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1 P R O C E E D I N G S

2 (11:22 a.m.)

3 CHIEF JUSTICE ROBERTS: We'll hear argument  
4 next this morning in Case 13-9972, Rodriguez v. The  
5 United States.

6 Mr. O'Connor.

7 ORAL ARGUMENT OF SHANNON P. O'CONNOR

8 ON BEHALF OF THE PETITIONER

9 MR. O'CONNOR: Mr. Chief Justice, and may it  
10 please the Court:

11 The big issue that starts in this case is  
12 whether, after completing the task related to a traffic  
13 stop, whether an officer without individualized  
14 suspicion can hold the driver for a dog sniff. The  
15 specific question in this case is whether Officer  
16 Struble was entitled to piggyback an already completed  
17 traffic offense with probable cause on to that piggyback  
18 -- on to that traffic offense for an investigation of  
19 Mr. Rodriguez involving nothing more than a hunch. That  
20 is the question of the case.

21 JUSTICE GINSBURG: But that remains -- that  
22 wasn't reached by the court of appeals. The district --  
23 the district court, as you pointed out, rejected the  
24 argument that there was probable cause saying if nothing  
25 more than a hunch. But that was not reviewed by the

1 court of appeals. So that would still be open.

2 MR. O'CONNOR: The -- the decision of the  
3 court of appeals, Your Honor, absolutely, that was a de  
4 minimis ruling. They did not reach the question as to  
5 whether there was reasonable suspicion, and left it just  
6 based on their ruling of -- of whether, in fact, this  
7 was a de minimis action.

8 CHIEF JUSTICE ROBERTS: Counsel, do you  
9 concede that this would be all right if the dog sniff  
10 took place during the traffic stop? In other words,  
11 let's say, there were, you know, two -- two policemen  
12 there already. One says, I'm going to go write you a  
13 ticket and while that's taking place, the other  
14 policeman walks around with the dog. No problem with  
15 that?

16 MR. O'CONNOR: There'd be no problem,  
17 Mr. Chief Justice, if -- if, in fact, all of that was  
18 done before the traffic ticket was written. If, in  
19 fact, the dog was written -- taken around the car prior  
20 to the completion of the traffic stop and the ticket,  
21 then, of course, it would be --

22 JUSTICE SOTOMAYOR: All right.

23 JUSTICE SCALIA: Mr. O'Connor --  
24 Mr. O'Connor, it's frequent that a policeman, when he  
25 stops somebody for a broken taillight or whatever, will

1     conduct some other inquiries, you know, where are you  
2     going? Ask a lot of questions. He will -- he will  
3     check whether the person is -- is driving a stolen car,  
4     whether -- whether the person is properly licensed. All  
5     of that has nothing to do with the broken taillight and  
6     yet, that's permitted, right?

7             MR. O'CONNOR:             Yes. Yeah.

8             JUSTICE SCALIA:             Would it be permitted if he  
9     did it after he wrote the ticket?

10            MR. O'CONNOR:            It -- at that point in time,  
11     no, he -- he would not --

12            JUSTICE SCALIA:            Is that right? He -- he  
13     can only do that before he writes the ticket.

14            MR. O'CONNOR:            If assuming that --

15            JUSTICE SCALIA:            What if he's not giving a  
16     ticket, he's just going to give him a warning?

17            MR. O'CONNOR:            When --

18            JUSTICE SCALIA:            And he says to the man, you  
19     shouldn't have done and you went a little bit over the  
20     line. Be careful next time. By the way, let me -- let  
21     me see your driver's license. That would be bad.

22            MR. O'CONNOR:            Yes, Your Honor, that would  
23     -- that would. It would be because that would be part  
24     of the stop.

25            JUSTICE SCALIA:            So --

1           MR. O'CONNOR:           All -- all of those questions  
2 would be -- once the stop is finished, then he should be  
3 allowed to go no matter what the question was.

4           JUSTICE ALITO:           Is it -- is it your argument  
5 that -- that as soon as all of the steps that must be  
6 taken in connection with the traffic stop are completed,  
7 then the -- the stop must end? Or is it that nothing  
8 more can be done after the ticket is issued? In other  
9 words, is it the length of time or is it the formal act  
10 of giving the ticket or the warning that -- that cuts  
11 things off?

12          MR. O'CONNOR:           Your Honor, it is the formal  
13 act. Once the act of the traffic stop is done, which  
14 would be the reason, which would be the purpose for the  
15 stop, once that is done, that is the --

16          JUSTICE KENNEDY:        Yes. But the -- the  
17 "that" is done is -- is not clear. Two questions. In  
18 Justice Scalia's hypothetical, the officer said, I'm not  
19 going to give you a ticket, but I just want to ask you a  
20 few questions. It seems to me that under your argument,  
21 those questions are impermissible because he's made his  
22 decision, he's not going to give a ticket.

23          On the other hand, as Justice Alito  
24 indicated, suppose that he said, now, I finished your  
25 ticket, but before I give it to you, I'm going to go

1 back to the police car and check to see if there are  
2 warrants, is that all right?

3 MR. O'CONNOR: If it is the completion of  
4 the --

5 JUSTICE KENNEDY: He says, I've finished  
6 writing the ticket, I've folded my notebook, I'm going  
7 to give you this ticket. But I'm first going to go back  
8 and see if my radio check has come in to verify your  
9 license plates. Is that permitted?

10 MR. O'CONNOR: If it is the end of the  
11 traffic stop, it is not.

12 JUSTICE SOTOMAYOR: But first of all --

13 JUSTICE SCALIA: But that's what he was  
14 asking.

15 JUSTICE SOTOMAYOR: -- these are  
16 hypotheticals that have a wrong presumption, okay?  
17 There are certain tasks involved in giving a traffic  
18 ticket, correct?

19 MR. O'CONNOR: Yes, Your Honor. Yes.

20 JUSTICE SOTOMAYOR: And those include  
21 checking for warrants, checking for tickets on the car,  
22 checking identity, asking questions about that, and  
23 generally with identity it also has to do with where are  
24 you going and where are you coming from. Correct?

25 MR. O'CONNOR: Yes, Your Honor.

1 JUSTICE ALITO: And conducting a dog sniff.  
2 That also, right?

3 JUSTICE SOTOMAYOR: I'm sorry?

4 CHIEF JUSTICE ROBERTS: Justice Sotomayor.

5 JUSTICE SOTOMAYOR: I didn't hear that.

6 My question for you -- and it can't be the  
7 formal act of writing the ticket. It has to be the  
8 formal -- it has to be the acts related to the mission.  
9 When you finish those, that's when the stop ends.

10 MR. O'CONNOR: Yes, Your Honor, that is  
11 exactly right.

12 JUSTICE SOTOMAYOR: Yes, but you've tied it  
13 to just writing it -- handing over the ticket, but -- or  
14 you're not even doing that, you're -- you're saying just  
15 writing the ticket, which is crazy.

16 MR. O'CONNOR: If, in fact, that's -- that's  
17 the impression that I gave, that -- that is wrong. It's  
18 not -- the formal handing of the ticket is when the stop  
19 is complete. Once the justification for the stop and  
20 the purpose is complete, the ticket is done, whether it  
21 is a warning, whether it is handed to them, at some  
22 point in time the ticket is done and that's the  
23 investigation of the stop.

24 JUSTICE SCALIA: Justice Sotomayor's  
25 question assumes, and you apparently embrace the



1 assumption, that checking on whether you have a  
2 private -- a proper license, checking whether the car is  
3 stolen, all of these things are embraced within the  
4 mission when the only basis for the stop is you have a  
5 broken taillight. How does that have anything to do  
6 with the broken taillight?

7 MR. O'CONNOR: Those are things, Your Honor,  
8 that have been accepted as part of --

9 JUSTICE SCALIA: I see.

10 MR. O'CONNOR: -- the process.

11 JUSTICE SCALIA: Well, then maybe dog  
12 sniffing should be too, right? Dog sniffing is  
13 accepted, so long as it's done before what? Before  
14 completion of --

15 MR. O'CONNOR: Before the completion of the  
16 mission.

17 JUSTICE SCALIA: Which includes not just a  
18 broken taillight, but also inquiring into your license,  
19 inquiring into prior arrests? That's all part of the  
20 mission?

