No. _____

In the Supreme Court of the United States

PABLO PASTRANA,

Petitioner,

v.

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent.

On Petition for a Writ of Certiorari to the Court of Appeals of New York

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a vehicular roadblock satisfies the standard for a reasonable search and seizure under the Fourth Amendment, articulated in *Brown v. Texas*, 443 U.S. 47 (1979), when there is no evidence that it was planned or authorized by supervisory (non-field) officers or that the date and location of the roadblock was reasonably selected to achieve valid law enforcement goals.

RELATED PROCEEDINGS

- *People v. Pastrana*, No. 63 (N.Y. Nov. 21, 2023).
- *People v. Pastrana*, No. 2018-4537 (N.Y. App. Div. May 5, 2022).
- *People v. Pastrana*, Indictment No. 2026-2015 (N.Y. Sup. Ct. Jan. 7, 2018).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Pablo Pastrana respectfully petitions for a writ of certiorari to review the judgment of the New York Court of Appeals.

OPINIONS BELOW

The opinion of the New York Court of Appeals (App. 1a–12a) is not yet reported, but is reproduced at 2023 WL 8039657. The opinion of the New York Supreme Court, Appellate Division, First Department (App. 13a–16a) is reported at 205 A.D.3d 461, 168 N.Y.S.3d 53. The decision and order of the New York Supreme Court, Bronx County (App. 17a–26a) is not reported.

JURISDICTION

The judgment of the New York Court of Appeals was issued on November 21, 2023. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides in relevant part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ."

INTRODUCTION

Over forty years ago, this Court explained that "a plan embodying explicit, neutral limitations on the conduct of individual officers" is essential to adequately protect Fourth Amendment rights when the police conduct a suspicionless stop. *Brown v. Texas*, 443 U.S. 47, 51 (1979). In the intervening decades, this Court has decided numerous cases concerning the constitutionality of police roadblocks—a common exemplar of such suspicionless stops—and yet, courts across the country are deeply divided regarding what is required to make such stops "reasonable."

The conflict stems from a gap in this Court's precedents, which have focused on whether a roadblock has been set for a permissible purpose. We now know that a roadblock may be set to check for sobriety, for example, but not for general crime control. Left undecided by this Court, and now dividing the lower courts, however, is what additional guardrails need to accompany a roadblock—once it clears the permissible-purpose hurdle—"to safeguard the privacy and security of individuals against arbitrary invasions." *Delaware v. Prouse*, 440 U.S. 648, 653–54 (1979) (internal quotation marks omitted). In particular, courts are divided on what is required to satisfy this Court's directive that "an individual's reasonable expectation of privacy not be subject to arbitrary invasions solely at the unfettered discretion of officers in the field." *Brown*, 443 U.S. at 51.

Consistent with *Brown*'s teaching, most states require that the roadblock be planned by non-field officers. *See, e.g.*, *State v. Loyd*, 530 N.W.2d 708, 711 (Iowa

1995); *see also infra* at 12–13 (citing additional cases). In Florida, written guidelines are constitutionally required and such guidelines must "specify vehicle selection procedures, duty assignments, detention techniques, and procedures for the disposition of vehicles." *Campbell v. State*, 679 So. 2d 1168, 1170 (Fla. 1996). Many states have also held that there must be empirical data (or at least some objective rationale) supporting that the time and place of the roadblock would be effective in achieving law enforcement goals. *See, e.g.*, *State v. Groome*, 664 S.E.2d 460, 462 (S.C. 2008); *Ingersoll v. Palmer*, 743 P.2d 1299, 1314 (Cal. 1987).

Other states require far less. Maine and Mississippi, for example, do not require that roadblocks be planned by non-field officers. *See State v. Cloukey*, 486 A.2d 143, 146 (Me. 1985); *McLendon v. State*, 945 So. 2d 372, 382 (Miss. 2006). And states like Georgia and Vermont do not consider the selection of the roadblock's time and place in their constitutional analysis—arbitrary selection is just fine. *See McCoy v. State*, 814 S.E.2d 319, 322–23 (Ga. 2018); *State v. Williams*, 933 A.2d 239, 241–42 (Vt. 2007).

