No. 20-1607

In the Supreme Court of the United States

MICHIGAN

Petitioner,

v.

ANTHONY MICHAEL OWEN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Michigan Court of Appeals correctly held that, under the totality of the circumstances, a police officer lacked an objectively reasonable belief that probable cause existed to initiate a traffic stop of respondent's vehicle.

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INTRODUCTION

Petitioner asks this Court to grant certiorari to resolve a supposed conflict over the application of *Heien v. North Carolina*, 574 U.S. 54 (2014), in cases where officers reasonably misinterpret an unambiguous statute. But the key premises underlying the petition are wrong. In the decision below, the Michigan Court of Appeals explicitly found that the officer who initiated a traffic stop of respondent acted *unreasonably*, because he failed to know what "a reasonably competent law enforcement officer should have known"—namely, the speed limit on the road where the stop occurred. Pet.App.16.[1] That factbound holding is clearly correct. And it does not conflict with any of the decisions identified by Petitioner, several of which

[1] The Petition Appendix is not internally paginated. Citations to "Pet.App.__" refer to pages of the PDF version of the Appendix submitted to the Court by Petitioner.

pre-date *Heien* and thus necessarily do not apply that decision.

Even if this case presented the question Petitioner poses, the petition would not satisfy this Court's criteria for review. Although the Michigan Court of Appeals concluded that the statute at issue was unambiguous, it identified numerous other circumstances supporting its conclusion that the officer lacked reasonable suspicion. The question that Petitioner claims is presented is therefore not outcome determinative. Nor has Petitioner established that any confusion over the application of *Heien*—assuming such confusion exists—is of such practical importance that it demands this Court's review. The Court should deny certiorari.

STATEMENT

A. Factual Background

One evening in September 2015, respondent Anthony Michael Owen was driving from his home to a friend's house in the Village of Saranac, Michigan. Pet.App.29. A deputy sheriff, Derrick Madsen, saw Mr. Owen travel on Summit Street and then turn left onto Parsonage Road. Pet.App.30. The southbound portion of Parsonage Road where Mr. Owen was driving did not have any signs indicating a speed limit. Pet.App.30.

Using his radar, Deputy Madsen determined that Mr. Owen was driving at 43 miles per hour and initiated a traffic stop. Pet.App.12. Deputy Madsen later testified that he had stopped Mr. Owen because he believed the speed limit on the portion of Parsonage Road where Mr. Owen was driving to be 25 miles per hour. Pet.App.33. After performing a series of field sobriety tests and giving Mr. Owen a breathalyzer test, Deputy Madsen placed Mr. Owen under arrest. Pet.App.12. Mr. Owen informed Deputy Madsen during the arrest that he was licensed to

carry a concealed weapon and that he had his handgun on his person.

B. Proceedings Below

1. Mr. Owen was charged with impaired driving and carrying a concealed firearm while intoxicated. Pet.App.12. He moved to suppress the evidence from the traffic stop, arguing that the stop had been unlawful because the speed limit was 55 miles per hour, not 25 miles per hour. Pet.App.12. The district court denied the motion. Pet.App.12. Mr. Owen appealed to the circuit court, which remanded for an evidentiary hearing to determine the speed limit on Parsonage Road. Pet.App.2.

At the evidentiary hearing, Mr. Owen offered testimony from Lieutenant Gary Megge, a 22-year veteran of the Michigan State Police. Lieutenant Megge works in the department's traffic services section and trains new troopers on how and why speed limits are established. Pet.App.115. He testified that under section 627 of the Michigan Vehicle Code, the "general speed limit" on highways is 55 miles per hour. Pet.App.120; *see* Mich. Comp. Laws § 257.627. Modifying that general speed limit requires performing a "speed study," entering a traffic control order, and posting appropriate signage listing the new speed limit, none of which the Village of Saranac had done for Parsonage Road. Pet.App.119. As a result, Lieutenant Megge testified, "[t]he enforceable speed limit" where Mr. Owen was arrested was 55 miles per hour. Pet.App.120.

At the conclusion of the hearing the district court found "that the uniform traffic code applies here, and that by default, the speed limit is 55." Pet.App.139. The court subsequently entered an order granting Mr. Owen's motion to suppress and dismissing the case. Pet.App.5.

