No. 18-556

In The Supreme Court of the United States

STATE OF KANSAS,

Petitioner,

v.

CHARLES GLOVER,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Kansas

AMICUS CURIAE BRIEF OF OKLAHOMA, ARKANSAS, COLORADO, GEORGIA, INDIANA, KENTUCKY, MICHIGAN, NEBRASKA, OHIO, UTAH, AND WYOMING AS AMICI CURIAE IN SUPPORT OF PETITIONER

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INTERESTS OF AMICI CURIAE

Amici curiae are the States of Oklahoma, Arkansas, Colorado, Georgia, Indiana, Kentucky, Michigan, Nebraska, Ohio, Utah, and Wyoming.[1] They operate their own motor vehicle licensing agencies and are responsible for ensuring the safety of motorists, passengers, and pedestrians, as well as enforcing the criminal laws of their state. Drivers' license and registration requirements "are essential elements in a highway safety program," and "the States have a vital interest in ensuring that only those qualified to do so are permitted to operate motor vehicles." *Delaware v. Prouse*, 440 U.S. 648, 658 (1979).

This case involves a challenge to the constitutionality of a standard and frequent practice of state law enforcement officers: stopping motor vehicles known to be registered to individuals with suspended licenses, or having outstanding arrest warrants, in order to verify whether the driver is committing or has committed a crime. Studies show that despite having their license suspended, many drivers continue to drive their vehicles. And because unlicensed drivers account for a disproportionate share of motor vehicle accidents, such stops are often the sole, indispensable means available to officers to police against this important public safety hazard.

The decision below severely undermines the ability of state officers to keep their streets safe. It injects unnecessary uncertainty in states across the country

[1] Amici submit this brief pursuant to Sup. Ct. Rule 37.4. All parties received notice of amici's intention to file this brief.

as to whether officers can continue employing this standard law enforcement practice. This in turn jeopardizes the lives of lawful drivers, passengers, and pedestrians everywhere. Accordingly, amici states have a substantial interest in this Court's disposition of the case.

SUMMARY OF THE ARGUMENT

The question presented implicates a frequently recurring problem that police officers face when combating a significant public safety hazard: unlicensed drivers. Numerous studies have documented that unlicensed drivers are statistically more likely to be involved in automobile accidents, and that these crashes tend to be especially severe. Studies also show that drivers who have their licenses revoked nevertheless continue to drive with alarming frequency. Ordinarily, police officers lack the tools to identify unlicensed drivers on the road. But when an officer runs a license plate and discovers that the vehicle's registered owner is unlicensed to drive, the officer has reasonable suspicion to stop the car and investigate whether the driver is in fact unlicensed. Yet the court below broke with the considered judgment of six U.S. Courts of Appeals in holding that even in these limited circumstances, police officers may not stop a car absent further corroborating evidence that the driver is in fact unlicensed. In so holding, the court failed to acknowledge that officers will often be unable to obtain any further information about the driver—whether because of nightfall, the

weather, tinted windows, or traffic conditions. Thus, if left to stand, the decision below will severely undermine law enforcement's ability to police against unlicensed drivers.

The Petition presents a compelling vehicle to resolve this issue. There are no facts in dispute, and the legal question has been passed upon by numerous lower courts, which have fully ventilated the arguments on each side. Because the decision below is wrong and jeopardizes public safety, this Court should grant review.

ARGUMENT

I. The Decision Below Undermines Law Enforcement's Efforts To Promote Public Safety.

Every day, law enforcement officials patrol America's streets to protect ordinary citizens from fleeing criminals, drunk drivers, and unsafe motorists. When a lawbreaker is ensconced in a vehicle, officers often do not have the benefit of examining facial expressions, spoken words, or furtive gestures. Instead, they must rely upon what evidence remains visible to them: the external appearance of cars, their movements, and their license plate numbers. *United States v. Brignoni-Ponce*, 422 U.S. 873, 884-85 (1975); *see also*, *e.g.*, *Brendlin v. California*, 551 U.S. 249, 252 (2007).

