No. 20-18

In The
Supreme Court of the United States

ARTHUR GREGORY LANGE,

Petitioner,

v.

CALIFORNIA,

Respondent.

On Writ Of Certiorari To The Court Of Appeal Of The State Of California, First Appellate District

BRIEF OF MOTHERS AGAINST DRUNK DRIVING AS *AMICUS CURIAE* IN SUPPORT OF THE JUDGMENT BELOW

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INTEREST OF *AMICUS CURIAE*[1]

Amicus Mothers Against Drunk Driving ("MADD") was founded in May 1980 by a mother whose daughter was killed by a drunk driver. MADD's mission is to end drunk driving, fight drugged driving, support the victims of these violent crimes, and prevent underage drinking. In pursuit of these objectives, MADD participates actively in public and private studies, legislative initiatives, and law-enforcement programs aimed at reducing the incidence of alcohol-related roadway tragedies. MADD is also one of the largest victim-services organizations in the United States.

Since 2006, MADD's Campaign to Eliminate Drunk Driving has supported law enforcement in their efforts to apprehend drunk drivers, keep them off the road, and discourage people from driving while under the influence of alcohol. Strict and swift enforcement of drunk-driving laws, through detention, arrest, and prosecution, is essential to those efforts. MADD supports law enforcement's use of all constitutionally permissible tools to prevent drunk driving, including the immediate arrest of drunk drivers. The critical need to enhance, rather than hamper, such enforcement efforts implicates MADD's core mission.

[1] Pursuant to Supreme Court Rule 37.6, MADD affirms that no counsel for a party authored this brief in whole or in part and that no person other than *amicus curiae* and its counsel made a monetary contribution intended to fund this brief's preparation or submission. Pursuant to Supreme Court Rule 37.3, counsel of record for all parties have provided written consent to *amicus curiae*'s submission of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Court should hold that the hot pursuit doctrine allows an officer to pursue a fleeing suspect to a private place regardless whether the suspect has committed a felony or a misdemeanor. Such a holding comports with the totality-of-the-circumstances approach to determining exigency and accords with a proper understanding of the hot pursuit doctrine's origins, which arise from the flight of a suspect, not the underlying crime for which the suspect is fleeing. Any other approach, including one that potentially precludes officers from pursuing into private places fleeing suspects who have committed misdemeanors, would provide an unworkable standard for law-enforcement officers and excuse potentially serious—and deadly—crimes.

Drunk-driving offenses in particular demonstrate the unworkability of a rule that only sometimes includes misdemeanors in the hot pursuit doctrine. That is because whether a suspect who is driving drunk has crossed the line from a misdemeanor to a felony usually turns on factors unknowable to an officer in the throes of a hot pursuit. An officer who attempts to detain a drunk driver may suspect him of intoxication, but the officer cannot know before the detention whether an aggravating factor—*e.g.*, the suspect's status as a serial drunk driver, the extent of the driver's intoxication, or the presence of a child in the car—heightens the violation from a misdemeanor to a felony. But whether a fleeing drunk driver has committed a felony or a misdemeanor, he has committed a

serious offense and an officer should be permitted to pursue the offender from a public to a private place to minimize the threat of further harm, effectuate an arrest, and preserve valuable evidence of the crime.

Accordingly, the hot pursuit doctrine should permit pursuit into the home even for misdemeanors like (some) suspected drunk-driving offenses, crimes which the Court recognizes present a special and serious risk to society. This would enable states to vindicate their undeniably critical interest in highway safety and reduce the incidence of drunk driving. Such a rule also would provide a necessary check against a drunk driver's perverse incentive to try to race toward home (and thereby delay arrest and allow evidence of the crime—the driver's blood alcohol content ("BAC")—to dissipate while the officer pursues the suspect and calls in a warrant), instead of complying with an officer's order to pull over immediately. Indeed, a rule that stops short of categorically including misdemeanor drunk driving from the hot pursuit doctrine while categorically permitting hot pursuit of felony drunk driving would *encourage* the most intoxicated suspects to behave recklessly in a race to make it from a public roadway to home, risking in the process further injury or death to the driver, any passengers, police officers, and innocent bystanders. The Court should not adopt an overly rigid and artificial rule that would allow drunk drivers to escape immediate detention at the risk of public safety. The Court therefore should affirm the judgment below.

