No. _____

In the Supreme Court of the United States

STATE OF KANSAS,

Petitioner,

v.

CHARLES GLOVER,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of the State of Kansas

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

A Kansas officer ran a registration check on a pickup truck and learned that the registered owner's license had been revoked. Suspecting that the owner was unlawfully driving, the officer stopped the truck, confirmed that the owner was driving, and issued the owner a citation for being a habitual violator of Kansas traffic laws. The Kansas Supreme Court, breaking with 12 state supreme courts and 4 federal circuits, held the stop violated the Fourth Amendment.

The question presented is whether, for purposes of an investigative stop under the Fourth Amendment, it is reasonable for an officer to suspect that the registered owner of a vehicle is the one driving the vehicle absent any information to the contrary.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTION

STATUTES

OTHER AUTHORITIES

PETITION FOR A WRIT OF CERTIORARI

The State of Kansas respectfully petitions for a writ of certiorari to review the judgment of the Kansas Supreme Court in this case.

OPINIONS BELOW

The Kansas Supreme Court's decision is reported at 422 P.3d 64. App. 1. The Kansas Court of Appeals' decision is reported at 400 P.3d 182. App. 21. The Douglas County, Kansas District Court's decision is unpublished. App. 35, 38-39.

JURISDICTION

The Kansas Supreme Court issued its decision and final judgment on July 27, 2018. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides:

> 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.

STATEMENT OF THE CASE

1. The parties have stipulated to the following facts: While on routine patrol, Douglas County, Kansas Sheriff's Deputy Mark Mehrer ran a registration check

on a pickup truck with a Kansas license plate. App. 60-61. The Kansas Department of Revenue's electronic database indicated the truck was registered to Charles Glover, Jr. and that Glover's Kansas driver's license had been revoked. App. 61, 83. Deputy Mehrer stopped the truck to investigate whether the driver had a valid license because he "assumed the registered owner of the truck was also the driver." App. 61. The stop was based only on the information that Glover's license had been revoked; Deputy Mehrer did not observe any traffic infractions and did not identify the driver. App. 61. Glover was in fact the driver, App. 61, and was charged as a habitual violator for driving while his license was revoked, App. 4, 45-46; *see also* Kan. Stat. Ann. § 8-287.

2. Though Glover admitted he "did not have a valid driver's license," he moved to suppress all evidence from the stop. App. 47-48. He claimed the stop violated the Fourth Amendment, as interpreted by this Court in *Terry v. Ohio*, 392 U.S. 1 (1968), and *Delaware v. Prouse*, 440 U.S. 648 (1979), because Deputy Mehrer lacked reasonable suspicion to pull him over. App. 37, 48.

The State responded that a law enforcement officer could infer that the owner of a vehicle may be driving the vehicle, absent information to the contrary, and that the inference was sufficient to provide reasonable suspicion for an investigative stop where the officer knows the owner has a revoked license. App. 51-54. The State relied in part on the decisions of other state supreme courts and intermediate appellate courts that had approved searches based on the very same inference. App. 56.

Based only on the judge's anecdotal personal experience, the Douglas County, Kansas District Court concluded that it is not reasonable for an officer to infer that the registered owner of a vehicle is the driver of the vehicle. App. 38-39. Accordingly, the District Court granted Glover's motion to suppress. App. 39.

3 The State appealed to the Kansas Court of Appeals, maintaining that the decision had misapplied the Fourth Amendment and this Court's cases interpreting it. App. 22, 69-71, 74-77. That court agreed with the State and reversed the District Court's decision. Citing "the consensus of state supreme courts that have considered this issue," the Court of Appeals held that a "law enforcement officer has reasonable suspicion to initiate a stop of a vehicle to investigate whether the driver has a valid driver's license if . . . the officer knows the registered owner of the vehicle has a suspended license and the officer is unaware of any other evidence or circumstances from which an inference could be drawn that the registered owner is not the driver of the vehicle." App. 33.

The Court of Appeals reasoned that requiring an officer to gather additional evidence to confirm a driver's identity before stopping a vehicle would "raise[] the evidentiary standard [for an investigative stop] from one of reasonable suspicion to the more demanding standard of probable cause." App. 31. It also noted that, as a practical matter, forbidding an officer from inferring that the registered owner of a vehicle is driving the vehicle would seriously limit an officer's ability to investigate driver's license suspension violations because often there is little an officer can do to safely verify a driver's identity. App. 30.