2. Petitioner appealed to the circuit court, which initially affirmed the suppression order. Pet.App.7.

Petitioner then moved for reconsideration. Petitioner contended that the law establishing speed limits was ambiguous, and therefore Deputy Madsen's mistake had been reasonable, in light of a 2004 law setting the speed limit in residential areas at 25 miles per hour. Although Petitioner acknowledged the 2004 law it pointed to had been superseded in 2006 by the operative version of section 627, Petitioner nevertheless argued that it was reasonable for Deputy Madsen to believe that the speed limit remained 25 miles per hour nearly ten years later when he arrested Mr. Owen. The circuit court granted Petitioner's request for rehearing and vacated the suppression order. Pet.App.9.

3. Mr. Owen entered a conditional plea of guilty in June 2017, and also sought leave to appeal the circuit court's decision. Pet.App.12. The Michigan Court of Appeals denied leave, and Mr. Owen sought leave to appeal to the Michigan Supreme Court. The supreme court remanded the case for consideration in the court of appeals in lieu of granting leave. Pet.App.11.

4. The Michigan Court of Appeals reversed the circuit court's order. Pet.App.12-18.

As relevant here, the court of appeals agreed with Mr. Owen that Deputy Madsen had unlawfully stopped Mr. Owen, in violation of his Fourth Amendment rights. The court explained that under Michigan law, any modification of the statutorily defined general speed limit "had to be a matter of public record." Pet.App.16. The Village of Saranac "had no public record of any modification of the statutorily defined speed limits." Pet.App.16. The evidentiary record "also established that the road where the traffic stop occurred lacked any speed limit signage." Pet.App.16. Accordingly, the court held, the speed limit was 55 miles per hour, and Mr. Owen had been lawfully

traveling on the road at the time Deputy Madsen stopped him. Pet.App.17.

In reaching its holding, the court of appeals rejected Petitioner's argument that Deputy Madsen had made a reasonable mistake of law under *Heien v. North Carolina*, 574 U.S. 54 (2014). The court noted that Deputy Madsen had "admitted that he knew that the speed limit was not posted on the road," "admitted that no speed limit was posted where he stopped" Mr. Owen, and admitted that "he knew that at that location because it was not posted that the speed limit was 55 miles per hour." Pet.App.16. The record thus established "that the deputy failed to know the basic Michigan law provided under the Motor Vehicle code, the very law he was tasked to enforce." Pet.App.17.

Based on "the totality of the circumstances," Pet.App.17, the court concluded that "[a] reasonably competent law enforcement officer should have known" that the Michigan Vehicle Code "did not permit an officer to stop a vehicle on an unposted road for exceeding the speed limit based on a belief that the road had a 25-mile-per-hour speed limit," Pet.App.16. The court remanded for further proceedings consistent with its opinion.

5. The Michigan Supreme Court denied Petitioner's petition for review. Pet.App.19. This petition followed.

REASONS FOR DENYING THE PETITION

The Michigan Court of Appeals correctly held that Deputy Madsen lacked reasonable suspicion to perform a traffic stop on Mr. Owen. This Court has made clear that mistakes of law may support reasonable suspicion only when they are "objectively reasonable." *Heien v. North Carolina*, 574 U.S. 54, 66 (2014). The court of appeals faithfully applied that standard here and correctly concluded, based on the totality of the circumstances, that a "reasonably competent law enforcement officer should

have known that" the speed limit on the portion of Parsonage Road where Mr. Owen was driving was 55 miles per hour. Pet.App.16.

Petitioner argues that the court of appeals' holding conflicts with decisions from other courts that have found mistakes reasonable in cases where the allegedly violated law was unambiguous. But the court of appeals did not rest its holding on any statutory ambiguity requirement. Rather, as outlined in *Heien*, the court considered *all* of the relevant circumstances, including but not limited to statutory clarity, and concluded that the officer acted unreasonably. This holding does not conflict with any of the decisions Petitioner cites, all of which—like the decision below—turned on case-specific assessments of reasonableness.

