No. _____

In the Supreme Court of the United States

PEOPLE OF THE STATE OF MICHIGAN, PETITIONER

v.

DAVID ALLAN LUCYNSKI

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Do all unreasonable mistakes of law by the police constitute deliberate, reckless, or grossly negligent conduct requiring suppression of probative evidence?

PARTIES TO THE PROCEEDING

Petitioner is the State of Michigan. Respondent is David Allan Lucynski.

RELATED CASES

- Michigan Court of Appeals, *People* v. *Lucynski*, No. 353646, Opinion issued December 17, 2020 (holding that no seizure occurred).

- Michigan Supreme Court, *People* v. *Lucynski*, No. 162833, Opinion issued July 26, 2022 (reversing and remanding).

- Michigan Court of Appeals, *People* v. *Lucynski*, No. 353646, Opinion issued April 27, 2023 (on remand, finding exclusion of evidence not required).

- Michigan Supreme Court, *People* v. *Lucynski*, No. 165806, Order issued July 26, 2024 (reversing the Michigan Court of Appeals' holding on suppression).

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JURISDICTION

The judgment of the Michigan Supreme Court was rendered July 26, 2024. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution, U.S. Const. amend. IV, provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

INTRODUCTION

The Michigan Supreme Court ran afoul of this Court's precedent when it held that, when an officer makes an unreasonable mistake of law, any evidence gleaned as a result of that mistake must automatically be excluded from evidence.

Before the encounter between Respondent David Lucynski and law enforcement, the officer had witnessed Lucynski's vehicle sitting in the middle of the road alongside another vehicle in a rural part of Michigan with no other vehicles present. The officer believed that Lucynski was impeding traffic under Michigan's traffic laws, see Mich. Comp. Laws § 257.676b ("shall not block, obstruct, impede, or otherwise interfere with the normal flow of vehicular, streetcar, or pedestrian traffic"), and followed him before Lucynski pulled into a friend's driveway.

The Michigan Supreme Court concluded that in order for this statute to apply, "some traffic must have actually been disrupted or blocked." Pet. App. 69a. It also determined that the officer's mistake was not objectively reasonable. Pet. App. 73a. In a subsequent order, the court ruled "that a seizure based on an officer's *unreasonable* interpretation of the law warrants application of the exclusionary rule," Pet. App. 6a (emphasis in original), creating a rule of automatic exclusion of evidence premised on an unreasonable mistake of law.

But from *Mapp* v. *Ohio*, 367 U.S. 643 (1961), through the more recent series of exclusionary rule decisions, this Court has suppressed evidence only for egregious police misconduct, not for isolated instances

of negligence. The idea that every unreasonable mistake of law made by a police officer necessarily constitutes "deliberate, reckless, or grossly negligent conduct" requiring suppression of evidence conflicts with this Court's case-specific analysis designed to effectuate the sole purpose of the exclusionary rule—deterrence of future police misconduct. *Herring* v. *United States*, 555 U.S. 135, 144 (2009). The Michigan Supreme Court's one-size-fits-all approach runs contrary to this Court's precedent. And the errant approach is particularly off-target here, where the same interpretation of the law from Deputy Robinson was adopted by the Michigan Court of Appeals 20 years earlier, albeit in an unpublished opinion. The suggestion that a police officer needs to know better than state appellate court judges or is otherwise in need of correction by the exclusionary rule misses the mark.

Unfortunately, several appellate courts align with the Michigan Supreme Court's misunderstanding, even as others faithfully follow this Court's precedent. The mistake below warrants this Court's review.

STATEMENT OF THE CASE

The petition raises the question whether the officer's mistake of law about whether the driver had impeded traffic required suppression of the evidence of drunk driving under the Fourth Amendment. The district court at the preliminary examination dismissed the drunk driving charge after suppressing the evidence of this crime that it determined was obtained as a violation of the Fourth Amendment. After two decisions of Michigan's intermediate court reinstating the charge in 2020 and 2023 on different grounds, the Michigan Supreme Court in 2022 and 2024 reversed both decisions. In the latter order, the Michigan Supreme Court remanded to the lower courts, although there is nothing left to do but to dismiss the drunk driving charge.