4. Glover sought review in the Kansas Supreme Court, asking it to hold that the stop violated the Fourth Amendment. App. 103-04. The Kansas Supreme Court granted review and expressly rejected its sister courts' reliance on "common sense." App. 17. Instead it held that an officer lacks reasonable suspicion to stop a vehicle when the stop is based on the officer's suspicion that the registered owner of a vehicle is driving the vehicle unless the officer has "more evidence" that the owner actually is the driver. App. 18.

The court gave two reasons for its conclusion. First it said that allowing officers to stop a vehicle whenever the registered owner lacked a valid license required "stacking unstated assumptions." App. 9. The two "assumptions" the Court took issue with "stacking" were that "the registered owner was likely the primary driver of the vehicle" and that "the owner will likely disregard the suspension or revocation order and continue to drive." App. 11-12. The Court then said that allowing an officer to infer that a registered owner of a vehicle also is driving the vehicle would somehow relieve the State of its burden of showing reasonable suspicion and shift the burden to the defendant to show an absence of reasonable suspicion. App. 14.

The Kansas Supreme Court did not address the reasoning that led its sister courts to unanimously hold exactly the opposite. It only commented in passing that the other courts did not address the question under the Kansas Supreme Court's "inference stacking" and burden shifting analysis. App. 17.

Kansas now asks this Court to grant review to resolve the split the Kansas Supreme Court's decision creates with the decisions of more than two dozen other

courts that have decided the question, including numerous state supreme courts and intermediate state appellate courts, and several federal circuit courts.

REASONS FOR GRANTING THE PETITION

Certiorari should be granted for three reasons.

First, the Kansas Supreme Court's decision that it is unreasonable for an officer to suspect that the registered owner of a vehicle is the person driving the vehicle conflicts with 12 other state supreme courts, 13 intermediate state appellate courts, and 4 federal circuit courts, including the Tenth Circuit, which covers Kansas. *See, e.g.*, *United States v. Pyles*, 904 F.3d 422, 425 (6th Cir. 2018) (noting the split); *United States v. Cortez-Galaviz*, 495 F.3d 1203, 1207-08 (10th Cir. 2007) (Gorsuch, J.). Three intermediate state appellate courts have taken the Kansas Supreme Court's side in the split. One of those was later contradicted, though not formally overruled, by the state supreme court. *See State v. Donis*, 723 A.2d 35, 41 (N.J. 1998); *State v. Parks*, 672 A.2d 742, 745 (N.J. App. Div. 1996).

Second, the Kansas Supreme Court's decision is wrong. It incorrectly adopted a standard much more demanding than reasonable suspicion, which this Court has described as "minimal." *United States v. Sokolow*, 490 U.S. 1, 7 (1989).

Third, as the lopsided split suggests, the Kansas Supreme Court's decision defies common sense on an important and recurring Fourth Amendment question about "judgments and inferences" that law enforcement officers make every day. *Illinois v. Wardlow*, 528 U.S. 119, 125 (2000).

I. The Decision Below Directly Conflicts with the Decisions of 12 State Supreme Courts and 4 Federal Circuit Courts on an Important Fourth Amendment Question.

A. Ten state supreme courts have held that when an officer knows that the registered owner of a vehicle has a suspended driver's license, the officer has reasonable suspicion to stop the vehicle to investigate whether the owner is driving illegally unless the officer has information that suggests the owner is not the driver. *See Armfield v. State*, 918 N.E.2d 316, 321-22 (Ind. 2009); *State v. Vance*, 790 N.W.2d 775, 781-82 (Iowa 2010); *State v. Tozier*, 905 A.2d 836, 838-39 (Me. 2006); *Commonwealth v. Deramo*, 762 N.E.2d 815, 818 (Mass. 2002); *State v. Pike*, 551 N.W.2d 919, 922 (Minn. 1996); *State v. Neil*, 207 P.3d 296, 297 (Mont. 2009); *State v. Richter*, 765 A.2d 687, 689 (N.H. 2000); *State v. Donis*, 723 A.2d 35, 41 (N.J. 1998); *State v. Edmonds*, 58 A.3d 961, 964-65 (Vt. 2012); *State v. Smith*, 905 N.W.2d 353, 359 (Wis. 2018).