21 MR. O'CONNOR: Yes, Your Honor, it is.

22 JUSTICE SCALIA: Why don't you make the dog  
23 sniff part of the mission and that will solve the  
24 problem?

25 MR. O'CONNOR: Well --

1 JUSTICE SCALIA: Part of the mission where  
2 you stop somebody is not just the broken taillight, but,  
3 you know, whether the car is stolen, whether you have  
4 drugs on the car, so let's bring in a dog and do the car  
5 sniff. I mean, you're willing to expand the mission to  
6 everything up to but not beyond the dog sniff. Why do  
7 you do that?

8 MR. O'CONNOR: You expand the mission, Your  
9 Honor, for everything that comes within the tasks that  
10 are part of the traffic stop. The dog sniff --

11 JUSTICE SCALIA: It's a broken taillight.  
12 That's the only thing that comes within the traffic  
13 stop. All the rest is added on. And you let them add  
14 it on. Why do you let them add on the dog sniff? You  
15 do so long as it occurs before the ticket is delivered;  
16 is that right?

17 MR. O'CONNOR: You do if it's done before  
18 the -- the traffic stop is done. Ticket would not be a  
19 formal part of --

20 JUSTICE KENNEDY: But you see the problem is  
21 how do you define the traffic stop, and you've already  
22 indicated the traffic stop can include some of the  
23 questioning. You're really, I think, much better off if  
24 you stick with the formal rule. Once you hand the  
25 ticket, that's the end of it. Then you have a formal

1 rule. You're not arguing that, and that leaves us open  
2 to the question of why can't we include the dog sniff.

3 MR. O'CONNOR: Well, the dog sniff --

4 JUSTICE SOTOMAYOR: It's a policy question.  
5 So answer -- answer it as a policy question. Don't tie  
6 it to the stop or not. Tie it to something else.

7 MR. O'CONNOR: As a policy question, if you  
8 could end it with the handing of the ticket, that would  
9 be acceptable. If we tie -- if we tie the traffic  
10 ticket as the end of the -- end of the justification for  
11 the stop, then we --

12 JUSTICE ALITO: If we hold that it's okay to  
13 have a dog sniff so long as it's before the ticket is  
14 issued, then every police officer other than those who  
15 are uninformed or incompetent will delay the handing  
16 over of the ticket until the dog sniff is completed. So  
17 what has that -- what does that accomplish?

18 MR. O'CONNOR: Well --

19 JUSTICE ALITO: I mean, it's great for your  
20 client, but what does it do for the law?

21 MR. O'CONNOR: Your Honor, I think what it  
22 does first, if you have officers that -- that wait, if  
23 that's the -- if that's the question, Your Honor, if  
24 they wait for the pocket, put the ticket in the pocket  
25 for the dog --

1 JUSTICE ALITO: Yeah if -- If we adopt a  
2 formal rule, that's one of -- one of the options, a  
3 formal rule, once you hand over the ticket, that's it,  
4 you can't do anything more. The person has to be allowed  
5 to go. All right? Is that your argument or not?

6 MR. KELLER: Yes. Yes, it is.

7 JUSTICE ALITO: That is your argument.

8 MR. O'CONNOR: Yes.

9 JUSTICE ALITO: Then what does that  
10 accomplish?

11 MR. O'CONNOR: What it accomplishes is  
12 the -- is the enforcement of the Fourth Amendment. Once  
13 the stop is done, once the purpose is done, the  
14 justification is done, the person should be free to go.

15 JUSTICE GINSBURG: But the question is, is  
16 this -- is this very -- the easiest thing to get around  
17 by simply saying, would the sequence in which I will do  
18 this, I won't think of issuing the ticket until I've had  
19 the dog sniff? So that's the problem. And what are you  
20 accomplishing? Say, we make -- we make the handing over  
21 the ticket the end of the legitimate stop.

22 JUSTICE SCALIA: Yeah.

23 JUSTICE GINSBURG: Well, then the police can  
24 just say, I'm going to defer that a few minutes until  
25 the dog sniff occurs. It just seems that you're not

1 going to accomplish any protection for individuals if  
2 that's your position, that -- that it was just a  
3 question of when you do it. So if you do it during the  
4 stop, before the ticket issued, it's okay and if you do  
5 it two minutes after, it's not okay.

6 MR. O'CONNOR: Your Honor, it is -- it is  
7 okay when the traffic stop is done. When the mission is  
8 complete --

9 JUSTICE SCALIA: You can't possibly mean  
10 that. You can't possibly mean that.

11 MR. O'CONNOR: Oh, yes, sir, I do.

12 JUSTICE SCALIA: The stopping officer says,  
13 I'm done, I got my ticket here. It's all written out.  
14 However, before I give it to you, I want to have a dog  
15 sniff, I'm going to call in to headquarters. They're  
16 going to send out a dog. It's going to take maybe 45  
17 minutes. You just sit there because the traffic stop is  
18 not -- is not terminated until I give you your ticket.  
19 You're going to allow that?

20 MR. O'CONNOR: Well, again, if I -- if --  
21 the formal -- the formal handing of the ticket is not  
22 the end, in your example, Your Honor?

23 JUSTICE SCALIA: In my example, he hasn't  
24 turned over the ticket yet. He says, I'm -- I'm not  
25 going to give you the ticket until the dog comes and

1 that's going to take 45 minutes, and that's okay.

2 MR. O'CONNOR: No, the traffic stop is done.  
3 Whether he hands the ticket to him at that point in  
4 time, if the only reason --

5 JUSTICE SCALIA: He has not handed the  
6 ticket over. He's -- he's kept the ticket.

7 MR. O'CONNOR: And the reason that he has  
8 kept the ticket is for the dog to come.

9 JUSTICE SCALIA: Yeah.

10 MR. O'CONNOR: And -- but that is past  
11 the -- that is past the traffic stop. The traffic  
12 stop done --

13 JUSTICE SCALIA: So you're not -- you're not  
14 applying a formal test. I thought you were saying it's  
15 a formal test when you deliver the ticket is the  
16 termination point, but it -- that's not right.

17 MR. O'CONNOR: No, that's -- no.

18 JUSTICE SCALIA: All right.

19 MR. O'CONNOR: The formal test --

20 JUSTICE SCALIA: So what is the test?

21 MR. O'CONNOR: The formal test --

22 JUSTICE SCALIA: How long a normal traffic  
23 stop would take?

24 MR. O'CONNOR: The formal test -- no, your  
25 Honor, that would not be the case at all. The formal

1 test is when the mission has been accomplished. If you  
2 pull someone over for the traffic offense, and if, in  
3 fact, you do all of the tasks that are necessary to  
4 complete it, when it is completed, it is done.

5

6

7

8 CHIEF JUSTICE ROBERTS: What if the officer  
9 says -- says, I need to think about this for a while?

10 MR. O'CONNOR: Well, whose --

11 CHIEF JUSTICE ROBERTS: The officer says, I  
12 need to think about this for a while. I'm going to go  
13 back and I'm going to ponder how long it took you. I'm  
14 going to think about other tickets I've given in the  
15 past, and, you know, the dogs are going to be here in  
16 8 minutes. I think I need about 10 minutes to think  
17 about it.

18 Is that -- is that okay, since he has not --  
19 he hasn't written a ticket? He waits, you know, until  
20 he's thought about it for a while to write the ticket.

21 MR. O'CONNOR: No, your Honor, that's --  
22 that's not okay at all. If -- what has to happen is the  
23 officer must be diligent. He must be diligent going  
24 towards the investigation of the traffic stop.

25 And, again, I think we're putting -- and if

1 I'm the one that started the miss -- misleading of this,  
2 I apologize. Handing of the ticket is not the end-all.  
3 Handing of the ticket is when the tasks are done. I got  
4 pulled over for a driving offense, then it -- it -- then  
5 it is over.

6 In your example, Mr. Chief Justice, if he's  
7 pondering, then he's not being diligent. If he's  
8 pondering, you're not being diligent, then that's  
9 when --

10 JUSTICE SCALIA: Gee, we ponder all the  
11 time, and we think we're being diligent.

12 (Laughter.)

13 JUSTICE SCALIA: Pondering is not diligent.

14 MR. O'CONNOR: Unless the pondering is to  
15 avoid the diligence, and that would be the question.  
16 The question, then, is if -- if, in fact, the officer is  
17 pocketing the ticket, he said, I'm going to wait until  
18 the dog comes, you are then extending the time of the  
19 stop; and it violates the rule that you have in the  
20 laws.

