proposed rule, as well as the Eighth Circuit's *de minimis* approach, exposes the problem with the "diligence" standard articulated in *Place* and *Sharpe*.[153] Determining whether an investigative

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143.*Id.* at 358.

144.*Id.* at 350 (emphasis added).

145.*Id.* at 357.

146.*See id.*

147.Illinois v. Caballes, 543 U.S. 405, 406 (2005) ("While [the officer] was in the process of writing a warning ticket, [the other officer] walked his dog around respondent's car."); *Rodriguez*, 575 U.S. at 352 ("Although justification for the traffic stop was 'out of the way,' [the officer] asked for permission to walk his dog around Rodriguez's vehicle." (citation omitted)).

148.*Caballes*, 543 U.S. at 406 ("When [the stopping officer] radioed the police dispatcher to report the stop, a second trooper . . . overheard the transmission and immediately headed for the scene with his narcotics-detection dog.").

149.*Id.*

150.Brief for the United States at 36–39, *Rodriguez*, 575 U.S. at 352 (No. 13-9972).

151.*See Caballes*, 543 U.S. at 406.

152.*Rodriguez*, 575 U.S. at 357 (alteration in original) (citation omitted).

stop was unreasonably prolonged based on whether the officer acted diligently in pursuing it—that is, analyzing duration as a function of diligence—invites courts to base their inquiry on whether the length of a particular stop is similar to the length the court believes to be characteristic of a reasonably diligent officer under the same circumstance. The problem with this kind of analysis is that it obviates the need for examining what the officer actually *did*.

Wise to this problem, Justice Ginsburg rejected the government's proposed rule and characterized it as arguing "that by completing all traffic-related tasks expeditiously, an officer can earn bonus time to pursue an unrelated criminal investigation."[154] "How," Justice Ginsburg asked, "could diligence be gauged other than by noting what the officer actually did and how he did it?"[155] Firmly centering the diligence inquiry around the actions of the officer, as opposed to basing it on an objective standard, is what allowed the Court to make "whether conducting the sniff 'prolongs'—*i.e.*, adds time to—the stop"[156] the dispositive factor in its analysis.[157] This bright-line rule is striking in how unforgiving it is: a literal reading demands that in the absence of reasonable suspicion, *any* detour from the mission of the traffic stop, for *any* amount of time, renders the stop presumptively unreasonable, further rendering any evidence obtained as a result of the extension suppressible. Though striking, this aggressive line drawing should not be surprising.

Recall Justice Ginsburg's dissent in *Caballes*. There, Ginsburg wrote that regardless of whether a dog sniff conducted without reasonable suspicion lengthens the duration of a traffic stop, it impermissibly expands the scope of the seizure from a "routine traffic stop to a drug investigation"[158] in violation of *Terry*'s command that an officer's action be both justified at its inception and "reasonably related in scope to the circumstances which justified the interference in the first place."[159] The *Caballes* majority's holding—that reasonable suspicion is not required to initiate a dog sniff during a traffic stop[160]—cut off Justice Ginsburg's preferred "scope" standard, such that "a dog sniff does not render a seizure that is reasonable in time unreasonable in scope."[161] Through

153.*See supra* section I.D.

154.*Rodriguez*, 575 U.S. at 357.

155.*Id.*

156.*Id.* (citation omitted).

157.*Id.* (quotation marks omitted).

158.Illinois v. Caballes, 543 U.S. 405, 420–21 (2005) (Ginsburg, J., dissenting).

159.*Id.* at 418 (quoting People v. Brownlee, 713 N.E.2d 556, 565 (Ill. 1999)).

160.*Id.* at 410 (majority opinion).

161.*Id.* at 421 (Ginsburg, J., dissenting).

Justice Ginsburg's majority opinion in *Rodriguez*, Ginsburg responded by rendering the "reasonable in time" standard—which after *Caballes* provides the only grounds for challenging a dog sniff conducted during a traffic stop—exacting, inflexible, and maximally protective of citizens involved in police encounters.

Dissenting in *Rodriguez*, Justice Thomas wrote: "[b]y strictly limiting the tasks that define the durational scope of the traffic stop, the majority accomplishes today what [Justice Ginsburg's] *Caballes* dissent could not: strictly limiting the scope of an officer's activities during a traffic stop justified by probable cause" to believe the driver committed a traffic offense.[162] Justice Thomas was half correct. *Rodriguez* did nothing to cut back the range of actions officers are permitted to take during a traffic stop. Rather, it eliminated some of the leeway officers previously had to engage in conduct outside the scope of the traffic stop by introducing a strict duration-based penalty. *Rodriguez* was not concerned with defining the scope of a traffic stop—Justice Ginsburg lost that battle in *Caballes*.[163] It was instead concerned with defining the penalty for stepping outside that scope. Where *Caballes* had knocked *Terry*'s investigative stop principles out of balance by loosening its scope standard, *Rodriguez* attempted to compensate for *Caballes* by tightening its duration standard. In other words, *Rodriguez* did not limit the kinds of activities an officer can engage in. However, it did limit the reach of *Caballes*, and in that sense, accomplished what Justice Ginsburg's dissent could not.

Properly read, *Rodriguez* eliminates the possibility of a *de minimis* extension. Or, put another way, under *Rodriguez*, any extension that is measurable is not *de minimis*. And because a dog sniff is just one example of a detour that adds time to a stop,[164] the rule that falls out of *Rodriguez* is best formulated as follows: if, during a traffic stop, an officer detours from the mission of the stop, and that detour extends the stop by *any* amount of time, then it is a *per se* unlawful seizure under the Fourth Amendment. Therefore, any evidence discovered as a result of that unlawful extension is tainted and must be suppressed.

III. *RODRIGUEZ* IN THE LOWER COURTS

This Comment argues that *Rodriguez*'s holding is best understood as making any extension of a routine traffic stop without reasonable suspicion *per se* unlawful under the Fourth Amendment and eliminating

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162.*Rodriguez*, 575 U.S. at 367 (Thomas, J., dissenting).

163.*See supra* text accompanying note 109–112.

164.*See Rodriguez*, 575 U.S. at 356.

the *de minimis* rule the Eighth Circuit relied on when it upheld Rodriguez's conviction. Many courts accept that *Rodriguez* did away with *de minimis* extensions in the traffic stop context;[165] but not all apply its holding in the way this Comment advocates for.[166] In addition, courts differ in their understanding of what exactly constitutes the mission of a traffic stop beyond the activities the *Rodriguez* Court identified.[167] And, hand-in-hand with the struggle to define the stop's mission, courts struggle to determine what exactly constitutes a detour from that mission.

This Part surveys how select state and federal appellate courts have confronted these ambiguities since the Supreme Court decided *Rodriguez*. Framing the initial discussion through the Third Circuit's decision in *United States v. Green*,[168] this Part analyzes the split in authorities on the question of whether, after *Rodriguez*, *any* diversion from a traffic stop's mission is unlawful absent reasonable suspicion, or if a less rigorous application is called for instead. Then, using Idaho and Kentucky as case studies, this Part offers examples of how courts have successfully applied a more rigorous reading of *Rodriguez*, drawing lessons for crafting a workable methodology in the process.

A. Confusion in the Federal Circuits: Rigor or Reasonableness?

The Third Circuit's 2018 decision in *United States v. Green* demonstrates the confusion over how to apply *Rodriguez*.[169] *Green* is useful for the way it highlights some important ambiguities in *Rodriguez*'s holding and lays out how federal circuits split in their applications of *Rodriguez*. Understanding the ambiguities identified by the *Green* court both clarifies *Rodriguez* and helps resolve the debate over whether its holding is to be applied literally.