The intermediate appellate courts of another 10 states have held the same. *See State v. Turner*, 416 P.3d 872, 873-74 (Ariz. Ct. App. 2018); *State v. Laina*, 175 So. 3d 897, 899-900 (Fla. Dist. Ct. App. 2015); *State v. Seward*, No. 43658, 2016 WL 5266624, at *4 (Idaho Ct. App. Sept. 22, 2016) (unpublished); *Village of Lake in the Hills v. Lloyd*, 591 N.E.2d 524, 525-26 (Ill. App. Ct. 1992); *State v. Candelaria*, 245 P.3d 69, 74-75 (N.M. Ct. App. 2010); *People v. Ceballos*, 572 N.Y.S.2d 84, 85 (N.Y. App. Div. 1991); *State v. Hess*, 648 S.E.2d 913, 916-17 (N.C. Ct. App. 2007); *State v. Yeager*, No. 99CA2492, 1999 WL 769965, at *4 (Ohio Ct. App. Sept. 24, 1999) (unpublished); *State v. Panko*, 788 P.2d 1026,

1027 (Or. Ct. App. 1990); *State v. Phillips*, 109 P.3d 470, 472 (Wash. Ct. App. 2005).

Two other state supreme courts and the intermediate appellate courts of three other states have held that an officer has reasonable suspicion to stop a vehicle when the officer knows only that there is a warrant for the vehicle owner's arrest. *People v. Cummings*, 46 N.E.3d 248, 249 (Ill. 2016) (citing *People v. Cummings*, 6 N.E.3d 725, 731 (Ill. 2014)); *Traft v. Commonwealth*, 539 S.W.3d 647, 651 (Ky. 2018); *People v. Jones*, 678 N.W.2d 627, 631 (Mich. Ct. App. 2004); *State v. Steiger*, No. 981805-CA, 2002 WL 76778 (Utah Ct. App. Jan. 17, 2002) (unpublished); *Hurtado v. State*, 881 S.W.2d 738, 742 (Tex. App. 1994).

These courts, based on common sense and a proper understanding of reasonable suspicion, found that it is reasonable for officers to suspect that the registered owner of a vehicle is the person driving the vehicle. They recognized that reasonable suspicion to conduct an investigative stop does not require an "actual violation of the vehicle and traffic laws [to] be detectable," *Pike*, 551 N.W.2d at 921-22, but only requires, based on the totality of the circumstances, "articulable facts that criminal activity may be afoot, even if the officer lacks probable cause," *Armfield*, 918 N.E.2d at 319 (internal quotation marks omitted). *Accord, e.g.*, *Vance*, 790 N.W.2d at 780 ("The principal function of an investigatory stop is to resolve the ambiguity as to whether criminal activity is afoot." (internal quotation marks omitted)); *Turner*, 416 P.3d at 873 ("Reasonable suspicion does not require solid proof, but rather an objective basis to believe that

criminal activity *might* be occurring sufficient to justify further investigation." (emphasis added)).

The state courts on this side of the split held, "as a matter of common sense," that officers may "infer that the registered owner of a car is the one most likely to be driving the car at that moment." *Edmonds*, 58 A.3d at 963; *accord, e.g.*, *Vance*, 790 N.W.2d at 781; *Richter*, 765 A.2d at 689; *Donis*, 723 A.2d at 42; *Lloyd*, 591 N.E.2d at 526.

Several of the courts acknowledged that while it is possible someone other than a vehicle's registered owner *could* drive the vehicle, it was still *reasonable* for an officer to suspect that the registered owner is the driver. *See Vance*, 790 N.W.2d at 781; *Tozier*, 905 A.2d at 839; *Deramo*, 762 N.E.2d at 818; *Richter*, 765 A.2d at 689; *Turner*, 416 P.3d at 873. Several courts also explained that requiring officers to obtain "additional information confirming driver identification . . . as a precondition" to stopping a vehicle would transform the "less demanding 'reasonable and articulable' suspicion necessary for an investigative stop" into "a standard of probable cause." *Edmonds*, 58 A.3d at 965 (citing *Vance*, 790 N.W.2d at 780); *accord, e.g.*, *Tozier*, 905 A.2d at 838; *Richter*, 765 A.2d at 689; *Pike*, 551 N.W.2d at 921.

