Is Asking for Consent to Search Necessary to Effectuate the Purpose of a Traffic Stop? The Court in *Rodriguez v. United States* Rejects "Mission" Creep

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Introduction

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.[1]

In *Rodriguez v. United States*, the Supreme Court held that "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."[2] *Rodriguez* therefore declared that a traffic stop violated the Fourth Amendment when an officer prolonged the stop beyond what was "reasonably required to complete the mission of issuing a ticket for the violation."[3] The Court considered the "mission" measure to be so crucial that it specifically referred to it eight times in its opinion.[4]

Rodriguez's intense "mission" focus could have important implications for any officer seeking consent to search a vehicle during a traffic stop. What, for instance, would the *Rodriguez* Court make of a sheriff deputy who, after completing his traffic stop mission by issuing a driver a verbal warning and returning his license, asked, "One ques-

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1 U.S. Const. amend. IV.

2 Rodriguez v. United States, 135 S. Ct. 1609, 1612 (2015).

3 *Rodriguez*, 135 S. Ct. at 1612 (quoting Illinois v. Caballes, 543 U.S. 405, 407 (2005)).

4 *Id*. at 1614-16.

tion before you get gone: Are you carrying any illegal contraband in your car?"[5] Would the *Rodriguez* Court find such an inquiry to be an impermissible act "measurably extend[ing] the duration of the stop,"[6] or would it instead see the officer's behavior as nothing more than "addressing questions," which would be prevented by absolutely "nothing in the Constitution?"[7] Moreover, what impact will the Court's "mission" yardstick have on measuring the timing of seizures occurring during traffic stops?

Rodriguez's "mission" analysis could also alter the Court's criteria for assessing the lawfulness of seizures of persons by shifting its emphasis away from time on the clock to an officer's change in purpose. In an earlier case, *Muehler v. Mena*, the Court showed little interest in the fact that an officer made a "shift in purpose" from investigating gang activity to inquiring about immigration status, since an official's questions did not lengthen the duration of the detention.[8] In contrast, *Rodriguez* spent much effort in distinguishing between proper and improper "objective[s,]" "aim[s,]" and "missions."[9]

This Article will fully explore these issues. In Part I, this work offers a historical overview of the Court's precedent relevant to a full consideration of *Rodriguez*. This overview explores the purpose of the Fourth Amendment, the definition of a Fourth Amendment seizure of a person, and the Court's analysis of prolongation of seizures of the person. Part II critically examines *Rodriguez*, including the case's facts and Court analysis. Part III examines both *Rodriguez's* potential impact on officers' seeking consent to search at traffic stops and the implications of the Court's change in emphasis from the duration of a traffic stop to its "mission."

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[5] Ohio v. Robinette, 519 U.S. 33, 36 (1996). In *Ohio v. Robinette*, a case decided nine years before *Rodriguez*, the Court had explicitly refused to find an officer's "continued detention" of a motorist beyond the purpose of the original stop to be unreasonable under the Fourth Amendment. *Id*. at 38.

[6] *Rodriguez*, 135 S. Ct. at 1615 (quoting Arizona v. Johnson, 555 U.S. 323 (2009)).

[7] *See* United States v. Mendenhall, 446 U.S. 544, 553 (1980) (quoting Terry v. Ohio, 392 U.S. 1, 34 (1968) (White, J., concurring)).

[8] *See* Muehler v. Mena, 544 U.S. 93, 100-01 (2005). The Court stated:

> As the Court of Appeals did not hold that the detention was prolonged by the questioning, there was no additional seizure within the meaning of the Fourth Amendment. Hence, the officers did not need reasonable suspicion to ask Mena for her name, date and place of birth, or immigration status.

Id.

[9] *Rodriguez*, 135 S. Ct. at 1615.

I. BACKGROUND

A. *The Purpose of the Fourth Amendment*

"The basic purpose of [the Fourth] Amendment . . . is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials."[10] This safeguard of our "sense of security" is so paramount[11] that any unjustifiable government intrusion, "whatever the means employed, must be deemed a violation of the Fourth Amendment."[12] This protection of "the right to be let alone"[13] is "basic to a free society."[14]

This right to be left alone, however fundamental, is not infinite. The rights under the Fourth Amendment are only relevant when there is a "search" or a "seizure."[15] Seizures can be of items or of persons.[16] As noted in *United States v. Jacobsen*, "[a] 'seizure' of property occurs when there is some meaningful interference with an individual's possessory interests in that property."[17] Defining a seizure of a person is not so straightforward, as is seen in the next section.[18]

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[10] Camara v. Municipal Court, 387 U.S. 523, 528 (1967). *See also* United States v. Martinez-Fuerte, 428 U.S. 543, 554 (1976) ("The Fourth Amendment imposes limits on search-and-seizure powers in order to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals."); United States v. Ortiz, 422 U.S. 891, 895 (1975) ("[T]he central concern of the Fourth Amendment is to protect liberty and privacy from arbitrary and oppressive interference by government officials.").

[11] *See* United States v. Jacobsen, 466 U.S. 109, 140 (1984); United States v. White, 401 U.S. 745, 786 (1971) (finding that an individual's sense of security must be balanced against the usefulness of a law enforcement method to determine whether it violates the Fourth Amendment); *Camara*, 387 U.S. at 528.

[12] Olmstead v. United States, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting).

[13] *Id*.

[14] *Camara,* 387 U.S. at 528 (quoting Wolf v. Colorado, 338 U.S. 25, 27 (1949)).

[15] *See* U.S. CONST. amend. IV.

[16] *See* California v. Hodari D., 499 U.S. 621, 626 (1991) (finding that submission is a necessary element for seizure to apply to persons); Florida v. Bostick, 501 U.S. 429, 434 (1991) (finding that questioning by the police does not qualify as seizure under the Fourth Amendment "[s]o long as a reasonable person would feel free to 'disregard the police and go about his business'"). *See also Jacobsen*, 466 U.S. at 113.

[17] *Jacobsen*, 466 U.S. at 113.

[18] *See infra* Part I.B.