Often this is enough for officers to develop reasonable suspicion of a crime. Police can investigate specific

vehicles that match a witness's description. *See*, *e.g.*, *Alabama v. White*, 496 U.S. 325, 327 (1990). They can pull over swerving cars to stop suspected drunk drivers. *See*, *e.g.*, *Missouri v. McNeely*, 569 U.S. 141, 145 (2013). And in most jurisdictions, they can stop vehicles registered to unlicensed drivers to investigate whether the driver is in fact licensed to operate the vehicle. Relatedly, they can investigate whether the person driving has an outstanding arrest warrant—sometimes for very serious crimes—based on the identifying information broadcast by a license plate. This forms a critical responsibility of police officers across the country, in light of the significant hazards unlicensed drivers and those with outstanding warrants pose to the public.

A. Unlicensed drivers present a significant risk to public safety.

Almost forty years ago, this Court suggested that "drivers without licenses are presumably the less safe drivers." *Prouse*, 440 U.S. at 659. We now have the statistics to back that up. Although unlicensed drivers account for only 2.6% of all motorists on the road, they are responsible for 18.2% of fatal crashes. AAA Foundation for Traffic Safety, *Unlicensed to Kill* 2 (Nov. 2011). These crashes result in roughly 7,000 deaths each year. NHTSA, *Trends in Fatal Crashes Among Drivers With Invalid Licenses* (Dec. 2009). And in 43.0% of these cases, the drivers are both unlicensed and under the influence. *Unlicensed to Kill*, *supra* at 3.

Numerous studies have concluded that "[u]nlicensed drivers are a high risk group for car crash injury after taking other crash-related risk factors into account." Stephanie Blows et al., *Unlicensed Drivers and Car Crash Injury*, 6(3) TRAFFIC INJURY PREVENTION 230, 230 (2005). For example, suspended, revoked, and unlicensed drivers are 3.7 to 4.9 times more likely to have caused fatal crashes in which they are involved. Sukhvir S. Brar, *Estimating the over-involvement of suspended, revoked, and unlicensed drivers as at-fault drivers in California fatal crashes*, 50 J. SAFETY RESEARCH 53, 53 (2014). Not only that, their crashes also "tend to be more severe." Barry Watson, *The Crash Risk of Disqualified/Suspended and Other Unlicensed Drivers*, PROCEEDINGS OF ROAD SAFETY RESEARCH, POLICING & EDUC. CONF. 181 (2002).

This is a particularly pressing issue in Kansas, which has the fifth highest rate of drivers with suspended licenses.[2] In the state, 14% of child fatalities from motor vehicle accidents occur where the driver was not licensed. K. James Kallail et al., *The influence of license status on Kansas child fatalities due to motor vehicle crashes*, 15(2) INT'L J. OF INJURY CONTROL & SAFETY PROMOTION 77 (2008).

But these accidents are more than statistics. They often destroy the lives of victims and their loved ones. Examples are too numerous to detail here, but their

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[2] *The 10 States with the Most Suspended/Revoked Licenses*, Insurify (June 4, 2018), available at https://insurify.com/insights/the-10-states-with-the-most-suspended-revoked-licenses/.

sheer volume should not lead us to lightly pass over victims like Glenn Vierra, 58, who was killed by an unlicensed driver with four prior convictions for driving without a license.[3] Nor should we forget Christopher "Buddy" Rowe, a four-year-old boy who was struck by an unlicensed motorist and sent flying 80 feet through the air while his mother, twin sister, and 6-year-old sister watched from the crosswalk. The driver had previously been caught driving without a license twice before—including 5 days before he killed Buddy.[4] Officers who endeavor to prevent these crimes are engaged in serious, life-saving work.

B. Police officers have limited means to combat motorists driving with suspended licenses.

Police officers have a circumscribed toolkit to combat unlicensed drivers. As this Court has noted, absent some way to narrow the inquiry, it would be unworkable for police officers to stop cars at random to identify unlicensed drivers: "It seems common sense that the percentage of all drivers on the road who are driving without a license is very small and that the number of

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[3] Mary Callahan, *Guerneville man dies of injuries in Highway 116 crash*, The Press Democrat (Feb. 24, 2012), available at https://www.pressdemocrat.com/news/2307027-181/guerneville-man-dies-of-injuries.