ARGUMENT

I. Properly Defined, Hot Pursuit Justifies Warrantless Home Entry On The Basis Of A Suspect's Flight.

The hot pursuit doctrine is an exception to the Fourth Amendment's general warrant requirement. *See Birchfield v. North Dakota*, 136 S. Ct. 2160, 2173 (2016). It provides "that a suspect may not defeat an arrest which has been set in motion in a public place . . . by the expedient of escaping to a private place." *United States v. Santana*, 427 U.S. 38, 43 (1976). Hot pursuit is a recognized "exigent circumstance" that justifies warrantless official action—and by that definition, the hot pursuit doctrine also necessarily requires insufficient time for an officer to secure a warrant. *Birchfield*, 136 S. Ct. at 2173.

So defined, hot pursuit does not turn on the artificial boundary between whether the underlying conduct for which a suspect is fleeing constitutes a misdemeanor or a felony. *See Stanton v. Sims*, 571 U.S. 3, 9 (2013) (per curiam) (noting that *Santana* was not expressly limited to suspected felons). In fact, applying the doctrine formalistically and differently to misdemeanors as opposed to felonies would burden officers faced with snap judgments about how to react to dangerous situations and would hamper states' ability to protect the health, safety, and welfare of their citizens, especially in the context of drunk driving.

A. The Hot Pursuit Doctrine Requires No More Than An Arrest That Is Set In Motion In Public And A Suspect's Attempted, Expedient Escape To A Private Dwelling, Which Results In No Time To Secure A Warrant.

As Petitioner notes, the Court has had little occasion "to define 'hot pursuit' with precision." Br. for Pet'r 33. Indeed, the cases "involving a true 'hot pursuit,'" *Santana*, 427 U.S. at 42, have been few and far between. *Compare, e.g.*, *Stanton*, 571 U.S. at 10 ("Stanton *was* in hot pursuit of Patrick, he *did* see Patrick enter Sims' property, and he had every reason to believe that Patrick was just beyond Sims' gate.") *and Santana*, 427 U.S. at 42 ("involving a true 'hot pursuit'") *with Welsh v. Wisconsin*, 466 U.S. 740, 753 (1984) ("On the facts of this case, however, the claim of hot pursuit is unconvincing because there was no immediate or continuous pursuit.") *and Johnson v. United States*, 333 U.S. 10, 16 n.7 (1948) ("'[W]e find no element of "hot pursuit" in the arrest of one who was not in flight, was completely surrounded by agents before she knew of their presence . . . and who made no attempt to escape.'").

The question whether a purported hot pursuit is really an exigent circumstance has thus turned largely on the nature of a suspect's flight, not the underlying crime that sparked the flight. Defining the warrant exception in this way ensures that true hot pursuit encompasses only a narrow category of cases (and thereby strengthens the general rule that officers must obtain warrants when they can). As the Court held in

Santana, the hot pursuit doctrine involves a discrete fact pattern where "a suspect may not defeat an arrest which has been set in motion in a public place . . . by the expedient of escaping to a private place." *Santana*, 427 U.S. at 43; *see also Stanton*, 571 U.S. at 4–5, 10 (noting that "Stanton *was* in hot pursuit of Patrick" when Officer Stanton attempted to detain the suspect in public at which point the suspect fled to a private home).

Cases that do not involve both a publicly begun detention and an expedient escape into a private dwelling will therefore fall outside the hot pursuit doctrine. *See, e.g.*, *Welsh*, 466 U.S. at 742–43 (no hot pursuit because no arrest or detention set in motion in public); *Johnson*, 333 U.S. at 16 n.7 (same).[2] No more or less is required. This rule has the benefit of easy applicability in the moment of the pursuit.

As this Court frequently articulates, the hot pursuit doctrine is one "exigent circumstance" that gives rise to an exception to the warrant requirement. But hot pursuit is just one example of a "variety of circumstances" involving "an exigency sufficient to justify" warrantless police action. *Missouri v. McNeely*, 569

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[2] Because the doctrine necessarily involves the fact pattern by which a detention begins in a public place but cannot be completed before a suspect retreats to a private place, it follows that hot pursuit cases usually involve—as the name suggests—"some sort of a chase," however brief. *Santana*, 427 U.S. at 43 ("The fact that the pursuit here ended almost as soon as it began did not render it any the less a 'hot pursuit' sufficient to justify the warrantless entry into Santana's house.").