B. *What Constitutes a Fourth Amendment Seizure*

In *Terry v. Ohio*,[19] the seminal case enabling police to perform a stop and frisk on less than probable cause, the Court readily noted that not all contact between officers and citizens amounted to seizures of the person.[20] In *Terry*, a Cleveland police officer named Detective McFadden became "thoroughly suspicious"[21] about two men, Chilton and Terry,[22] who he believed were "casing a job, a stick-up," of a store.[23] Although he feared the would-be robbers might be armed, Detective McFadden approached these men, "identified himself as a police officer and asked for their names."[24] When the men "mumbled" their responses, Detective McFadden grabbed Terry, spun him around, patted him down, and found a pistol.[25]

The *Terry* Court explicitly assigned itself, as its first task, the job of establishing "at what point in this encounter [did] the Fourth Amendment become[ ] relevant,"[26] in other words, "whether and when Officer McFadden 'seized'" the defendants.[27] The Court rejected "the notions that the Fourth Amendment does not come into play at all as a limitation upon police conduct if the officers stop short of something called a 'technical arrest' or a 'full-blown search.'"[28] Instead, *Terry* defined a seizure as occurring only when "the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen . . . ."[29]

Terry's newly minted definition, however, failed to aid the Court in fulfilling the task it assigned itself; the justices could not determine, "with any certainty upon this record whether any such 'seizure' took

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19 Terry v. Ohio, 392 U.S. 1, 27, 30-31 (1968).

20 *Id*. at 19 n.16 ("Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred.").

21 *Id*. at 6.

22 *Id*. at 5.

23 *Id*. at 6.

24 *Id*. at 6-7.

25 Terry v. Ohio, 392 U.S. 1, 7 (1968).

26 *Id*. at 16.

27 *Id*.

28 *Id*. at 19.

29 *Id*. at 19 n.16.

place" when Officer McFadden initially accosted Terry.[30] Only after the officer grabbed Terry and spun him around[31] did the Court feel confident in concluding that there could be "no question" that Officer McFadden had seized his quarry.[32] Instead of identifying the precise point that triggered Fourth Amendment application, *Terry* settled for assessing a later encounter where it was undeniable a seizure occurred.[33]

The Court again considered seizures of the person in *Davis v. Mississippi*, a case in which police investigating a rape brought some 24 African American youths to the police station for questioning and fingerprinting.[34] Davis, a 14-year-old who had worked in the victim's yard, was one of the persons so "routinely questioned."[35] While the Court considered fingerprinting as possibly being a "much less serious intrusion upon personal security than other types of police searches and detentions[,]"[36] it still deemed this intrusion to be an "investigatory stage" covered by the Fourth Amendment.[37] Otherwise, the Court in *Davis* feared, "[i]nvestigatory seizures would subject unlimited numbers of innocent persons to the harassment and ignominy incident to involuntary detention."[38] The Court would later cite *Davis* to conclude that, "[t]he Fourth Amendment applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest."[39] Outside of deciding that fingerprinting at the station amounted to a "detention" under the Fourth Amendment, the *Davis* Court offered no more clarity in defining a Fourth Amendment seizure of the person.[40]

The Court offered an explicit statement of what official action created a Fourth Amendment "seizure" in *United States v. Menden-*

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30 *Id*. (In light of its inability to identify the exact point of Fourth Amendment application, *Terry* chose to "assume" that the officer's behavior before the frisk caused "no intrusion upon [Terry's] constitutionally protected rights.").

31 Terry v. Ohio, 392 U.S. 1, 7 (1968).

32 *Id*. at 19.

33 *See id.*

34 Davis v. Mississippi, 394 U.S. 721, 722 (1969).

35 *Id*.

36 *Id*. at 727.

37 *Id*. at 726 (declaring that: "to argue that the Fourth Amendment does not apply to the investigatory stage is fundamentally to misconceive the purposes of the Fourth Amendment.").

38 *Id*.

39 United States v. Brignoni-Ponce, 422 U.S. 873, 878 (1975) (citing Davis v. Mississippi, 394 U.S. 721, 726-27 (1969); Terry v. Ohio, 392 U.S. 1, 16-19 (1968)).

40 *See* Davis v. Mississippi, 394 U.S. 721, 727 (1969).

hall.[41] In this case, Drug Enforcement Administration (DEA) agents approached Mendenhall after she disembarked from a flight at the Detroit Metropolitan Airport.[42] The officers identified themselves as narcotics agents, reviewed and returned Mendenhall's airline ticket and driver's license, and asked her to accompany them to an airport DEA office for further questioning.[43] At this office, Mendenhall eventually agreed to a strip search of her person, which resulted in the discovery of heroin.[44]

In considering whether Mendenhall was seized at the time she gave consent, the Court echoed *Terry's* definition of a Fourth Amendment seizure by noting: "a person is 'seized' only when, by means of physical force or a show of authority, [her] freedom of movement is restrained."[45] Therefore, "[a]s long as the person to whom questions are put remains free to disregard the questions and walk away, there has been no intrusion upon that person's liberty or privacy as would under the Constitution require some particularized and objective justification."[46] Noting that the "purpose of the Fourth Amendment is not to eliminate all contact between the police and the citizenry,"[47] the *Mendenhall* Court feared that "characterizing every street encounter between a citizen and the police as a 'seizure[ ]'" would only "impose wholly unrealistic restrictions upon a wide variety of legitimate law enforcement practices."[48]

The Court ascertained the existence of a seizure by considering "all of the circumstances surrounding the incident" which would cause "a reasonable person" to believe "that [s]he was not free to leave."[49] To measure a reasonable belief in the inability to leave, the Court in *Mendenhall* offered some examples of relevant facts that would point to the existence of a seizure.[50] Some circumstances seemed straightforward, such as an officer's "use of language or tone of voice indicating that compliance with the officer's request might be compelled[.]" Others created a rather high bar for triggering the Fourth Amend-

41 United States v. Mendenhall, 446 U.S. 544, 553-55 (1980).
42 *Id*. at 547.
43 *Id*. at 547-48.
44 *Id*. at 548-49.
45 *Id*. at 553; *see* Terry v. Ohio, 392 U.S. 1, 19 (1968).
46 *Mendenhall*, 446 U.S. at 554.
47 *Id.* at 553.
48 *Id*. at 554.
49 *Id*.
50 *Id*.

ment, such as "the threatening presence of several officers, the display of a weapon by an officer, [or] some physical touching of the person of the citizen . . . ."[51] Without "some such evidence," the Court declared, "as a matter of law," that "otherwise inoffensive contact between a member of the public and the police" could not "amount to a seizure of that person."[52]

In another airport-approach case, *Florida v. Royer*, the Court again made a point of protecting an officer's ability to approach and ask questions.[53] The Court in *Royer* declared, "officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen . . . ."[54] The Fourth Amendment situation would not change even if the officer identified himself as law enforcement.[55] In *Royer*, the Court envisioned the person questioned as being able to "decline to listen to the questions at all" and even going "on his way."[56] As noted in *Mendenhall*, the Court considered a police officer's ability to question as being a crucial law enforcement tool, because, "[w]ithout such investigation, those who were innocent might be falsely accused, those who were guilty might wholly escape prosecution, and many crimes would go unsolved. In short, the security of all would be diminished."[57]

The Court again sought to preserve the official right to question persons in *Immigration and Naturalization Service v. Delgado*.[58] In *Delgado*, the Immigration and Naturalization Service (INS) performed "factory surveys" in which agents stayed at factory exits while other agents, armed, wearing badges, and carrying walkie-talkies, "dispersed throughout the factory to question most, but not all, employees at their work stations."[59] Agents moved "systematically through the factory," asking employees "from one to three questions

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[51] *Id*.