[4] Paul Payne, *Unlicensed driver sentenced to four years in prison in fatal Santa Rosa crosswalk crash*, The Press Democrat (June 29, 2012), available at https://www.pressdemocrat.com/news/2317379-181/unlicensed-driver-sentenced-to-four?gallery=2356207.

licensed drivers who will be stopped in order to find one unlicensed operator will be large indeed." *Prouse*, 440 U.S. at 659-60. As a result, officers generally cannot "stop[] an automobile and detain[] the driver in order to check his driver's license," *id.* at 663, absent some additional reason to suspect that criminal activity may be afoot.

Officers do, however, have access to government databases that link license plate numbers to vehicle registration information. *See State v. Donis*, 723 A.2d 35, 36-37 (N.J. 1998) (explaining system). That, indeed, is the principal expressive purpose of license plates. *See Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 135 S. Ct. 2239, 2249 (2015) ("[L]icense plates are, essentially, government IDs."). From there, an officer can ascertain whether the registered owner of a vehicle has a suspended license or warrant for his arrest. The officer can also obtain all the information available on the registered owner's driver's license, including his name, age, height, and weight.

Although state license plate requirements have a long history, *Walker*, 135 S. Ct. at 2248, they have become only more necessary in modern times, where vehicles can travel at high speeds, with tinted windows or cabins high off the ground. "At best," an officer may "ha[ve] only a fleeting glimpse of the persons in the moving car, illuminated by headlights." *Brignoni-Ponce*, 422 U.S. at 886; *see*, *e.g.*, *Armfield v. State*, 918 N.E.2d 316, 317 (Ind. 2009) (officer "did not have the opportunity to verify anything about the identity of the driver in the short time it took for him to pass the

[defendant's car]"). At worst, officers will be unable to safely view the identity of the driver at all.

American courts are filled with cases documenting the various reasons why this is the case: It can be difficult to see at night. *See*, *e.g.*, *United States v. Chartier*, 772 F.3d 539, 543 (8th Cir. 2014); *State v. Hess*, 648 S.E.2d 913, 915 (N.C. App. 2007); *State v. Martinez-Arvealo*, 797 S.E.2d 181, 183 (Ga. App. 2017). Heavy traffic may render further investigation difficult, if not impossible. *See*, *e.g.*, *State v. Vance*, 790 N.W.2d 775, 782 (Iowa 2010). Tinted windows can mask the driver's identity. *See*, *e.g.*, *Vance*, 790 N.W.2d at 782; *Armfield*, 918 N.E.2d at 317 n.1. Weather, too, can impede the officer's visibility. *See*, *e.g.*, *Vance*, 790 N.W.2d at 782. And objects within the driver's vehicle may block the officer's line of sight. *See*, *e.g.*, *State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996) (defendant "testified that his truck was elevated on over-sized tires and the headrest on the back of the seat covered the back of his head"). Any one or combination of these things could render it "impossible for an officer to verify that a driver of a vehicle fits the description of the registered owner." *Vance*, 790 N.W.2d at 782.

Absent the ability to conduct a brief, limited investigatory stop, officers in these situations may lack any independent means to protect the public safety when a vehicle's license tag indicates the possibility that a crime is being or has been committed. For these reasons, the decision below will have a debilitating effect on law enforcement officials' ability to keep our streets safe. As the Iowa Supreme Court warned, "to forbid the

police from relying on such an inference to form reasonable suspicion for an investigatory stop would seriously limit an officer's ability to investigate suspension violations because there are few, if any, additional steps the officer can utilize to establish the driver of a vehicle is its registered owner." *Vance*, 790 N.W.2d at 782.

II. This Petition Presents A Compelling Vehicle To Address The Important Question Presented.

This Petition uniquely presents a clean question of law that implicates important public safety concerns, has divided courts, and has been the subject of careful consideration by judges across the country. This Court should grant certiorari.

1. All agree that in this case, "the parties present[] narrow, stipulated facts." Pet. App. 10a. They have been reduced to seven simple propositions. Pet. App. 4a-5a, 60a-61a. And they are all specified on paper, subject to de novo review as to the application of law. Pet. App. 8a. There do not appear to be any alternative grounds that would render the certiorari petition ineffective at altering the judgment, or any factual issues that threaten to render the case moot. This case thus presents a question of law with an elegance rarely seen.