21 JUSTICE SOTOMAYOR: You know, it really  
22 looks --

23 CHIEF JUSTICE ROBERTS: You may have  
24 answered this already, but I'm not sure.

25 Can he ask for the registration? Usually,



1 people have told me, when you're stopped, the officer  
2 says, License and registration.

3 (Laughter.)

4 CHIEF JUSTICE ROBERTS: Is that okay?

5 MR. O'CONNOR: I've had -- I've had friends  
6 that say -- say the same thing, Mr. Chief Justice.

7 Of course that's okay.

8 CHIEF JUSTICE ROBERTS: What about the  
9 registration is pertinent to the traffic stop?

10 MR. O'CONNOR: Well, what's pertinent about  
11 it is, part of the traffic stop is the vehicle itself as  
12 well. Not only do you have the driver, but you're  
13 looking at the driver, the driver's history, the car.  
14 All of those things are part and parcel to the --

15 CHIEF JUSTICE ROBERTS: If you saw -- if you  
16 saw --

17 MR. O'CONNOR: -- task towards the offense.

18 CHIEF JUSTICE ROBERTS: If you saw the car  
19 swerve, what does that have to do with the car? The car  
20 was just doing what the driver did. And I don't see why  
21 you need the registration of the car.

22 MR. O'CONNOR: What you can do -- no, Your  
23 Honor, I think -- Mr. Chief Justice, I think you do. I  
24 think that is part of investigating the -- the --  
25 traffic offense. Those are things that have been

1     accepted -- and "accepted" might -- might -- might not  
2     be the right word -- adopted as things that you can do  
3     in a traffic stop.

4             Now, there are certainly times when you go  
5     beyond the traffic stop. And you have the Johnson case.  
6     If, in fact, you go beyond the -- the -- the traffic  
7     stop even measurably beyond it, then you have violated  
8     the -- the -- the driver's rights, and it is  
9     unconstitutional. The question in that case occurred  
10    during the traffic stop.

11            JUSTICE GINSBURG:            Mr. O'Connor, is this  
12    particular traffic violation, was that an arrestable  
13    offense?

14            MR. O'CONNOR:                No. Under Nebraska law, no,  
15    Your Honor, it was not.

16            JUSTICE GINSBURG:            It was not.

17            MR. O'CONNOR:                It's a traffic infraction.

18            JUSTICE GINSBURG:            Because if it was an  
19    arrestable offense, they could arrest the driver and  
20    then impound the car and do an inventory search.

21            MR. O'CONNOR:                If it was an arrestable  
22    offense, yes, Your Honor, I think that's correct.

23            JUSTICE GINSBURG:            But you say it's not an  
24    arrestable offense.

25            MR. O'CONNOR:                It is not. And regardless, I

1 mean, he was -- see, here's the -- here's the -- what we  
2 do know about this case: Not only do we know the  
3 mission is done because of the tasks that were  
4 completed, you have the officer that says, I've done the  
5 tasks, everything that needs to be done with this  
6 offense or with this -- with this traffic stop is  
7 finished. It's finished. There's no question about  
8 that.

9 Then there's no more justification. In  
10 order for the driver to be continued to be detained,  
11 there must be new justification or consent, which you  
12 did not get in this case; but you must let the driver go  
13 because you are at the end, you are finished with the  
14 traffic stop, you are finished with the reason that he  
15 was detained in the first place, the purpose: Going  
16 across the fog line.

17 JUSTICE SOTOMAYOR: Can I just ask you a  
18 simple question? Yes, we've permitted a dog search; but  
19 in the cases that we have, Caballes and others, it was  
20 done simultaneous with the traffic stop. Correct?

21 MR. O'CONNOR: Correct.

22 JUSTICE SOTOMAYOR: You said in your brief:  
23 A dog sniff is not a police entitlement to which the  
24 Fourth Amendment limits must bend.

25 Is there a line that we should draw at how

1 long citizens should be kept by the side of the road?

2 MR. O'CONNOR: I think that the --

3 JUSTICE SOTOMAYOR: All right. So announce  
4 what that line is. That's what I think everybody's been  
5 asking you.

6 MR. O'CONNOR: The line is when -- I can --  
7 I can start off with -- with, perhaps, the Johnson case  
8 again. When the stop is basically -- when the stop is  
9 done --

10 JUSTICE SOTOMAYOR: Why don't you just do a  
11 simple test?

12 MR. O'CONNOR: I can give you --

13 JUSTICE SOTOMAYOR: If you're going to do a  
14 -- if you're going to do a stop, you can't reasonably  
15 extend or pass the time it takes to deal with a ticket,  
16 correct?

17 MR. O'CONNOR: I think that --

18 JUSTICE SOTOMAYOR: That would be the simple  
19 rule.

20 MR. O'CONNOR: I think that the simple rule,  
21 if I -- if I may propose one, is the same one that  
22 Professor LaFave has -- has proposed about a traffic  
23 stop or a simple stop.

24 Basically what you do is the officer sees  
25 the infraction; the officer pulls the person over; the

1 officer tells the person what the infraction is; he does  
2 the license; he does the registration, runs the car.  
3 Then when it's done, he gives him the ticket, the  
4 warning ticket.

5 That is the end of the traffic stop.

6 There's no other reason to hold the person after that  
7 point in time.

8 JUSTICE KENNEDY: You say he "runs the car."  
9 He puts the license plate into the radio and waits for  
10 the report from the station as to whether or not the  
11 license is okay?

12 MR. O'CONNOR: Yes, Your Honor.

13 JUSTICE ALITO: Why is that part of the  
14 mission and the dog sniff is not? That's the question.

15 If you're not going to have a formal rule,  
16 you have to explain why -- somebody's pulled over for a  
17 broken taillight, why the -- adding any time to the stop  
18 in order to do a records check is part of the mission  
19 but the dog sniff is not.

20 I mean, I could understand the rule, you  
21 pull somebody over for a broken taillight, maybe you get  
22 the registration to make sure you write out the ticket  
23 to the right person. Then you give him the ticket, and  
24 that's it.

25 No -- no time for the records check. What

1 does the records check have to do with pulling somebody  
2 over for a broken taillight? I can understand that, but  
3 is that your argument?

4 MR. O'CONNOR: Well, if that is -- that is  
5 part of what the courts have accepted as part of the  
6 stop. You are looking at the vehicle itself.

7 Now, the dog, Your Honor, is different. The  
8 dog is different because the dog is not a task  
9 related -- what the courts have accepted as related to a  
10 traffic stop. It is a collateral offense -- or a  
11 collateral event where you have the dog sniff and do  
12 nothing more than look for drugs, any nothing more than  
13 that.

14 JUSTICE ALITO: I mean, your answer is -- I  
15 don't want to interrupt. Your answer is that the courts  
16 have accepted that you can go -- you can prolong this a  
17 little bit to do a records check. But then you have to  
18 explain why the dog sniff is different.

19 MR. O'CONNOR: You're not prolonging it,  
20 Your Honor, to do a records check. That is part of the  
21 stop. As long as the person, the officer, is diligently  
22 working towards the mission --

23 JUSTICE GINSBURG: Why -- why is it part?  
24 As the question he has suggested, it's unrelated to the  
25 traffic stop. You're looking to see if this person has

1 a record, committed other crimes, for example. What has  
2 that got to do with whatever the traffic --

3 MR. O'CONNOR: No.

4 JUSTICE GINSBURG: -- infraction is? Not  
5 stopping at a stop sign, what has checking to see if the  
6 defendant has a criminal record got to do with that?

7 MR. O'CONNOR: That is something that the --  
8 that the courts are looking at as to whether that is  
9 something that you should be able to do. The courts  
10 have generally accepted that.

11 What I can come back, and this particular  
12 case is not something that happened in this case,  
13 because it is clear-cut. Now, that issue is extremely  
14 important, but is something that I don't think can be  
15 done today.

16 CHIEF JUSTICE ROBERTS: He can -- I mean,  
17 one reason I think they do the records check, the  
18 officer needs to know who he's dealing with. I think  
19 one of the higher incidences of when officers are shot  
20 or wounded is when they make a traffic stop.