This case would be unsuitable for review even were Petitioner correct about the existence of confusion in the lower courts. Nothing in the decision below suggests that the Michigan Court of Appeals has made statutory ambiguity a prerequisite for application of *Heien*. Its holding was based instead of the particular facts of this case. There is no reason for this Court to review those fact-bound determinations. Nor is there any reason to believe the outcome of this case would be different if the Court agreed with Petitioner on the question it claims the petition presents.

I. The Michigan Court of Appeals' Decision Is Correct

1. All agree that Mr. Owen was driving below the operative 55-mile-per-hour speed limit on the southbound portion of Parsonage Road when he was stopped by Deputy Madsen. Pet. 3. Yet Petitioner claimed below that there was reasonable suspicion to stop Mr. Owen based on the deputy's erroneous belief that the speed limit on the southbound portion of Parsonage Road was 25 miles per hour. The deputy assumed that was the speed limit

because the area was residential and because other roads in Saranac Village, including on the northbound portion of Parsonage Road, had 25-mile-per-hour speed limit signs. The Michigan Court of Appeals correctly rejected that claim, holding the deputy's "unsupported hunch," Pet.App.17, to be unreasonable because "no sign posted anywhere . . . provided that the village had a general speed limit" and because such general village speed limits had been illegal in Michigan for nearly 10 years before Deputy Madsen stopped Mr. Owen. Pet.App.16.

The court of appeals rightly based its conclusion on its reading of this Court's decision in *Heien v. North Carolina*, which held that mistakes of law may support reasonable suspicion only when they are "objectively reasonable." 574 U.S. 54, 66 (2014). Under *Heien*, the "subjective understanding of the particular officer involved" is irrelevant, *id.*; what matters is what would be "objectively reasonable for *an officer* in [the deputy's] position to think," *id.* at 68 (2014) (emphasis added). In the context of a mistake of law, a court looks to whether an interpretation of the relevant law consistent with the officer's belief is "at least . . . reasonable." *Id.*

Heien forecloses Petitioner's argument that the deputy's mistake was reasonable. Petitioner concedes (at 5) not merely that Michigan Vehicle Code section 257.628(1) sets speed limits for unposted roads at 55 miles per hour, but that it "clear[ly]" does so. Thus, all the deputy needed to do to avoid this mistake of law was consult the Michigan Vehicle Code—no lawyerly interpretive skills needed. The test for objective reasonableness is "not as forgiving as the one employed" for qualified immunity, *Heien*, 574 U.S. at 67, yet even that more forgiving standard would not immunize a mistake where the operative law is clear on its face. *See Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011) (qualified immunity not warranted where the "statutory or constitutional question [is] beyond debate"). So

Deputy Madsen's mistake must also fail the more demanding objective reasonableness test.

Deeming the officer's mistake reasonable also conflicts with the limits this Court set on *Heien*'s narrow exception for reasonable mistakes. The Court cautioned that its decision would not "discourage officers from learning the law," *Heien*, 574 U.S. at 66, because even under that standard "an officer can gain no Fourth Amendment advantage through a sloppy study of the laws he is dutybound to enforce," *id.* at 67. Yet that is exactly the result that Petitioner's position would produce. Officers could simply rely on their own ignorance and unsupported hunches about what the law does and does not allow to generate reasonable suspicion. That is especially true here, where the deputy in question was a local officer specifically tasked with enforcing traffic laws and conceded that he should be expected to know the speed limit prior to enforcing it. Pet.App.17. Indeed, it is hard to think of an officer more "dutybound to enforce" a village's traffic laws than a deputy sheriff. *Heien*, 574 U.S. at 67.

2. Petitioner's claims of error are equal parts factbound and wrong.

Petitioner's chief complaint (at 10) is that the lower court "ignored facts like the 25 MPH sign going the other way on this residential street inside a village." In Petitioner's view, the 25 MPH sign the other way and the fact that the "road is inside a village where the speed limit is 25 almost everywhere else" made it reasonable for the officer to try to enforce an unposted speed limit against a motorist with no notice of the limit. Pet. 5-6. But the premise of Petitioner's argument—that the court of appeals "ignored" this information—is mistaken. The lower court expressly noted that the deputy's belief was based on the fact that "25-mile-per-hour speed limits were posted on some streets entering Saranac," Pet.App.16,

which would include the northbound section of Parsonage Road, *see* Pet.App.35. It simply found Deputy Madsen's reliance on that fact unreasonable, as the Village could not lawfully establish a general village speed limit and nowhere purported to do so. And that result is clearly correct: a law enforcement officer cannot bootstrap his way into reasonableness by layering one mistake of law atop another. Nor may he double-down on enforcing an unposted speed limit based by assuming a different, village-wide unposted speed limit applies.