2. The Petition also lays out in a clear fashion the many decisions issued by courts across the country on this issue and illustrates the division among these

authorities, however lopsided. *See* Pet. 6-12; *White*, 496 U.S. at 328 (granting certiorari "[b]ecause of differing views in the state and federal courts over whether an anonymous tip may furnish reasonable suspicion for a stop"); *see*, *e.g.*, *Nutraceutical Corp. v. Lambert*, No. 17-1094 (U.S.) (granting review of outlier decision that conflicts with seven courts of appeals). Although the court below is in the minority on the issue, its incorrect ruling may spread to other states like Oklahoma, Arkansas, Colorado, Georgia, Indiana, Kentucky, Michigan, Nebraska, Ohio, Utah, and Wyoming, where either the relevant state or federal appellate courts have not both ruled on the matter. As explained in Part I, *supra*, this would have an immediate and significant effect on public safety because of its implications for day-to-day law enforcement in an area of often life-and-death concern. *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (granting certiorari because of the importance of conducting investigatory stops in particular law enforcement contexts); *United States v. Sokolow*, 490 U.S. 1, 7 (1989) (same).

3. Certiorari is especially warranted in this case because of the untenable division within Kansas, where the binding rule from the relevant federal appellate court conflicts with the rule set forth by the state's highest court on a question of federal law. Pet. 11-12; *cf. Virginia v. LeBlanc*, 137 S. Ct. 1726, 1729-30 (2017) (granting certiorari to spare courts within one state from the "legal quagmire" of conflicting decisions from the federal appellate court and the state's highest court). The result of the decision below is that law enforcement officers will be subject to different Fourth

Amendment standards within the same state based solely upon whether the future prosecution ends up in state or federal court. This Court in the past has affirmatively acted to prevent situations where the application of Fourth Amendment law is dependent on such vagaries. *Ornelas v. United States*, 517 U.S. 690, 697 (1996). Thus, not only is the question presented worthy of certiorari because of the split among courts on the issue, granting this particular case now, rather than some future case, is especially important given the intra-state conflict created by the decision below.

4. Finally, no delay in granting certiorari on this question is warranted because further percolation of the issue is unnecessary: The Court has available numerous opinions to draw upon from a great diversity of courts. Pet. 6-12. The issues have been adequately ventilated on each side. *See* Pet. App. 47a-116a. In granting the Petition, the Court should heed the numerous sound judgments from courts across the country on the reasonableness of these brief investigative stops to correct the error of the court below.

III. The Decision Below Is Wrong.

A. It is reasonable to infer that the registered owner is the driver, absent contrary information.

The court below based its entire opinion on a false premise: That because there exists a significant chance the registered owner of a vehicle is not in fact the driver, any suspicion is unreasonable. *See* Pet. App.

11a-14a (repeatedly requiring the officer have proof that Glover "likely" was the driver of the vehicle before conducting an investigatory stop). But this Court has said that the requisite level of suspicion for a *Terry* stop "is considerably less than proof of wrongdoing by a preponderance of the evidence" and less even than the standard for probable cause, which is "a fair probability that contraband or evidence of a crime will be found." *Sokolow*, 490 U.S. at 7 (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)). That standard is amply met here. In the words of then-Judge Gorsuch, "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." *United States v. Cortez-Galaviz*, 495 F.3d 1203, 1207 (10th Cir. 2007). For this reason, Judge Sutton and many other learned jurists have concluded that, "it is fair to infer that the registered owner of a car is in the car absent information that defeats the inference." *United States v. Pyles*, 904 F.3d 422, 424-25 (6th Cir. 2018) (citing 11 cases). Civil law cases similarly countenance the inference that a vehicle is being driven by its owner. *Village of Lake in the Hills v. Lloyd*, 591 N.E.2d 524, 526 (Ill. App. 2d Dist. 1992).

