No. 20-564

In the Supreme Court of the United States

RODNEY CARLISLE, JR.,

Petitioner,

v.

COMMONWEALTH OF KENTUCKY,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Kentucky

BRIEF OF *AMICI CURIAE* PROFESSORS OF CRIMINAL LAW AND CRIMINAL PROCEDURE IN SUPPORT OF PETITIONER

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BRIEF OF *AMICI CURIAE* PROFESSORS OF CRIMINAL LAW AND CRIMINAL PROCEDURE IN SUPPORT OF PETITIONER

INTEREST OF THE *AMICI CURIAE*

Amici are legal academics and clinicians who research, teach, and write about criminal law and criminal procedure.[1] *Amici* include former prosecutors and public defenders with extensive first-hand experience with the systemic realities of the modern criminal justice system, including police practices and the Fourth Amendment rules governing searches and seizures. *Amici* submit this brief to offer their insights, based on scholarly research and practical experience, in hopes of informing the sound and consistent development of criminal procedure doctrine.

A complete list of *amici* is attached as the Appendix.

SUMMARY OF ARGUMENT

The Court should grant the Petition because resolution of the question presented will affect millions of Americans and provide needed guidance to law enforcement nationwide. More than 1.5 million traffic stops are conducted *every month*. Existing splits among the Circuits and other lower courts mean that the scope of a person's protected liberty and privacy interests during these routine events depends on the

[1] In accordance with Rule 37.6, the *amici curiae* affirm that no counsel for a party authored this *amicus* brief in whole or in part and that no party or counsel for a party made any monetary contributions intended to fund the preparation or submission of this brief. In accordance with Rule 37.2, all parties with counsel listed on the docket have consented to the filing of this brief.

fortuity of his or her residence. As long as this split persists, it not only will affect the rights of countless citizens, but it will leave police officers nationwide without guidance as to the legality of the basic question of whether they can conduct criminal history checks during a traffic stop.

The Kentucky Supreme Court's approach—allowing police unregulated discretion to conduct criminal history checks of every vehicle occupant at every traffic stop, permits precisely the sort of arbitrary and unjustified government intrusions prohibited by the Fourth Amendment. This approach leaves the Fourth Amendment liberty and privacy interests of every motor vehicle driver *and* passenger subject to the whims of every law enforcement officer conducting a traffic stop. The Kentucky Supreme Court's categorical approach permits police officers to convert any traffic stop into a lengthy seizure and a broad-brush criminal investigation, despite the absence of any fact-based justification for doing so. It thereby potentially subjects every passenger in a vehicle to the "unbridled authority of a general warrant." *Stanford v. Texas*, 379 U.S. 476, 481 (1965).

That is exactly what happened here. Police officers made a traffic stop for suspected minor vehicle equipment violations: a loud exhaust system and a defective taillight. During the course of the traffic stop, a police officer demanded that the driver and passenger both provide identification, and the officer then ran criminal background checks on both men. The officer lacked reasonable suspicion, let alone probable cause, to suspect that the passenger, Mr. Carlisle, was armed and dangerous, or that he was guilty of engaging in any criminal conduct. All that the officer knew

was that Mr. Carlisle, a black man, was a passenger in a vehicle with suspected equipment problems.

The Supreme Court of Kentucky held that police officers are automatically entitled to demand that a passenger like Mr. Carlisle provide identification and then to conduct background investigations of them merely because the passengers were riding in a motor vehicle stopped for a minor traffic violation. This assumption provides police officers with arbitrary discretion to convert these traffic stops into general criminal investigations of the passengers, investigations that stray far from the permissible mission of the traffic stop.

In *Rodriguez v. United States*, 575 U.S. 348 (2015), this Court confirmed that the "mission" of a routine traffic stop is "to address the traffic violation that warranted the stop, and attend to related safety concerns." *Rodriguez*, 575 U.S. at 354 (internal citation omitted). *Rodriguez* also identified ordinary inquiries that officers are entitled to take in every traffic stop: "checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." *Rodriguez*, 575 U.S. at 355. Such ordinary inquiries about the status of the driver and vehicle are justified as part of the legitimate mission of a traffic stop. But in the absence of facts creating at least reasonable suspicion that passengers are engaged in criminal conduct, or reason to believe that they pose a threat to officer safety, requiring mere passengers to identify themselves and running criminal background checks on them unnecessarily extends the length of detention (a seizure for Fourth Amendment purposes) and exceeds the mission of a valid traffic stop.

The Kentucky Supreme Court's decision also permits officers to intrude upon a related liberty interest protected by the Fourth Amendment. In general, police officers must possess fact-based reasons to believe that individuals are criminal suspects before they are entitled to require individuals to identify themselves. *Hiibel v. Sixth Judicial Dist. Court of Nev.*, 542 U.S. 177, 184-85 (2004). In this case, when officers demanded that Mr. Carlisle provide identification (and later ran a criminal background check on him), they possessed no facts implicating him in any criminal conduct. All they knew was that he was a passenger in a vehicle with a faulty taillight and loud exhaust system. The officer's only apparent justification was that he thought the occupants were "shady." Were they "shady" because the driver was white and the passenger was black? By failing to impose even minimal Fourth Amendment standards, the Kentucky Supreme Court granted the officers arbitrary authority to subject people to a seizure and search based solely on a hunch, with no articulable basis in fact. If allowed to stand, the Kentucky Supreme Court's decision would permit officers to exercise the same arbitrary and unjustified authority in every traffic stop.