165.*See, e.g.*, State v. Linze, 389 P.3d 150, 153 (Idaho 2016) (explaining that *Rodriguez*'s rule applies "to all extensions of traffic stops including those that could reasonably considered *de minimis*"); Davis v. Commonwealth, 484 S.W.3d 288, 294 (Ky. 2016) ("There is no '*de minimis* exception' to the rule that a traffic stop cannot be prolonged for reasons unrelated to the purpose of the stop."); United States v. Green, 897 F.3d 173, 179 (3d Cir. 2018) ("Following *Caballes*, lower courts disagreed over whether a *de minimis* extension of a traffic stop to allow time for a sniff would pass constitutional muster. *Rodriguez* answered this question with a clear 'no.'" (citing *Rodriguez*, 543 U.S. at 355)).

166.*See, e.g.*, State v. Wright, 926 N.W.2d 157, 166 (Wis. 2019) (holding that questions unrelated to the traffic stop's mission did not measurably extend the stop because, even though they "took some amount of time to ask," the court viewed "the time it took [the officer to ask the question] as de minimis and virtually incapable of measurement").

167.*See Rodriguez*, 575 U.S. at 355.

168.897 F.3d 173 (3d Cir. 2018).

169.*Id.* at 182.

1. The Background: United States v. Green

In *Green*, an officer pulled over the defendant, Green, while Green was driving between Pittsburgh and Philadelphia.[170] Green told the officer Green was going to Philadelphia to see family, but when asked how long Green planned to stay in the city Green replied, "I don't know. That all depends."[171] After questioning Green briefly, the officer checked Green's driver's license, which "revealed . . . multiple prior arrests for drug and weapons offenses."[172] The officer then issued Green a warning for tinted windows and obtained Green's permission to search Green's car.[173] The search did not uncover any contraband, but the officer reported smelling marijuana.[174]

The officer let Green go, but pulled Green over for speeding the next day as Green drove westbound, back in the direction of Pittsburgh.[175] The officer spent roughly forty seconds questioning Green about why Green was already leaving Philadelphia, then returned to the cruiser and spent approximately two minutes informing a colleague of the stop over the phone.[176] Prior to the officer's conversation with Green, the officer had requested backup and waited in the car for backup to arrive at the scene.[177]

Roughly eight minutes after finishing the call with the officer's colleague, backup still had not arrived, and the officer asked Green for consent to search Green's car.[178] "This time, Green . . . declined," at which point the officer instructed Green to remain in Green's car "until further notice."[179] Roughly fifteen minutes later, a canine unit arrived, although the court could not determine whether or when the officer had requested it,[180] and the dog alerted on Green's car.[181] A subsequent search uncovered roughly twenty pounds of heroin, and the government charged Green with possession with intent to distribute.[182]

170.*Id.* at 175–76.
171.*Id.* at 176.
172.*Id.*
173.*Id.*
174.*Id.*
175.*See id.*
176.*Id.* at 177.
177.*Id.*
178.*Id.*
179.*Id.*
180.*Id.*
181.*Id.*
182.*Id.*

Appealing the denial of Green's motion to suppress the drug evidence, Green argued that the officer prolonged the second stop without reasonable suspicion in violation of the Fourth Amendment.[183] The court framed the *Rodriguez* rule similarly to how this Comment has. First, the court wrote that *Rodriguez* required it to "determine [whether and] when" the officer "measurably extend[ed]" the stop.[184] Then, "[a]fter determining when the stop was extended—the '*Rodriguez* moment,' so to speak—we can assess whether the facts available" to the officer at the time of the *Rodriguez* moment were enough to establish "reasonable suspicion" of criminal activity.[185] If they were, then any measurable extension would be lawful; but if not, any extension would constitute an unreasonable seizure under the Fourth Amendment.[186]

The court noted that "the *Rodriguez* rule is far easier to articulate than to apply," especially when it comes to analyzing an officer's conduct *during*—as opposed to before or after—a traffic stop.[187] According to the Third Circuit, this difficulty arises from ambiguity in the Supreme Court's description of what constitutes an extension of the stop: "[i]n describing an extension as anything that 'adds time to,' or 'measurably extend[s],' a stop, the Court seems to imply that nearly anything an officer does outside the valid, traffic-based inquiries will be unconstitutional. Yet, other language in the opinion suggests a more forgiving approach toward non-traffic-based actions."[188]

For the Third Circuit, the "other language" introducing ambiguity into the equation is the Supreme Court's statement that "[a]n officer . . . may conduct certain unrelated checks during an otherwise lawful traffic stop. But . . . he may not do so in a way that prolongs the stop."[189] According to the *Green* court, the problem with this language is that it leaves unexplained "how a police officer could possibly perform multiple tasks simultaneously without adding any time to a stop."[190] Fundamentally, the *Green* court found *Rodriguez* unclear on whether "*any* diversion from a stop's traffic-based mission is unlawful absent reasonable suspicion,"[191]

183.*Id.* at 178.

184.*Id.* at 179 (quoting Arizona v. Johnson, 555 U.S. 323, 333 (2009)) (second alteration in original).

185.*Id.*

186.*Id.*

187.*Id.* at 179–80.

188.*Id.* at 180 (second alteration in original) (citations omitted).

189.*Id.* (quoting Rodriguez v. United States, 575 U.S. 348, 355 (2015)).

190.*Id.*

191.*Id.* at 180–81 (emphasis added).

or if police conduct should instead be evaluated under a more "forgiving" standard.[192]

Ultimately, the Third Circuit could not overcome the ambiguity it saw in *Rodriguez*. Without landing on whether it preferred the "restrictive" reading or the "reasonableness" approach, the court declared itself unable to definitively *conclude* when the first *Rodriguez* moment occurred.[193] Instead, erring on the side of caution, the court *assumed* that the officer's two minute call to a colleague was the first *Rodriguez* moment that extended the stop.[194] But the Third Circuit upheld the district court, finding that the officer had reasonable suspicion that Green was engaged in drug trafficking when the call occurred and that any measurable extension of the traffic stop caused thereby was lawful under the Fourth Amendment.[195]

2. Courts Are Split on What Constitutes an Unlawful Diversion

For the Third Circuit, *Rodriguez* left unclear "what exactly is dispositive when evaluating an officer's" conduct during a traffic stop.[196] And as the court indicated, this question forms the major fault line along which the federal circuits split in their applications of *Rodriguez*.[197] Where some circuits hold to a strict application that finds any diversion from a stop's traffic-based mission unlawful absent reasonable suspicion, others "have applied *Rodriguez* more leniently, evaluating police actions by something more akin to a reasonableness standard."[198]

Among the courts that follow the stricter approach to applying *Rodriguez*, the Second Circuit found that a five minute traffic stop violated the Fourth Amendment because the officer measurably extended the stop by "asking questions and executing searches related to [a] heroin investigation rather than conducting 'ordinary inquiries incident to the traffic stop'—such as checking [the defendant]'s license, determining whether there were outstanding warrants for him, and inspecting the car's proof of insurance."[199] The Ninth Circuit took a similar approach, holding that an officer unlawfully prolonged a routine

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192.*Id.* at 180.

193.*Id.* at 182–83.

194.*Id.*

195.*See id.* at 187.

196.*Id.* at 180.

197.*See id.* at 180–82 (surveying the way different federal circuit courts assess officer conduct post-*Rodriguez* to determine if it extends the traffic stop).

198.*Id.* at 181; *see also id.* at 180–82 (discussing the differences between the restrictive and reasonableness approaches to applying *Rodriguez*).