Petitioner further contends (at 9) that it was nevertheless reasonable for Deputy Madsen to think the speed limit was 25 because, years after the stop here, the Michigan legislature changed the motor vehicle code to set a default 25 mile per hour speed limit in local street systems. That move, according to Petitioner (at 9), shows a 25 mile per hour speed limit is "common sense" in residential areas. Not so. A change that occurred four years after the stop in question is irrelevant to whether the deputy's application of the law *at the time of the stop* was "objectively reasonable." What is more, Petitioner's position suggests that officers may nullify their obligation to understand and enforce the law as written so long as they can identify post hoc policy justifications for doing so. Petitioner offers no support for the assertion that such extralegal considerations are relevant in assessing reasonableness, nor does anything in *Heien* endorse such an approach.

Petitioner also resists the court of appeals' reasoning by asserting (at 8) that the residential nature of the area and the other speed limit signs mean the deputy "made a mistake that just about anyone would have made." But this kind of fact-specific dispute about how to weigh the totality of circumstances does not warrant this court's intervention. In any event, Petitioner is wrong on the law. The Fourth Amendment is not concerned with what

untrained individuals on the street might think or what set of laws "make sense"; the operative question is what would be "objectively reasonable for *an officer* in [the deputy's] position to think" of the law as written. *Heien*, 574 U.S. at 68 (emphasis added). And as already explained, the deputy's mistake here flunks this more demanding standard.

Finally, Petitioner repeatedly (at 5, 6, 9, 10, 11, 12) makes the irrelevant argument that the deputy's mistake was reasonable because it "took the lower courts five months to figure out" that the speed limit on the southbound portion of Parsonage Road was 55 miles per hour. But that argument assumes, with no basis, that the length of the proceedings is attributable to the complexity of the legal issue rather than simple court congestion. Regardless, the length of time it took the courts to document facts that were known to the officer the night of the stop has no bearing on whether the officer's application of law to those facts was reasonable.

3.a. Petitioner further characterizes this case as presenting the question of whether a mistake of law can be reasonable even "where the law (once discovered) is clear, but the circumstances make applying it uncertain." Pet. II. Petitioner suggests that this Court should grant certiorari to resolve a purported conflict over whether *Heien*'s reasonableness framework applies in cases where the underlying law is clear. *See* Pet. 7-8. The court of appeals, however, never purported to hold that the clarity of the statute alone rendered the officer's conduct unlawful. Instead, the court of appeals explained that, "the totality of the circumstances established" that the deputy's mistaken belief was based "on an unsupported hunch that the speed limit was 25 miles per hour because other roads were posted elsewhere in the village with that speed limit." Pet.App.17. According to the court of appeals, that "unsupported hunch" was unreasonable not just because

the Michigan Vehicle Code clearly prohibits village-wide speed limits, but also because no sign purporting to give notice of such a village-wide speed limit was posted anywhere in town. Pet.App.16-17.

Thus, even if the law were ambiguous as to whether Saranac Village could have established a village-wide speed limit of 25 miles per hour, it still would have been unreasonable for Deputy Madsen to infer that the village had done so silently. Whether mistaken applications of clear statutes could be reasonable in some circumstances has no bearing on the outcome of this case. The question the Petitioner claims is presented by this case is therefore neither squarely presented nor dispositive.

b. In any event, the better rule is that an officer's mistake of law cannot be objectively reasonable where the statute is unambiguous. *Accord Heien*, 574 U.S. at 70 (Kagan, J., concurring). Petitioner itself concedes that such an approach "may be generally correct." Pet. 8. And for good reason: In *Heien*, the Court evaluated the objective reasonableness of the officer's conduct by looking only to whether there was some basis in the operative statute for the officer's conclusion that both brake lights—rather than just one—must be operational. *Id.* at 68 (majority op.). What mattered was whether the *statute* supplied any basis to conclude the officer's interpretation was "at least . . . reasonable." *Id.* The Court did not consider whether there might be good reasons to require both brake lights be working as a policy matter. Nor did the Court contemplate whether, for example, an officer could draw a reasonable inference from whatever rules governed headlights or tail lights.