Instead of improperly imposing a probable-cause-type standard for reasonable suspicion, as the Kansas Supreme Court did, the more than two dozen other state courts to address this issue concluded that the "Fourth Amendment right to be secure from unreasonable searches and seizures" is "vindicated by requiring that officers must be unaware of any evidence or circumstances which indicate that the

owner is not the driver of the vehicle before initiating a *Terry* stop." *Armfield*, 918 N.E.2d at 321; *accord, e.g.*, *Pike*, 551 N.W.2d at 922 ("[I]f the officer knows that the owner of a vehicle has a revoked license and further, that the owner is a 22-year-old male, and the officer observes that the person driving the vehicle is a 50- or 60-year-old woman, any reasonable suspicion of criminal activity evaporates.").

B. Similarly, the Fifth, Sixth, Eighth, and Tenth Circuits have held that it is reasonable for an officer to infer that the owner of a vehicle may be driving the vehicle, and that the inference is sufficient to provide reasonable suspicion for an investigative stop where the officer knows the owner cannot lawfully drive or is otherwise subject to seizure. *See United States v. McBrown*, 149 F.3d 1176, 1998 WL 413981, at *10 (5th Cir. 1998) (unpublished) (warrants for owner's arrest); *United States v. Pyles*, 904 F.3d 422, 424-25 (6th Cir. 2018) (warrants for owner's arrest); *United States v. Chartier*, 772 F.3d 539, 542-43 (8th Cir. 2014) (owner lacked valid license); *United States v. Cortez-Galaviz*, 495 F.3d 1203, 1207-08 (10th Cir. 2007) (owner lacked required insurance).

As then-Judge Gorsuch explained in an opinion for the Tenth Circuit, "common sense and ordinary experience suggest that a vehicle's owner is, while surely not always, very often the driver of his or her own car." *Cortez-Galaviz*, 495 F.3d at 1207-08. Thus, "requir[ing] an officer to know both the identity of the driver as well as the vehicle's insurance status would take us from *Terry*['s] . . . authorization to investigate equivocal facts and into the land of requiring an officer to have probable cause before effecting any stop." *Id.*

The Tenth Circuit also echoed the practical concerns expressed in several of the state-court decisions about how an officer could "practicably and safely divine the identity of a moving vehicle." *Id.* at 1208. Reasonable suspicion does not require such dangerous feats to "rule out every possible lawful explanation for suspicious circumstances before effecting a brief stop." *Id.*

Most recently, in *Pyles*, the Sixth Circuit in an opinion by Judge Sutton expressly rejected the Kansas Supreme Court's decision. Instead it sided with the "[c]onsiderable authority" supporting the inference that an owner of a vehicle also is likely its driver. *See* 904 F.3d at 425. And the First Circuit, while not formally ruling on the question, declined to second-guess the case law recognizing the reasonableness of the "implicit assumption that [the] owner and operator of [a vehicle are] one and the same." *United States v. Coplin*, 463 F.3d 96, 101 n.4 (1st Cir. 2006).

C. In contrast, the Kansas Supreme Court held that an officer does not have reasonable suspicion to stop a vehicle when all the officer knows is that the vehicle owner's license has been suspended. App. 3. Three intermediate state appellate courts have reached the same conclusion. *State v. Martinez-Arvealo*, 797 S.E.2d 181, 182 (Ga. Ct. App.2017); *Parks*, 672 A.2d at 745; *Worley v. Commonwealth*, No. 1913-94-2, 1996 WL 31949, at *1 (Va. Ct. App. Jan. 30, 1996) (unpublished); *cf. State v. Cerino*, 117 P.3d 876, 878 (Idaho Ct. App. 2005) (holding that a detective lacked reasonable suspicion to stop a vehicle where he "knew only that the [owner] had not obtained an Idaho driver's license" but "had no information as to whether [the owner] held a driver's license from another jurisdiction").