1. Basic math should be enough to show how different this case is from *Prouse*. There, the Court held that the chance of any vehicle on the road being driven by an unlicensed driver—which we now know is around 2%, *supra* at 6—is insufficient for reasonable suspicion. *Prouse*, 440 U.S. at 660. But here even granting, as the court below emphasized, that "in Kansas . . . families may have several drivers sharing vehicles

legally registered in the names of only one or two of the family members," Pet. App. 11a, there is still nearly a 30% or 40% chance that the registered owner is driving the vehicle—in which case he would be committing a crime. According to U.S. census statistics the average household in Kansas has 2.53 members.[5] If in any other context an officer knew that there was nearly a 40% chance that a crime was being committed, that should suffice for "reasonable suspicion." *Cf. State v. Weber*, 139 So.3d 519, 522 (La. 2014) (officers had reasonable suspicion to draw blood of registered owner of vehicle involved in crash where they "had more than a random one in three chance that defendant was the driver of the truck"). At the very least, this case is orders of magnitude closer to epistemological certainty about the commission of a crime than *Prouse*. Kansas policemen "ha[ve] reason, therefore, to pluck this needle from the haystack of cars." *Cortez-Galaviz*, 495 F.3d at 1206.

The court below appears to counter that such a probability must be discounted by rejecting the "assumption that the owner will likely disregard the suspension or revocation order and continue to drive . . . because it presumes a broad and general criminal inclination on the part of suspended drivers." Pet. App. 12a. But unfortunately, while expressing a noble sentiment, this presumption that those with suspended

[5] U.S. Census Bureau, QuickFacts, Kansas, available at https://www.census.gov/quickfacts/ks.

licenses are generally law-abiding contradicts empirical reality.

"There have been a number of studies conducted during the past three decades which show that most suspended/revoked drivers violate their license action and continue to drive during their period of disqualification." David J. DeYoung et al., *Estimating the exposure and fatal crash rates of suspended/revoked and unlicensed drivers in California*, 29(1) ACCIDENT ANALYSIS & PREVENTION 17 (1997) (formatting altered).[6] In the words of one researcher at the Texas Transportation Institute of Texas A&M University: "It's like a revolving door. These people are being suspended and suspended and suspended again, and still, they're driving."[7]

2. Instead of recognizing these commonsense and empirical probabilities, the court below engaged in wordplay. It quibbled over whether the officer "assumed" versus "inferred" that the driver was unlicensed. Pet. App. 10a. But almost all knowledge is based on inference. Here, the inferential logic is straightforward:

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[6] Available at https://www.sciencedirect.com/science/article/abs/pii/S0001457596000565.

[7] *Report: Beware of Unlicensed drivers*, ABC NEWS (July 13, 2018), available at https://abcnews.go.com/Travel/story?id=118913&page=1.

- most vehicles are driven by their registered owners or related family members,
- most families have only a few members,
- therefore one can infer that there is a fair possibility that the driver of the vehicle is the registered owner.

Such a process is not "the product of a volatile or inventive imagination, or was undertaken simply as an act of harassment" of the type the Fourth Amendment prohibits. *Terry v. Ohio*, 392 U.S. 1, 28 (1968).

In any event, the Court's case law eschews the distinction the Kansas Supreme Court drew between inferences and assumptions. *See*, *e.g.*, *Terry*, 392 U.S. at 28 (search of those suspected of planning a daytime robbery was justified because "it is reasonable to *assume*" the suspected crime "would be likely to involve the use of weapons" (emphasis added)). It is true that the officer in this case faced some uncertainty, but inference—and developing reasonable suspicion enough to warrant further investigation—is all about drawing tentative conclusions in the face of uncertainty. "The process does not deal with hard certainties, but with probabilities." *Sokolow*, 490 U.S. at 8 (quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981)); *see also Terry*, 392 U.S. at 27 ("The officer need not be absolutely certain . . . ; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief. . . .").

B. Where the registered owner of a vehicle is unlicensed to drive, an officer has a particularized and objective basis for suspecting legal wrongdoing.

Similarly, the court below misinterpreted this Court's requirement that officers have a "particularized and objective basis for suspecting legal wrongdoing." *Arvizu*, 534 U.S. at 273 (cleaned up). It mistakenly read this standard to require deductive logic to arrive at a near-certain conclusion of criminal wrongdoing. Instead, reasonable suspicion requires exactly what it says: a (1) particularized suspicion grounded on an (2) objective basis.

Here, the officer can articulate specific facts *particular to* the vehicle he is stopping: "I know that the registered owner of *this* vehicle is unlicensed to drive," "I know that if the owner is in this vehicle now, he is violating the law," and "it is sufficiently probable, even if not certain, that this particular owner is driving and therefore committing a crime." This line of reasoning is particularized to the specific license plate the officer observed (here, 295ATJ). Pet. App. 51a.