A narrow focus on the closeness of the legal question at issue is consistent with the Court's explication that the objective reasonableness is a more demanding test than qualified immunity's "clearly established" standard.

Qualified immunity doctrine presupposes that officers are aware of all published judicial opinions in their circuit and others such that if binding circuit court precedent—or a chorus of out-of-circuit courts—have "placed the statutory or constitutional question beyond debate," the officer is not immune. *Ashcroft*, 563 U.S. at 741. The more demanding standard established by *Heien* must *at least* require officers to correctly apply clearly written statutes.

II. This Case Does Not Implicate Any Conflict in the Lower Courts

Petitioner erroneously contends (at 7-8) that the Michigan Court of Appeals' decision implicates a conflict in the lower courts over whether "*Heien* requires statutory ambiguity." To the contrary, every case Petitioner cites turned on whether the mistake at issue was reasonable. Those courts that considered statutory ambiguity did so only as an indicia of the reasonableness of the mistake, not as a necessary predicate to a finding of reasonableness.

1. Petitioner (at 7-8) cites three "similar" cases in which courts "upheld the stop." As Petitioner concedes (at 7), *Atwood v. Pianalto*, 350 P.3d 1048 (Kan. 2015), did not concern a mistake of law. Instead, the Supreme Court of Kansas determined only that an officer's mistake of *fact* was objectively reasonable. *Id.* at 1053-54. The court therefore had no reason to consider whether the relevant statute was ambiguous or whether the officer acted pursuant to a reasonable understanding of the statute.

Likewise, in *United States v. Blackburn*, No. 01-CR-86, 2002 WL 32693714 (N.D. Okla. Feb. 20, 2002), the court also characterized the officer's mistake as one of fact, not of law, and explicitly distinguished the facts of that case from scenarios in which an officer acts based on an mistaken or erroneous interpretation of a state statute. *Id.* at *3-4. And the court concluded that, despite the

mistake, the officer "had a reasonable articulable suspicion" that a violation had occurred. *Id.* As in *Pianalto*, the court had no reason to consider whether the applicable statute was ambiguous.

Although the third case that petitioner cites—*Harrison v. State*, 800 So. 2d 1134 (Miss. 2001)—did involve a mistake of law, it is also not evidence of Petitioner's supposed circuit split. First of all, that case pre-dates *Heien*, and therefore does not purport to interpret it. Second, the opinion plainly turned on whether the mistake at issue was reasonable, not on the presence or absence of statutory ambiguity.

In *Harrison*, officers stopped the defendant because he was driving faster than the posted speed limit in a construction zone. The Supreme Court of Mississippi later determined that the speed limit applied only when workers were present. The court explained that "the stop was based on a mistake of law." *Id.* at 1138. But the court concluded that "the deputies had an objectively reasonable basis for believing that Harrison violated the traffic laws" because the defendant was traveling faster than the posted speed limit. *Id.* at 1139. The court implied that the law was confusing but did so only in reaching the conclusion that the officers had a "valid reasonable belief" that the defendant "was violating the traffic laws." *Id.*

Petitioner is wrong to suggest (at 7-8) that the outcome of this case would have been different had it been decided by the courts who decided *Pianalto*, *Blackburn*, or *Harrison*. Like the Michigan Court of Appeals, those courts considered whether the officers made reasonable mistakes. And like the Michigan Court of Appeals, those courts would have concluded that Deputy Madsen's mistake was unreasonable because a "reasonably competent law enforcement officer" should have known that the speed limit was 55 miles per hour.