The courts on this side of the split have concluded that when an officer stops a vehicle based only on the "*general* fact" that the owner of the vehicle cannot lawfully drive, rather than an inference based on "*specific and articulable* facts," the officer makes a naked assumption about the driver's identity and therefore reasonable suspicion is lacking. *See* App. 14; *accord Worley*, 1996 WL 31949, at *1. The Kansas Supreme Court called this "assumption" a "hunch" that "does not satisfy the *Terry* standard." App. 12. These courts require officers to conduct additional investigation before stopping the vehicle, such as identifying certain characteristics about the driver, including race, gender, age, height, or weight, and comparing them to the owner's biometric information on file. Anything less, they opine, would be tantamount to allowing suspicionless searches and seizures. *See* App. 15, 18; *Worley*, 1996 WL 31949, at *1.

D. The split in this case, and the need for this Court's review, is particularly compelling. Because the Kansas Supreme Court and the Tenth Circuit have decided the question differently, the Fourth Amendment will apply differently to routine investigative stops in Kansas depending on whether the State of Kansas or the United States files the charge.

This Court has rejected the notion that state laws alter the Fourth Amendment's protections at least in part because it "would cause them to vary from place to place and from time to time." *Virginia v. Moore*, 553 U.S. 164, 176 (2008) (internal quotation marks omitted); *see also Kansas v. Carr*, 136 S. Ct. 633, 641 (2016) ("[S]tate courts may experiment all they want

with their own constitutions," but cannot "experiment with our Federal Constitution and expect to elude this Court's review so long as the victory goes to the criminal defendant."). Allowing the Kansas Supreme Court's decision to go unreviewed would allow decisions by state and federal prosecutors to alter the Fourth Amendment's protections. Whether a search or seizure is reasonable under the Fourth Amendment should not turn on which sovereign chooses to prosecute.

* * *

By disagreeing with every other state supreme court and federal circuit court to have addressed the issue, the Kansas Supreme Court has created a clean split on the question of whether an officer has reasonable suspicion to stop a vehicle when the officer knows the owner of the vehicle has a suspended or revoked license, or is otherwise subject to seizure. This Court should grant review to answer the question once and for all. *See, e.g.*, *Manuel v. City of Joliet*, 137 S. Ct. 911, 917 (2017) (explaining that the Court granted review to address the Seventh Circuit's "outlier" decision).

II. The Kansas Supreme Court's Decision Is Wrong.

The Kansas Supreme Court is alone among state supreme courts because it misapplied the Fourth Amendment. This Court should review the decision below before other courts are tempted to follow in the Kansas Supreme Court's footsteps and redefine which searches and seizures are constitutionally reasonable.

The Fourth Amendment prohibits only "unreasonable searches and seizures." U.S. Const. amend. IV. It allows brief investigative stops, like the

traffic stop in this case, as long as the investigating officer has reasonable suspicion that criminal activity "may be afoot." *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (internal quotation marks omitted). This includes "reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law." *Delaware v. Prouse*, 440 U.S. 648, 663 (1979).

Reasonable suspicion is a "minimal" standard. *United States v. Sokolow*, 490 U.S. 1, 7 (1989). It requires more than an "inchoate and unparticularized suspicion or 'hunch.'" *Terry v. Ohio*, 392 U.S. 1, 27 (1968). But it is satisfied by "considerably less than preponderance of the evidence." *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000). It even is a "less demanding standard than probable cause," *id.*, which only requires "a fair probability that . . . evidence of a crime will be found," *Sokolow*, 490 U.S. at 7.

In determining whether reasonable suspicion exists, "due weight must be given . . . to the specific reasonable inferences [the officer] is entitled to draw from the facts in light of his experience." *Terry*, 392 U.S. at 27. Such inferences are rooted in "commonsense judgments . . . about human behavior," *Wardlow*, 528 U.S. at 119, and "practical considerations of everyday life," *Navarette v. California*, 572 U.S. 393, 402 (2014). Reasonable suspicion need not "be based on the officer's personal observation." *Id.* at 397. And it does not require an officer to "rule out the possibility of innocent conduct." *Arvizu*, 534 U.S. at 277.

