

Case No. S221852

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**IN THE SUPREME COURT OF THE  
STATE OF CALIFORNIA**

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**PEOPLE OF THE STATE OF CALIFORNIA,**  
Plaintiff and Respondent,

SUPREME COURT  
**FILED**

v.

MAY -4 2015

**PAUL MACABEO,**  
Defendant and Appellant.

Frank A. McGuire Clerk  

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Deputy

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After a Decision of the Court of Appeal, Second Appellate District,  
Division Five, Case No. B248316, from Superior Court of California,  
County of Los Angeles, Case No. YA084963, Hon. Mark Arnold

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**APPELLANT'S SUPPLEMENTAL BRIEF ADDRESSING  
RODRIGUEZ v. UNITED STATES**

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**Court Rules**

Rule of Court 8.520..... 1

Defendant and Appellant, Paul Macabeo, submits this Supplemental Brief pursuant to California Rule of Court 8.520, subsection (d), to call to the Court's attention a recent decision of the U.S. Supreme Court, *Rodriguez v. United States* ((April 21, 2015, No. 13-9972) \_\_\_ U.S. \_\_\_ [2015 U.S. LEXIS 2807]), which was decided after he filed his Opening Brief.

**A. The Supreme Court's decision**

On April 21, 2015, the U.S. Supreme Court decided *Rodriguez v. United States*. *Rodriguez* concerned whether a law enforcement officer may extend a traffic stop beyond the point of completion in order to conduct a dog sniff. (*Id.* at \*5.) 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.” (*Ibid.*) Because the officer had prolonged the seizure “beyond the time reasonably required” to issue a ticket for the traffic violation, the Court held that continuing the seizure for the purpose of conducting a dog sniff violated the Fourth Amendment. (*Id.* [quoting *Illinois v. Caballes* (2005) 543 U.S. 405, 407 [125 S.Ct. 834, 160 L.Ed.2d 842]].) In the course of reaching this conclusion, the Court made several observations that bear on Mr. Macabeo’s case:

First, the Court explained that a routine traffic stop is more like a *Terry* stop than a formal arrest and that, as in *Terry v. Ohio* (1968) 392 U.S. 1 [88 S.Ct. 1868, 20 L.Ed.889], the duration of the stop must be closely linked to its mission. (*Id.* at

\*10.) Second, the Court clarified that the “mission” of a traffic stop is limited in scope: “to address the traffic violation that warranted the stop, and attend to related safety concerns.” (*Ibid.* [internal citations omitted].) Third, the permissible duration of a traffic stop has come to an end “when tasks tied to the traffic infraction are—or reasonably should have been—completed.” (*Id.* at \*11.)

These factors led the Court to conclude that because the purpose of a dog sniff is to investigate “ordinary criminal wrongdoing” rather than to ensure “roadway safety,” a dog sniff is “not fairly characterized as part of the officer’s traffic mission.” (*Id.* at \*12-13.) Thus, prolonging a traffic stop to conduct a dog sniff is impermissible absent reasonable suspicion of other criminal activity. (See *id.* at \*15-16.)

**B. The impact of *Rodriguez* on Mr. Macabeo’s case**

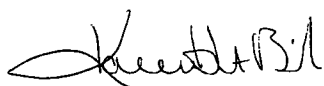
The Supreme Court’s decision in *Rodriguez* cuts against allowing officers to conduct searches incident to arrest when no arrest has taken place or is underway. The lesson of *Rodriguez* is that the purpose of a traffic stop is to address the infraction that led to the stop, and officers must move expeditiously to satisfy that purpose. Unlike the routine questioning permitted in *Rodriguez*, conducting a full custodial search is a time-consuming process that will often prolong a stop beyond the time needed to address the infraction. This is particularly the case because officers will usually have observed the traffic infraction themselves, and a warning or a ticket can be issued promptly without the need to collect additional evidence.

*Rodriguez* also reinforces the Supreme Court’s repeated teaching that the reasonableness of a search may turn on the purpose for it. (See Appellant’s Opening Brief, pp. 37-38.) *Rodriguez* carefully examined the purpose of a traffic stop and limited the duration of a stop to the time necessary to accomplish its purpose expeditiously. And in assessing whether an officer has acted expeditiously, the Court insisted that reasonableness “depends on what the police in fact do.” (*Rodriguez, supra*, at \*15.) After all, “[h]ow could diligence be gauged other than by noting what the officer actually did and how he did it?” (*Ibid.*) This reasoning reinforces the point that the lower courts erred when they declined to examine whether Mr. Macabeo had in fact been arrested, instead considering it sufficient that “he *could have been* arrested for failing to stop at the stop sign.” (See Appellant’s Opening Brief, pp. 7, 11 [emphasis added].)

Rather than base its decision on the existence of a hypothetical arrest, this Court should “not[e] what the officer[s] actually did and how [they] did it.” (*Rodriguez, supra*, at \*15.) What the officers actually did here was to question Mr. Macabeo and search his cell phone for evidence of activity unrelated to the traffic stop; the officers did not tell Mr. Macabeo he was under arrest for rolling through the stop sign, nor did they handcuff him prior to the search. (See 1CT 62:7-12, 113-117.) As Mr. Macabeo explained in his Opening Brief, the objective facts—what the officers actually did—show that Mr. Macabeo was not under arrest for a traffic infraction, nor was his arrest underway, when the officer searched his cell phone. (See Appellant’s Opening Brief, pp. 23-28.)

Dated: May 1, 2015

Respectfully submitted,



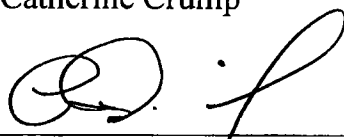
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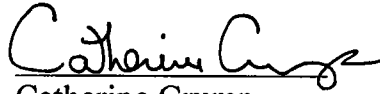
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## CERTIFICATION OF WORD COUNT

Pursuant to Rules 8.204(c)(1) and 8.520(d)(2), I hereby certify that, according to our word processing software, the word count for the attached APPELLANT'S SUPPLEMENTAL BRIEF ADDRESSING RODRIGUEZ v. UNITED STATES is 798 words, including footnotes.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: May 1, 2015 at Berkeley, California.

  
Catherine Crump  
Attorney for Appellant



**PROOF OF SERVICE BY EXPEDITED DELIVERY**

Re: *People v. Macabeo*, No. S221852, Court of Appeal Case No. B248316, Los Angeles County Superior Court Case No. YA08496.

I declare that at the time of service I was at least 18 years old and not a party to this legal action. My business address is University of California, Berkeley School of Law (Boalt Hall), Clinical Program, 353 Boalt Hall, Berkeley, CA 94720-7200. On May 1, 2015, I sent copies of the above APPELLANT'S SUPPLEMENTAL BRIEF ADDRESSING RODRIGUEZ v. UNITED STATES by enclosing them in sealed envelopes and depositing the sealed envelopes with Federal Express, fully prepaid for standard overnight delivery. The envelopes were addressed as follows:

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I am employed in the county where the delivery occurred. The document was sent from Berkeley, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Berkeley, California, on May 1, 2015.

  
\_\_\_\_\_  
AMY UTSTEIN