U.S. 141, 148–49 (2013) (plurality opinion). Other exigent circumstances also turn on the nature of the exigency, and not some other underlying factor. *See id.* (listing as other recognized exigent circumstances that justify warrantless action "law enforcement's need to provide emergency assistance to an occupant of a home, . . . or enter a burning building to put out a fire and investigate its cause"); *see also Welsh*, 466 U.S. at 749–50 (citing *Santana* as providing one example of "emergency conditions" justifying "warrantless searches or arrests"); *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006) (listing "'hot pursuit' of a fleeing suspect" and citing *Santana* among various examples of "'exigencies of the situation'" that justify warrantless official action).

All of these recognized exigent circumstances empower a responding officer to proceed without a warrant "because 'there is compelling need for official action and no time to secure a warrant.'" *McNeely*, 569 U.S. at 149 (plurality opinion) (quoting *Michigan v. Tyler*, 436 U.S. 499, 509 (1978)); *see also Birchfield*, 136 S. Ct. at 2173 (the "exigent circumstances" exception allows official action "when an emergency leaves police insufficient time to seek a warrant"). As a branch of the exigent circumstances exception to the warrant requirement, true hot pursuit inherently involves insufficient time for an officer to secure a warrant. *See Smith v. Stoneburner*, 716 F.3d 926, 931 (6th Cir. 2013) (noting that the requirement of "immediate police action" is "[w]hat makes the pursuit 'hot'").

In sum, this Court's precedents define hot pursuit to encompass a specific set of facts in which all of the following must be true: (1) an officer begins to arrest or detain a suspect in a public place, (2) the suspect retreats into a private place before the officer can complete the arrest or detention, and, as a result, (3) there is a compelling need to arrest or detain without time to secure a warrant.

B. The Fact Pattern Common To All Hot Pursuit Cases Justifies Warrantless Home Entry For All Crimes, Whether Misdemeanors Or Felonies.

Defined in this way, the hot pursuit doctrine necessarily encompasses only a narrow set of cases. That set already categorically includes felonies, as the State of California recognizes. Br. for Resp't Supporting Vacatur 12–15. Petitioner similarly acknowledges the possibility that "*Hayden* and *Santana* could be read to support a per se exigency rule for serious felonies." Br. for Pet'r 7. There is no principled reason why the doctrine's categorical application should stop at the porous border between felonies and misdemeanors. *See Stanton*, 571 U.S. at 9 ("[T]hough *Santana* involved a felony suspect, we did not expressly limit our holding based on that fact.").

1. Recognizing that the doctrine applies the same way to felonies and misdemeanors will not upend the totality-of-the-circumstances analysis for determining exigency. As Justice Thomas explained in his

concurrence in *Mitchell v. Wisconsin*, "a *per se* rule" and the " 'case by case,' 'totality of the circumstances' analysis ordinarily applied in exigent-circumstance cases" are not mutually exclusive. 139 S. Ct. 2525, 2541 (2019) (Thomas, J., concurring). To the contrary: "That the exigent-circumstances exception might ordinarily require 'an evaluation of the particular facts of each case,' does not foreclose us from recognizing that a certain, dispositive fact is always present in some categories of cases." *Id.* (quoting *Birchfield*, 136 S. Ct. at 2183).

Here, it is the suspect's expedient escape to a private place, necessitating action before a warrant can be obtained, that provides the "certain, dispositive fact" that is "always present" in the narrow category of hot pursuit cases. *Id.*; *see also id.* at 2534–35 (plurality opinion) (noting that the Court may "address how the exception bears on the category of cases encompassed by the question on which we granted certiorari").

Accordingly, the Court need not shy away from holding that the doctrine applies categorically to flight, regardless whether that flight is connected to a suspected misdemeanor or felony. Indeed, focusing the test on the actions of the suspect evading arrest—and not the underlying crime—alleviates any anxiety of the kind Petitioner raises, such as "[m]ust officers themselves follow the suspect, or can they be directed to the home by witnesses?" (hot pursuit requires that officers themselves follow the suspect, given the necessity of an "arrest which has been set in motion in a public place," *Santana*, 427 U.S. at 43) and "[c]an

pursuers follow footprints or other evidence rather than the suspect himself?" (no, for the same reason). Br. for Pet'r 33.