The New York Court of Appeals, in a split decision, has now deepened this divide, and set a problematically low bar for suspicionless searches that is irreconcilable with *Brown* and similar teachings. *See, e.g., Prouse*, 440 U.S. at 660 (invalidating a spot check where police officer "was not acting pursuant to any standards, guidelines, or procedures pertaining to document spot checks, promulgated by either his department or the State Attorney General").

The roadblock at issue was set in the Bronx following the Puerto Rican Day Parade. It was operated by members of an anti-crime unit of the NYPD for the supposed purpose of enforcing vehicle and traffic laws—*i.e.*, checking driver's licenses and registrations. The majority concluded that the roadblock was not arbitrary or discriminatory because every third car was stopped and because of the "reasonable inference" (found nowhere in the record) that the roadblock was scheduled for that day due to the heavy traffic.

The dissent (authored by Judge Caitlin Halligan, and joined by Chief Judge Rowan Wilson), would have held that the roadblock was unconstitutional because "the record does not adequately establish that the selection of the checkpoint's particular date and location would be effective in serving [the stated] objective, or that the checkpoint was properly authorized." App. 10a. The absence of such evidence, the dissent explained, violated the Supreme Court's instruction in *Brown* that suspicionless stops must advance the public interest and be administered in a way that sufficiently limits the discretion of officers in the field.

New York is now on the wrong side of an untenable split—at times devolving into abject confusion—among the states. This Court should grant certiorari and clarify the Fourth Amendment's operation in this crucial sphere. Without such intervention, there will be no uniformity among the states on an issue of national significance; a motorist's rights will depend on the state through which he is driving; and millions of New Yorkers and citizens of other states will be subjected to warrantless vehicular seizures that are

insufficiently constrained, violating their Fourth Amendment rights. Drivers beware.

STATEMENT OF THE CASE

1. Petitioner's car was stopped and searched at a police roadblock as he drove to the Bronx from the Puerto Rican Day Parade. App. 1a. After the police recovered a handgun and marijuana from the locked glove box, petitioner was arrested and indicted for criminal possession of a weapon and marijuana. App. 3a.

2. Petitioner moved to suppress the items recovered from his car on the grounds that the roadblock violated the Fourth Amendment. App. 22a.

The prosecution's sole witness at the suppression hearing was Detective Jeremy Veit of the New York Police Department ("NYPD"). At the time of the roadblock, Veit was a member of the NYPD Strategic Response Group, which was a plainclothes anti-crime unit deployed in areas of New York City with a spike in violent crime. App. 17a.

On June 14, 2015, Veit was assigned to the Puerto Rican Day Parade, operating a vehicle checkpoint on the bridge between Manhattan and the Bronx. App. 18a. Several other field officers joined the operation, including Sergeant Rosario, who was supervising. App. 41a. The officers were in uniform, had set up cones, and were stopping every third car supposedly to check for vehicle and traffic law ("VTL") violations—*i.e.*, checking driver's licenses, vehicle registrations, and seatbelts. App 41a–42a. This was not a

normal assignment for a member of the Strategic Response Group. App. 40a.

Veit did not testify as to who had planned the roadblock or who had authorized it. He did not explain why the roadblock had been set for after the Puerto Rican Day Parade or why it had been placed on the bridge to the Bronx. And he did not testify as to whether any non-field officers had known of the roadblock or whether any prior warning had been given to the drivers. App. 41a–42a.

