

Supreme Court Rejects "De Minimis" Extension of a Traffic Stop to Deploy a Drug Dog

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Yesterday, the Supreme Court decided [Rodriguez v. United States](#), an important traffic stop case that changes North Carolina law as it pertains to certain drug dog sniffs, and perhaps other investigative techniques as well.

Facts. Just after midnight, a Nebraska law enforcement officer saw a vehicle veer onto the shoulder of a state highway, then pull back onto the road. Nebraska law prohibits driving on the shoulder, so the officer stopped the vehicle. The driver provided the officer with his license, registration, and proof of insurance. The passenger provided his license as well. License and warrant checks on both men apparently came back clean, and the officer issued a warning ticket to the driver. The officer suspected that the driver might be involved in drug activity, so he asked the driver for permission to run the officer's drug dog around the vehicle. The driver said no. The officer then called for backup and detained the driver for a few minutes until another officer arrived. At that point, the officer walked his dog around the vehicle twice and the dog alerted. The alert led to a search and the discovery of methamphetamine. The total delay to allow the drug dog to sniff the car was seven or eight minutes.

Procedural history. The defendant was charged in federal court with possession of methamphetamine with intent to distribute. He moved to suppress. The district court denied the motion, ruling that the delay to allow the dog sniff was "de minimis" and did not implicate the Fourth Amendment. The defendant pled guilty and appealed the suppression issue. The Eighth Circuit affirmed. The Supreme Court agreed to review the case, because courts across the country have divided regarding the permissibility of brief extensions of traffic stops to conduct investigation unrelated to the original basis for the stop.

The majority. Justice Ginsburg wrote for herself and five other Justices. She concluded that a stop may not be extended beyond the time necessary to complete the "mission" of the stop, which is "to address the traffic violation that warranted the stop . . . and attend to related safety concerns." That is, "[a]uthority for the seizure ends when tasks tied to the traffic infraction are – or reasonably should have been – completed." A dog sniff is not such a task "tied to the traffic infraction," as it is "aimed at detecting ordinary criminal wrongdoing." Therefore, if such a sniff prologs a stop at all, it violates the Fourth Amendment. There is no exception for "de minimis" delays.

The majority remanded the case to the court of appeals to determine whether, based on facts not summarized in this post, the officer's decision to detain the driver might have been supported by reasonable suspicion.

The dissents. Justice Thomas wrote the principal dissent, arguing (1) that the 29-minute total duration of the stop was reasonable "for a traffic stop by a single officer of a vehicle containing multiple occupants"; (2) that the majority's rule makes the permissible duration of a stop dependent on the identity of the officer, with an efficient officer who can address the traffic infraction quickly limited to a short stop, while a slower officer is permitted additional time; (3) that the majority draws a doubtful distinction between dog sniffs (not allowed, because they target ordinary criminal activity) and warrant checks (allowed by the majority as discussed further below, though arguably also addressing criminal activity rather than roadway safety); and (4) that the majority fails to differentiate between traffic stops based on reasonable suspicion, which might be more constrained, and those based on probable cause, which constitutionally could culminate with an arrest and so may be more expansive. Justice Thomas also believed that reasonable suspicion

of drug activity supported the continued detention of the driver in this case. Justices Kennedy and Alito joined Justice Thomas, with Justice Alito writing a separate dissent that makes many of the same points made by Justice Thomas.

Effect on North Carolina law. At a minimum, *Rodriguez* effectively overrules *State v. Brimmer*, 187 N.C. App. 451 (2007) (“Courts . . . have held . . . that if the detention is prolonged for only a very short period of time, the intrusion is considered *de minimis*. As a result, even if the traffic stop has been effectively completed, the sniff is not considered to have prolonged the detention beyond the time reasonably necessary for the stop.”), and *State v. Sellars*, 222 N.C. App. 245 (2012) (similar).

But the impact of *Rodriguez* extends beyond dog sniffs. If an officer can’t extend a stop to deploy a dog, he or she can’t extend the stop to ask drug-related questions or seek consent to search, either. Professor Orin Kerr argues [here](#) that the case “is more important for its impact on police asking questions than [for its impact on the] use of drug-sniffing dogs,” because dog sniffs are uncommon but questions about matters unrelated to the basis for the stop are asked “all the time.” As noted in my paper on traffic stops, which is linked [here](#), though now I need to revise it again, North Carolina law tended not to support delays for additional questioning even before *Rodriguez*, but the case certainly draws a line in the sand. It remains to be seen how much general chit-chat about travel plans and the like courts will permit incident to traffic stops.

So what’s an officer to do? Although *Rodriguez* is mostly about what officers *can’t* do, it also makes clear that officers certain activities are related to the “mission” of an ordinary traffic stop, so a reasonable amount of time may be spent on these activities:

- Checking the driver’s license, registration, and insurance
- Checking for outstanding warrants against the driver
- Taking actions necessary to address safety concerns, such as ordering the driver out of the vehicle

Furthermore, officers may undertake investigative activities that do not relate to the original basis of the stop so long as the activities themselves do not implicate the Fourth Amendment, and so long as they do not extend – at all – the duration of the stop.

My guess is that many officers will respond to *Rodriguez* by multitasking: deploying a drug dog while waiting for a response on a license check, or asking investigative questions of the driver while filling out a citation. Defendants may argue that such multitasking inherently slows an officer down, and I can imagine difficult-to-resolve factual disputes about that.

I should also note that nothing in *Rodriguez* changes the rule that once a stop is complete and the driver’s paperwork has been returned, the officer may seek consent to pursue further investigation.

A word about warrant checks. Finally, I wanted to touch on a point of dispute between the majority and the dissent. The majority stated that an officer may check for outstanding arrest warrants for the driver during a traffic stop. That is apparently a common law enforcement practice. But, as noted by the dissent, it does not align very well with the majority’s reasoning that a stop should stay focused on its “mission” rather than general crime detection. The majority’s justification for permitting warrant checks is that they add to roadway safety by allowing an officer to determine whether a driver is wanted for other traffic offenses. That strikes me as a pretty weak argument – how many outstanding warrants are there for speeding? Furthermore, the principal authority the majority cites for that idea is Professor LaFave’s treatise, but Professor LaFave himself doubts whether warrant checks should be permitted. Wayne R. LaFave, *The “Routine Traffic Stop” from Start to Finish: Too Much “Routine,” Not Enough Fourth Amendment*, 102 Mich. L. Rev. 1843 (2004) (stating that “a rather compelling argument” can be made for abolishing warrant checks as insufficiently directed at the purpose of the stop, though noting that “there are at least some rational arguments” to the contrary).

A better argument might be that a warrant check is appropriate as an officer safety measure, i.e., that officers need to know whether they're dealing with a fugitive who may have an incentive to assault, resist, or run from law enforcement. In any event, a majority of the Court has ruled that such checks are permissible, and perhaps the holding is more important than the reasoning.