2. Nor does *Welsh* require the categorical exclusion of misdemeanors from hot pursuit. While *Welsh* held that "the gravity of the underlying offense" should be "an important factor to be considered when determining whether any exigency exists," 466 U.S. at 753, such a factor would not be displaced by a holding that the doctrine applies equally to misdemeanors. As explained above, the necessity of immediate action with no time to secure a warrant is a consideration that is already built into the hot pursuit doctrine. *See supra* at I.A. Situations that fail this test would necessarily fall outside the category of hot pursuit, and the doctrine would not apply by its terms.

Further, on the question whether the hot pursuit doctrine applies to misdemeanors, the Court has already cautioned against "read[ing] *Welsh* . . . too broadly." *Stanton*, 571 U.S. at 9. "[N]othing in the [*Welsh*] opinion establishes that the seriousness of the crime is equally important *in cases of hot pursuit*." *Id.* (emphasis in original).

Nor does the formalistic line between felonies and misdemeanors necessarily correspond to any material difference between degrees of "seriousness of the crime." As Justice White warned:

> There may have been a time when the line between misdemeanors and felonies marked off those offenses involving a sufficiently serious

> threat to society to justify warrantless in-home arrests under exigent circumstances. But the category of misdemeanors today includes enough serious offenses to call into question the desirability of such line drawing.

Welsh, 466 U.S. at 761 (White, J., dissenting). As explained below, such a line is especially unworkable in the context of drunk driving, where the difference between misdemeanor and felony liability often turns on aggravating factors (such as prior convictions, the presence of a child, or level of intoxication) that are not contemporaneously apparent to an officer—much less an officer in hot pursuit.

C. Treating Misdemeanor Offenses Differently Under The Hot Pursuit Doctrine Would Present An Unworkable Standard For Police Officers.

Petitioner's proposed rule would provide no guidance to officers giving chase to a fleeing suspect. But Fourth Amendment rules in particular—which police officers in pressure-loaded situations (not constitutional scholars in ivory towers) apply—must be clear and straightforward. *See Mitchell*, 139 S. Ct. at 2539 (Thomas, J., concurring) (criticizing the plurality's "difficult-to-administer rule" that will "burden both officers and courts who must attempt to apply it," and proposing a "'*per se* rule'" as a "'better (and far simpler)'" resolution); *Birchfield*, 136 S. Ct. at 2179–80 (noting that the search-incident-to-arrest exception's categorical application "was needed to give police

adequate guidance"); *Riley v. California*, 573 U.S. 373, 398 (2014) ("If police are to have workable rules, the balancing of the competing interests must in large part be done on a categorical basis—not in an ad hoc, case-by-case fashion by individual police officers.") (cleaned up) (quoting *Michigan v. Summers*, 452 U.S. 692, 705 n.19 (1981)); *McNeely*, 569 U.S. at 166 (Roberts, C.J., concurring in part) (Criticizing a rule in which "[a] police officer reading this Court's opinion would have no idea—no idea—what the Fourth Amendment requires of him," and noting that even a " 'totality of the circumstances' approach" should not prevent the Court from providing "guidance on how police should handle cases like the one before us.").

A rule that asks officers to draw lines based on whether the underlying suspected crime is a felony or a misdemeanor is especially unworkable considering that some would-be misdemeanors become felonies based on aggravating factors that are typically unknown—if not unknowable—to an officer in hot pursuit. As an example, this Court noted that the defendant in *McNeely* was "charged with a class D felony under Missouri law" because of "his two prior drunk-driving convictions," 569 U.S. at 146 n.1, a fact that would not be accessible to an officer engaged in a hot pursuit.