Veit did not explain why the plan had been to stop every third car or whether that plan (supposedly executed by another officer) had been followed. He did not testify as to how many cars had been stopped, for how long they had been stopped, or how many had been searched. And he did not explain whether the officers discovered any VTL violations or made any other arrests that day. *Id.*

As to the stop itself, petitioner was driving a car which was pulled over at the checkpoint. App. 47a. A woman sat in the front and a man in the back. *Id.* Veit testified that although the car smelled of marijuana and alcohol and that the man in the back tried to conceal a bottle of liquor, he did not suspect that petitioner was driving under the influence. App. 47a–53a. After Veit directed the passengers out of the car, he found a bottle of vodka and a small "plastic twist" of marijuana on the floor of the front passenger seat. App. 50a. He then searched the rest of the car and found a firearm and marijuana in the locked glove

box. App. 51a. Petitioner and the two passengers were arrested.

There was no testimony from Sergeant Rosario, who supposedly supervised the operation; from Officer Banks, who was tasked with counting the cars and directing them to pull over; or from Officer Morell, who initially approached petitioner's vehicle with Veit. App 41a.

Ehtien Karell, the backseat passenger, was the only witness for the defense. He explained that it was not until petitioner drove onto the bridge to the Bronx that he noticed the police had set up a checkpoint. App. 92a. He testified that the car directly behind them, with a Latino driver, was pulled over, while the car directly in front, with an Asian driver, was not. App. 92a–94a. And he noted that the Latino man in the car behind them had been pulled out of his vehicle after being stopped, though his car did not appear to have been searched. App. 94a.

3. The trial court denied petitioner's motion to suppress. App. 26a. In so doing, the court stated that the "only requirement of a checkpoint stop is that the procedure followed by the police be uniform and not gratuitous or subject to individually discriminatory selection." App. 22a. The court concluded that Veit's testimony had satisfied the "elements of a valid checkpoint stop," because its primary purpose was roadway safety rather than crime control, it was "effective in advancing th[at] interest[], and . . . the degree of intrusion on a driver's liberty was minimal." App. 24a. The court also concluded that the roadblock was neither pretextual nor a product of racial profiling, explaining that while Karell testified that a Latino

driver directly behind him had been stopped, "Karell did not testify that he observed only Latino men being stopped." App. 24a.

4. In 2018, a jury convicted petitioner on all charges. The court sentenced him to 16 years to life in prison.

5. The Appellate Division upheld petitioner's conviction. As relevant here, the court concluded that "[t]he police testimony, and reasonable inferences to be drawn therefrom, were sufficient to satisfy the People's burden at the hearing of establishing the elements of a valid checkpoint stop." App. 14a. In so holding, the court found that "the primary purpose of the checkpoint was vehicular safety . . . rather than general crime control, that the checkpoint was effective in advancing th[at] interest[], [and] that the checkpoint . . . originated at a higher police supervisory level than the officers at the scene." *Id.* The court also concluded that "[t]he officer's testimony that the checkpoint stopped every third car satisfied the requirement that the procedure followed be uniform and not gratuitous or subject to individual selection." *Id.* (internal quotation marks omitted).

6. A divided New York Court of Appeals affirmed. As relevant here, the majority concluded that "the checkpoint was maintained in accordance with a uniform procedure that gave little discretion to operating personnel, i.e., every third car was stopped." App. 3a. The majority also made the "reasonable inference" that "the roadway safety checkpoint was chosen" to take place on the bridge to the Bronx following the Puerto Rican Day Parade not for any discriminatory purpose, but "because of the large volume of traffic

that would be crossing the bridge." App. 4a. The majority thus held that, while "[t]he People's evidentiary showing as to the authorization for the roadblock certainly could have been more robust[,] . . . the detective's testimony and the reasonable inferences to be drawn therefrom were sufficient, albeit barely, to satisfy the People's burden" to demonstrate the roadblock's constitutionality. *Id.*

Judge Halligan issued a dissent, joined by Chief Judge Wilson. The dissent explained that while "Detective Veit testified at the suppression hearing that the goal of the checkpoint was vehicular safety, which is a permissible primary programmatic purpose[,] . . . the record does not adequately establish that the selection of the checkpoint's particular date and location would be effective in serving that objective." App. 10a.