21 And So if you run the registration, you see  
22 it's a stolen car, you need to know that before you go  
23 back and deal with the driver and other occupants.

24 What if the police officer determines that  
25 he's -- he's concerned about that, either as a general

1 matter or as a specific matter. He takes the license  
2 and registration, but he's not going to go back to the  
3 car until he has backup. Okay?

4 So he calls ahead and said, I would -- you  
5 know, I would like backup. And the person says, you  
6 know, it's going to take 25 minutes, and he says, fine.

7 Is that a legitimate reason? The traffic  
8 stop isn't over, because he's -- he doesn't want to go  
9 back because he's alone and he doesn't know who these  
10 guys are.

11 MR. O'CONNOR: That is a legitimate reason.

12 CHIEF JUSTICE ROBERTS: So he can call back.  
13 Now -- now, okay, what if the backup is a canine unit?  
14 The canine unit gets there, you've told us it hasn't  
15 been prolonged, and as the officer goes up to give him  
16 the warning the dog walks around the car. Is that all  
17 right?

18 MR. O'CONNOR: I think that that is all  
19 right. And the reason that it's all right is because  
20 you have the diligence of the officer. Officer safety  
21 is certainly a reason to ask for backup. Once the  
22 backup is there, the officer then completes the traffic  
23 offense, everything is done, and before that, the dog  
24 has run around, I don't think that there is a problem  
25 with that, because the delay was for a legitimate



1 reason, not putting the ticket in -- in your pocket.

2 If there are no further questions, I will  
3 request the remaining for rebuttal.

4 CHIEF JUSTICE ROBERTS: Thank you. Thank  
5 you, counsel.

6 Ms. Anders.

7 ORAL ARGUMENT OF GINGER D. ANDERS

8 ON BEHALF OF RESPONDENT

9 MS. ANDERS: Mr. Chief Justice, and may it  
10 please the Court:

11 In order to avoid the arbitrary results that  
12 Petitioner's bright-line rule would -- would impose on  
13 traffic stops, a dog sniff conducted during a traffic  
14 stop should be subject to a reasonableness analysis.  
15 Whether the --

16 JUSTICE SOTOMAYOR: How long is reasonable?  
17 You keep saying in your -- in your papers you have to  
18 look at the totality of the circumstances, but I don't  
19 know what that means. I think that keeping me most of  
20 the time, and Chief, I've been stopped -- keeping me  
21 past --

22 MS. ANDERS: So have I.

23 JUSTICE SOTOMAYOR: Keeping me past giving  
24 me the ticket is annoying as heck whether it's 5  
25 minutes, 10 minutes, 45. But how do you define de

1    minimis?  What are the circumstances that would make any  
2    difference be -- in holding somebody 5 minutes or 45?  
3    It all has to do with your needs, not the passenger's  
4    needs.

5           MS. ANDERS:           Well, if I could explain what  
6    the reasonableness approach is.  First of all, it's  
7    not -- it's not a strict de minimis approach that  
8    focuses just on the amount of time in isolation.  It's  
9    a -- it's a question about the objective reasonableness  
10   of the length of the stop.  And we think that --

11          JUSTICE SOTOMAYOR:        To accomplish what?  
12   Break into -- go into their home and search their home?  
13   Is that okay?

14          MS. ANDERS:           The reasonable length of a stop  
15   is the amount of time that it -- a stop is reasonable,  
16   even if it includes a dog sniff, if its duration is  
17   within the amount of time -- the range of reasonably --  
18   reasonable, routine traffic stops that don't involve dog  
19   sniffs.  So we're talking about a length of time that is  
20   still tethered to the traffic violation purpose of the  
21   stop.

22          So in addition to not exceeding the sort of  
23   heartland of -- of routine traffic stop durations, the  
24   officer also has to be reasonably diligent which means  
25   that he needs to be focused overall.

1 JUSTICE SCALIA: What's the heartland of  
2 routine traffic stops? You have a minute criteria?  
3 What is it, half an hour?

4 MS. ANDERS: I think within the universe of  
5 routine traffic stops, there's a range. I mean, the  
6 courts have applied a reasonableness analysis to routine  
7 traffic stops for 30 years. There is --

8 JUSTICE SCALIA: What is it? What is it? I  
9 want to know what it is so I can complain when it's  
10 longer.

11 (Laughter.)

12 MS. ANDERS: Well, it depends on the  
13 circumstances that are presented during the stop. So  
14 for instance, a stop might reasonably take longer if  
15 there are more people in the car so that the officer has  
16 to check the -- the criminal histories of more people in  
17 the car. He has to be more worried about officer  
18 safety. It --

19 JUSTICE SCALIA: How many minutes when there  
20 are three people in the car?

21 MS. ANDERS: The courts -- courts  
22 asserted --

23 JUSTICE SCALIA: I mean, you've got to pick  
24 a minute. Don't you have to pick a minute sooner or  
25 later to decide these cases?

1 MS. ANDERS: No, I think in -- in every --  
2 in every case the Court -- the Court has to look to the  
3 totality of the circumstances presented.

4 JUSTICE SCALIA: And pick a minute.

5 MS. ANDERS: And so it's not possible to  
6 pick a minute in the abstract because even -- as this  
7 Court said in --

8 JUSTICE SCALIA: What more do you need?  
9 There are three people in the car and he's stopped for a  
10 broken taillight.

11 MS. ANDERS: Well, as we said in our brief,  
12 when that situation occurs, courts have upheld stops of  
13 up to, you know, 35 minutes, something like that.

14 JUSTICE BREYER: The problem -- I have a  
15 great idea. Why don't we say, taking your test, that  
16 the stop, you can -- you can do it, you know, whatever  
17 is normal there, but it cannot be prolonged more than  
18 the time reasonably required to complete the mission,  
19 which happens to be giving a temporary -- a traffic  
20 ticket. Or we could say it cannot last longer than is  
21 necessary to effectuate the purpose of the stop.

22 What an original idea I had. It happens to  
23 be language from two cases that we've already said. And  
24 are you saying anything different? I don't think so.  
25 If so, what? And if not -- since this is a case where

1     apparently the lower courts have said it did last longer  
2     than was reasonably necessary because the policeman  
3     said, that's why I -- I mean, in effect said, according  
4     to the judge -- Hey, I called the dog after the stop was  
5     over, or something like that -- we cite those two cases,  
6     say those are the tests. Affirm -- or reverse, I guess;  
7     QED. Good-bye, we say, to all the litigants, and hope  
8     you are happy.

9             Now, when -- when -- when I hear you say  
10     that it sound -- what you've said sounds -- sounds  
11     that's what you think we should do.

12            MS. ANDERS:             We think --

13            JUSTICE BREYER:         But I suspect you don't,  
14     but I want to know why.

15            MS. ANDERS:             Well, we think the amount of  
16     time reasonably required to complete the traffic stop  
17     is -- is the duration it takes, looking toward --  
18     looking to other similar stops, it's the duration  
19     that --

20            JUSTICE BREYER:         It is the time necessary to  
21     effectuate the purpose of the stop or it is the time  
22     that is reasonably required to complete the mission. We  
23     can't do better than that. How can we? We are not  
24     traffic policemen, and our experience on stops comes  
25     from, unfortunately, being the stoppee rather than the

1 stopper.

2 MS. ANDERS: Right. And a stop can fall  
3 within that reasonably required time frame --

4 JUSTICE BREYER: Yeah.

5 MS. ANDERS: -- even if it includes some  
6 delay that is attributable to --

7 JUSTICE BREYER: Of course, if it's in the  
8 middle of it, you call the dog and so forth, but you  
9 can't prolong it beyond the time reasonably necessary.  
10 Now, I've said that several times. I think you may  
11 agree with that.