[52] United States v. Mendenhall, 446 U.S. 544, 555 (1980).

[53] Florida v. Royer, 460 U.S. 491, 491, 497-98 (1983).

[54] *Id*. at 497.

[55] *Id*.

[56] *Id*. at 498.

[57] *Mendenhall*, 446 U.S. at 554 (quoting Schneckloth v. Bustamonte, 412 U.S. 218, 225 (1973)).

[58] INS v. Delgado, 466 U.S. 210, 212 (1984).

[59] *Id*.

relating to their citizenship."[60] While unsatisfactory answers could lead to a request for immigration papers, "employees continued with their work and were free to walk around within the factory."[61] In assessing the factory surveys, the Court aimed to distinguish between a "seizure" which would trigger Fourth Amendment protection and a mere "consensual encounter," which would not.[62] The *Delgado* Court concluded, "[P]olice questioning, by itself, is unlikely to result in a Fourth Amendment violation."[63] Even though "most citizens will respond to a police request, the fact that people do so, and do so without being told they are free not to respond, hardly eliminates the consensual nature of the response."[64]

Perhaps the Court's strongest rejection of the link between questioning and creating a seizure came in *Florida v. Bostick*, a case in which two officers, "complete with badges, insignia and one of them holding a recognizable zipper pouch, containing a pistol, boarded a bus bound from Miami to Atlanta during a stopover in Fort Lauderdale."[65] The officers approached Bostick, who was seated on the bus, identified themselves as narcotics agents, and asked if they could search his luggage for drugs.[66] After a search that a trial judge would later deem consensual, the officers discovered cocaine.[67]

In assessing whether the officers had seized Bostick at the time they sought his consent, the Court deemed the "'free to leave' analysis" to be "inapplicable" because Bostick had his "freedom of movement . . . restricted by a factor independent of police conduct—*i.e.*, by his being a passenger on a bus."[68] *Bostick* therefore declared the "appropriate inquiry" for such confined circumstances to be "whether a reasonable person would feel free to decline the officers' requests or otherwise terminate the encounter."[69] In considering whether the two officers' questioning of *Bostick* transformed the encounter into a

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[60] *Id*.

[61] *Id*. at 212-13.

[62] *Id*. at 215.

[63] *Id*. at 216.

[64] INS v. Delgado, 466 U.S. 210, 216 (1984).

[65] Florida v. Bostick, 501 U.S. 429, 431 (1991) (quoting Bostick v. State, 554 So. 2d 1153, 1154 (Fla. 1990)).

[66] *Id*. at 431-32 (quoting Bostick v. State, 554 So. 2d 1153, 1154 (Fla. 1990)).

[67] *Id*. at 432 (quoting Bostick v. State, 554 So. 2d 1153, 1154-55 (Fla. 1990)).

[68] *Id*. at 435-36.

[69] *Id*. at 436.

seizure, the Court found such inquiries to be benign.[70] The Court declared, "[o]ur cases make it clear that a seizure does not occur simply because a police officer approaches an individual and asks a few questions."[71] *Bostick* reiterated, "[s]ince *Terry*, we have held repeatedly that mere police questioning does not constitute a seizure."[72] The Court even ruled, "when officers have no basis for suspecting a particular individual, they may generally ask questions of that individual, ask to examine the individual's identification, and request consent to search his or her luggage,—as long as the police do not convey a message that compliance with their requests is required."[73]

Thus, for decades, the Court has analyzed the existence of a Fourth Amendment seizure by considering whether all the circumstances surrounding the police activity would cause a reasonable person to feel they were not free to leave.[74] Further, the Court has attempted to strike a balance between extremes. While it has insisted that the Fourth Amendment covers even early "investigatory stage[s],"[75] it has refused to turn every meeting between police and citizen into a Fourth Amendment issue.[76] Moreover, the Court has, for over thirty years, vehemently defended police officers' need to keep the vital law enforcement tool of questioning.[77]

C. *What Constitutes a Prolongation of an Already Existing Seizure*

The Court has not only considered when a seizure begins, but also when it should end. As early as *Terry*, the Court analyzed the reasonableness of a seizure not just by its initial justification, but also

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70 *See id.*

71 Florida v. Bostick, 501 U.S. 429, 434 (1991).

72 *Id*.

73 *Id*. at 434-35 (citation omitted).

74 *See id.* at 436, 438-39 (holding that in the particular circumstances where a person would somehow be confined by his or her own choices and therefore not "free to leave," such as when he or she is working at a factory or sitting on a bus, the Court has refined its test to inquire whether a reasonable person would not feel free "to decline the officers' requests or otherwise terminate the encounter."); United States v. Mendenhall, 446 U.S. 544, 554 (1980); Terry v. Ohio, 392 U.S. 1, 19 n.16 (1968).

75 Davis v. Mississippi, 394 U.S. 721, 726 (1969).

76 *See, e.g.*, *Mendenhall*, 446 U.S. at 554.

77 *See, e.g.*, Florida v. Royer, 460 U.S. 491, 497 (1983). *See also* Kolender v. Lawson, 461 U.S. 352, 364 (1983) (Brennan, J., concurring) ("*Terry* and the cases following it give full recognition to law enforcement officers' need for an 'intermediate' response, short of arrest, to suspicious circumstances; the power to effect a brief detention for the purpose of questioning is a powerful tool for the investigation and prevention of crimes.").

by considering whether the seizure's scope was "reasonably related" to "the circumstances which justified the interference in the first place."[78] In *Florida v. Royer*, the Court ruled, "an investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop."[79] The Court considered a practical demonstration of this principle in *Illinois v. Caballes*.[80] In this case, Illinois State Trooper Gillette stopped Caballes for speeding.[81] When Graham, a member of the Illinois State Police Drug Interdiction Team, overheard the radioed report of the stop, he "immediately headed for the scene with his narcotics-detection dog."[82] While Trooper Gillette wrote Caballes a warning ticket, Graham walked his dog around the car, causing the dog to alert to contraband.[83] The resulting search recovered marijuana.[84] Later, the trial judge held that the canine sniff had not "unnecessarily prolonged the stop."[85]