"More concerning" to the dissent was "the absence of any testimony regarding how the checkpoint was authorized." App. 11a. While Veit testified that he was "assigned" to the roadblock, the dissent concluded that "[t]o the extent any additional inference could have been drawn from Detective Veit's comments, it would stretch too far to ensure that officer discretion was sufficiently constrained for purposes of the Fourth Amendment." App. 11a–12a.

A third judge dissented on other grounds.

REASONS FOR GRANTING THE PETITION

I. Courts are deeply divided over how the Fourth Amendment applies to police roadblocks.

1. The Fourth Amendment requires that searches and seizures be reasonable. Although seizures are ordinarily unreasonable absent individualized suspicion of wrongdoing, "the Fourth Amendment imposes no irreducible requirement of such suspicion." *United States v. Martinez-Fuerte*, 428 U.S. 543, 561 (1976).

This Court has thus validated the suspicionless seizure of vehicles via roadblock for certain purposes. Police may set roadblocks to intercept illegal immigrants at the border, *id.*, identify drunk drivers, *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444, 455 (1990), or obtain information about a crime, *Illinois v. Lidster*, 540 U.S. 419, 426 (2004). This Court also has suggested—without holding—that police may set a roadblock to verify driver's licenses and vehicle registrations. *See Delaware v. Prouse*, 440 U.S. 648, 663 (1979). The police may not do so, however, for the purpose of general crime control. *See City of Indianapolis v. Edmond*, 531 U.S. 32, 41 (2000).

The power to seize Americans without any suspicion of wrongdoing is a significant one, inconsistent with the Fourth Amendment's basic command that the government cannot conduct a search or seizure without cause. As a result, this Court has imposed strict limits on the power to erect roadblocks. Even when a roadblock is established for a permissible purpose, its constitutionality "still depends on a balancing of the competing interests at stake and the

effectiveness of the program." *Id.* at 47. To balance these interests, this Court employs the test established in *Brown v. Texas*, 443 U.S. 47 (1979), which considers "the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty." *Lidster*, 540 U.S. at 427 (quoting *Brown*, 443 U.S. at 51).

2. This Court has never applied *Brown* to invalidate a roadblock that sought to serve a legitimate state purpose. As a result, the floor has not been set, and the requirements of *Brown* have been reduced to a guessing game. The states have had decades to fill the void and lay a solid foundation, and all but two have tried.[1] Yet nothing near a national consensus has emerged.

The disarray is demonstrated in part by the sheer number of tests developed to assess reasonableness under *Brown*. There are two-factor tests and there are thirteen-factor tests, and there is just about everything in between.[2] These are not just different

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[1] After exhaustive research, it appears that every state other than Nevada and Wyoming has confronted the issue of what constitutes a reasonable roadblock under the Fourth Amendment. While federal courts have also waded into the issue—and have similarly disagreed about the constitutional requirements—they have done so less often than their state-court counterparts and, as a result, their decisions are not the focus of this Petition.

[2] For a representative sample, *see, e.g.*, *Whalen v. State*, 500 S.W.3d 710, 714 (Ark. 2016) (two-factor test); *State v. Mikolinski*, 775 A.2d 274, 279 (Conn. 2001) (three-factor test); *McCoy v. State*, 814 S.E.2d 319, 322–23 (Ga. 2018) (four-factor test); *Com. v. Worthy*, 957 A.2d 720, 725 (Pa. 2008) (five-factor test);

paths to the same destination—they amount to different Fourth Amendment standards altogether.