12 MS. ANDERS: No, it --

13 JUSTICE BREYER: And then if you do agree  
14 with it, here, it was prolonged more than reasonably  
15 necessary -- at least that's what they found -- end of  
16 case. Now --

17 MS. ANDERS: I think looking -- looking to  
18 whether the dog sniff occurs before or after the traffic  
19 ticket is given will accord dispositive significance to  
20 the officer's sequencing decision when he gives the  
21 ticket. As I understand Petitioner's position, it is  
22 that if, in the midst of a traffic stop that, say, lasts  
23 10 minutes, the officer spends 1 minute on a dog sniff,  
24 that is okay even though it has incrementally --

25 JUSTICE BREYER: Yeah, that's right --

1           MS. ANDERS:           -- increased the length of the  
2 stop. But then you have that very same stop where the  
3 officer gives the ticket first and then adds a minute  
4 for a dog sniff --

5           JUSTICE BREYER:           There are a lot of  
6 problems --

7           MS. ANDERS:           -- 11-minute stops and --

8           JUSTICE BREYER:           There are a lot of problems  
9 with any rule based on reasonableness, and, of course,  
10 there will be difficult problems. But here we've said  
11 twice that once the stop is over, i.e., goes beyond the  
12 time reasonably necessary to complete the mission, you  
13 cannot call in the dogs; and before, you can.

14           Now, of course there will be anomalies in  
15 that respect. Of course there can be bad-faith  
16 exercises. Of course there can be confusion as to which  
17 is which. But that's inevitable in the situation and we  
18 can't do anything about it.

19           Now, what can you suggest that would just  
20 help us and show we could do something about it?

21           MS. ANDERS:           Well, I think it's a pretty  
22 serious anomaly when --

23           JUSTICE BREYER:           Well, it may be --

24           MS. ANDERS:           -- when --

25           JUSTICE BREYER:           -- but I'm asking you

1     what -- what is it that we could say better than the  
2     language of the two cases? I mean, I'm not -- I'm not  
3     denying there is a problem with what you just said;  
4     there is. You might do it -- decide to do this  
5     beforehand and do all kinds of excuses. You know,  
6     people every day of the week make up reasons, they go  
7     about -- but if you want a better rule than the one laid  
8     down in the two cases, what?

9             MS. ANDERS:             Well, I think there are two  
10     ways to understand the language in the two cases you're  
11     referring to in Caballas. One is, as I think you're  
12     suggesting, that the time reasonably required to  
13     complete the traffic violation means that time and  
14     nothing else, so that any delay attributable to a dog  
15     sniff as opposed to other --

16            JUSTICE BREYER:         No, I don't think you have  
17     to do that. I mean, you know, you get into arguments  
18     about it; was it reasonably necessary or not? It's the  
19     cannot be prolonged beyond the time what is reasonably  
20     necessary. It is difficult sometimes --

21            MS. ANDERS:             Well, the one --

22            JUSTICE BREYER:         -- to decide what is  
23     reasonably necessary.

24            MS. ANDERS:             One -- once we accept that --  
25     that a stop can be incrementally prolonged for purposes



1 of a dog sniff if that dog sniff occurs during the stop,  
2 so that the officer is doing nothing but that dog sniff,  
3 he's adding a 1-minute to a 10-minute dog sniff, then  
4 the question would be whether that 11-minute total stop  
5 is reasonable. Then that's the exact same intrusion  
6 that would occur if the officer decided to do all of the  
7 traffic-related tasks first, that took 10 minutes, and  
8 then he did a dog sniff immediately afterwards. That's  
9 an 11-minute traffic stop.

10 JUSTICE KAGAN: Can I just --

11 MS. ANDERS: It's exactly the same intrusion  
12 and it should be subject to a reasonableness analysis.

13 JUSTICE KAGAN: Could I just get a little  
14 clarification on your argument? If I understand what  
15 you've been saying, you are accepting the idea, aren't  
16 you, that the dog sniff is something that's extraneous  
17 to the mission of the stop; is that correct?

18 MS. ANDERS: We're not suggesting that it  
19 is -- it is an ordinary incident of the traffic stop  
20 that you'd have to take time to stop --

21 JUSTICE KAGAN: It's not an ordinary  
22 incident.

23 MS. ANDERS: But since the Court said in  
24 Caballas that a dog sniff is permissible to perform at  
25 stops sometimes, we think that the analysis as to when

1 it is permissible --

2 JUSTICE KAGAN: Wait, I'm not getting there  
3 yet. I just want to understand -- because some of the  
4 questions are focused on, like, what is a stop? What's  
5 the mission of the stop? What's entailed in a normal  
6 stop? And you're not contesting that a dog sniff is not  
7 something that's entailed in a normal stop even though  
8 there might be occasions where you can do a dog sniff  
9 attendant to a stop.

10 MS. ANDERS: I think that's right, but as  
11 other members of the Court have suggested, once there's  
12 probable cause to stop someone for --

13 JUSTICE BREYER: What about --

14 JUSTICE SCALIA: Suppose you have a police  
15 department that -- it's in a small state, they have --  
16 every -- every police cruiser has a -- has a canine, and  
17 they make it just -- just as common to, you know, to  
18 check on the -- the license plate, call in to see if a  
19 person has any -- any prior convictions. So, also, they  
20 always take the dog around the car.

21 MS. ANDERS: I think it would be --

22 JUSTICE SCALIA: It's a routine part of --  
23 of a traffic stop.

24 MS. ANDERS: It would be permissible for  
25 them to do that as long as in each stop, it fell within

1 the reasonable amount of time that -- that it would take  
2 for a routine traffic stop if the officer --

3 JUSTICE SCALIA: Including the time for the  
4 dog sniff.

5 MS. ANDERS: I think we would -- we would  
6 not include the time for a dog sniff --

7 JUSTICE SCALIA: Ah.

8 MS. ANDERS: -- in the baseline that we  
9 would use.

10 JUSTICE SCALIA: Why not? Why not?

11 MS. ANDERS: Well, I think -- I think -- I  
12 think it --

13 JUSTICE SCALIA: That -- that's what a  
14 routine traffic stop is for that jurisdiction.

15 MS. ANDERS: Well, I think our point is that  
16 once there's probable cause to perform a set of  
17 legitimate investigative inquiries, then if the officer  
18 can do other investigations during that time such as a  
19 dog sniff or unrelated questionings, then it ought to be  
20 constitutionally reasonable to do that. And that's what  
21 actually the Courts of Appeals for the most part have  
22 held with respect --

23 JUSTICE BREYER: Okay. But that's where --  
24 I thought that position that I've tried to -- let me  
25 state it more clearly, I think. It is unlawful to have

1 the dog sniff where the dog sniff unreasonably prolongs  
2 the stop, is that -- does -- is that okay if I write --  
3 with the government -- if I write those words in an  
4 opinion?

5 MS. ANDERS: That's right. But we don't  
6 think that a dog sniff performed right after the ticket  
7 per se unreasonably prolongs the stop. And if I could  
8 give you a hypothetical that --

9 JUSTICE BREYER: Ah. Well, how -- if the  
10 ticket-writing is over and there is nothing else to do  
11 and the policeman says, hey, this is over, at that point  
12 has it not unreasonably prolonged the stop if the sniff  
13 takes place afterwards?

14 MS. ANDERS: I don't think so. I mean, just  
15 imagine --

16 JUSTICE BREYER: Because?

17 JUSTICE SCALIA: Because that takes only two  
18 minutes and that's not unreasonable, right?

19 MS. ANDERS: That's right. And it doesn't  
20 take into account how he stops --

21 JUSTICE SCALIA: Big deal. The dog walks  
22 around the car for two minutes. That's --

23 CHIEF JUSTICE ROBERTS: It's only a  
24 violation of the Fourth Amendment for two minutes,  
25 right?

1 (Laughter.)

2 CHIEF JUSTICE ROBERTS: I mean, the reason I  
3 don't understand -- I don't understand when you're  
4 talking about prolonging the stop, are you talking about  
5 here's the amount of time that you are -- needed for the  
6 traffic stop and you're allowed to prolong it sometime  
7 after that? Or is it that the -- the sniff is part of  
8 the time for the stop so you're not prolonging it at  
9 all? You're including it, you're wrapping it up in the  
10 stop.

11 MS. ANDERS: No, I think -- I think we -- we  
12 admit that the -- that the dog sniff can prolong the  
13 traffic stop, that it is not a routine part of every  
14 single traffic stop. We're not trying to make that  
15 argument. But I do think that just because a dog sniff  
16 prolongs the traffic stop by some, you know, incremental  
17 amount of time doesn't mean that the stop is per se  
18 unreasonable.

19 JUSTICE SCALIA: It can prolong it a little  
20 bit.

21 MS. ANDERS: It can prolong it a reasonable  
22 amount of time --

23 JUSTICE GINSBURG: And what else -- what  
24 else besides -- we have the extraneous dog sniff. It  
25 doesn't relate to the traffic violation. What else?