When a law enforcement officer learns that the registered owner of a vehicle has a suspended or revoked license, or is otherwise subject to seizure, common sense and ordinary experience suggest that it is reasonable to infer that a vehicle's owner may be driving the vehicle absent information to the contrary. The decisions of more than two dozen courts make that clear. *See supra* § I; *see also, e.g.*, *United States v. Pyles*, 904 F.3d 422, 425 (6th Cir. 2018) ("Considerable authority supports this inference.").

That inference is enough to satisfy reasonable suspicion, which does not even require an officer to determine that the owner probably is the driver but only that an officer have information suggesting that the owner might be the driver. *See United States v. Cortez-Galaviz*, 495 F.3d 1203, 1207-08 (10th Cir. 2007); *see also Sokolow*, 490 U.S. at 7; 4 Wayne R. LaFave & David C. Baum, *Search and Seizure* § 9.5(e), p. 687 (5th ed. 2017) ("[A]bsent additional facts suggesting otherwise, on grounds to arrest the registered owner of a specific vehicle, there exists a reasonable suspicion the present driver is the registered owner to justify a stop and inquiry."). After all, the purpose of an investigative stop based on reasonable suspicion is to conduct a limited investigation to determine whether the officer's suspicion is accurate; for example, by asking for a driver's license and registration. *See Prouse*, 440 U.S. at 653. Requiring an officer to match the registered owner's and driver's identities before making a stop would hold the officer to the much higher standard of probable cause, which is not required for a traffic stop. *See Sokolow*, 490 U.S. at 7; *Cortez-Galaviz*, 495 F.3d at 1207-08; *State v. Edmonds*, 58 A.3d 961, 965 (Vt. 2012).

The Kansas Supreme Court refused to apply this commonsense approach. Instead it defied this Court's instruction not to "refine and elaborate the requirements of 'reasonable suspicion'" in a way that overcomplicates the "relatively simple concepts embodied in the Fourth Amendment." *Sokolow*, 490 U.S. at 7-8.

The Kansas Supreme Court dissected the straightforward inference that the owner of a vehicle may be its driver, characterizing it as "implicitly requir[ing]" the "stacking [of] unstated assumptions," and as shifting the State's burden to prove the lawfulness of a stop. App. 9. That analysis has several flaws.

First, the Court imported the idea of disfavoring "inference stacking" from state case law that says if a jury must "make a presumption based upon other presumptions" to convict, the State has not carried its burden of proving the charge *beyond a reasonable doubt*. *State v. Banks*, 397 P.3d 1195, 1200 (Kan. 2017); *see also* App. 13-14. Thus the Kansas Supreme Court's decision is not just overly elaborate, it heightens the standard for reasonable suspicion beyond anything this Court has ever suggested the Fourth Amendment requires for an investigative traffic stop. *See, e.g.*, *Navarette*, 572 U.S. at 397; *Prouse*, 440 U.S. at 663.

Second, the Kansas Supreme Court concluded that allowing an officer to infer that the registered owner of a vehicle is driving it would relieve the officer of developing independent reasonable suspicion. This reasoning is hollow and also inconsistent with this Court's cases. That the owner of a vehicle has a suspended license or is otherwise subject to seizure *is*

the "articulated fact" that provides a "founded suspicion" sufficient to justify stopping the vehicle. *State v. Laina*, 175 So. 3d 897, 899-900 (Fla. Dist. Ct. App. 2015). The Kansas Supreme Court's attempt to divine a meaningful difference between an "assumption" and an "inference" cannot avoid this commonsense conclusion. *See United States v. Coplin*, 463 F.3d 96, 101 n.4 (1st Cir. 2006) (describing the inference that the owner and driver of a vehicle are "one and the same" as an "assumption" that "has grounding in the case law").