3. One central divide exists over a simple question: who decides? Some states have upheld the constitutionality of roadblocks even when the roadblock at issue was planned by officers in the field. *See, e.g.*, *McLendon v. State*, 945 So. 2d 372, 382 (Miss. 2006) (upholding roadblock even though "there were no written guidelines or set procedures in place," since "the officers stopped every single vehicle which came through the roadblock"); *State v. Cloukey*, 486 A.2d 143, 146 (Me. 1985) ("We are not persuaded . . . that the relative absence of supervisory personnel in the planning stages of the roadblock renders it constitutionally unreasonable.").

Most states, however, require that the roadblock be designed and approved by some non-field officer "to reduce the potential for arbitrary and capricious enforcement." *Ingersoll v. Palmer*, 743 P.2d 1299, 1341–42 (Cal. 1987); *see also, e.g.*, *Whalen v. State*, 500 S.W.3d 710, 714 (Ark. 2016) ("[T]he decision to set up the roadblock in the first instance cannot have been made by the officer or officers actually establishing the checkpoint."); *State v. Piper*, 855 N.W.2d 1, 12 (Neb. 2014) (explaining that a roadblock is unconstitutional when "there was no plan formulated at the policymaking level"); *State v. Hilleshiem*, 291 N.W.2d 314, 318 (Iowa 1980) (requiring "a predetermination

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Lookingbill v. State, 157 P.3d 130, 136 (Okla. Crim. App. 2007) (six-factor test); *People v. Banks*, 863 P.2d 769, 773–74 (Cal. 1993) (eight-factor test); *State v. Jones*, 483 So. 2d 433, 439 (Fla. 1986) (twelve-factor test); *State v. Deskins*, 673 P.2d 1174, 1185 (Kan. 1983) (thirteen-factor test).

by policy-making administrative officers of the roadblock location, time, and procedures to be employed").

Florida takes things a step further by interpreting the Fourth Amendment to require written supervisory guidelines, which must "specify vehicle selection procedures, duty assignments, detention techniques, and procedures for the disposition of vehicles." *Campbell v. State*, 679 So. 2d 1168, 1170 (Fla. 1996). The written requirement is meant to "ensure that the police do not act with unbridled discretion in exercising the power to stop and restrain citizens who have manifested no conduct that would otherwise justify an intrusion on a citizen's liberty." *Id.* at 1172.

4. Aside from the who, states are also split on the when and the where. Many states have held that there must be empirical data (or at least some objective rationale) supporting that the time and place of the roadblock would be effective in achieving law enforcement goals. *See, e.g.*, *State v. Groome*, 664 S.E.2d 460, 462 (S.C. 2008) (explaining that *Sitz* "retains the requirement that the State produce empirical data to support the effectiveness of its roadblock"); *Ingersoll v. Palmer*, 743 P.2d 1299, 1314 (Cal. 1987) ("The sites chosen should be those which will be most effective in achieving the governmental interest; i.e., on roads having a high incidence of alcohol related accidents and/or arrests.").

For other states, the time and place of the roadblock are not factors that fall within the constitutional analysis. *See, e.g.*, *McCoy v. State*, 814 S.E.2d 319, 322–23 (Ga. 2018) (four-factor test that does not consider the roadblock's time or place); *State v. Williams*, 933 A.2d 239, 241–42 (Vt. 2007) (six-factor test that

does not consider the roadblock's time or place). The police in these states can, without providing a reasonable justification, set up a roadblock down the street from a house of worship, a place of a planned protest, or the office of a political opponent; it is all fair game.

5. Additional factors considered by some states (but not by others) include the time and duration of the roadblock, advance notice to the public at large, advance warning to the approaching motorists, and the average length of time each motorist is detained. *Compare State v. Deskins*, 673 P.2d 1174, 1185 (Kan. 1983) (considering thirteen factors in evaluating roadblock constitutionality), *with Whalen v. State*, 500 S.W.3d 710, 714 (Ark. 2016) (focusing on two factors related to whether field officer discretion was properly limited).