199.United States v. Gomez, 877 F.3d 76, 91 (2d Cir. 2017).

traffic stop under *Rodriguez* when they performed an ex-felon registration check, which the court found was "wholly unrelated to [the officer]'s 'mission' of 'ensuring that vehicles on the road are operated safely and responsibly.'"[200]

Meanwhile, other circuits have stuck to the more reasonableness-based approach. The Sixth Circuit, for example, found that the Fourth Amendment and *Rodriguez* were not violated where most of the questions the officer asked were related to the stop's traffic-based mission "and none of them extended the traffic stop beyond a reasonable time."[201] Similarly, the Seventh Circuit has held that "[i]t was permissible for [an officer] to ask [a driver and passenger] questions unrelated to the traffic violations during the traffic stop" without reasonable suspicion.[202] The Seventh Circuit so held despite the fact that—as the Third Circuit pointed out in its review of *United States v. Walton*[203]—the unrelated questioning had to have "extended the stop."[204]

In *Green*, the Third Circuit declined to formally adopt either of these approaches, believing that both the strict approach exemplified by the Second and Ninth Circuits and the reasonableness approach exemplified by the Sixth and Seventh Circuits could be justified under *Rodriguez*.[205] However, while the meaning of *Rodriguez*'s language is ambiguous, it is not as open-ended as the *Green* court indicated.

This Comment asserts the more rigorous approach taken by the Second and Ninth Circuits is the correct one. As argued above, any diversion from a traffic stop's mission that measurably extends the stop is de facto unreasonable under the Fourth Amendment, and the only way a diversion will not measurably extend the stop is if there is complete simultaneity between the mission and the unrelated inquiry represented by the diversion.[206]

While the Third Circuit read too much ambiguity into *Rodriguez* on the question of whether every detour from a stop's mission is unlawful if it measurably extends the stop, it correctly noted that "the *Rodriguez* rule is far easier to articulate than apply."[207] Even if we accept the strict

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200.United States v. Evans, 786 F.3d 779, 786 (9th Cir. 2015) (quoting Rodriguez v. United States, 575 U.S. 348, 363 (2015)); *id.* at 788–89; *see also* United States v. Landeros, 913 F.3d 862, 868–70 (9th Cir. 2019) (holding that an officer unlawfully extended a traffic stop under *Rodriguez* by repeatedly demanding that a passenger provide identification without reasonable suspicion of criminal activity).

201.United States v. Collazo, 818 F.3d 247, 257–58 (6th Cir. 2016).

202.United States v. Walton, 827 F.3d 682, 687 (7th Cir. 2016).

203.827 F.3d 682 (7th Cir. 2016).

204.*Green*, 897 F.3d at 181 (discussing *Walton*, 827 F.3d 682 (7th Cir. 2016)).

205.*See id.* at 179–82.

206.*See supra* section I.E.

formulation of the rule, which mandates that *any* deviation is unreasonable if it extends the stop,[208] determining whether a deviation extended a stop to begin with can become complicated in cases potentially involving multiple officers, close questions of timing, or a poorly developed record. In addition, *Rodriguez* provides little guidance on what activities actually fall outside the lawful scope of a traffic stop.[209] But while the federal circuits have proved unable to agree on how to properly apply *Rodriguez*,[210] two state jurisdictions—Idaho and Kentucky—offer important lessons for doing so.

B. Idaho: The Legal Meaning of "Extension"

Like the Second and Ninth Circuits, the Idaho Supreme Court emphasizes *Rodriguez*'s bright-line nature, explaining that its rule is "both broad and inflexible," applying "to all extensions of traffic stops including those that could reasonably be considered *de minimis*."[211] Most instructive are the Court's recent applications of *Rodriguez* in *State v. Karst*[212] and *State v. Riley*.[213] *Karst* and *Riley* involve similar fact patterns that nonetheless end in different legal outcomes. Understanding why these cases reached different outcomes illuminates what it means to illegally extend a traffic stop under *Rodriguez* and points toward a method for applying *Rodriguez* that is especially useful in cases involving complex fact patterns.

In *State v. Karst*, the Idaho Supreme Court invalidated a traffic stop under *Rodriguez* based on a nineteen second detour from the stop's mission.[214] In *Karst*, an officer pulled a truck over for multiple traffic violations.[215] The officer approached the vehicle and saw the defendant, Karst, sitting in the passenger seat without a seatbelt.[216] As the officer returned to the patrol vehicle to write Karst a citation, the officer stopped for nineteen seconds to radio dispatch and request a drug dog unit to the scene.[217] While the officer wrote the citation and attended to other aspects of the stop, the drug dog unit arrived and conducted a sniff test

207.*Green*, 897 F.3d at 179.

208.*Id.* at 180–81.

209.*See infra* section III.B.

210.*See supra* text accompanying notes 195–203.

211.State v. Linze, 389 P.3d 150, 153 (Idaho 2016).

212.509 P.3d 1148 (Idaho 2022).

213.514 P.3d 982 (Idaho 2022).

214.*Karst*, 509 P.3d at 1156–57.

215.*Id.* at 1150.

216.*Id.*

217.*Id.*

around the exterior of the truck.[218] The dog alerted to the presence of drugs, and a subsequent search uncovered methamphetamine.[219]

The Idaho Supreme Court reversed the denial of Karst's motion to suppress the drug evidence, emphasizing that *any* detour or deviation from the mission of the traffic stop, even if only *de minimis*, "runs afoul of the protections of the Fourth Amendment."[220] The Court held that the officer's nineteen second detour from the traffic stop's mission to radio dispatch and request a drug dog "impermissibly extended the duration of the traffic stop" in violation of the Fourth Amendment.[221]

Karst invalidated a traffic stop based on a mere nineteen second detour, but one month later, in *Riley* the Court declined to invalidate a traffic stop based on a twenty-eight second detour.[222] Resolving the apparent contradiction between *Karst* and *Riley* clarifies the meaning of "extension" under *Rodriguez* and provides important lessons for applying its holding.

Riley's fact pattern is highly complex, involving several officers and two separate detours from the traffic stop's mission.[223] It began with Officer Kingland, who pulled over the defendant, Riley, for driving with expired tags.[224] Officer Kingland radioed for backup, although it is not clear when the call was made.[225] After asking Riley about Riley's identity, expired license, and registration tags, Officer Kingland questioned Riley for roughly eight seconds about whether there were any drugs in the car.[226] The district court found that these eight seconds of questioning constituted the first detour from the stop's mission.[227] Officer Kingland then returned to the patrol vehicle, and while writing Riley's citations, Officers Miles and Ellison arrived.[228] Officer Miles approached Officer Kingland, who was sitting in a vehicle, and the two conferred for at most twenty seconds.[229] The sound on both officers' body cameras was off, but the district court determined that the conversation involved Officer Kingland summarizing the situation for Officer Miles and

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218.*Id.*

219.*Id.*

220.*Id.* at 1156.

221.*Id.* at 1157.

222.State v. Riley, 514 P.3d 982, 990 (Idaho 2022).

223.*See id.* at 984–86.

224.*Id.* at 984.

225.*See id.* at 984–87.

226.*Id.* at 985.

227.*Id.*

228.*Id.* at 984.

