

## The Early Impact of *Rodriguez v. United States*

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About three months ago, the United States Supreme Court decided *Rodriguez v. United States*, \_\_\_ U.S. \_\_\_, 135 S. Ct. 1609 (2015). I wrote about it [here](#). In a nutshell, the Court ruled that once the purpose of a traffic stop has been addressed – or reasonably should have been addressed – an officer can’t extend the stop, even briefly, for unrelated investigative activities such as drug dog sniffs, unless the officer has reasonable suspicion of criminal activity to support the continued detention.

The rule is clear enough in theory but it can give rise to some difficult questions in practice. May an officer engage in brief chit-chat with a motorist, or does such interaction constitute an extension of the stop? What about inquiring about a motorist’s travel plans, or a passenger’s, where such inquiries may bear on the likelihood of driver fatigue but also may be used to seek out inconsistencies that may be evidence of illicit activity? May an officer comply with *Rodriguez* by multi-tasking, i.e., by asking unrelated questions while examining a driver’s license, or does multi-tasking inherently slow an officer down and so extend a stop?

Courts across the country are beginning to address some of these questions. This post summarizes the early impact of *Rodriguez*.

**It applies to questioning, not just dog sniffs.** Although *Rodriguez* concerned a stop that was extended to allow a drug dog to sniff a car, rather than a stop that was extended to allow the officer to ask unrelated questions of an occupant of the vehicle, the Court’s opinion indicates that a stop may not be extended for any kind of unrelated investigation without reasonable suspicion. *See, e.g., Rodriguez*, 135 S.Ct. at 1614 (“Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.”). Lower courts have applied the case outside the dog sniff context. *See, e.g., United States v. Archuleta*, \_\_\_ Fed. Appx. \_\_\_, 2015 WL 4296639 (10<sup>th</sup> Cir. July 16, 2015) (citing *Rodriguez* while ruling that a bicycle stop was improperly prolonged “in order to ask a few additional questions” unrelated to the bicycle law violations that prompted the stop); *Amanuel v. Soares*, 2015 WL 3523173 (N.D. Cal. June 3, 2015) (unpublished) (extending a traffic stop by 10 minutes to discuss a passenger’s criminal history, ask whether the passenger had been subpoenaed to an upcoming criminal trial, and caution the passenger against perjuring himself, would amount to an improper extension of the stop in violation of *Rodriguez*); *United States v. Kendrick*, 2015 WL 2356890 (W.D.N.Y. May 15, 2015) (unpublished) (agreeing that “absent a reasonable suspicion of criminal activity, extending the stop . . . in order to conduct further questioning of the driver and the occupants about matters unrelated to the purpose of the traffic stop would appear to violate the . . . rule announced in *Rodriguez*,” though finding that reasonable suspicion was present in the case under consideration).

**What inquiries are related to the purpose of a routine traffic stop?** The *Rodriguez* Court stated that an officer may conduct the ordinary inquiries incident to a traffic stop, including “checking the driver’s license, determining whether there are outstanding warrants against the driver, and inspecting the automobile’s registration and proof of insurance.” *Rodriguez*, 135 S.Ct. at 1615. A few cases have addressed what counts as an ordinary traffic-related inquiry.

- *Asking about travel plans.* In *United States v. Iturbe-Gonzalez*, \_\_\_ F.Supp.3d \_\_\_, 2015 WL 1843046 (D. Mont. April 23, 2015), the court indicated that an officer may make “traffic safety-related inquiries of a general nature

[including about the driver's] travel plans and travel objectives," and said that "any suggestion to the contrary would ask that officers issuing traffic violations temporarily become traffic ticket automatons while processing a traffic violation, as opposed to human beings." While a question or two about travel plans may be sufficiently related to the purpose of a traffic stop, a court might take a different view of an officer's extended discussion of itineraries with multiple vehicle occupants.

- "*Ex-felon registration check[s]*." In *United States v. Evans*, 786 F.3d 779 (9th Cir. 2015), the court ruled that an officer improperly extended a traffic stop to conduct an "ex-felon registration check," a procedure that inquired into a subject's criminal history and determined whether he had registered his address with the sheriff as required for certain offenders in the state in which the stop took place. The court reasoned that the check appeared to be directed at finding evidence of ordinary criminal wrongdoing, i.e., a failure to register, not enhancing traffic safety.
- *Seeking consent to search*. The *Rodriguez* Court did not directly address requests for consent to search, but such requests are not ordinary incidents of routine traffic stops. Thus, in *United States v. Hight*, 2105 WL 4239003 (D. Colo. June 29, 2015), an officer stopped a truck for a traffic violation. After running standard checks on the driver and talking briefly with him, the officer decided that he wanted to ask for consent to search. He called for backup and spent at least nine minutes waiting for another officer and working on a consent form. When backup arrived, the officer terminated the stop, then asked for and obtained consent. The court ruled that the nine-minute extension of the stop was improper and that it required suppression even if consent to search was obtained voluntarily after the stop ended. *Hight* does not address significant questions like (1) whether an officer who takes two seconds, instead of nine minutes, to ask "may I search your car?" has measurably extended the stop, and (2) whether an officer who seeks and obtains consent without extending a stop – for example, while waiting for a warrant check to be completed – may extend the stop to conduct the search without running afoul of *Rodriguez*. I tend to think that the answer to both questions is yes, but others may disagree.

**Unrelated investigation without extending a stop.** In my original post about *Rodriguez*, I speculated that:

[O]fficers 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.

Apparently, some officers are doing just that and in two early cases on point courts have accepted the officers' approaches. See, e.g., *State v. Jackson*, \_\_\_ N.E.3d \_\_\_, 2015 WL 3824080 (Ohio Ct. App. 2015) (a traffic stop was not impermissibly extended by a dog sniff where the sniff was conducted by a different Trooper while the Trooper who initiated the stop was in the process of investigating defendant's background and producing a traffic citation); *Lewis v. State*, 2015 WL 3619359, at \*3 (Ga. Ct. App. June 11, 2015) (similar).

**Extensions in the middle of a stop instead of at the end.** The stop in *Rodriguez* was extended as it was coming to a close, and there are a few phrases in the Court's opinion that could be read to limit the reach of the opinion to such cases. See, e.g., *Rodriguez*, 135 S.Ct. at 1612 (discussing "whether the Fourth Amendment tolerates a dog sniff conducted *after completion* of a traffic stop" (emphasis added)). But overall, the opinion is pretty clear that delays unrelated to the purpose of the stop are forbidden whenever they take place. See, e.g., *id.* at 1616 ("The critical question, then, 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]."). At least, so concluded the court in *People v. Pulling*, \_\_\_ N.E.3d \_\_\_, 2015 WL 3764791 (Ill. Ct. App. June 17, 2015) (applying *Rodriguez* and finding that an officer violated by "interrupt[ing] his traffic citation preparation to conduct a free-air sniff based on an unparticularized suspicion of criminal activity"; although the sniff took place during the stop, while the sniff in *Rodriguez* took place at the end of the stop, "this positional difference of the point at which the sniff occurs has no impact on our ruling," as "the dog sniff added time to the total duration of the stop at issue").

**Conclusion.** Stay tuned for further developments under *Rodriguez*. Especially given the increasing emphasis on recording officer-citizen interactions, courts will have many more opportunities to scrutinize stops for unwarranted delays.