6. As a result, the Fourth Amendment now applies inconsistently and inequitably among the states. Law enforcement officers in one state may be permitted to intrude on a person's liberty interests in ways that would be strictly prohibited just a few miles down the road. After decades of this experiment, states are no closer to resolving their differences. This Court's review is needed.

II. The decision of the New York Court of Appeals is incorrect and irreconcilable with this Court's guidance.

The widespread disagreement over how the Fourth Amendment applies to police roadblocks is reason enough to grant certiorari. The indefensibility of the New York Court of Appeals' holding on this

issue, in light of this Court's precedent, provides further grounds for review.

1. The roadblock here was set up on a bridge to the Bronx following the Puerto Rican Day Parade. The supposed purpose of the roadblock was to promote vehicular safety, which included checking for valid driver's licenses and vehicle registrations. The officers planned to stop every third car in pursuit of that purpose. No other guidelines for the roadblock were set out in the record. And yet, the New York Court of Appeals upheld the roadblock, concluding that "the detective's testimony and the reasonable inferences to be drawn therefrom were sufficient, *albeit barely*, to satisfy the People's burden" to demonstrate the roadblock's constitutionality. App. 4a (emphasis added).

2. The New York Court of Appeals got it wrong. The roadblock at issue violated the Fourth Amendment by failing to conform to the requirement that a suspicionless seizure "be carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers." *Brown*, 443 U.S. at 51.

To start, the record is devoid of any testimony indicating how, or by whom, the roadblock was planned or approved. The sole witness for the People was the arresting officer, who was a member of an anti-crime unit of the NYPD. That officer did not explain who designed the roadblock or who assigned him and the other officers to execute it. The officer also failed to explain whether any standards had been established with respect to the duration of the roadblock, the

number of cars to be stopped, the length of each stop, or the questions to be asked of each driver.

The only limit on officer discretion was the supposed plan to stop every third car. New York courts determined that this alone was sufficient to constrain officer discretion as required by the Fourth Amendment. In its decision, the trial court explained that "[t]he *only* requirement of a check point stop is that the procedure followed by the police be uniform and not gratuitous or subject to individually discriminatory selection." App. 22a (emphasis added). The Appellate Division and Court of Appeals affirmed on similar grounds. There was no need to establish who planned the roadblock or who ultimately approved it.

These rulings run afoul of this Court's precedents. In *Martinez-Fuerte*, for example, this Court allowed warrantless checkpoints only after reasoning that "the need for [such warrants] is reduced when the decision to 'seize' is not entirely in the hands of the officer in the field." 428 U.S. at 566. In so holding, this Court explained that "deference is to be given to the administrative decisions of higher ranking officials," *Id.*, who are "responsible for making overall decisions as to the most effective allocation of limited enforcement resources," and who would thus "be unlikely to locate a checkpoint where it bears arbitrarily or oppressively on motorists as a class." *Id.* at 559.

Higher ranking officials did not, by contrast, plan the spot check at issue in *Prouse*. There, this Court explained that the police officer "was not acting pursuant to any standards, guidelines, or procedures pertaining to document spot checks, promulgated by either his department or the State Attorney General."

440 U.S. at 650. This Court thus invalidated the stop at issue in that case, holding that "persons in automobiles on public roadways may not for that reason alone have their travel and privacy interfered with at the unbridled discretion of police officers." *Id.* at 663.

The importance of supervisory planning and approval is clear when viewed in light of "the central concern of the Fourth Amendment," which "is to protect liberty and privacy from arbitrary and oppressive interference by government officials." *United States v. Ortiz*, 422 U.S. 891, 895 (1975). This central concern exists not only insofar as field officers might arbitrarily select individual drivers to be stopped, but also insofar as the officers might arbitrarily select *the pool* from which the drivers will be plucked. Here, the pool of drivers skewed heavily toward the (obvious) group of people who might be going from Manhattan to the Bronx after the Puerto Rican Day Parade. Supervisory planning and approval reduces the likelihood both of arbitrary and discriminatory intrusions, and provides a measure of accountability should either occur.