229.*Id.* at 984–85.

instructing him to attempt to get Riley's consent to search Riley's car.[230] The conversation between Officers Miles and Kingland constituted a second detour from the stop's mission,[231] but the district court initially found its length indeterminable.[232] After trying and failing to get Riley's consent to search Riley's car, Officer Miles informed Riley that a drug dog unit was on its way.[233] Officer Miles had apparently requested the dog, although it is unclear when this happened or under what circumstances.[234] A short time later, a drug dog handled by Officer Lane arrived at the scene and circled Riley's car.[235] The drug dog alerted and, roughly forty-eight seconds later, Officer Kingland "appear[ed] to finish writing up Riley's citations."[236] A search of Riley's car uncovered methamphetamine and "two snort straws with suspected methamphetamine residue."[237]

The district court granted Riley's motion to suppress, the Idaho Court of Appeals reversed, and the Idaho Supreme Court affirmed the Court of Appeals.[238] First, the Idaho Supreme Court ruled that the district court committed clear error when it found that the length of the conversation between Officers Kingland and Miles could not be determined, finding that it lasted no more than twenty seconds.[239] Second, the Court held that the officers did not unlawfully prolong the stop under *Rodriguez* or *Karst*, because the twenty-eight seconds of total deviation from the stop's mission "did not actually lengthen the stop because even without the deviations, the drug dog would still have alerted 20 seconds before the citations were complete,"[240] providing the officers with reasonable suspicion of a new crime and "thereby initiating a new timeline."[241]

The reasoning of *Riley* is difficult to grasp, but it fundamentally comes down to a counting exercise. Because of the two deviations from the stop's mission, the drug dog alerted forty-eight seconds before Officer Kingland completed writing the citation. But had the officers not deviated from the stop at all, the drug dog still would have alerted *twenty*

230.*Id.*

231.*Id.* at 987.

232.*Id.* at 986.

233.*Id.* at 985.

234.*Id.* at 985, 989.

235.*Id.* at 985.

236.*Id.*

237.*Id.* (quotation marks omitted).

238.*Id.* at 986, 990.

239.*Id.* at 987.

240.*Id.* at 989.

241.*Id.* at 990.

seconds before Officer Kingland completed the citation,[242] and thus twenty seconds before the stop's original, traffic-based mission concluded. Therefore, with or without the two deviations, the drug dog would have alerted before the stop's mission ended; and once the dog alerted, the officers had reasonable suspicion to initiate a search of the car,[243] making the subsequent extension of the stop a lawful Fourth Amendment seizure.[244] For the extension caused by the two deviations to invalidate the stop, they would have to have added *more* than forty-eight seconds to the length of the stop. Had that been the case, the drug dog would have alerted *after* the stop's traffic-based mission had concluded, but *before* new reasonable suspicion arose, creating a period where the officer extended the stop without reasonable suspicion. *That* extension would constitute an unlawful seizure under *Rodriguez*[245] —but there was no such extension in *Riley*.[246]

Reading *Riley* and *Karst* together elucidates two possible ways for a traffic stop to be unlawfully extended in the context of a dog sniff: first, where the detour that extended the stop was made *for the purpose of* calling or inquiring about a drug dog, as was the case in *Karst*;[247] and second, where the detour—while not made for the purpose of calling or inquiring about a drug dog—was of such a length that, had it not taken place, the mission of the traffic stop would have concluded *prior* to the dog alerting to the presence of drugs. This second scenario is what failed to play out in *Riley*, where the detour was immaterial to whether or not the stop's mission would have concluded prior to the dog alerting.[248]

In both scenarios, the detour extending the stop can be identified as a but-for cause of the drug dog alerting prior to the end of the stop's mission. In the first scenario, the dog would not have alerted to the presence of drugs before the stop's traffic-based mission ended if it were not for the detour to radio dispatch. Without this detour, the drug dog would never have been present at the scene to begin with. And in the second scenario, without the detour, the stop would have been completed prior to the drug dog alerting. Therefore, there would have been a delay between the conclusion of the stop's mission and the new reasonable

242.*Id.* at 989.

243.*See supra* notes 239–240 and accompanying text.

244.*Cf.* Rodriguez v. United States, 575 U.S. 348, 355 (2015) (explaining that an officer may not extend a traffic stop "absent the reasonable suspicion ordinarily demanded to justify detaining an individual").

245.*See id.*

246.*See Riley*, 514 P.3d at 989 (finding that the officer's deviations "did not actually lengthen the stop").

247.*See* State v. Karst, 509 P.3d 1148, 1157 (Idaho 2022).

248.*See Riley*, 514 P.3d at 990.

suspicion arising as a result of the alert. This dead space between the end of the stop and the beginning of new reasonable suspicion would be the source of the constitutional violation.

Accordingly, in *Karst*, the unlawful extension caused by the officer's detour from the traffic stop's mission was a but-for cause of the dog alerting and the subsequent discovery of drugs. As such, the discovery of the drug evidence was downstream of the unlawful extension and had to be suppressed as its fruit.[249] And, by the same logic, the motion to suppress could not be granted in *Riley*, because while the two detours from the traffic stop's mission extended the stop, their combined extension was not a but-for cause of the dog alerting or the discovery of drugs. The extension in *Riley* was still a detour from the mission that added time to the stop, thus representing an unlawful seizure under the Fourth Amendment; but the discovery of the drug evidence was *not* downstream of that seizure, and therefore the evidence could not be suppressed as its fruit.[250]

Taken together, *Riley* and *Karst* clarify the legal meaning of "extension" under *Rodriguez*. Although *Rodriguez* made clear that *any* amount of time added to a traffic stop by a detour from the stop's mission is an unlawful extension under the Fourth Amendment,[251] the rule that falls out of *Karst* and *Riley* shows that this unlawful extension can only form the basis for a motion to suppress if it is also a but-for cause of the discovery of evidence.

C. Kentucky: Understanding a Traffic Stop's Lawful Scope After Rodriguez

The Idaho Supreme Court's jurisprudence helps explain *Rodriguez*'s central, duration-based inquiry: determining when an impermissible extension of a traffic stop occurs. Meanwhile, the Kentucky Supreme Court's treatment fleshes out *Rodriguez*'s less well-developed scope analysis. As this Comment ultimately argues, grafting lessons from Kentucky's scope analysis onto Idaho's duration analysis helps formulate a more precise, rigorous method of applying *Rodriguez*.

Before examining Kentucky's case law, it is useful to briefly return to how *Rodriguez* treated the acceptable scope of a traffic stop. *Rodriguez* addressed the scope of a traffic stop in the context of a routine traffic

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249.*See Karst*, 509 P.3d at 1157.

250.*See Riley*, 514 P.3d at 990.

251.*See* Rodriguez v. United States, 575 U.S. 348, 357 (2015) ("The critical question, then, is . . . whether conducting the sniff 'prolongs,'—*i.e.*, adds time to—the stop." (quotation marks omitted)).

infraction[252] and defined it as encompassing (1) the mission of the stop, which is "address[ing] the traffic violation that warranted the stop";[253] and (2) "attend[ing] to related safety concerns."[254] Under *Rodriguez*, the stop's mission includes (1) "determining whether to issue a traffic ticket";[255] and (2) "ordinary inquiries incident to [the traffic] stop."[256] *Rodriguez* did not precisely define what an ordinary inquiry incident to a traffic stop is, but explained that such inquiries "serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly."[257] The Court identified typical inquiries to a traffic stop: "checking the driver's license," running a warrant check on the driver, and inspecting the car's insurance and registration.[258] But it omitted what other activities might fall into this category.[259]

In addition to activities that advance the stop's traffic-based mission, *Rodriguez* also permitted officers to attend to related safety concerns; but any such action should be a "negligibly burdensome precaution[] [required to] complete [the] mission safely."[260] These negligibly burdensome safety precautions include ordering the driver and passenger out of the car,[261] as well as running a criminal history and warrant check.[262] Again, the Court did not elaborate on what other actions might qualify as negligibly burdensome safety precautions.[263] Thus, *Rodriguez* explains that the lawful scope of a traffic stop is based on (1) the activities necessary to advance the stop's mission; and (2) any negligibly burdensome precautions that facilitate doing so safely—but it provided little guidance for identifying which actions fall within these categories beyond the ones specifically identified by the Court. This lack of guidance is problematic and bespeaks a lack of analytic clarity on the question of what constitutes a detour from the stop's mission. This lack of clarity, in turn, makes it difficult to determine whether *Rodriguez*'s

252.*See id.* at 350–53.