1     Could -- could the police say, I've taken the time I've  
2     needed to look into this traffic violation, but we're in  
3     a high crime neighborhood, so I'd like to keep this  
4     driver a bit longer so I can just interrogate him about  
5     what other things he might have been doing. And it's  
6     not going to take -- it's only going to take eight  
7     minutes. But traffic stop, you've taken care of that.  
8     And now instead of having the dog come, the police  
9     officer says, I have a few questions I want to ask you.

10           MS. ANDERS:                Yes. The Court held -- the  
11     Court held in Arizona v. Johnson that that questioning  
12     about an unrelated matter is not -- like a dog sniff --  
13     it is not an independent Fourth Amendment intrusion.  
14     So, again, I think the only interest at stake from the  
15     individual's point of view is the interest against  
16     unreasonable delay. And since that is the case, I think  
17     that the officer can incrementally extend the stop so  
18     long as the ultimate duration of the stop is --

19           JUSTICE GINSBURG:           So you say that --

20           JUSTICE BREYER:            Now, what  
21     about this? See, I see your problem is, you said, well,  
22     it can't prolong the stop, the traffic stop more than  
23     reasonably -- you know, it has to be -- take the time  
24     reasonably required to complete the mission. That's  
25     what it says, complete the mission. So we have the

1 intermission prolongation, which has to be reasonable,  
2 and we have complete the mission. So complete the  
3 mission. Once the mission's completed, it's over.  
4 That's language from the opinion, too. Complete,  
5 complete. Good-bye. Over. At that point it becomes a  
6 violation of the Fourth Amendment.

7 MS. ANDERS: And that would lead to  
8 arbitrary results. And if I could just give you one  
9 scenario where that could occur and then tell you why  
10 practically officers often end up or need to do the dog  
11 sniff after the tickets.

12 So the hypothetical that I propose is that  
13 if you imagine you have two officers conducting a stop  
14 and the first officer is explaining the ticket and  
15 what's happening with the ticket to the person, to the  
16 driver. While he's doing that, the second officer is  
17 performing the dog sniff around the car. If the officer  
18 who's explaining the ticket ends first and the dog sniff  
19 takes another 30 seconds, I don't think there's any  
20 reason to say that that stop, which maybe lasted a total  
21 of ten minutes has -- has gone on for longer than  
22 reasonably required to complete the traffic ticket.

23 JUSTICE SOTOMAYOR: Well, I have a -- I have  
24 a real fundamental question, because this line drawing  
25 is only here because we've now created a Fourth

1 Amendment entitlement to search for drugs by using dogs,  
2 whenever anybody's stopped. Because that's what you're  
3 proposing. And is that really what the Fourth Amendment  
4 should permit?

5 MS. ANDERS: I don't think it's an  
6 entitlement, Justice Sotomayor. I think once the Court  
7 said in Caballes that -- that it is permissible in some  
8 circumstances to perform a dog sniff during a traffic  
9 stop, then --

10 JUSTICE SOTOMAYOR: Well, in some  
11 circumstances. So why don't -- why don't we keep it  
12 cabin to Caballes, which is when it's being done  
13 simultaneous with writing the ticket. If it's not, then  
14 it's unlawful.

15 MS. ANDERS: Well, because that leads to  
16 arbitrary results as I was explaining with  
17 Justice Breyer, I think in that hypothetical --

18 JUSTICE SOTOMAYOR: It's not arbitrary. The  
19 Fourth Amendment is arbitrary by its nature. It says  
20 you can't search unless you have probable cause to  
21 search.

22 MS. ANDERS: Well, Petitioner's rule would  
23 say that the hypothetical I proposed is impermissible in  
24 every circumstance; that even a 30-second extension of a  
25 short traffic stop is always unreasonable even if that



1 stop falls within the amount of time it usually takes to  
2 do routine traffic stops --

3 JUSTICE KAGAN: Ms. Anders -- I'm sorry.  
4 Please.

5 MS. ANDERS: -- and the officer is  
6 reasonably diligent with respect to the traffic mission.

7 JUSTICE KAGAN: You know, I -- I think I  
8 read Caballes differently than you. Here's what I think  
9 Caballas agrees with you on and here's what I think  
10 Caballes doesn't. Caballes definitely agrees with you on  
11 that a dog sniff is not part of the traffic stop. So I  
12 think that you and Caballes are definitely in the same  
13 place there. And Caballes definitely says that even  
14 though a dog sniff is not part of the mission of the  
15 traffic stop, we're going to allow a dog sniff if the dog  
16 sniff doesn't extend the traffic stop. It's like, you  
17 know, there are two officers or there's some other reason  
18 why you're not being detained a moment longer because of  
19 the dog sniff and Caballes basically says, sure, no harm,  
20 no foul on that one, right?

21 But then you're saying Caballes gives you  
22 this extra leeway to detain people even though it is  
23 longer than an ordinary traffic stop would take, and I  
24 think that's just not right. I mean, I think that  
25 reasonableness language in Caballes is all about -- it's

1 an extra limitation the Court says. It says, like,  
2 don't think just because this officer was really slow  
3 and it took a really long time to do the traffic stop,  
4 and he was able because of that to get another officer  
5 in and do a dog sniff and it was all with -- it's like  
6 an additional limitation that, no, you have to be  
7 diligent and you have to be reasonable in the way you  
8 conduct the traffic stop. And if you're not, the dog  
9 sniff can't come in even though it was conducted during  
10 the time the traffic stop occurred. But it -- that's --  
11 that's an additional constraint. It's not some kind of  
12 extra leeway for the police officers to do things  
13 outside the bounds of the traffic stop itself.

14 MS. ANDERS: Well, I think that's one way to  
15 read Caballes's language. The reason we don't think  
16 that that's the right way is that we know after Caballes  
17 that a dog sniff is not an independent Fourth Amendment  
18 intrusion. It's not a search. We also know that it  
19 doesn't impose -- it doesn't violate any independent  
20 scope limitation on traffic stops.

21 JUSTICE KAGAN: It is not a search, but  
22 the -- but the theory of Caballes and of all of our  
23 questions is that you can't -- and of all of our  
24 cases -- is that you really can't detain somebody if you  
25 don't have some kind of objective reasonable basis for

1     doing so.   And that any detention -- and, you know, it  
2     might be ten minutes or it might be five minutes or it  
3     might be two minutes -- without that kind of basis is a  
4     Fourth Amendment violation.

5           MS. ANDERS:           But once the individual is  
6     already being detained for a traffic stop on probable  
7     cause, I think the implication of Caballes is that --  
8     that if the dog sniff takes any time, then the intrusion  
9     we're talking about is the incremental delay.   It's a  
10    temporal intrusion.   And so from the individual's  
11    perspective, her interest in -- it's the same in  
12    avoiding the dog sniff as it is in avoiding a warrant  
13    check or any other incident of a stop.   It's the  
14    interest against unreasonable delay.   And so because  
15    that's the case, we think the delays attributable to  
16    dog   sniffs should be treated like delays attributable to  
17    a warrant check or anything else.   They should be  
18    subject to --

19           CHIEF JUSTICE ROBERTS:           You say -- you've  
20    said several times the phrase "incremental." In My -- I  
21    sense that it being less than, right?   I mean, if the  
22    actual traffic stop is 5 minutes, then you wouldn't say  
23    a 15-minute dog sniff is incremental.   So doesn't the  
24    dog sniff have to be less than the traffic stop?

25           MS. ANDERS:           I think that -- I think that

1 one of the things that courts should look to is the  
2 relative proportion of time of the dog sniff to the rest  
3 of the stop. And I -- the reason I think that is  
4 relevant is that the officer -- this is the case in  
5 routine traffic stops as well -- the officer has to be  
6 reasonably diligent. And so, I think reasonably  
7 diligent can take into account whether the officer is  
8 predominantly working on resolving the traffic  
9 violation. But if he is able to a dog sniff within a  
10 reasonable amount of time and not have the traffic stop  
11 exceed the duration of a reasonable, routine traffic  
12 stop, then he ought to be able to do that.