The *Caballes* Court, in considering the legalities of this stop, recognized 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."[86] To assess this timing issue, *Caballes* relied on the conclusions of the state court judges, who, after "carefully review[ing] the details" and "the precise timing" of the radio transmissions, decided, "the duration of the stop in this case was entirely justified by the traffic offense and the ordinary inquiries incident to such a stop."[87]

Interestingly, the Court in *Caballes* next considered whether the canine sniff changed the "character" of the traffic stop.[88] The state court had reasoned that the "use of the dog" had shifted the "purpose" of the seizure from a traffic stop to a drug investigation.[89] The Supreme Court disagreed, ruling that a canine sniff could only change the character of the investigation if it infringed on the driver's "consti-

78 *Terry*, 392 U.S. at 19-20.
79 *Royer*, 460 U.S at 500.
80 *See* Illinois v. Caballes, 543 U.S. 405, 407-08 (2005).
81 *Id.* at 406.
82 *Id*.
83 *Id*.
84 *Id*.
85 *Id*. at 407.
86 Illinois v. Caballes, 543 U.S. 405, 407 (2005).
87 *Id.* at 408.
88 *Id*.
89 *Id*.

tutionally protected interest in privacy[ ]" by amounting to a search.[90] Because the dog sniff did not itself amount to a search, no change in character occurred, leaving the Court with the original lawful traffic stop.[91] Since the *Caballes* Court ruled that the canine sniff was not a search, it never squarely ruled on whether a change in purpose would have altered the legality of the stop.[92]

The Court showed less patience with the changed-purpose argument in *Muehler v. Mena*, a case where a "Special Weapons and Tactics (SWAT) team" executed a search warrant on a home in search of deadly weapons and gang evidence.[93] Finding Mena and three others sleeping in the home, police handcuffed all four and took them to the house's converted garage while the warrant was executed.[94] While she was held in the garage, an INS officer asked Mena for her "name, date of birth, place of birth, and immigration status."[95] The *Mena* Court refused to label the INS questioning of Mena about "her immigration status during the detention" as some kind of "discrete Fourth Amendment event."[96] Because "mere police questioning" did not "constitute a seizure," any "shift in purpose" made no Fourth Amendment difference.[97] As with *Caballes'* dog sniff, *Mena*'s immigration questions created no independent Fourth Amendment intrusion, and therefore no change in purpose occurred.[98] The relevant constitutional criterion left for *Mena* to consider was time; since the immigration questions did not prolong the detention, they needed no additional justification.[99]

Arizona v. Johnson provided the Court's latest statement prior to *Rodriguez* regarding an "officer's inquiries into matters unrelated to

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90 *Id*.

91 *Id*. at 408-09.

92 *See* Illinois v. Caballes, 543 U.S. 405, 408 (2005). The closest the *Caballes* Court came to ruling on whether a change in purpose would have altered the legality of the stop was speculating about facts not before it in noting, "[C]onducting 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 respondent's [Caballes] constitutionally protected interest in privacy." *Id.* Because the Court's cases held that a canine sniff "did not" make such an infringement, the issue of an independent Fourth Amendment event was not before the Court. *Id*.

93 Muehler v. Mena, 544 U.S. 93, 95-96 (2005).

94 *Id*. at 96.

95 *Id*.

96 *Id*. at 100-01.

97 *Id*. at 101.

98 *Id.* at 101-02.

99 *See* Muehler v. Mena, 544 U.S. 93, 101-02 (2005).

the justification for the traffic stop . . . ."[100] In this case, Officers Trevizo, Machado, and Gittings, of Arizona's gang task force, pulled a car over for a suspended registration and an insurance violation.[101] Because the vehicle had three occupants, each officer focused on a particular individual.[102] Officer Trevizo focused on Johnson, the back-seat passenger.[103] After questioning Johnson and observing his demeanor, clothes, and possessions while he was still seated in the car, Trevizo suspected that he might be armed.[104] Trevizo therefore patted Johnson down when he complied with her request to exist the vehicle.[105] When Trevizo's pat down revealed a gun, she handcuffed Johnson.[106]

Johnson echoed the principles of *Caballes* and *Mena* by declaring that official inquiries into subjects unrelated to the initial justification for the stop "do not convert the encounter into something other than a lawful seizure . . . ."[107] The Court, however, still felt the need to explain the separate purpose of Trevizo's pat down.[108] *Johnson* focused on officer safety, noting, "traffic stops are 'especially fraught with danger to police officers.'"[109] The Court in *Johnson* further explained, "the risk of a violent encounter in a traffic stop setting" stemmed from "the fact that evidence of a more serious crime might be uncovered during the stop."[110] The Court mentioned the officer's "need to control the scene"[111] and defended Officer Trevizo's decision not to permit "a dangerous person to get behind her."[112] Thus, *Johnson* did not see the purpose of officer safety as separate from the aim of the traffic stop, because pursuing officer safety is an integral part of every traffic stop.[113]

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100 Arizona v. Johnson, 555 U.S. 323, 333 (2009) (citing Muehler v. Mena, 544 U.S. 93, 100-01 (2005)).

101 *Id*. at 327.

102 *See id*. at 327-28.

103 *Id*.

104 *Id.* at 328.

105 *Id.*

106 Arizona v. Johnson, 555 U.S. 323, 328 (2009).

107 *Id*. at 333 (citing Muehler v. Mena, 544 U.S. 93, 100-01 (2005)); *see* Illinois v. Caballes, 543 U.S. 405, 408 (2005).

108 *Johnson*, 555 U.S. at 329.

109 *Id*. at 330.

110 *Id.* at 331.

111 *Id*. at 333.

112 *Id.* at 334.

113 *See id*. at 333-34.

Johnson also clarified the boundaries of a Fourth Amendment seizure of the person during a traffic stop.[114] The Court noted that while the stop "begins when a vehicle is pulled over for investigation of a traffic violation[,]" it ends "when the police have no further need to control the scene, and inform the driver and passengers they are free to leave."[115] As for questions on other matters, inquiries "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."[116]

The Court's position on purpose or mission changes during detentions evolved from *Terry's* command that the scope of a seizure be "reasonably related" to "the circumstances which justified the interference in the first place."[117] The Court, in *Caballes*, *Mena*, and *Johnson* all offered language discussing the potential Fourth Amendment impact of a shift in purpose.[118] Yet none of these cases could provide a definitive answer regarding the constitutional implications of a shift in purpose, because the Court in each explained that any such change in purpose was lacking.[119] Thus, an actual holding on mission creep was left open for *Rodriguez* to make.[120]

II. *RODRIGUEZ V. UNITED STATES*

A. *Facts*

Around midnight on March 27, 2012, Officer Morgan Struble, a K-9 Officer with the Valley Police Department in Nebraska, was in the median of Highway 275.[121] When Dennys Rodriguez passed him driving a Mercury Mountaineer heading westbound, Officer Struble left the median and followed him.[122] Officer Struble, from his vantage

114 Arizona v. Johnson, 555 U.S. 323, 333 (2009).

115 *Id*. at 333 (citing Brendlin v. California, 551 U.S. 249 (2007)).