253.*Id.* at 354 (citing Illinois v. Caballes, 543 U.S. 405, 407 (2005)).

254.*Id.*

255.*Id.* at 355.

256.*Id.* (quoting *Caballes*, 543 U.S. at 408) (alteration in original).

257.*Id.*

258.*See id.*

259.*See id.*

260.*Id.* at 356.

261.*Id.* (citing Pennsylvania v. Mimms, 434 U.S. 106, 110–11 (1997) (drivers); Maryland v. Wilson, 519 U.S. 408, 413–15 (1997) (passengers)).

262.*See id.* (citing United States v. Holt, 264 F.3d 1215, 1221–22 (10th Cir. 2001)).

263.*See id.* at 355–56.

duration-based safeguards have been activated. Clarifying this ambiguity is essential to formulating a fleshed out and workable rule.

Kentucky case law provides the needed clarity. In a series of decisions applying *Rodriguez*, the Kentucky Supreme Court developed a rigorous scope analysis centered around the question of whether the officer's actions relate back to the stop's legitimate purpose, object, or mission.

The Kentucky Supreme Court first applied *Rodriguez* in *Davis v. Commonwealth*.[264] In *Davis*, the Court held that an officer unlawfully prolonged a traffic stop under *Rodriguez* when the officer pulled Davis over for suspicion of driving under the influence (DUI); conducted multiple sobriety tests, none of which indicated that Davis was intoxicated; and then continued detaining Davis in order to conduct a sniff test with a drug dog, which lead to the discovery of methamphetamine.[265] Because the officer had prolonged the stop to conduct the dog sniff, the Court sought to determine "whether the sniff search was related to *the purpose* for which [Davis] was stopped."[266] And because the officer stopped Davis on suspicion of driving under the influence, the key question was whether the dog sniff was related to the purpose of "verify[ing Davis's] sobriety (or lack thereof)."[267] Finding that "[t]he only reason for the sniff search was to discover illegal drugs in [Davis's] car, which adds nothing to indicate if the driver is under the influence and is clearly beyond the purpose of the original DUI stop,"[268] the Court concluded that the officer "prolonged the seizure and conducted the [dog sniff and subsequent search] in violation of *Rodriguez* and [Davis's] Fourth Amendment protections."[269]

Davis thus defines *Rodriguez*'s scope analysis by determining (1) the original purpose of the stop; (2) the conduct that allegedly prolonged the stop; and (3) whether that conduct relates back to the original purpose of the stop.[270] In *Davis*, the original purpose was to verify the driver's sobriety,[271] and the allegedly prolonging conduct was a dog sniff, which did not relate back to the DUI investigation.[272] The officer therefore stepped outside the lawful scope of the traffic stop by conducting the

264.484 S.W.3d. 288 (Ky. 2016).

265.*Id.* at 290–91.

266.*Id.* at 294 (emphasis in original).

267.*Id.* at 293.

268.*Id.* at 294.

269.*Id.*

270.*See supra* notes 264–271 and accompanying text.

271.*See* Davis v. Commonwealth, 484 S.W.3d 288, 290 (Ky. 2016).

272.*See id.* at 294.

dog sniff; and because the dog sniff also extended the stop, it violated *Rodriguez*.[273] *Davis* applied this "relates back" test[274]in the DUI context, but the Kentucky Supreme Court has since employed the same approach in several other scenarios.

In *Commonwealth v. Smith*,[275] for example, the Court applied *Rodriguez* in the context of a drug investigation similar to the one at issue in *Rodriguez* itself.[276] In *Smith*, an officer pulled Smith over for failing to use a turn signal,[277] but "instead of diligently pursuing the purpose of the traffic stop, [the officer] seemingly abandoned the legitimate purpose of issuing a traffic citation . . . [by] immediately ask[ing Smith] about drugs and" conducting a dog sniff test.[278] The sniff test uncovered cocaine, but the Kentucky Supreme Court held that the officer obtained the drugs pursuant to an unlawful seizure and the drugs had to be suppressed because the officer "deferred the issuance of the citation [for failing to signal] to conduct the dog sniff search, and thereby unreasonably prolonged the stop, albeit for a very brief time."[279]

In reaching this holding, the *Smith* Court also clarified the meaning of "diligence" in the traffic stop context, writing that "[i]f the traffic citation was deferred to complete the sniff search, then the officer did not act with reasonable diligence to pursue the legitimate object of the traffic stop."[280] This formulation of *Rodriguez*'s diligence requirement essentially provides that an officer fails to act with the requisite diligence whenever they defer pursuing the stop's original purpose by taking actions unrelated to that purpose. In other words, an officer fails to act with the requisite diligence whenever they step outside the lawful scope of the stop in a way that extends the stop. By functionally merging the diligence requirement into its scope analysis, the Kentucky Supreme Court effected *Rodriguez*'s suggestion that diligence should "be gauged . . . by noting what the officer actually did and how he did it."[281]

273.*See id.*

274.*See id.* ("The 'key question' . . . is whether the sniff search was related to *the purpose* for which [Davis] was stopped." (emphasis in original)).

275.542 S.W.3d 276 (Ky. 2018)

276.*Id.* at 278–79.

277.*Id.* at 279.

278.*Id.* at 282.

279.*Id.* The brevity of the detour did not change the Kentucky Supreme Court's analysis, because "[t]here is no '*de minimis* exception' to the rule that a traffic stop cannot be prolonged for reasons unrelated to the purpose of the stop." *Id.* (quoting *Davis*, 484 S.W.3d at 294).

280.*Id.*

281.*Compare id.* ("[I]nstead of diligently pursuing the purpose of the traffic stop, [the officer] seemingly abandoned the legitimate purpose of issuing a traffic citation because he immediately asked [Smith] about drugs and launched the dog's sniff search."), *with* Rodriguez v. United States,

The Kentucky Supreme Court elaborated on the lawful scope of a traffic stop over three more cases: *Commonwealth v. Mitchell*,[282] *Commonwealth v. Clayborne*,[283] and *Carlisle v. Commonwealth*.[284] In *Mitchell*, the Court held that a conversation between officers about whether to call for a drug dog during a traffic stop detoured from the original purpose of the stop in violation of *Rodriguez*, even though the conversation was partly for training purposes.[285] Like in *Davis*, the Court found that the officers failed the diligence requirement by departing from the stop's lawful scope in a way that extended the stop,[286] but it took care to note that its diligence inquiry does not put officers "on a clock"[287]:

> Officers neither get bonus time to pursue other investigative tracks by completing a citation quickly, nor is an inexperienced officer forced to meet an arbitrary benchmark that is unreasonable given his or her background. The test is what officers do at the scene. As long as the officers are diligently working to complete the purpose of the initial stop, a stop is not impermissibly extended merely because one stop is marginally longer than another.[288]

Under *Mitchell*, officers may still "confer as to the proper method of processing a stop," so long as the discussion relates to the original purpose of the stop,[289] and officers may still have conversations unrelated to the purpose of the stop, so long as they are carried out simultaneously with the stop's original mission.[290]

Mitchell also held that calling for a drug dog was itself a detour from the stop's purpose.[291] The Court extended this reasoning further in *Clayborne*.[292] There, the Court held that providing backup to an officer who is conducting a dog sniff detours from the purpose of a routine traffic stop, *even* if it is done to address safety concerns.[293] The Court

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575 U.S. 348, 357 (2015) ("How could diligence be gauged other than by noting what the officer actually did and how he did it?").