Missouri is certainly not alone in imposing felony-level liability for drunk driving on the basis of prior convictions or other aggravating circumstances related to the drunk-driving conviction. In fact, nearly every State does so. *See, e.g.*, Ala. Code § § 32-5A-191,

13A-5-7 (fourth and subsequent drunk-driving offenses are felonies); Alaska Stat. § § 28.35.030, 12.55.035, 12.55.135 (third and subsequent offenses are felonies); Ariz. Rev. Stat. Ann. § § 28-1381, 28-1382, 28-1383, 13-707, 13-801, 13-802 (third); Ark. Code Ann. § § 5-65-103, 5-65-111, 5-65-112 (fourth); Colo. Rev. Stat. § 42-4-1301 (fourth); Conn. Gen. Stat. § § 14-227a, 53a-25, 53a-26 (second); Del. Code Ann. tit. 21, § 4177, tit. 11, § 233 (third); Fla. Stat. § § 316.193, 775.082 (third); Ga. Code Ann. § 40-6-391 (fourth); Haw. Rev. Stat. § § 291E-61, 291E-61.5, 701-107 (fourth); Idaho Code § § 18-8004, 18-8004C, 18-8005 (third); 625 Ill. Comp. Stat. § 5/11-501 (third); Ind. Code. § § 9-30-5-1, 9-30-5-3 (second); Iowa Code § § 321J.2, 707.6A(1) (third); Kan. Stat. Ann. § 8-1567 (third); Ky. Rev. Stat. Ann. § § 189A.010, 532.020, 532.060 (fourth); La. Rev. Stat. Ann. § § 14:98.1, 14:98.2, 14:98.3, 14:98.4 (third); Me. Rev. Stat. Ann. tit. 29-A, § 2411, tit. 17-A, § 1252 (third); Mass. Gen. Laws ch. 90 § 24, ch. 274 § 1 (third); Mich. Comp. Laws § 257.625 (third); Minn. Stat. § § 169A.24, 169A.25, 169A.26, 169A.27, 169A.095 (fourth, or prior conviction for certain vehicular homicide or injury, or substance-related offenses); Miss. Code Ann. § 63-11-30 (third); Mo. Rev. Stat. § § 577.010, 577.012, 577.023, 558.011 (felony liability for "persistent," "aggravated," "chronic," or "habitual" offender); Mont. Code Ann. § § 61-8-401, 61-8-711, 61-8-714, 61-8-731, 61-8-734 (fourth); Neb. Rev. Stat. § § 28-105, 28-106, 60-6,196, 60-6,197.03 (fourth, or third if BAC of 1.5 or more or refusal to submit to a BAC test); Nev. Rev. Stat. § § 484C.400, 484C.410 (third); N.H. Rev. Stat. Ann. § 265-A:18 (fourth, or any

DUI causing serious bodily injury); N.M. Stat. Ann. § § 66-8-102, 31-18-13, 30-1-6 (fourth); N.Y. Veh. & Traf. Law § 1193 (second); N.C. Gen. Stat. § § 20-138.1, 20-138.5 (fourth); N.D. Cent. Code § 39-08-01 (fourth); Ohio Rev. Code Ann. § 4511.19 (fourth); Okla. Stat. tit. 47 § 11-902 (second); Or. Rev. Stat. § 813.010 (fourth); R.I. Gen. Laws § § 11-1-2, 31-27-2 (third); S.C. Code Ann. § § 16-1-20, 16-1-100, 56-5-2933, 56-5-2930 (fourth); S.D. Codified Laws § § 32-23-2, 32-23-3, 32-23-4, 32-23-4.6, 32-23-4.7, 32-23-4.1 (third); Tenn. Code Ann. § § 55-10-402, 55-10-405, 39-11-110, 39-11-114 (fourth); Tex. Penal Code Ann. § § 49.04, 49.09 (third); Utah Code Ann. § § 41-6a-503, 41-6a-517 (third); Vt. Stat. Ann. tit. 13, § 1, tit. 23, § 1210 (third); Va. Code Ann. § § 18.2-10, 18.2-270 (third); Wash. Rev. Code § § 46.61.502, 46.61.504 (fourth); W. Va. Code § 17C-5-2 (third); Wis. Stat. § § 346.63, 346.65, 343.307, 939.60 (fourth); Wyo. Stat. Ann. § § 6-10-101, 31-5-233 (fourth, or any DUI causing serious bodily injury).