116 *Id*.

117 Terry v. Ohio, 392 U.S. 1, 20 (1968).

118 *See* Arizona v. Johnson, 555 U.S. 323, 333 (2009); Illinois v. Caballes, 543 U.S. 405, 408 (2005); Muehler v. Mena, 544 U.S. 93, 101 (2005).

119 *See Johnson*, 555 U.S. at 333; *Caballes*, 543 U.S. at 408; *Mena*, 544 U.S. at 100-01.

120 *See supra* Part I.C.

121 Rodriguez v. United States, 135 S. Ct. 1609, 1612 (2015); United States v. Rodriguez, No. 8:12CR170, 2012 WL 5458427, at *1 (D. Neb. Aug. 30, 2012), *aff'd*, 741 F.3d 905 (8th Cir. 2014), *vacated and remanded*, 135 S. Ct. 1609 (2015), and *aff'd*, 799 F.3d 1222 (8th Cir. 2015).

122 *Rodriguez*, 135 S. Ct. at 1612; *Rodriquez*, 2012 WL 5458427, at *1-2.

point in the left lane of a four-lane divided highway and "three or four car-lengths behind" Rodriguez saw the Mountaineer[123] "veer slowly onto the shoulder of the highway, before it jerked back onto the road."[124] Because driving on the highway's shoulder violated Nebraska law, Officer Struble pulled Rodriguez's Mountaineer over at 12:06 a.m.[125] As Officer Struble approached the vehicle on the passenger side, he noticed "an 'overwhelming' odor of air freshener.[126] Officer Struble knew that "the use of 'overwhelming' air freshener is a 'common tactic' for covering up the scent of contraband such as illegal drugs."[127] He also noted that the Mountaineer's passenger, Scott Pollman, "pulled his hat down over his eyes," avoiding eye contact with him.[128]

Identifying himself, Officer Struble asked Rodriguez why he had driven onto the shoulder.[129] Rodriguez might have denied running off the road at some point,[130] but he ultimately explained that he "swerved to avoid a pothole."[131] Having then obtained Rodriguez's driver's license, registration, and proof of insurance, Officer Struble asked Rodriguez to walk with him to his patrol vehicle.[132] Rodriguez asked if he was required to do so and chose not to when Officer Struble told him he did not have to accompany him.[133] Never before having anyone refuse to come back to his vehicle, Officer Struble was "taken aback" by Rodriguez's response, believing it was a "subconscious behavior that people concealing contraband will exhibit."[134]

After running a records check on Rodriguez, Officer Struble asked the passenger, Pollman, "where he was coming from and where

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123 Brief for Petitioner at 3, Rodriguez v. United States, 135 S. Ct. 1609 (2015) (No. 13-9972) [hereinafter Petitioner's Brief].

124 United States v. Rodriguez, 741 F.3d 905, 906 (8th Cir.), *cert. granted*, 135 S. Ct. 43 (2014), and *vacated and remanded*, 135 S. Ct. 1609 (2015).

125 *Rodriguez*, 135 S. Ct. at 1612-13.

126 Brief for the United States at 2-3, Rodriguez v. United States, 135 S. Ct. 1609 (2015) (No. 13-9972) [hereinafter Respondent's Brief].

127 *Id*.

128 *Id*. at 2-3; Petitioner's Brief, *supra* note 123, at 3-4.

129 *Rodriguez*, 135 S. Ct. at 1613.

130 United States v. Rodriguez, No. 8:12CR170, 2012 WL 5458427, at *2 (D. Neb. Aug. 30, 2012), *aff'd*, 741 F.3d 905 (8th Cir. 2014), *vacated and remanded*, 135 S. Ct. 1609 (2015), and *aff'd*, 799 F.3d 1222 (8th Cir. 2015).

131 *Rodriguez*, 135 S. Ct. at 1613.

132 *Id*.

133 *Id*.

134 Respondent's Brief, *supra* note 126, at 3.

they were going."[135] Pollman explained they had driven to Omaha to look at "an older-model Ford Mustang," but chose not to purchase it because the owner could not produce the title to the vehicle.[136] Officer Struble found the decision to drive two hours to see a car without first seeing photographs of it to be "strange" and "abnormal."[137] He returned to his patrol car again, completed the records check on Pollman, called for a second officer, and wrote "a warning ticket for Rodriguez for driving on the shoulder of the road."[138] Officer Struble then returned to the Mountaineer and gave his written warning to Rodriguez.[139]

Officer Struble explained that at this point, both Rodriguez and Pollman "had all their documents back and a copy of the written warning. I got all the reason[s] for the stop out of the way[,] . . . took care of all the business."[140] Officer Struble did not, however, consider the motorists "free to leave."[141] He asked Rodriguez whether "he had an issue with [Officer Struble] walking [his] police service dog around the outside of [the] vehicle."[142] When Rodriguez answered that "he did, in fact, have an issue with that,"[143] Officer Struble told Rodriguez to "turn off the ignition, exit the vehicle, and stand in front of the patrol car to wait for the second officer."[144] Rodriguez complied.[145] When the second officer, Deputy Duchelus, arrived at 12:33 a.m.,[146] Officer Struble took his dog, Floyd, twice around Rodriguez's Mountaineer.[147] When the dog alerted halfway through its second pass, the officers searched the vehicle, recovering "a large bag of methamphetamine."[148] The time elapsing from Officer's Struble giv-

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135 *Id*.

136 *Id*. at 3-4.

137 Petitioner's Brief, *supra* note 123, at 5.

138 Rodriguez v. United States, 135 S. Ct. 1609, 1613 (2015).

139 *Id*.

140 *Id*.

141 *Id*.

142 Petitioner's Brief, *supra* note 123, at 6.

143 *Id*.

144 Rodriguez v. United States, 135 S. Ct. 1609, 1613 (2015).

145 *Id*.

146 Petitioner's Brief, *supra* note, 123, at 6.

147 *Rodriguez*, 135 S. Ct. at 1613.