For these reasons, the Court should grant the Petition.

ARGUMENT

I. THE COURT SHOULD GRANT THE PETITION BECAUSE THE ISSUE PRESENTED AFFECTS MILLIONS OF AMERICANS.

As this Court has warned "unconstitutional practices get their first footing . . . by silent approaches and slight deviations from legal modes of procedure." *Boyd v. United States*, 116 U.S. 616, 635 (1886). The

Fourth Amendment was designed to prevent the arbitrary abuses of power that existed under general warrants. *See* Thomas K. Clancy, *The Framers' Intent: John Adams, His Era, and the Fourth Amendment*, 86 IND. L.J. 979, 980 (2011); *Stanford*, 379 U.S. at 481 (abuses of general warrants were front of mind in crafting the Fourth Amendment). The Supreme Court of Kentucky's decision is a further slide down the slippery slope leading to just those conditions. Stated concerns for officer safety have been used to erode the constitutional rights of vehicle passengers to the point where, as in this case, police may investigate any passenger without reasonable suspicion or probable cause based on the assumption that this is a *de minimis* intrusion into the passenger's privacy rights.

Under the Court's precedents, police with probable cause for an insignificant traffic violation may stop the vehicle, *Whren v. United States*, 517 U.S. 806 (1996), order the driver and passengers to exit the vehicle, *Maryland v. Wilson*, 519 U.S. 408 (1997), subject the occupants to a frisk, *Arizona v. Johnson*, 555 U.S. 323 (2009), search certain areas of the vehicle's interior, *Arizona v. Gant*, 556 U.S. 332 (2009) and *Michigan v. Long*, 463 U.S. 1032 (1983), and detain the vehicle occupants while the officers perform a drug sniff inspection. *Illinois v. Caballes*, 543 U.S. 405 (2005).

Given the ease with which the police can identify a factual basis for a traffic stop, "the permissible dimensions of a lawful traffic stop are matters of some importance." Wayne R. LaFave, *The "Routine Traffic Stop" from Start to Finish: Too Much "Routine," Not Enough Fourth Amendment*, 102 MICH. L. REV. 1843, 1844 (2004). The ubiquity of traffic stops—and the multitude of possible justifications for them—mean that the issues raised here affect millions of

Americans every year. Indeed, police nationwide conduct 1.5 million traffic stops each month. Yet, because of the split in the lower courts identified by Petitioner, the scope of citizens' liberty and privacy interests, and the degree of discretion to conduct criminal background checks afforded to police officers, varies widely based on where the stop occurs. This situation calls out for resolution of this issue by this Court.

II. THE LOWER COURT'S DECISION PERMITS ARBITRARY AND UNJUSTIFIED INTRUSIONS PROHIBITED UNDER THE FOURTH AMENDMENT.

A. *Rodriguez* Does Not Permit Law Enforcement to Prolong Every Traffic Stop by Requesting Identification and Performing a Criminal Records Check.

The Supreme Court of Kentucky erred in holding that the criminal records check performed by the officers was permissible under *Rodriguez*. *Carlisle v. Commonwealth*, 601 S.W.3d 168, 178 (Ky. 2020). Relying on *Rodriguez* and a decision by the Georgia Supreme Court, *State v. Allen*, the lower court reasoned that a criminal records check of a passenger is "an ordinary inquiry related to officer safety." *Id.* at 179 (citing *State v. Allen*, 779 S.E.2d 248, 256-57 (Ga. 2015)).

As noted by Petitioner, the Kentucky court's decision ignores the critical distinction between "a permissible inquiry related to completing the traffic stop and an impermissible inquiry directed at investigating unrelated criminal conduct." Pet. at 15.

A criminal records check is "a measure aimed at detecting evidence of ordinary criminal wrongdoing" and cannot be tied to the objective of "ensuring that vehicles on the road are operated safely and

responsibly." *Rodriguez*, 575 U.S. at 355. The question is whether such a departure from the traffic stop's objective can be justified in the name of officer safety in *all* traffic stops, without regard to any fact-based justification.

There is no evidence in the record that the officers had any objective reason to believe Carlisle posed any threat to their safety, or even that they subjectively were concerned for their safety. The record here makes clear that the purpose of the criminal records check was to find a pretext to search the vehicle. Permitting criminal records checks on the basis of the pretext of protecting officer safety would permit police to seize a citizen without factual basis simply in order to conduct an investigation unrelated to the traffic stop—whether for possession of illegal drugs or unregistered weapons, for immigration violations, or for whatever else an officer's speculative "hunch" suggests might be afoot.