In nearly every state, the same set of facts observable to an officer could give rise to either misdemeanor or felony liability. Not only can this distinction turn on the existence of prior convictions, severity of intoxication, or aggravating circumstances, but the presence or absence of a child in the car can also be a factor in defining the crime. *See* Tex. Penal Code Ann. § 49.045. All of these facts are not knowable in the heat of the moment (and usually cannot be learned before a suspect is detained). Petitioner provides no explanation how an officer in hot pursuit could know, *vel non*, whether a fleeing suspect is a serial or aggravated

drunk driver under state law (or whether a child is in the car) before pursuing the fleeing suspect into a private place. Petitioner's rule is simply unworkable.

II. Drunk Driving Is Especially Pernicious And Officers Should Be Empowered To Detain Fleeing Drunk Drivers Regardless Whether The Crime Is A Misdemeanor.

The Court has repeatedly decried the scourge of drunk driving and its devastating effects on society. Indeed, "[d]runk drivers take a grisly toll on the Nation's roads, claiming thousands of lives, injuring many more victims, and inflicting billions of dollars in property damage every year." *Birchfield*, 136 S. Ct. at 2166; *see also*, *e.g.*, *Mitchell*, 139 S. Ct. at 2535 (plurality opinion) ("For decades, we have strained our vocal chords to give adequate expression to the stakes" of drunk driving and highway safety); *McNeely*, 569 U.S. at 160 (plurality opinion) ("While some progress has been made, drunk driving continues to exact a terrible toll on our society."); *id.* at 169 (Roberts, C.J., concurring in part) ("A serious and deadly crime is at issue. . . . [I]n 2011, one person died every 53 minutes due to drinking and driving."); *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444, 451 (1990) ("No one can seriously dispute the magnitude of the drunken driving problem or the States' interest in eradicating it.").

The Court's outrage is well founded. In 2019, 36,096 people were killed and 2.74 million were injured as a result of motor vehicle crashes in the United

States. National Highway Traffic Safety Admin. (NHTSA), Overview of Motor Vehicle Crashes in 2019 1, 2 (No. 813060, Dec. 2020). Over 10,000 of those fatalities were the result of alcohol-impaired driving, amounting to approximately one drunk-driving-related death every 52 minutes. *See id.* at 9.

Whatever rule the Court adopts, it should create no incentive for drunk drivers to flee police pursuit and thereby extend their dangerous time on the road. Instead, the Court should deter such flight by holding that any time a suspected drunk driver fails to comply with a police officer's attempted detention—and chooses instead to flee home—exigent circumstances exist to allow the officer to pursue and detain the driver. *See Mitchell*, 139 S. Ct. at 2535 n.3 (plurality opinion) (quoting *McNeely*, 569 U.S. at 166 (Roberts, C.J., concurring)) ("[T]he circumstances in drunk driving cases are often typical, and the Court should be able to offer guidance on how police should handle cases like the one before us."); *see also* Br. for Pet'r 17 (noting limited variation in "drunk-driving cases").

A. Allowing The Hot Pursuit Of Drunk Drivers Empowers States To Better Combat Drunk Driving.

The Court has recognized that tougher drunk-driving laws and enforcement—including the felony-level liability for repeat offenders employed by nearly every State—have helped to stem the national blight of drunk driving. *See, e.g.*, *Mitchell*, 139 S. Ct. at 2536 (plurality opinion) (noting that the "strategy" of

"imposing increased penalties for recidivists or for drivers with a BAC that exceeds a higher threshold . . . has worked"); *Birchfield*, 136 S. Ct. at 2169, 2178 ("In recent decades, the States and the Federal Government have toughened drunk-driving laws, and those efforts have corresponded to a dramatic decrease in alcohol-related fatalities," although "the statistics are still staggering.").

States have an indisputable interest in not only apprehending suspected drunk drivers, but also in deterring drunk drivers so that they "do not become a threat to others in the first place." *Birchfield*, 136 S. Ct. at 2178–79. States' ability to vindicate these critical purposes requires that law-enforcement officers have clear guidelines on how to detain suspected drunk drivers and an unhampered capability to employ all constitutionally permissible tools in doing so. The hot pursuit of fleeing suspects is one such important tool.

Treating misdemeanor drunk-driving offenses differently under the purview of hot pursuit will weaken officers' ability to tamp down on all drunk driving. This is because an officer in hot pursuit of a drunk driver attempting an expedient escape to his home typically will be unable to ascertain whether the suspect has the requisite number of prior convictions or other aggravating circumstances that could impose felony liability and therefore justify warrantless home entry to complete the arrest. This uncertainty could chill an officer's urgent pursuit of a drunk driver, even if it turns out after the fact that the drunk-driving offense would

amount to a felony. The drunk driver is not held accountable and the state is left unable to keep its roadways safe and deter drunk driving.