148 *Id*.

ing his written warning to his dog alerting to the drugs was about "seven or eight minutes."[149]

B. *The Court's Opinion*

The Court in *Rodriguez* began its analysis of Officer Struble's seven or eight minute prolongation of his motorists' seizures by noting that a traffic stop is supposed to be a "relatively brief encounter" more akin to a *Terry* stop than an arrest.[150] Moreover, *Rodriguez* immediately made the "purpose"[151] or "matters"[152] of the stop a key focus of its inquiry by emphasizing at the start that "[a] seizure for a traffic violation justifies a police investigation *of that violation*."[153] The Court then defined the "tolerable duration of police inquires" during a traffic stop as a function of the seizure's "mission."[154]

Rodriguez identified only two such missions for a traffic stop: 1) "to address the traffic violation that warranted the stop," and 2) to "attend to related safety concerns."[155] Addressing the first mission—the traffic violation—included deciding whether to write a ticket as well as the "ordinary inquiries incident to the traffic stop" such as inspecting the driver's license, vehicle registration and insurance, and checking for outstanding warrants.[156] These activities served the same purpose as the issuance of a ticket: "ensuring that vehicles on the road are operated safely and responsibly."[157] The second mission, officer safety, stemmed from the unfortunate fact of the traffic stop itself; these encounters were "especially fraught with danger to police officers."[158] Thus, the only matters that could appropriately take up

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149 *Id.*; United States v. Rodriguez, No. 8:12CR170, 2012 WL 5458427, at * 2 (D. Neb. Aug. 30, 2012), *aff'd*, 741 F.3d 905 (8th Cir. 2014), *vacated and remanded*, 135 S. Ct. 1609 (2015), and *aff'd*, 799 F.3d 1222 (8th Cir. 2015) (Judge Joseph F. Bataillon determined the delay after the warning to be "within 10 minutes or less.").

150 *Rodriguez*, 135 S. Ct. at 1614.

151 *Compare* Illinois v. Caballes, 543 U.S. 405, 408 (2005) (speaking of a shift in "purpose"), *with* Muehler v. Mena, 544 U.S. 93, 101 (2005) (discussing the "purpose" of official inquires beyond those of the initial detention).

152 Arizona v. Johnson, 555 U.S. 323, 333 (2009) (referring to the prolonged encounter as "An officer's inquiries into matters unrelated to the justification for the traffic stop.").

153 *Rodriguez*, 135 S. Ct. at 1614 (emphasis added).

154 *Id*.

155 *Id*.

156 *Id*. at 1615.

157 *Id*.

158 *Id.* at 1616.

time during a traffic stop were the original violation and ensuring the officer safely walked away from dealing with that violation.

Since the scope of any stop was "carefully tailored to its underlying justification," the traffic stop should "last no longer than is necessary" to effectuate the "purpose" of that stop, the safe handling of the traffic violation.[159] An officer's authority to limit the driver's freedom then evaporates once the "tasks tied to the traffic infraction are—or reasonably should have been—completed."[160] As for any other purposes an officer might wish to pursue, *Rodriguez* would, at best, "tolerate" an "unrelated investigation" only if it "did not lengthen the roadside detention."[161] Citing its "repeated" prior admonitions, the Court warned that any "unrelated checks" can only be performed if they do not prolong the seizure.[162]

A dog sniff, being "a measure aimed at 'detecting evidence of ordinary criminal wrongdoing,'" cannot be "fairly characterized as part of the officer's traffic mission."[163] Because use of a canine "detours from" the mission, no amount of time can be wasted on it—not even a "de minimis" period of time.[164] Even the brief time of an exit order could not be overlooked if it was wasted on a dog sniff instead of traffic concerns.[165] *Rodriguez* therefore held, "a police stop exceeding the time needed to handle the matter for which the stop was made" violated the Fourth Amendment.[166] Therefore, Officer Struble's decision to walk Floyd around Rodriguez's vehicle needed its own independent justification under the Fourth Amendment.[167]

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159 Rodriguez v. United States, 135 S. Ct. 1609, 1614 (2015).

160 *Id*.

161 *Id*.

162 *Id*. at 1615.

163 *Id*.

164 *Id*. at 1615-16.

165 Rodriguez v. United States, 135 S. Ct. 1609, 1616 (2015).

166 *Id.* at 1612.

167 *Id*. at 1616-17.

III. *RODRIGUEZ*'S IMPLICATIONS FOR SUSPICIONLESS REQUESTS FOR CONSENT TO SEARCH

A. Rodriguez *Potentially Limits an Officer's Ability to Seek Consent After Completing the Mission of the Traffic Stop*

The *Rodriguez* Court's ruling could have a significant impact on officers who seek consent from stopped motorists. Indeed, the reasoning in *Rodriguez* offered a striking contrast to conclusions the Court reached earlier in *Ohio v. Robinette*.[168] In *Robinette*, Sheriff Deputy Newsome stopped Robert Robinette for speeding 69 miles per hour in a 45 miles per hour zone north of Dayton, Ohio.[169] After a computer check revealed no prior violations, "Newsome then asked Robinette to step out of his car, turned on his mounted video camera, issued a verbal warning to Robinette, and returned his license."[170] Instead of allowing Robinette to return to his own vehicle and drive away, however, Deputy Newsome asked, "One question before you get gone: Are you carrying any illegal contraband in your car? Any weapons of any kind, drugs, anything like that?"[171] When Robinette answered, "no," Deputy Newsome then asked if he could search the car and Robinette consented.[172] The sheriff deputy then found controlled substances in Robinette's car.[173]

The *Robinette* Court, in asserting jurisdiction, declared, "[w]e believe the issue as to the continuing legality of the detention is a 'predicate to an intelligent resolution' of the question presented" in the case.[174] *Robinette* intoned, "[t]he parties have briefed this issue, and we proceed to decide it."[175] Despite such grand declarations, the Court never did address the issue of "the continuing legality" of Deputy Newsome's detention of Robinette while seeking consent and performing his search.[176] The Court did consider the Fourth Amendment reasonableness of Deputy Newsome's initial decision to stop Robi-

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168 Ohio v. Robinette, 519 U.S. 33, 38-40 (1996).

169 *Id*. at 35.

170 *Id*.

171 *Id*. at 35-36 (alteration in the original).

172 *Id*. at 36.

173 *Id.* The particular drugs found were marijuana and methylenedioxymethamphetamine (MDMA). *Id*.

174 Ohio v. Robinette, 519 U.S. 33, 38 (1996).

175 *Id*.