The officer here also has an *objective* basis for the stop. It is not the product of subjective hunches, idiosyncratic biases, or personal emotion. *Cf. Cortez-Galaviz*, 495 F.3d at 1206 (an officer is not "merely viewing the [vehicle] through his windshield, wondering about its insurance status as he might any other passing vehicle") (cleaned up). Rather, the suspicion is grounded in the vehicle's license plate number, the

government records associated with that license plate, and the registered owner's status as an unlicensed driver. If the registered owner is unlicensed to operate the vehicle, a stop is justified; if the owner is licensed, no such stop is necessary. That is not idiosyncratic or subjective; almost every officer will come to the same decision about whether or not to pull over the vehicle. That is objective.

All of this amply satisfies the Fourth Amendment's requirement of "'some minimal level of objective justification' for making the stop," *Sokolow*, 490 U.S. at 7.

C. Reasonable suspicion may be drawn from otherwise lawful acts.

The court below is also wrong to reason that an officer lacked reasonable suspicion in this case because "a person with a revoked driver's license commits no crime by simply owning and registering a vehicle" or "by allowing another licensed driver to use the registered vehicle." Pet. App. 9a. But that is the type of reasoning this Court has in the past rejected. *United States v. Cortez*, 449 U.S. 411, 416-17 (1981) (overturning decision that found Fourth Amendment violation because officers made "far too many innocent inferences to make the officers' suspicions reasonably warranted").

This Court has long recognized that behavior that is otherwise lawful in itself may nevertheless give rise to a reasonable suspicion that criminal

activity is afoot. Innocent acts may "warrant[ ] further investigation." *Arvizu*, 534 U.S. at 274; *see also id.* at 277 (although the facts could have "suggested a family in a minivan on a holiday outing," "[a] determination that reasonable suspicion exists, however, need not rule out the possibility of innocent conduct"); *Reid v. Georgia*, 448 U.S. 438, 441 (1980) ("[T]here could, of course, be circumstances in which wholly lawful conduct might justify the suspicion that criminal activity was afoot."). "[T]he relevant inquiry is not whether particular conduct is 'innocent' or 'guilty,' but the degree of suspicion that attaches to particular types of noncriminal acts." *Sokolow*, 490 U.S. at 10.

"In allowing such detentions, *Terry* accepts the risk that officers may stop innocent people. Indeed, the Fourth Amendment accepts that risk in connection with more drastic police action; persons arrested and detained on probable cause to believe they have committed a crime may turn out to be innocent." *Illinois v. Wardlow*, 528 U.S. 119, 126 (2000). Thus, although observing a vehicle on the road that is registered to an unlicensed driver "is not necessarily indicative of wrongdoing[,] . . . it is certainly suggestive of such." *Id.* at 124.

D. Police officers often cannot safely obtain any "additional information" about the driver without conducting a brief investigatory stop.

The court below also flouted this Court's specific directive that "[t]he reasonableness of the officer's

decision to stop a suspect does not turn on the availability of less intrusive investigatory techniques." *Sokolow*, 490 U.S. at 11. Instead, the court below claimed that officers who run upon suspects like Glover must take further steps to confirm identity before they may conduct an investigatory stop compliant with the Fourth Amendment. Pet. App. 18a.

This argument has a superficial appeal, but as a practical matter officers may be unable to obtain any corroborating evidence absent the authority to pull motorists over. *See*, *e.g.*, Pet. App. 30a; *State v. Neil*, 207 P.3d 296, 296-97 (Mont. 2009) (officer "was unable to determine [passengers'] gender, race, or any other obvious characteristics"); *State v. Richter*, 765 A.2d 687, 689 (N.H. 2000) ("The officer observed nothing that would indicate that the driver was not the owner."); *State v. Seward*, No. 43658, 2016 WL 5266624, at *1 (Idaho App. Sept. 22, 2016) ("Later that same evening, the vehicle drove past the officer but the officer could not see who the occupants were."); *Hess*, 648 S.E.2d at 915 (officer "could not determine anything about the driver from behind that vehicle" including "the sex or the race of the" driver). As noted above, nightfall, traffic, weather conditions, and other obstacles will often impede any attempt at identification. *Supra* at 6. These obstacles notwithstanding, the sheer distance between the officer and the driver will rarely permit anything beyond a rough demographic identification: perhaps the driver's sex and race, and maybe whether the driver is old or young. *See*, *e.g.*, *Pike*, 551 N.W.2d at 921 (officer "testified that he saw a 'lone male occupant

in the vehicle that [he] believed to be in th[e] right age category,' by which he meant 'about the age that the registered owner was' "); *State v. Tozier*, 905 A.2d 836, 837 (Me. 2006) ("trooper . . . noticed that the driver . . . was male").