Finally, the Kansas Supreme Court's decision would force officers to rule out the possibility that someone other than the owner is driving before stopping the vehicle. But requiring officers to confirm a driver's identity is both unrealistic and dangerous. *See, e.g. Armfield v. State*, 918 N.E.2d 316, 321-22 (Ind. 2009) (acknowledging the "difficulty that the driver verification requirement would impose on officers" in certain situations); *State v. Vance*, 790 N.W.2d 775, 781 (Iowa 2010) ("[T]here are few, if any, additional steps the officer can utilize to establish the driver of a vehicle is its registered owner."); *see also Cortez-Galaviz*, 495 F.3d at 1207 (noting the difficulty of "practicably and safely divin[ing] the identity of a driver of a moving vehicle"). And the Fourth Amendment does not require officers to take such risks. An officer need not "rule out the possibility of innocent conduct" before making an investigative stop. *Arvizu*, 534 U.S. at 277-78. *Terry* itself even "accepts the risk that officers may stop innocent people." *Wardlow*, 528 U.S. at 126; *accord Cortez-Galaviz*, 495 F.3d at 1207.

III. The Question Presented Is Important and Recurring and Warrants the Court's Review in this Case.

A. This case presents an important and recurring Fourth Amendment issue with significant implications for law enforcement officers' everyday activities, and in turn, public safety.

Law enforcement officers on routine patrol regularly run registration checks on vehicles they encounter. They do this for a number of reasons, including to determine whether the registered owner is lawfully authorized to drive or has outstanding warrants. Officers rely on this information to make stops to investigate illegal driving by the owner and warrants issued for the owner's arrest based on the inference that the owner of the vehicle may be the driver. The number of courts that have considered whether a stop based on an officer's inference that the registered owner of a vehicle may be its driver demonstrates beyond dispute that the question presented regularly confronts state and federal courts across the country.

The danger of preventing law enforcement officers from stopping a vehicle when the owner of the vehicle has outstanding warrants is obvious. A rule like the one the Kansas Supreme Court adopted would make it much easier for wanted criminals to avoid traffic stops that could lead to their arrest. The problem of unlicensed drivers flouting the suspension or revocation of their license also poses a serious threat to public safety. Drivers without licenses or whose licenses are suspended or revoked "are much more hazardous on the road than are validly licensed drivers." Sukhvir S. Brar, California Department of

Motor Vehicles, *Estimation of Fatal Crash Rates for Suspended/Revoked and Unlicensed Drivers in California*, p. v (2012), *available at* https://www.dol.wa.gov/about/docs/UnlicensedDriverStudy.pdf; *see also* Simon Shaykhet, *Suspended drivers wreak havoc on roads, causing deadly accidents in metro Detroit*, https://www.wxyz.com/news/local-news/investigations/exclusive-suspended-drivers-wreak-havoc-on-roads-causing-deadly-accidents-in-metro-detroit (March 8, 2017); AAA Foundation for Traffic Safety, *Unlicensed to Kill*, p. 3 (2011), *available at* http://www.adtsea.org/Resources%20PDF's/AAA%202011%20Unlicensed%20to%20Kill.pdf ("[D]rivers whose licenses have been suspended or revoked are significantly more likely to be involved in fatal crashes than are validly-licensed drivers.").

"One out of every five fatal crashes in the United States involves an unlicensed or invalidly licensed driver." Brar, *supra*, at 1. Drivers without valid licenses are "much more likely to have caused fatal crashes in which they are involved" than validly licensed drivers. *Id.* The "crashes caused by unlicensed drivers tend to be more severe and more likely to involve a fatality than those caused by licensed drivers." *Id.* And many drivers whose licenses have been suspended or revoked are repeat offenders, like Glover, whose presence on the road is not just unlawful but dangerous. *See, e.g.*, National Highway Traffic Safety Administration, *Driver License Compliance Status in Fatal Crashes*, p. 5 (Oct. 2014), *available at* https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812046 (reporting that 20% of invalid license holders involved in fatal crashes had three or more license suspensions).

B. In addition to the law enforcement and public safety concerns at issue, the Court should grant review of this case because it presents a clean vehicle to address the clear conflict among the numerous state supreme courts and federal circuit courts on this important Fourth Amendment issue of nationwide significance. The issue was raised and squarely decided at every stage of the state court proceedings. The facts have been stipulated. And because so many courts have already decided the issue, if the Court does not take this case, the inconsistent application of the Fourth Amendment likely will persist for years to come. The tension the inconsistent application of the Fourth Amendment will create, in Kansas and the Tenth Circuit in particular, is untenable.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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