176 *Id*. at 38-40.

nette, noting there was "admitted probable cause for speeding."[177] *Robinette* even assessed the legality of the deputy asking the motorist out of his vehicle.[178]

Once Robinette was lawfully on the sidewalk, however, the Court dispensed with any further analysis of the detention's legality.[179] Instead, the Court curiously shifted to a consent issue.[180] The Court defended its choice in avoiding bright-lines when rejecting a rule requiring "police officers to always inform detainees that they are free to go before a consent to search may be deemed voluntary."[181] The majority in *Robinette* concluded that voluntariness of consent was "a question of fact to be determined from all the circumstances . . . ."[182] Because the Supreme Court of Ohio had "held otherwise," the Court reversed the Ohio court's ruling.[183] Justice Stevens' dissent recognized that the *Robinette* majority narrowly held, "the Federal Constitution does not require that a lawfully seized person be advised that he is 'free to go' before his consent to search will be recognized as voluntary."[184] Choosing to pick up where the Court had unaccountably left off, Justice Stevens inquired, "whether respondent [Robinette] was still being detained when the 'one question' was asked, and, if so, whether that detention was unlawful."[185] He concluded that Robinette was indeed seized at the time and, further, that this seizure violated the Fourth Amendment.[186]

Justice Stevens also noted that the circumstances surrounding Robert Robinette's detention fulfilled *Mendenhall's* seizure definition because a reasonable person in his situation "would have believed that he was not free to leave."[187] Indeed, a reasonable motorist in Robinette's shoes would have understood that Deputy Newsome had conditioned his leaving on answering one question "*before* you get

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177 *Id*. at 38.

178 *Id*. at 38-39.

179 *Id.* at 39.

180 Ohio v. Robinette, 519 U.S. 33, 39-40 (1996).

181 *Id*.

182 *Id*. at 40.

183 *Id*.

184 *Id*. at 45 (Stevens, J., dissenting).

185 *Id*. at 46 (Stevens, J., dissenting).

186 Ohio v. Robinette, 519 U.S. 33, 45 (1996) (Stevens, J., dissenting). Justice Stevens declared that Robinette's "consent to the search of his vehicle was the product of an unlawful detention." *Id.*

187 *Id*. at 46 (Stevens, J., dissenting).

gone."[188] Lacking advice that he was free to leave, aware he was "standing in front of a television camera in response to an official command," and assuming, as most people would, that he was "validly in" police custody as long as the officer chose to interrogate him, it would be unreasonable for Robinette to conclude he could "simply walk away from the officer, get back in his car, and drive away."[189] Moreover, the seizure during which Deputy Newsome asked for consent lacked any justification, for "the lawful traffic stop had come to an end" when Robinette's documents checked out and the officer had completed his warning.[190] This unsupportable, and therefore illegal detention invalidated any consent prized from the motorist waiting for the traffic stop to end.[191] Unfortunately, Justice Stevens' reasoning here fell on deaf ears, for the Court instead chose to focus on whether warnings were needed for voluntary consent.[192]

Nearly two decades later, *Rodriguez* embraced the task that *Robinette* shirked. *Rodriguez*, unlike *Robinette*, deeming that the "tolerable duration" of a traffic stop be limited by its "mission," rejected "unrelated investigations" that lengthened the roadside detention.[193] The *Rodriguez* Court, in identifying the precise moment when Officer Struble had taken "care of all the business," recognized that the later canine sniff could not be "fairly characterized as part of the officer's traffic mission."[194] In light of *Rodriguez*, officers in the future should not, upon completion of their traffic stop duties, ask "One question before you get gone."[195] With its "mission" focus,[196] *Rodriguez* would spurn such an inquiry into "drugs" or "anything like

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188 *Id*. at 47 (Stevens, J., dissenting).

189 *Id*.

190 *Id*. at 50 (Stevens, J., dissenting).

191 *Id*. at 51 (Stevens, J., dissenting).

192 Ohio v. Robinette, 519 U.S. 33, 35 (1996) (stating "[w]e are here presented with the question whether the Fourth Amendment requires that a lawfully seized defendant must be advised that he is 'free to go' before his consent to search will be recognized as voluntary. We hold that it does not.").

193 Rodriguez v. United States, 135 S. Ct. 1609, 1614 (2015).

194 *Id*. at 1613, 1615.

195 *See Robinette*, 519 U.S. at 35-36.

196 *See Rodriguez*, 135 S. Ct. at 1614-15 (citing Illinois v. Caballes, 543 U.S. 405, 407 (2005)).

that"[197] as an "unrelated investigation" not to be tolerated by the Fourth Amendment.[198]

Perhaps, however, such optimism has to be tempered. In future cases, officers or courts might instead view attempts to gain consent to search as "mere police questioning" which does not itself "constitute a seizure."[199] As noted in *Mendenhall*, "[t]here is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets."[200] Therefore, if an officer asks questions after the mission of a seizure has ended, the actual questions themselves might not be enough to amount to a seizure with all of its Fourth Amendment protections.[201] This could be particularly true in light of the high bar *Mendenhall* set for a seizure when it offered "the threatening presence of several officers," the display of weapons, or actual physical touching, as circumstances that would trigger a seizure.[202] Further, the Court has supported officers in asking for consent to search even when they have "no basis for suspecting a particular individual."[203]

The *Bostick* court noted one restriction on the power of asking for consent which might offer a practical limit to police questioning after completion of the mission: questions seeking consent are allowed only so "long as the police do not convey a message that compliance with their requests is required."[204] This restraint on official power dovetails nicely with the facts in *Rodriguez*. In *Rodriguez*, rather than politely asking for consent, Officer Struble inquired whether Rodriguez "had an issue with" a canine sniff, as if any protest to such a procedure could only come from a person who was himself emotionally marred by a problem with dogs.[205] This might not have been what the *Mendenhall* Court envisioned when it spoke of "otherwise inoffensive contact between a member of the public and the police."[206]

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197 *Robinette*, 519 U.S. at 36.

198 *See Rodriguez*, 135 S. Ct. at 1614 (citing Arizona v. Johnson, 555 U.S. 323, 327-28 (2009); Illinois v. Caballes, 543 U.S. 405, 406, 408 (2005)).

199 *See* Florida v. Bostick, 501 U.S. 429, 434 (1991).

200 United States v. Mendenhall, 446 U.S. 544, 553 (1980) (quoting Terry v. Ohio, 392 U.S. 1, 34 (1968)).

201 *See id.*

202 *See id*. at 554.

203 *Bostick*, 501 U.S. at 435 (citing Florida v. Rodriguez, 469 U.S. 1, 5-6 (1984); INS v. Delgado, 466 U.S. 210, 216 (1984); Florida v. Royer, 460 U.S. 491, 501 (1983); United States v. Mendenhall, 446 U.S. 544, 557-58 (1980)).

204 *Id*.

205 *See* Petitioner's Brief, *supra* note 123, at 6.

206 *See Mendenhall*, 446 U.S. at 555.