282.610 S.W.3d 263 (Ky. 2020).

283.635 S.W.3d 818 (Ky. 2021).

284.601 S.W.3d 168 (Ky. 2020).

285.*Mitchell*, 610 S.W.3d at 266–67, 270.

286.*Id.* at 270.

287.*Id.*

288.*Id.* (footnotes omitted).

289.*Id.*

290.*Id.*

291.*Id.*

292.Commonwealth v. Clayborne, 635 S.W.3d 818, 824 (Ky. 2021).

293.*Id.*

explained that "[s]teps taken in pursuit of securing the scene and ensuring officer safety must still relate back to the purpose of the stop or be pursued simultaneously with diligent work on its original purpose."[294]

Thus, under *Clayborne* and *Mitchell*, if an officer calls a drug dog unit to the scene, the call itself is a detour, as is *any* action taken as a result of that original detour, even if it is for the purpose of facilitating officer safety.[295] This point sheds light on the question of what activities should count as "negligibly burdensome" safety precautions under *Rodriguez*.[296] *Clayborne* provides that any safety precaution that adds time to a stop must be for the purpose of facilitating the stop's original mission.[297]

Meanwhile, *Carlisle v. Commonwealth* provides a concrete example of a negligibly burdensome safety precaution that is not specifically identified in *Rodriguez*. In *Carlisle*, the Court held that neither questioning a driver about their travel plans, nor requesting and running a warrant check on a passenger's ID card, count as departures from a routine traffic stop's legitimate mission.[298] In so holding, the Court explained that officers can ask questions about travel plans because such questions "are ordinary inquiries incident to a traffic stop,"[299] and thus related to the stop's mission.[300] Turning to the identification check, the Court wrote that "an officer reasonably may ask for the identification and perform a criminal-records check of a driver and any passengers during an otherwise lawful traffic stop to determine an individual's prior contact with law enforcement," because doing so is "an ordinary inquiry related to officer safety."[301] Ultimately, the Court concluded that both alleged departures related back to the legitimate purpose of the stop—one as an ordinary inquiry incident to the stop's mission, and the other as a negligibly burdensome safety precaution.[302]

Thus, while Kentucky case law is generally useful for its rigorous analysis of what counts as a detour from a traffic stop's purpose or mission, *Carlisle* is doubly useful as an example of the substantial discretion *Rodriguez* leaves courts to decide what activities fall within a traffic stop's lawful scope. This aspect of *Rodriguez*—i.e., what counts as a detour[303]—forms another fault line along which courts are divided.

294.*Id.*

295.*See id.* at 824, 828; Commonwealth v. Mitchell, 610 S.W.3d 263, 266–67, 270 (Ky. 2020).

296.Rodriguez v. United States, 575 U.S. 348, 356 (2015).

297.*Clayborne*, 635 S.W.3d at 824.

298.Carlisle v. Commonwealth, 601 S.W.3d 168, 179 (Ky. 2020).

299.*Id.* at 177 (quoting United States v. Campbell, 912 F.3d 1340, 1354 (11th Cir. 2019)).

300.*Id.* at 179.

301.*Id.*

302.*See id.*

Indeed, even on the question of whether asking for a passenger's identification is permitted under *Rodriguez*, courts are far from unanimous.[304] And beyond the isolated question of passenger identification, there are innumerable activities that *Rodriguez* specifically identified neither as normal inquiries related to a traffic stop's mission, nor as negligibly burdensome safety precautions, but that can still reasonably be grouped with the activities *Rodriguez* does name. Each unnamed activity a court finds permissible under *Rodriguez* expands the lawful scope of a traffic stop and accordingly reduces the number of activities capable of triggering *Rodriguez*'s duration-based protections. Therefore, *Rodriguez*'s failure to provide meaningful guidance on what activities fall within the mission of a traffic stop or count as negligibly burdensome safety precautions makes the lawful scope of a traffic stop something of a moving target. Even if one were to insist that the officer's conduct relates back to the original purpose of the stop, *Rodriguez* provides courts with a great deal of latitude in deciding whether and when a specific activity meets that standard.

IV. RETHINKING *RODRIGUEZ*: CRAFTING A WORKABLE AND PROTECTIVE RULE

This Comment aims to create a framework for applying *Rodriguez* in a way that is maximally protective of defendants. Both *Rodriguez*'s text and background support this kind of application.[305] But while *Rodriguez* provides a rule, it supplies little in the way of methodology. Using lessons drawn from Idaho and Kentucky law allows us to create that methodology, putting meat on the bones of *Rodriguez*'s rule. This Part takes up that task, proposing a straightforward framework for applying *Rodriguez* in the context of a motion to suppress. This framework can be

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303.*See supra* section II.C.

304.For courts that have found that asking for a passenger's identification is within the legitimate scope of a traffic stop since *Rodriguez* was decided, see United States v. Clark, 879 F.3d 1, 4 (1st Cir. 2018); United States v. Sanford, 806 F.3d 954, 956 (7th Cir. 2015); State v. Allen, 779 S.E.2d 248, 252 (Ga. 2015); *Carlisle*, 601 S.W.3d at 179; State v. Martinez, 424 P.3d 83, 91 (Utah 2017). For examples of courts that have come to the opposite conclusion, see, e.g., United States v. Landeros, 913 F.3d 862, 868 (9th Cir. 2019) (holding that officer violated the Fourth Amendment when they prolonged traffic stop by repeatedly demanding that passenger provide identification without any independent reasonable suspicion of criminal activity); People v. Bass, 182 N.E.3d 714, 720 (Ill. 2021) (noting that defense made out a prima facie case that stop was illegally prolonged by asking passenger for identification and running name check "because his name check had nothing to do with resolving the red light violation at issue nor with its safe execution"); State v. Boston, 263 A.3d 214, 246–47 (N.J. Super. Ct. App. Div. 2021) (holding that under both the Fourth Amendment and New Jersey Constitution, officers may not request passenger identification during routine traffic stops without independent bases for focusing on passengers).

305.*See supra* sections II.A–II.B.

applied to all fact patterns where *Rodriguez* might be at issue, but is especially valuable in more complicated cases where multiple officers, indeterminate delays, and close timing make applying *Rodriguez* more difficult.

A. A Proper Application of Rodriguez *Should Use Idaho's Duration Analysis*

The centerpiece of this framework should lean heavily on the rule that emerges from the Idaho Supreme Court's analyses in *Karst* and *Riley*. Although neither case precisely formulates a methodology for applying *Rodriguez*, reconciling the holdings of *Karst* and *Riley* suggests a rule centered around but-for causation.[306] Under this rule, a court should ask whether the officer attending to the traffic stop detoured from the stop's traffic-based mission.[307] If the answer is yes, a court should then ask whether that detour measurably extended the stop.[308] And finally, if the court finds that the detour did extend the stop, it should ask whether that extension was a but-for cause of the new reasonable suspicion (or probable cause) that transformed the stop into a new investigation.[309]

Therefore, if during a routine traffic stop, the stopping officer (1) detours from the mission of the stop in *any* way; (2) that detour extends the stop by *any* amount of time; and (3) that extension is a but-for cause of the discovery of evidence that leads to reasonable suspicion of something *other* than the original traffic offense, then any evidence obtained as a result of that new reasonable suspicion was obtained pursuant to an unlawful seizure and must accordingly be suppressed.

B. A Proper Application of Rodriguez *Should Also Incorporate Kentucky's Scope Analysis*

In addition, courts should draw from Kentucky case law when determining whether a detour from the stop's mission has occurred. To make this determination, courts should first identify the original purpose of the stop.[310] Next, courts should identify the conduct that allegedly detoured from the stop's mission.[311] Finally, courts should ask whether

306.*See generally supra* section III.B (explaining and analyzing *Karst* and *Riley*).