3. Even if supervisors had planned and approved the roadblock, it would still be unconstitutional given the state's failure to explain why the roadblock had been set where and when it was—on a bridge to the Bronx on the day of the Puerto Rican Day Parade. The testifying officer explained that the purpose of the roadblock was to ensure vehicular safety; but, as Judge Halligan noted in dissent, "the record does not adequately establish that the selection of the

checkpoint's particular date and location would be effective in serving that objective." App. 10a.

The absence of such evidence makes it impossible to satisfy the second *Brown* factor, which concerns the degree to which the stop advances the public interest. This Court has never approved of a roadblock in the absence of a pre-established justification for the roadblock's location, coupled with an objective rationale for why that location might advance the stated interests of law enforcement.[3] Otherwise random stops would proliferate, resulting in just the sort of arbitrary seizures the Fourth Amendment was designed to eliminate. *See Edmond*, 531 U.S. at 56 (Thomas, J., dissenting) ("I rather doubt that the Framers of the Fourth Amendment would have considered 'reasonable' a program of indiscriminate stops of individuals not suspected of wrongdoing."). Indeed, going down the long list of factors states have considered in

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[3] *See Martinez-Fuerte*, 428 U.S. at 553 (noting that "the locations of [the permanent checkpoints] are chosen on the basis of a number of factors" which "[t]he Border Patrol believes [are needed] to assure effectiveness"); *Lidster*, 540 U.S. at 426 ("The police appropriately tailored their checkpoint stops to fit important criminal investigatory needs. The stops took place about one week after the hit-and-run accident, on the same highway near the location of the accident, and at about the same time of night."); *see also Sitz*, 496 U.S. at 464 n.5 (Stevens, J.) (dissenting) ("The Michigan plan provides that locations should be selected after consideration of 'previous alcohol and drug experience per time of day and day of week as identified by arrests and/or Michigan Accident Location Index data.'").

assessing reasonableness, just about every one of them was wanting in this case.

4. As a result, police officers in New York can now establish a roadblock at any time and at any place, without it being planned or approved by a supervising officer, and without data or objective rationale supporting that the time and place of the roadblock would be effective in achieving law enforcement goals. This will all be permissible so long the police claim a uniform method for selecting the drivers to be stopped.

This decision, in sum, weakens the cherished liberty interests that the Fourth Amendment is meant to protect, and inflicts constitutional harm on the countless New Yorkers whose privacy rights have been (or stand to be) invaded. For Pablo Pastrana, eight years into a potential life sentence, the injury is especially acute.

III. The question presented is important and this case presents an ideal vehicle for deciding it.

1. The question presented implicates recurring issues of national significance. Police officers across the country operate roadblocks every day, resulting in a steady stream of Fourth Amendment cases in lower courts throughout the country. This has been happening for decades, yet nothing close to a national standard has emerged as to the constitutional requirements for such roadblocks. For this reason alone, the question is an important one for this Court to address. If it does not, constitutional protections will continue to be offered inequitably among the states, and millions of citizens (from New York and elsewhere) will

continue to be subject to seizures that do not accord with the Fourth Amendment.

2. This case presents the ideal vehicle for this Court to address the question presented and resolve the divide and confusion among courts across the country. This case comes to this Court on direct appeal and free of any procedural constraints. The question presented was raised and considered at every stage of the proceedings: the suppression hearing (App. 17a–26a); the appellate division (App. 13a–16a); and the Court of Appeals (App. 1a–12a). It is thus properly presented for this Court's review.

This case also falls squarely on the wrong side of related splits among the lower courts, as it permits suspicionless roadblock stops absent supervisory planning or approval, or any objective rationale supporting that the time and place of the roadblock would be effective in achieving law enforcement goals. Resolving this case will thus resolve confusion among the states, strengthening Fourth Amendment rights across the nation. There will be no better vehicle to do so.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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