When Rodriguez refused, Officer Struble demonstrated the futility of Rodriguez's assertion of privacy by ordering him out of his vehicle so the dog could perform the sniff he had just rejected.[207] Clearly, Officer Struble failed not only the *Rodriguez* test but also the *Bostick* test.[208] Still, stretching *Rodriguez* to allow even innocuous questions would seem to violate the Court's clear command that "[a] seizure for a traffic violation" justifies only an investigation "of that violation."[209] Any allowance of questions could be a dangerous exception that could swallow the rule, particularly because *Schneckloth v. Bustamonte* held that individuals have no right to a warning that they may refuse consent[210] and *Robinette* ruled that officers need not warn motorists at the end of a stop that they have a right to leave.[211]

B. Rodriguez*'s "Mission" Focus Emphasizes a Police Officer's Shift in an Investigation to Matters Unrelated to the Initial Purpose of the Seizure*

When police seize a person for an objectively reasonable purpose, that particular purpose, or mission, becomes the clock by which the length of the seizure is measured.[212] In the Court's earlier cases, the mission clock was not emphasized because officers in those cases acted with appropriate dispatch or did not trigger a separate constitutional event.[213] In *Caballes*, since Officer Graham completed his task of walking his dog around the motorist's car while Trooper Gillette was still writing a warning ticket, the argument that the traffic stop changed in purpose to a drug investigation was dismissed because a canine sniff did not amount to a search.[214] Likewise, in *Mena*, since the INS officer questioned Mena well within the time that SWAT took to execute a warrant on Mena's residence, the Court refused to consider "mere police questioning" into her immigration status as a "dis-

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207 *See* Rodriguez v. United States, 135 S. Ct. 1609, 1613 (2015).

208 *See id.* at 1616; *Bostick*, 501 U.S. at 436-37.

209 *Rodriguez*, 135 S. Ct. at 1614.

210 *See* Schneckloth v. Bustamonte, 412 U.S. 218, 231 (1973).

211 *See* Ohio v. Robinette, 519 U.S. 33, 39-40 (1996).

212 Florida v. Royer, 460 U.S. 491, 500 (1983). The *Royer* Court declared: "an investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop." *Id.*

213 *See* Arizona v. Johnson, 555 U.S. 323, 333-34 (2009); Illinois v. Caballes, 543 U.S. 405, 406, 409 (2005); Muehler v. Mena, 544 U.S. 93, 100-01 (2005).

214 *Caballes*, 543 U.S. at 406, 409.

crete Fourth Amendment event."[215] In *Johnson*, the mission discussion was not pivotal because the officer's actions could all be justified as fulfilling the initial purposes of investigating a traffic violation and officer safety.[216]

All this changed with *Rodriguez*, where the Court gave new emphasis to the importance of a seizure's "mission."[217] In its first sentence of analysis, the *Rodriguez* Court promoted purpose by stating the obvious: "A seizure for a traffic violation justifies a police investigation of that violation."[218] It then defined the "tolerable duration" of a detention by "the seizure's mission"—actually two missions: 1) addressing the traffic violation, and 2) attending to related safety concerns.[219] No time could be spent on anything other than an effort to "effectuate" the traffic stop's "purpose."[220]

The change in emphasis was because of two considerations. First, unlike *Caballes* and *Mena*, *Rodriguez* involved an officer who clearly crossed the time limit by continuing his investigation after he had "got [sic] all the reason[s] for the stop out of the way."[221] Second, Officer Struble, unlike his peers in prior cases, clearly triggered a new constitutional event by ordering his motorists out to await the arrival of a second officer.[222] The clear delay and the creation of an independent Fourth Amendment event prompted powerful language from the Court.[223] Now, police are explicitly warned that since addressing a traffic violation is the "mission" of a traffic stop, this seizure can "last no longer than is necessary to effectuate that purpose."[224] Any "unrelated investigations" will simply not be "tolerated."[225] *Rodriguez* thus made a bold declaration against mission creep. While officers restrain a citizen's liberty for one reason, they should not then continue their restraint on the motorist's personal security to pursue other missions.

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215 *See Mena*, 544 U.S. at 100-01 (citing Florida v. Bostick, 501 U.S. 429, 434 (1991); INS v. Delgado, 466 U.S. 210, 212 (1984)).

216 *See Johnson*, 555 U.S. at 332-34 .

217 *See* Rodriguez v. United States, 135 S. Ct. 1609, 1612 (2015).

218 *Id.* at 1614.

219 *See id.* (citing Illinois v. Caballes, 543 U.S. 405, 407 (2005); United States v. Sharpe, 470 U.S. 675, 685 (1985); Florida v. Royer, 460 U.S. 491, 500 (1983)).

220 *See id*. (citing Florida v. Royer, 460 U.S. 491, 500 (1983)).

221 *See id*. at 1613; *Caballes*, 543 U.S. at 406, 409; *Mena*, 544 U.S. at 100-01.

222 *See Rodriguez*, 135 S. Ct. at 1613.

223 *See id.* at 1615-16.

224 *See id*. at 1614 (citing Florida v. Royer, 460 U.S. 491, 500 (1983)).

225 *See id*. at 1614-15 (citing Arizona v. Johnson, 555 U.S. 323, 327-28, 333-34 (2009); Illinois v. Caballes, 543 U.S. 405, 406-08 (2005)).

CONCLUSION

In his dissent in *Robinette*, Justice Stevens supposed that, "as an objective matter it is fair to presume that most drivers who have been stopped for speeding are in a hurry to get to their destinations."[226] Perhaps it is also fair to assume that most Americans, given the time constraints harassing their busy lives, would feel the same, regardless of the kind of violation for which they are stopped. Rather than being lonely souls wandering the roads in search of human contact, drivers "have no interest in prolonging the delay occasioned by the stop just to engage in idle conversation with an officer, much less to allow a potentially lengthy search."[227] In *Rodriguez*, the Court, in recognizing the individual's right to be free from any measurable extension of his or her seizure,[228] acknowledged the importance of citizens being free of even brief delays due to official whim. In doing so, *Rodriguez* corrected the balance of power in officer-motorist relations. It is not the individual's duty to explain why he or she does not want the intrusion; it is the official's obligation to justify the "detour" in the "mission."[229]

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226 Ohio v. Robinette, 519 U.S. 33, 47 (1996) (Stevens, J., dissenting).

227 *Id*. at 47-48.

228 Rodriguez v. United States, 135 S. Ct. 1609, 1615 (2015). *Rodriguez* ruled, "The seizure remains lawful only 'so long as [unrelated] inquiries do not measurably extend the duration of the stop.'" *Id.* (citing Arizona v. Johnson, 555 U.S. 323, 333 (2009)).

229 *See id*. at 1616.