307.*See supra* section III.B.

308.*See supra* section III.B.

309.*See supra* section III.B.

310.*Cf., e.g.*, Davis v. Commonwealth, 484 S.W.3d 288, 292 (Ky. 2016) (beginning its analysis by establishing the initial purpose for the stop).

that conduct relates back to the original purpose of the stop.[312] If the conduct does not relate back to the original purpose, it is a detour that falls outside the stop's lawful scope.[313] And if that detour adds any amount of time to the stop, it triggers the duration analysis discussed above.[314]

Thus, in the case of a routine traffic stop—the context in which *Rodriguez* is most often implicated—the original purpose is to address the alleged traffic infraction and determine whether to issue a citation. Similarly, if an officer pulls a driver over for suspected DUI, the stop's original purpose is to verify the driver's sobriety. Kentucky courts have applied *Rodriguez* in both these contexts.[315] But imagine that an officer pulls a driver over because their vehicle matches the description of a known robbery suspect. In such a case, the original purpose of the stop would be to determine whether the vehicle is in fact a match and whether the driver is in fact the suspect. Officer conduct that does not relate back to this original purpose is not "on mission"; so, in any of these scenarios, conducting a dog sniff test on the stopped vehicle would properly be considered a detour. Additionally, any conduct the officer engages in *as a result* of that detour—including any safety precautions—would itself be a detour. For example, if an officer detours from a traffic stop's mission to conduct a drug dog sniff, a second officer who stops attending to the traffic stop in order to provide cover to the officer conducting the dog sniff would *also* be detouring from the stop's mission.[316] Even though providing backup to the first officer is a safety precaution, it is still a detour from the stop's mission because it is directly tied to the first officer's original detour.[317]

Under this framework, then, if an officer stops to radio for a drug dog to come to the scene during a routine traffic stop, the radio call would constitute a (1) detour from the stop's mission that (2) extends the stop and (3) is a but-for cause of any evidence being discovered due to the

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311.*Cf., e.g.*, *id.* at 293 (reiterating *Rodriguez*'s rule that police may not extend traffic stops beyond their original purposes solely to conduct a sniff search, then discussing the purpose of Davis's stop in light of this rule).

312.*See, e.g.*, *id.* at 294 (noting that the "key question" is "whether the sniff search was related to *the purpose* for which [Davis] was stopped" (emphasis in original)).

313.*See id.*; Commonwealth v. Smith, 542 S.W.3d 276, 282 (Ky. 2018); Commonwealth v. Mitchell, 610 S.W.3d 263, 270 (Ky. 2020).

314.*Cf., e.g.*, *Smith*, 542 S.W.3d at 281 ("Prolonging a stop beyond what is reasonably required to complete the stop's mission violates the Fourth Amendment's proscription against unreasonable seizures.").

315.*See supra* section III.C.

316.*See* Commonwealth v. Clayborne, 635 S.W.3d 818, 824 (Ky. 2021).

317.*See id.*

dog sniff, which automatically invalidates the stop and the resulting discovery of evidence. This example tracks the facts of *Karst*,[318] but it is easy to imagine a situation where the reason that a drug dog arrived on scene is not clear from the record. Such a situation would present a problem for this proposed rule, because it would be unclear whether the stop was extended in order to call for the drug dog or if the drug dog arrived on scene due to an independent chain of events, which would preserve the simultaneity that made the stop legal in *Caballes*.[319] In addition, there may be cases where the length of the extension caused by a detour is indeterminable—for example, due to a malfunctioning body camera or conflicting testimony. Such circumstances make it difficult or impossible to determine whether the extension was actually a but-for cause of the discovery of evidence.

C. In the Event of Uncertainty, Defendants Should Benefit from a Presumption that the Extension Was a But-for Cause of the Discovery of Evidence

To solve for this potential uncertainty, a framework for applying *Rodriguez* should also contain the following caveat: where it is not clear from the record whether the extension was a but-for cause of the discovery, there should be a presumption, rebuttable by the government, that it *was* a but-for cause.

Courts applying this more fleshed out rule to the complex facts presented by *Riley*[320]would reach a different result from the Idaho Supreme Court. There, the officers (1) detoured from the stop's mission for roughly twenty-eight seconds because (a) their conversations had nothing to do with the traffic-based reason the officers pulled Riley over,[321] and therefore (b) did not relate back to the stop's original purpose; (2) the detour extended the stop; and (3) the extension appeared *not* to be a but-for cause of the discovery of drugs because, with or without the extension, the drug dog would have alerted to the presence of narcotics *before* the traffic-based mission ended.[322]

But crucially, the record in *Riley* was silent on how and why the drug dog arrived on scene in the first place.[323] The record indicated that

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318.*See supra* section III.B.

319.*See supra* section III.B; Illinois v. Caballes, 543 U.S. 405, 409–10 (2005) (holding that a sniff was constitutional where it "was performed on the exterior of [Caballes]'s car *while he was lawfully seized* for a traffic violation" (emphasis added)).

320.*See supra* section III.B.

321.*See supra* section III.B.

322.*See supra* section III.B.

323.*See* State v. Riley, 314 P.3d 982, 982 (Idaho 2022).

Officer Miles requested the dog; but it did not reveal when this happened or under what circumstances.[324] The record also indicated that when Officer Miles arrived, Miles spoke with Officer Kingland (the stopping officer) for roughly twenty seconds—a conversation the lower court found constituted a detour from the stop's mission.[325] But again, the record was silent on the exact contents of their conversation, because the sound on both officers' body cameras was off.[326] The district court determined that the conversation involved Officer Kingland summarizing the situation and instructing Officer Miles to get Riley's consent to search Riley's car,[327] but there was no finding as to whether Officer Kingland radioed for the drug dog *as a result* of the conversation with Officer Miles.[328] If Officer Kingland called for the dog as a result of that conversation, then the conversation—which was a detour from the stop's mission—would be a but-for cause of the dog alerting on Riley's car and the subsequent discovery of evidence. That is because, but for the deviation, Officer Kingland would not have called for the dog to begin with. Therefore, under this rule, the Court should have adopted the assumption that the twenty-second deviation represented by the discussion between Officers Kingland and Miles was a but-for cause of the discovery of evidence and invalidated the stop in the absence of clear evidence to the contrary.

Adding this caveat to the framework drawn from Idaho case law sets a clear standard that makes *Rodriguez* simple to apply in virtually every case, while obeying both its letter and spirit. Meanwhile, importing the Kentucky Supreme Court's scope analysis into this framework provides a consistent and coherent framework for determining when to apply Idaho's duration analysis. This approach thus goes a long way toward resolving the difficulties that come with applying *Rodriguez*. A scope analysis centered around the Kentucky Supreme Court's "relates back"[329] test provides a direct method for determining whether an officer's conduct constitutes a detour from the stop's traffic-based mission. Meanwhile, a duration analysis centered on but-for cause homes the analysis in on whether a departure from the stop's mission extended the stop in a way that violates the Fourth Amendment under *Rodriguez*. This but-for approach also applies in the same way regardless of whether the alleged detour happened before, during, or after the traffic stop's mission

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324.*Id.* at 985.

325.*Id.*

326.*Id.* at 984–85.

327.*Id.*

328.*See id.*

329.*See supra* section IV.A.

concluded, thus addressing one of the key difficulties in applying *Rodriguez* identified by the Third Circuit in *Green*.[330] And finally, where the record is unclear, a rebuttable presumption that any extension of a traffic stop was a but-for cause of the discovery of evidence allows for consistent application of *Rodriguez*'s rule, even in the face of ambiguity.