Moreover, even if police officers *could* maneuver their cruisers to attempt a visual identification, the court's rule requiring such reconnaissance is counterproductive. "[R]equiring the officer to verify the driver of the vehicle strikes against basic principles of safety [because it] puts the onus on the officer to maneuver himself into a position to clearly observe the driver in the midst of traffic." *Armfield*, 918 N.E.2d at 322 (internal quotation omitted). This becomes especially problematic in small or rural communities, where it is difficult to imagine how an officer would ever be able to view the driver of a car ahead of it on a one-lane road—or even a two-lane road, other than by driving at an elevated speed in the opposite direction of traffic. *See*, *e.g.*, *Chartier*, 772 F.3d at 543 ("[T]here was no passing lane that [the officer] could use to pull up safely alongside the vehicle to identify the driver.").

The rule laid down by the court below would force officers to undertake such daring moves, which would only stand to jeopardize, rather than "ensure[] the safety of the roadways and of law enforcement," *Vance*, 790 N.W.2d at 782—the very things police are trying to address in the first place. "Certainly it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties." *Terry*, 392

U.S. at 23; *see also Navarette v. California*, 572 U.S. 393, 403-04 (2014) (officer receiving tip of erratic driving "might eventually dispel a reasonable suspicion of intoxication" by undertaking "[e]xtended observation of an allegedly drunk driver," but "[t]his would be . . . particularly inappropriate . . . because allowing a drunk driver a second chance for dangerous conduct could have disastrous consequences").

Ultimately, the suggestion by the court below about alternative means of investigation only underscores the existence of reasonable suspicion in cases such as this. Why would an officer go through such efforts, potentially endangering public safety, to obtain further information about the driver's identity? It is because the officer reasonably suspects unlawful behavior that warrants investigation—justifying precisely the type of limited, investigatory stop this Court has approved in *Terry* and its progeny. *See Wardlow*, 528 U.S. at 126 (A *Terry* stop is a "far more minimal intrusion" than arrest and "simply allow[s] the officer to briefly investigate further."); *see also Vance*, 790 N.W.2d at 780; *State v. Turner*, 416 P.3d 872, 873 (Ariz. Ct. App. 2018).

E. The majority rule adequately protects the rights of law-abiding citizens.

Finally, the court below failed to acknowledge the protections to lawful citizens built into this Court's existing jurisprudence. This Court has consistently maintained that an officer's authority to conduct a

Terry stop is only coextensive with the suspicion: once an officer determines that the suspected criminal activity is not afoot, the search is over. *Terry*, 392 U.S. at 30. For this reason, courts have recognized that if an officer pulls over a motorist and immediately sees that the driver does not match the description of the registered owner, the officer has lost any reasonable suspicion and the seizure must end.

If "for example . . . the vehicle's driver appears to be much older, much younger, or of a different gender than the vehicle's registered owner, reasonable suspicion would, of course, dissipate" because "[t]here would simply be no reason to think that the nonowner driver had a revoked [or suspended] license." *Vance*, 790 N.W.2d at 782 (citations omitted). Or take a more specific example: "[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." *Pike*, 551 N.W.2d at 922.

Law-abiding motorists therefore enjoy adequate protection against unreasonable searches and seizures, because reasonable suspicion dissipates upon seeing a driver that does not match the suspect's description. If this recognition occurs from a distance, the officer may not stop the driver in the first place. If the officer only recognizes his mistake upon approaching the driver during a stop, the officer is left with nothing more to do except to say: "I pulled you over because this vehicle was registered to a driver with a suspended license. I

can see now that no crime is being committed. You are free to go. Drive safely."

CONCLUSION

The Court should grant the petition for certiorari.

Respectfully submitted,

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