From a drunk driver's perspective, Petitioner's rule would create a perverse incentive to try to reach "home base" and pull into the garage as quickly as possible to thwart an officer's attempt at a roadside stop and take advantage of the officer's asymmetrical information about prior convictions or aggravating factors. This, in turn, may spur the drunk driver to drive even *more* recklessly and pose an even *greater* societal danger in his race home. Although the circumstances of this case involved a relatively short pursuit, the rule the Court adopts will necessarily apply to longer pursuits, too—and the Court should be wary of any rule that would incentivize more reckless and drunken flights from police detention. Moreover, the Court should consider the secondary consequences of encouraging intoxicated individuals to flee home, thereby possibly presenting a threat to family members or other inhabitants of the home.[3]

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[3] Petitioner suggests that there is no reason to think that drunk drivers who make it home pose any further danger. *See* Br. for Pet'r 18. But that is not so, as social science evidence suggests a link between alcohol abuse and domestic violence. *See* Rosie Speedlin Gonzalez & Stacy Speedlin Gonzalez, *Lessons Learned, Lessons Offered: Creating a Domestic Violence Drug Court*, 22 The Scholar 221, 236 (2020) (noting "high co-occurrence rates" of alcohol use and domestic violence). Not only does a fleeing drunk driver risk the safety of others on the road while he flees—he also poses a potentially serious risk to those waiting for him when he eventually arrives at his destination.

Avoiding detention may have been Petitioner's very intent in this case (although his subjective motive has no bearing on the reasonableness of the officer's action). Petitioner had a BAC of .245—more than three times the legal limit, Br. in Opp'n 1, and a prior drunk-driving conviction, *People v. Lange*, No. A157169, 2019 WL 5654385, at *1 (Cal. Ct. App. Oct. 30, 2019). And while Petitioner has claimed he did not know Officer Weikert was following him with flashing lights, California courts have held on appeal—three separate times—that a reasonable person in Petitioner's position would have known Officer Weikert was instructing him to pull over before he entered his garage. *See Lange*, 2019 WL 5654385, at *2–3, 7. Instead of complying, Petitioner pulled into his garage and attempted to shut the door. *Id.* at *1. Had it not been for Officer Weikert's pursuit into the garage, Petitioner may have faced no accountability for his decision to drive his car with a severely elevated blood-alcohol level more than three times the legal limit.

Petitioner, and drunk drivers everywhere, should not be rewarded for disobeying an officer's lawful order to stop driving. This Court should reject Petitioner's rule, which would amount to a get-out-of-jail-free card for drunk drivers.

B. Applying The Hot Pursuit Doctrine To All Drunk-Driving Offenses Squares With *Mitchell*.

In *Mitchell*, after noting the similarity of drunk-driving cases and the need to combat the "terrible problem of drunk driving," a plurality of the Court ruled that exigency permits warrantless blood tests for drunk drivers when "(1) BAC evidence is dissipating and (2) some other factor creates pressing health, safety, or law enforcement needs that would take priority over a warrant application." 139 S. Ct. at 2531, 2537 (plurality opinion). Indeed, Justice Thomas has suggested since *McNeely* that the dissipation of BAC evidence alone justifies warrantless blood tests. *Id.* at 2539–41 (Thomas, J., concurring).

Hot pursuit of drunk drivers should permit warrantless home entry the same way other exigencies permit warrantless blood tests of suspected drunk drivers. The fact pattern common to hot pursuit cases, already a well-recognized type of exigent circumstance, should qualify as the dispositive "other factor" in the plurality's *Mitchell* test. This is because a suspect's attempted, expedient escape into the home "sits much higher . . . on the exigency spectrum" than drunk-driving cases involving no other exigency. *Id.* at 2533 (plurality opinion).

The categorical application of the hot pursuit doctrine to all drunk-driving crimes—whether misdemeanors or felonies—ensures that States can enforce

their interest in eradicating this reckless practice until there are no more victims.

CONCLUSION

For the foregoing reasons, the Court should affirm the judgment below.

Respectfully submitted,

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