Absent the existence of a sufficient fact-based suspicion that additional criminality was afoot, the officer's authority was defined by the law enforcement mission of completing the traffic stop. At the moment that Officer Powers collected Carlisle's identification and ran the criminal records check, he detoured from the mission of the traffic stop. *See Rodriguez*, 575 U.S. at 500 ("On-scene investigation into other crimes, however, detours from that mission."). The record is devoid of any evidence that the officers had reason to believe Carlisle posed a threat to their safety.

The Supreme Court of Kentucky ignored this Court's well-established rule: "[A] seizure that is lawful at its inception can violate the Fourth Amendment if its manner of execution unreasonably infringes interests protected by the Constitution." *Caballes*, 543

U.S. at 407; *see also United States v. Place*, 462 U.S. 696, 707-10 (1983); *Terry v. Ohio*, 392 U.S. 1, 21 (1968).

As a passenger, Mr. Carlisle was subjected to a Fourth Amendment seizure during the traffic stop. *See Brendlin v. California*, 551 U.S. 249, 251 (2007). By taking the time to collect Mr. Carlisle's identification and conduct a background search of his criminal history, the officers extended the length of time beyond the time necessary to complete the valid mission of the traffic stop. As a result, the length of the traffic stop violated Mr. Carlisle's Fourth Amendment rights.

B. Contrary to the Lower Court's Analysis, the Officers Were Not Automatically Entitled to Demand that Mr. Carlisle Provide Identification.

Relying primarily on the Georgia Supreme Court's decision in *State v. Allen*, the Supreme Court of Kentucky held that "an officer reasonably may ask for the identification . . . of a driver *and any passengers* during an otherwise lawful traffic stop to determine an individual's prior contact with law enforcement" because "[s]uch a task is an ordinary inquiry related to officer safety." *Carlisle*, 601 S.W.3d at 179 (citing *Allen*, 779 S.E.2d at 256-57) (emphasis added).

However, this holding ignores this Court's decisions requiring that an officer have at least a reasonable suspicion of criminality before he is entitled to require a person to identify himself. *See Hiibel*, 542 U.S. at 189; *see also* LaFave, *supra*, at 1884 (noting that "it is to be doubted whether there is any valid reason for automatic warrant checks on mere passengers").

Under *Terry v. Ohio*, an investigatory stop—including a demand for identification—is permissible, only if the officer possesses reasonable suspicion, based on specific, articulable facts, that the suspect is committing or has committed a crime. 392 U.S. at 21 ("[T]he police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion [on the constitutional rights of private citizens].").

An officer's personal observation of a traffic law violation provides at least reasonable suspicion, and often probable cause, justifying a Fourth Amendment seizure in the form of a traffic stop of the driver. *See, e.g.*, *Arizona v. Johnson*, 555 U.S. at 326; *also Brendlin*, 551 U.S. at 251 (holding a traffic stop constitutes Fourth Amendment seizure of vehicle's driver and passengers for duration of stop). But without more, it does not provide an officer with authority to demand that a non-suspect passenger provide identification.

This Court's decision in *Hiibel* reiterated that officers may demand that *suspects* identify themselves. 542 U.S. at 186. "[Q]uestions concerning a *suspect's* identity are a routine and accepted part of many Terry stops. . . . [and] serve[] important government interests", including alerting "an officer that a suspect is wanted for another offense, or has a record of violence or mental disorder." *Id.* (emphasis added). But nothing in this Court's jurisprudence suggests that this principle extends to requests for identification from a vehicle *passenger* who is suspected of no crime.

Other courts have correctly held that individualized reasonable suspicion should be required for any inquiry into a passenger's identity, and that

demanding passenger identification exceeded the mission of a traffic stop. *See United States v. Henderson*, 463 F. 3d 27, 46 (1st Cir. 2006) ("[officer's] demand for [defendant's] identifying information and his subsequent investigation of [defendant] expanded the scope of the stop, changed the target of the stop, and prolonged the stop"); *United States v. Kersey*, No. 1:17-cr-0016, 2018 U.S. Dist. LEXIS 47917, at *7 (S.D. Ohio 2018) (requiring reasonable suspicion to further investigate passenger's identity after traffic stop has concluded); *see also State v. Lee*, 435 P.3d 847, 853 (Wash. Ct. App. 2019) (citing *State v. Larson*, 611 P.2d 771, 774 (Wash. 1980) (finding "a stop based on a parking [or traffic] violation committed by the driver does not reasonably provide an officer with grounds to require identification of individuals in the car other than the driver, unless other circumstances give the police independent cause to question passengers")). The Kentucky Supreme Court erred by concluding that inquiry into a passenger's identity is always permissible because it is a "minimal additional intrusion that serves the weighty interest in officer safety." *Carlisle*, 601 S.W.3d at 178 (quoting *Allen*, 779 S.E.2d at 256). At the very least, the Kentucky Supreme Court's decision permitting officers to require identification from a passenger during every traffic stop deepens a split in the lower courts requiring this Court's resolution.

CONCLUSION

For the reasons stated above, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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