13 CHIEF JUSTICE ROBERTS: Is that - is that  
14 almost always the case, that the dog sniff is going to  
15 take longer than the traffic stop? I mean, I would assume  
16 so. The officer says license and registration, goes  
17 back, checks, comes back and gives you the ticket. The  
18 dog sniff is something else altogether. Assuming the  
19 dog is there, they've got to get -- you know, walk  
20 around the car. If you're -- if it really has to be  
21 incremental, I'm not sure -- it's hardly ever going to  
22 be reasonable.

23 MS. ANDERS: Well, the dog sniff itself, I  
24 think, is a matter of seconds. I think in the cases it  
25 takes anywhere from 30 seconds to 90 seconds to do a dog

1 sniff. So it is something that can be an incremental  
2 delay as I --

3 CHIEF JUSTICE ROBERTS: If the dog happens  
4 to be there, I guess.

5 MS. ANDERS: Well, even in a situation where  
6 the dog isn't there already, I mean, the officer calls  
7 for the dog early enough and the dog arrives. I mean,  
8 there are situations in cases -- we cited this in  
9 Footnote 20 of our brief where you have the dog arriving  
10 just as the officer is about to give the ticket. So  
11 that is a scenario -- that that can occur.

12 And I do think there are several reasons why  
13 an officer may want to give the ticket first and then do  
14 the dog sniff immediately. And one of them is officer  
15 safety. I think everything that an officer does during  
16 a traffic stop, how he orders his tasks and how he  
17 performs them, is infused with officer safety  
18 considerations. And so it can be a safer thing to ask  
19 -- to use the ticket, to explain the ticket as a non-  
20 confrontational way of seeing about the car.

21 JUSTICE BREYER: Well, I see that. What  
22 about -- another aspect is I was seeing it the way  
23 Justice Kagan described it. And one virtue of that,  
24 now, but you may not think it does work, is  
25 administrative. What do you tell the police department?

1 Say, well, when you're in traffic stops can you use dogs  
2 to sniff? Yeah, you can. But remember, once it's over,  
3 the traffic stop, it's over, done, finished. And by the  
4 way, if it isn't over yet, you still well may get into  
5 trouble if you've unreasonably prolonged the stop just  
6 to get the sniff.

7 Now, that seems pretty easy to explain.  
8 It's fairly bright-line. And as soon as you get into  
9 this other -- you know, just leaving it totally open,  
10 there's no check, really, on the -- on the or not too  
11 much of one. What -- you -- now, I'm putting that to  
12 you to get your response.

13 MS. ANDERS: So as I understand it you're  
14 saying that -- that, again, this is subject to a  
15 reasonableness analysis, that the officer can do the dog  
16 sniff and he can prolong the stop either before or after  
17 --

18 JUSTICE BREYER: No, I was saying two parts.  
19 Part one, traffic stoppers, you can use a dog sniff when  
20 you stop, but not once the stop is over, period, unless  
21 you have cause or something. And during the stop,  
22 that's part two, you can't prolong it but for a reason.  
23 You have to do it all within a reasonable time, okay?  
24 You can't unreasonably prolong it to get your dog in.  
25 See? You tell them those two things. Once you've told

1       them the two things, they've got it in their heads.  
2       When this is over, good-bye dog.

3               MS. ANDERS:               Well, so that --

4               JUSTICE BREYER:               When it's not over, they  
5       better be careful not to unreasonably prolong it. Now,  
6       they'll understand that, and it will be both protecting  
7       what the Fourth Amendment protects and also, I think,  
8       giving them enough leeway to conduct a traffic stop.

9               MS. ANDERS:               Well, so that makes the  
10       officer's sequencing decision entirely dispositive of  
11       whether the dog sniff can occur. If it happens before  
12       the stop, then it's fine; and after the stop, not. I  
13       think that does create arbitrary results from the  
14       perspective of the intrusion on the individual. But  
15       from the officer's perspective, I think there's an  
16       interest in officers having some leeway to sequence the  
17       traffic stop.

18              JUSTICE SOTOMAYOR:              But the way Justice  
19       Breyer has said this -- what he's saying is you can't  
20       unreasonably prolong. You can't hold a person any --  
21       any measurable time that would allow to get the dog.  
22       And, yes, it has to do with the resources of the police  
23       department, but we can't keep bending the Fourth  
24       Amendment to the resources of law enforcement.  
25       Particularly when this stop is not -- is not incidental

1 to the purpose of the stop. It's purely to help the  
2 police get more criminals, yes. But then the Fourth  
3 Amendment becomes a useless piece of paper.

4 JUSTICE SCALIA: I didn't understand --

5 JUSTICE BREYER: I think if I take what I  
6 said and take your answer, I have to say your answer is  
7 right. It's just a bad effect of my rule. And -- and  
8 the virtue of the, you know, the two-part rule is what  
9 we said was the virtue of it. And it's like in many  
10 cases; there just isn't much more to say. You have to  
11 say, am I willing to run this -- they might purposely  
12 change the sequence. They might, that's true. Somebody  
13 might. And I don't know what to do about that. The  
14 answer is I couldn't do anything about it.

15 MS. ANDERS: Well, we think there is a law  
16 enforcement interest in officers having some leeway to  
17 sequence the stop as they see fit. As I was explaining  
18 the reasons that an officer might want to give a ticket  
19 contemporaneously with or before doing a dog sniff.

20 JUSTICE SOTOMAYOR: Well, he said --

21 JUSTICE KAGAN: Suppose, Ms. Anders, that --  
22 it's a hypothetical -- police pulls somebody over and  
23 starts the process and then the police officer says, you  
24 know, I'd like a cigarette break now? A cigarette  
25 probably takes about as long as the dog sniff took in



1       this -- and just, you know, smokes a cigarette and he  
2       goes back to work. All right? Would you say that that  
3       was unconstitutional prolongation of the stop.

4               MS. ANDERS:               Well, an officer always has to  
5       be reasonably diligent. So at a certain point if the  
6       officer takes breaks for no valid law enforcement  
7       reason, that is going to be dilatory and so the stop  
8       would become unreasonable.

9               JUSTICE KAGAN:            Okay.

10              MS. ANDERS:               But, so I --

11              JUSTICE KAGAN:            So it would become  
12       unreasonable because there he was, he wasn't doing  
13       anything related to the mission of the stop. That's  
14       true if he gave the ticket and then said, I want you to  
15       stay while I take a cigarette break, or it's true if he  
16       did it before he gave the ticket, either way.

17              I guess what I'm saying to you is I kind of  
18       think it's the same thing, is that once you've  
19       acknowledge that the dog sniff is something that's  
20       extraneous to the stop itself -- it's obviously more  
21       helpful to the police than a cigarette break -- but it's  
22       extraneous to the stop itself -- then the same rules  
23       apply as if the police officer had just taken a  
24       moratorium on the stop in the middle in order to conduct  
25       his own business.

1           MS. ANDERS:           I think when a traffic stop is  
2           occurring, when an officer has someone stopped, we don't  
3           expect them to ignore potential evidence of criminal  
4           behavior. In fact, we think they'd be remiss if they  
5           did. And so we think that if the officer is able to do  
6           a dog sniff within a reasonable time, and is still  
7           reasonably diligent with respect to the traffic stop  
8           violation, it ought to be constitutionally permissible.

9           JUSTICE KAGAN:           But then you really are  
10          saying because we have a reason to pull you over for a  
11          traffic stop, that gives us some extra time to start  
12          questioning you about other law enforcement-related  
13          things and to do other law enforcement-related business.  
14          And I never thought that that was the rule. I always  
15          thought is that once the objective basis -- you know,  
16          for the stop, dissipated, that was it.

17          MS. ANDERS:           Well, I -- I think if you take  
18          unrelated questioning, for instance, questioning about  
19          other -- you know, other crime, other criminal activity,  
20          I think there's a strong law enforcement interest in  
21          officers having some leeway to pursue this within a stop  
22          as long as it still is reasonable --

23          JUSTICE GINSBURG:           You told me the officer  
24          could do that. At least that's what I understood your  
25          answer to be.