This presumption may strike some as overly friendly to the accused, but it serves several important purposes and does not impose an unreasonable burden on the government. First, if the record is ambiguous on whether an extension was actually a but-for cause of the discovery of evidence, insisting on a presumption *one way or the other* allows for predictable and consistent application of *Rodriguez* across jurisdictions. Second, insisting that this presumption favor defendants, as opposed to the government, serves the important purpose of resolving ambiguity in favor of the party whose liberty is at stake. This rationale reflects a normative judgment that it is better to allow the occasional guilty person to go free than it is to allow the occasional innocent person to go to prison. Third, creating a rebuttable presumption in favor of the defendant puts the burden of ensuring a clear record where it belongs: on the government. Finally, placing this burden on the government would not require anything unrealistic of police officers. As noted above, the fact that during the twenty-second detour from the traffic stop's mission the sound on the officers' body cameras was turned off is what led to the ambiguity in *Riley*. In that case, all the officers would have needed to do to avoid ambiguity in the record—and a resulting presumption in favor of the defendant—was to refrain from turning the sound on their body cameras off. Insisting on this presumption would therefore incentivize officers to ensure their equipment is recording at all times and penalize them for failing to do so. There is nothing unreasonably burdensome about penalizing the government when its officers fail to meet this minimal standard of conduct.

In addition, this proposed framework does not penalize officers who depart from a traffic stop's mission based on reasonable suspicion to believe that the driver or passengers are involved in criminal activity. Applying this framework to the facts of *Green*,[331] a court would reach the same result precisely because the detour was based on reasonable suspicion to believe the driver was transporting drugs.[332] Assuming the officer in that case was the one who radioed for a drug dog unit, the officer's action detoured from the stop's mission because it was not related to the traffic-based reason that the officer pulled Green over[333]

330. *See* United States v. Green, 897 F.3d 173, 179–80 (3d Cir. 2018).

331. *Green*, 897 F.3d 173; *see supra* sections II.A.i–II.A.ii.

332. *Green*, 897 F.3d at 187; *see supra* section III.A.i.

and therefore did not relate back to the stop's original purpose. Additionally, the detour presumably extended the stop by some amount of time because the officer would have had to stop attending to the traffic stop to use the radio. Finally, the extension would be a but-for cause of the discovery of drugs because had the officer not radioed for the K-9 unit, the drug dog would not have been at the scene to sniff Green's car for drugs. However, Green still would not be able to suppress the drug evidence uncovered as a result of the dog sniff because the court found that the officer had reasonable suspicion to detour from the stop's original traffic-based mission by initiating a drug investigation.[334] Thus, even under the more rigorous framework that this Comment proposes, many traffic stops would likely still be found legal on the same grounds that they would under other approaches to *Rodriguez*.

While this formulation of *Rodriguez*'s rule goes a long way toward ensuring that it is applied consistently and in a way that ensures citizens their rightful Fourth Amendment protections, certain aspects of *Rodriguez* remain fundamentally indeterminate and open to interpretation. As this Comment has already shown, *Rodriguez* leaves courts with significant latitude to decide whether and when an officer's conduct relates back to the stop's purpose.[335] That latitude leaves room to undermine even the most protective versions of *Rodriguez*'s rule.

D. Rodriguez *Ultimately Leaves Courts Free to Decide What Constitutes an "Ordinary Inquiry Incident to a Traffic Stop"*

As noted above, the *Rodriguez* Court defined "ordinary inquiries incident to a traffic stop" as part of a stop's mission.[336] But the Court named only checking the driver's license, running a warrant check on the driver, and inspecting the car's insurance and registration as examples of such ordinary inquiries, without indicating what other activities might fall into this category.[337] Each one of these activities corresponds to the amount of time that it takes to complete it; so each additional activity a court allows to be counted as an ordinary inquiry incident to a traffic stop expands the lawful scope of the stop—thus adding more lawful time to the stop—which in turn makes it less likely

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333.*Green*, 897 F.3d at 176–77; *see supra* section III.A.i.

334.*Green*, 897 F.3d at 187; *see supra* section III.A.i.

335.*See supra* text accompanying notes 251–262.

336.Rodriguez v. United States, 575 U.S. 348, 355 (2015) (quoting Illinois v. Caballes, 543 U.S. 405, 408 (2005)); *see supra* section III.C.

337.*See supra* section III.C.

that an extension will trigger *Rodriguez*'s duration-based protections. Because the *Rodriguez* Court did not provide meaningful guidance on how to determine whether an activity should be counted as an ordinary inquiry incident to a traffic stop, courts have a free hand to expand that category beyond what *Rodriguez* specifically listed, thus weakening *Rodriguez*'s shield against unlawful seizures.

Accordingly, courts should be wary of expanding the traffic stop's mission beyond the activities specifically delineated in *Rodriguez*, and should avoid broad characterizations of officers' actions as negligently burdensome safety precautions. Allowing new activities to fall within the purpose or mission of a traffic stop, or to count as negligibly burdensome safety precautions, has the potential to significantly expand the lawful scope of the stop, making it harder to activate *Rodriguez*'s protections.

While this Comment advises restricting the lawful scope of a traffic stop's mission as much as possible to the activities specifically mentioned in *Rodriguez*, the fact that *Rodriguez* leaves open the decision of whether to do so represents a fundamental weakness. By ceding the "scope" debate in favor of a stringent, duration-based rule, *Rodriguez* failed to place any meaningful guardrails around the stop's mission. *Rodriguez* remains extremely vulnerable to manipulation on this front, and will remain so unless and until the Supreme Court provides more meaningful guidance. Further guidance from the Supreme Court is not likely, and so *Rodriguez*'s legacy remains ambiguous—as simultaneously a line in the sand and a retreat.

CONCLUSION

This Comment argues that a proper reading of *Rodriguez* establishes a strict, bright-line rule under which an officer may not detour from a traffic stop's mission in a way that adds any amount of time to the stop. The harsh nature of *Rodriguez*'s rule reflects Justice Ginsburg's concern with the expanding scope of investigative stops in the traffic stop context, which peaked with Ginsburg's dissent in *Caballes*. *Rodriguez* was the Court's attempt to rebalance traffic stops by hardening the duration-based penalty for officers who step outside a traffic stop's lawful scope.

While *Rodriguez*'s rule is fairly straightforward, courts have struggled to apply it, especially in more complicated fact patterns. To alleviate this difficulty, this Comment has proposed a framework for applying *Rodriguez* drawn primarily from Idaho and Kentucky case law. By combining Kentucky's "scope" analysis with Idaho's "duration" analysis, it is possible to craft a framework for applying *Rodriguez* that

is faithful to its text and maximally protective of defendants. In a world of continuously eroding Fourth Amendment rights, understanding how to get the most out of *Rodriguez* is all the more important.

Ultimately, *Rodriguez*'s failure to adequately define the permissible scope of a traffic stop leaves its bright-line rule open to being watered down. By defining more activities as negligibly burdensome safety precautions or as part of the traffic stop's mission, courts can widen the acceptable scope of traffic stops even further, making it more difficult to trigger *Rodriguez*'s duration-based protections.

Justice Ginsburg wrote that the Court's decision in *Caballes* rendered stops that were "reasonable in time unreasonable in scope."[338] In *Rodriguez*, the Court responded by drastically narrowing the meaning of "reasonable in time" under the Fourth Amendment; but it simultaneously failed to put the brakes on the expansion of what can be considered "reasonable in scope." So long as the scope of a traffic stop's mission can continually expand, the constraints *Rodriguez* places on its duration can be watered down or evaded.

338. *Caballes*, 543 U.S. at 421 (Ginsburg, J., dissenting).