2. Petitioner also wrongly contends (at 8) that the Michigan Court of Appeals' decision here as well as two other cases have "concluded that *Heien* requires statutory ambiguity." As explained above, the Michigan Court of Appeals decision did not turn on the clarity of the statute, but rather on the court's conclusion that the deputy "made an unreasonable mistake of law merely based on an unsupported hunch" and therefore "did not have an objectively reasonable belief that probable cause existed." Pet.App.17.

The two other cases Petitioner cites also correctly applied *Heien* by considering whether the officers' mistakes were reasonable under the totality of the circumstances. In *United States v. Alvarado-Zarza*, 782 F.3d 246 (5th Cir. 2015), the Fifth Circuit considered whether an officer made a reasonable mistake of law in stopping the defendant who failed to signal 100 feet in advance of a lane change where the statute required signaling only for turns. *Id.* at 248. In the course of a factbound discussion, the court explained that the statute was unambiguous, but did so to bolster its conclusion that "the statute facially [gave] no support" for the officer's interpretation of the law, making the mistake of law unreasonable. *Id.* at 250. In other words, like every other case Petitioner cites, the Fifth Circuit's analysis ultimately centered on whether the officer's mistake was reasonable.

Similarly, in *United States v. Stanbridge*, 813 F.3d 1032 (7th Cir. 2016), the Seventh Circuit concluded that the officer's mistaken understanding of the applicable statute was "not objectively reasonable" because the statute was not ambiguous. *Id.* at 1037. Like in *Alvarado-Zarza*, the court's determination that the statute was unambiguous merely evidenced the officer's "sloppy study of the laws." *Id.* at 1038 (citing *Heien*, 135 S. Ct. at 539-40).

In sum, Petitioner wrongly implies (at 5) that the cited cases turned on statutory ambiguity or lack thereof. Far from it: each of the cited cases center on whether or not the officers' mistakes were reasonable. That is the *Heien*-mandated inquiry. The lower courts are not split on how to apply *Heien*. Indeed, Petitioner's cited cases are evidence that the lower courts—including the Michigan Court of Appeals in this case—are faithfully applying this Court's instruction that whether a mistake can give rise to reasonable suspicion hinges on whether the mistake was reasonable.

III. This Case Does Not Warrant This Court's Review

This case does not present a question warranting this Court's review, for several reasons.

Start with the lack of conflict in the lower courts. As explained above there is no widespread confusion over how to apply this Court's decision in *Heien*. *See supra* at 12-15. To the contrary, courts consistently and uniformly apply *Heien*'s instruction that the Fourth Amendment requires that any mistake "whether of fact or of law . . . be objectively reasonable." *Heien*, 574 U.S. at 57 (emphasis omitted). Petitioner's complaint boils down to a dispute over whether the Michigan Court of Appeals correctly applied that established standard, but this Court does not ordinarily resolve that kind of factbound question.

Moreover, even if there were confusion over how to apply this Court's decision in *Heien* (there is not), this case would be an exceedingly poor vehicle in which to address the question presented. Petitioner asks the Court to "resolve a split on whether *Heien* . . . applies to situations where the law (once discovered) is clear but the circumstances make applying it uncertain." Pet. 5. But the Michigan Court of Appeals determined that there should have been no uncertainty over how to apply the law here. To the contrary, the court explained, "because the road

had no posted speed limit sign," a "reasonably competent enforcement officer should have known that" the speed limit was 55 miles per hour. Pet.App.16 And the court noted that Deputy Madsen's mistake was unreasonable because his decision was "based on an unsupported hunch," not on any particular circumstance that he was confronted with. Pet.App.17.

In other words, the court below did *not* determine that the officer's mistake was unreasonable simply because the statute at issue was unambiguous. To the extent the Court is interested in clarifying how its decision in *Heien* applies in situations involving unambiguous statutes, this is not the right case for doing so.

Finally, even if this case presented the question Petitioner posits, and even if a conflict existed on that question, Petitioner has not demonstrated that the question arises frequently enough to justify this Court's intervention. There is no evidence that courts are inundated with Fourth Amendment suppression hearings in which the dispositive question involves a mistake of law of any kind, much less the question whether a mistake of law was reasonable in light of an unambiguous statute. In short, there is no evidence that is an area in which this Court's intervention is necessary.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully Submitted,

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