1           MS. ANDERS:           That's right, the officer can  
2       do that.   And I think it's important that the officer  
3       have some leeway so long as the overall time remains  
4       reasonable.   If you think about questioning -- if the  
5       officer starts questions about where the person is going  
6       and that kind of thing, you don't -- we don't want  
7       officers to have to make finely-tuned judgements in the  
8       moment about whether the next question he wants to ask  
9       is sufficiently related to the traffic mission or not.  
10      That's why we think there needs to be some leeway for the  
11      officers to take some time to pursue -- to pursue the  
12      things that they observe.   As long as they can do that  
13      within the amount of time that would be reasonable in a  
14      routine traffic stop, then we think it should be  
15      constitutionally reasonable to do that.   And I would say  
16      that I think the reasonableness analysis -- it allows  
17      courts to calibrate based on the nature and severity of  
18      the intrusion.

19           Under Petitioner's view, even a 30-second  
20      extension of a traffic stop for a dog sniff would be  
21      unreasonable in every case.   But if you have a  
22      reasonable analysis --

23           JUSTICE KAGAN:           But what your -- where your  
24      rule is going to lead to, Ms. Anders, is something along  
25      the lines of, like, everybody will decide 30 minutes or

1 40 minutes, I think you say at one point in your brief,  
2 is reasonable for a traffic stop. And if you see a  
3 taillight violation, that's 40 minutes of free time for  
4 the police officers to investigate any crimes that they  
5 want, because they can do it all in the range of what  
6 you've decided is kind of the reasonable traffic stop.

7 MS. ANDERS: I don't think that's how we  
8 envision the analysis going, because the ultimate length  
9 of time has to be within the duration of a routine  
10 traffic stop that doesn't involve a dog sniff. And  
11 that's going to vary based on the circumstances because  
12 routine traffic stops, what's reasonable varies based on  
13 the circumstances. So what we think courts can do is  
14 they can look at what the officer actually did and they  
15 can look to stops involving similar circumstances but  
16 not dog sniffs, and determine whether the officer was  
17 able to do the whole thing within a reasonable amount of  
18 time.

19 I think that's essentially what the Court  
20 contemplated in Ornelas, that with these Fourth  
21 Amendment inquiries they're fact-specific, but, you  
22 know, the harder cases will be appealed and -- and there  
23 will start being guidelines, the courts can look to  
24 similar indications.

25 We think the same thing can happen here, and

1 indeed it already has happened with respect to unrelated  
2 questioning. There, the vast majority of the courts of  
3 appeals have said that you can extend a traffic stop for  
4 unrelated questioning, and the courts have looked to how  
5 much time does the questioning take, how long is the  
6 overall stop, and was the officer reasonably diligent  
7 with respect to the traffic mission.

8 And we think the same thing should happen  
9 here, whether the dog sniff is before or after the  
10 ticket. That's the only rule that avoids arbitrary  
11 results.

12 If there are no further questions --

13 CHIEF JUSTICE ROBERTS: Thank you,  
14 Ms. Anders.

15 Mr. O'Connor, you have six minutes left.

16 REBUTTAL ARGUMENT OF SHANNON P. O'CONNOR

17 ON BEHALF OF THE PETITIONER

18 MR. O'CONNOR: Thank you.

19 Justice Breyer was much better than I said  
20 it. I think the point was well made.

21 JUSTICE BREYER: Well, then, what do you  
22 think about her response? Because I thought it was -- I  
23 mean, she has an interesting point -- I mean, an  
24 important point. She said, you know, the trouble with  
25 what I said -- which of course you think is okay -- she

1     said it's -- it's -- here's what's really going to  
2     happen, is that the police will -- will think:  Gee, I  
3     just better be sure those dogs get here in time, and so  
4     what they'll do is tend to prolong the stops, and  
5     they'll want to be sure the dogs get there.

6             And so if you really added all this up  
7     and thought about it, even experimentally, the class of  
8     stopped drivers where there are hunches is going to end  
9     up waiting longer and being in custody, in a sense,  
10    longer than if we follow her approach.  And her approach  
11    is just to say:  Hey, apply reasonableness across the  
12    board; a few extra minutes isn't that big a deal.

13            I took her answer to be something like that  
14    and I thought it was, and it's a point.  It's a -- it's  
15    a point.  So what do you think?

16           MR. O'CONNOR:           Well, we hope that if you  
17    look at officers' diligence there are things that will  
18    help enforce that.  One is the community.  Will the  
19    community start to accept 40-minute stops?  Will the law  
20    enforcement officer himself expect that, I'm going to  
21    stop being a police officer for 2, 3, 4 minutes when  
22    there's other things going on?  I think that's very,  
23    very, very significant.

24           Reasonableness -- reasonableness stops when  
25    you have the stop end.  At that point in time,

1     reasonableness has nothing more to do with it because  
2     the person should be released until there is another  
3     reason, another purpose for the stop, a reasonable  
4     articulable suspicion, or you have consent.  Otherwise,  
5     it is done.

6             Here's the problem with the reasonableness.  
7     There was the -- the statement that was made that it's  
8     not reasonable, doesn't give the officers enough time.  
9     We're not talking about the Fourth Amendment and the  
10    officers and open season on the officers and what the  
11    officers can do.  We're talking about the Fourth  
12    Amendment and the protections that it has on the driver.  
13    You don't look at, well, it's only going to be a minute  
14    longer if you do it this way.  The Fourth Amendment  
15    shuts it off when it is done.

16            JUSTICE ALITO:           What do you say about the  
17    questioning that took place in this case?  Where are you  
18    going?  Are you going to buy a car someplace?  All of  
19    that, was that -- is that part of the mission?

20            MR. O'CONNOR:           We didn't raise that, Your  
21    Honor.  Is that part of -- of the mission?  It is  
22    something that hasn't been -- that hasn't been  
23    challenged.  It has been accepted as being part of the  
24    mission.  I will tell you that's what the courts say,  
25    that it has been accepted as part of the mission.

1 The -- I have lots of questions before as to what is  
2 part of the mission and how far you go. That's for the  
3 courts to -- to determine.

4 My response, Your Honor --

5 JUSTICE ALITO: Well, one of those courts is  
6 this Court and what -- that's what I don't understand  
7 about your position, is the definition of the mission.  
8 I don't understand -- I can understand a definition that  
9 says, just what you need to do to resolve the traffic  
10 violation, period. But if it includes other things like  
11 questioning about where are you going to buy a car and  
12 all of that or doing a records check, then I really  
13 don't see why. I want -- I want to know what the  
14 difference is between that and having a dog -- a dog  
15 sniff.

16 MR. O'CONNOR: Well, the other -- the other  
17 things that are tasked in part of the traffic offense  
18 where there is no doubt -- and that could be  
19 questionable -- but there's no doubt that a dog sniff is  
20 not part of the offense. That's collateral and it's  
21 nothing but an -- an investigation.

22 Now, the other -- the last thing that --  
23 that I would like to do, Justice Ginsburg, is an --  
24 answer your question as to the Eighth Circuit, and the  
25 Eighth Circuit did not make a decision as to the



1     probable cause. But you do have a court that did. The  
2     trial level court did make that decision. It made the  
3     decision that it was probable cause.

4             JUSTICE GINSBURG:             It was only a hunch, but  
5     that would ordinarily be reviewable by the court of  
6     appeals. The court of appeals didn't get to it, so it's  
7     an open question for the court of appeals.

8             MR. O'CONNOR:             If it can go to the court of  
9     appeals, but this is -- I mean, you have the question  
10    that it was based on a hunch, but you give the  
11    discretion to the magistrate who heard the evidence.  
12    And the magistrate had a question as to the credibility  
13    of this witness, and if you have a question as to the  
14    credibility of the witness then there is not sufficient  
15    facts to -- able to make a determination as to whether  
16    in fact there is probable cause.

17            We would ask the Court to adopt the finding  
18    that there is no probable cause. That is something that  
19    you can do as a reviewing court, because the facts have  
20    been established. We know that the -- that the judge  
21    had problems with the credibility of the witness. The  
22    facts that are left is not enough to -- to establish any  
23    type of reasonable suspicion.

24            What we do for judicial economy is you make  
25    the decision here, now, because the Eighth Circuit would

1       have to do the same thing.   The Eighth Circuit would  
2       have to make a decision based on the magistrate's  
3       finding of lack of -- of credibility, and that's what I  
4       would ask the Court to do today.

5               CHIEF JUSTICE ROBERTS:               Thank you, counsel.  
6               The case is submitted.

7               (Whereupon, at 12:23 p.m., the case in the  
8       above-entitled matter was submitted.)

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