The facts underlying the seizure and suppression decisions.

On the morning of January 20, 2020, Tuscola County Sheriff Deputy Ryan Robinson, while on patrol, saw two vehicles stopped in the middle of a dirt road, driver's-side to driver's-side, in a rural township in northern Michigan. Pet. App. 45a. From about 800 feet away, Deputy Robinson saw that the two drivers appeared to be talking to one another, and he thought it might have been a drug transaction. Pet. App. 45a. There were no other vehicles in the vicinity. Pet. App. 45a. With the intention of stopping Lucynski for impeding traffic, Deputy Robinson followed Lucynski in his marked patrol vehicle for about 300 to 400 feet and did not turn on his lights or signal for Lucynski to pull over. Pet. App. 98a.

While being followed by Deputy Robinson, Lucynski turned into a private driveway and parked; only a single-lane of the driveway was cleared of snow. Pet. App. 45a. Deputy Robinson pulled his marked police vehicle into the driveway and "parked a few feet behind [Lucynski's] car in the single-lane driveway," which thus "blocked" in Lucynski. Pet. App. 61a. Lucynski had already alighted from his vehicle, and he was "standing next to the driver's side door" of his car "as Robinson emerged from his patrol car." Pet. App. 61a.

When Deputy Robinson approached Lucynski, he immediately asked Lucynski whether he lived there, and as Lucynski walked toward the deputy he responded that it was a friend's house. Pet. App. 46a. The Michigan Supreme Court noted that the body-camera footage of the encounter was introduced at the preliminary examination, and summarized the questions and actions that Deputy Robinson took when he encountered Lucynski as follows:

- "Robinson immediately asked whether [Lucynski] lived there, and [Lucynski] responded that it was a friend's house as he walked toward the deputy."

- "Robinson asked what [Lucynski] was doing on the road, to which [he] replied, 'Just talking about fishing.' "

- "[Lucynski] had moved to put his hands in his pockets, and Robinson ordered him not to do so; [Lucynski] complied with the directive."

- "Robinson then said, 'I didn't know if maybe there was a drug deal going on, and that when I ran the plate it [came] back to' an address in Reese, Michigan. [Lucynski] denied any drug transaction and said that Reese was where he lived and that he worked just up the road."

- "After confirming the name of the homeowner, Robinson asked [Lucynski] if [he] had his driver's license, to which [he] replied in the negative."

- "[U]pon Robinson's further questioning, [Lucynski] responded that he did not have a valid driver's license."

Pet. App. 46a. This all transpired within two minutes of Deputy Robinson pulling into the driveway. Pet. App. 46a. Lucynski eventually admitted that his license was suspended. Pet. App. 99a.

Regarding the possible impeding traffic citation, Deputy Robinson explained that he smelled marijuana and alcohol coming from Lucynski and noticed that he had blood shot eyes, so he investigated whether Lucynski was intoxicated. Pet. App. 46a–47a. Lucynski admitted to having smoked marijuana about 20 minutes earlier and to consuming alcohol during the day. Pet. App. 47a. At that point, Lucynski consented to a search of his vehicle, where Deputy Robinson found marijuana and an open alcohol container. Pet. App. 46a–47a. Deputy Robinson then administered field sobriety tests, which resulted in Lucynski's arrest; after being arrested, Lucynski agreed to a breath test and a blood draw. Pet. App. 46a–47a.

The district court dismisses the charges.

Lucynski was charged with (1) operating while intoxicated, third offense; (2) driving with license suspended, second offense; and (3) possession or transportation of an open alcoholic container in a vehicle. Pet. App. 47a. At the preliminary examination, Deputy Robinson testified, and his body-camera was admitted. The district court dismissed the felony charge of operating while intoxicated, finding that the deputy lacked probable cause or reasonable suspicion to effect a stop because Michigan's law on impeding traffic requires "real, not imagined, traffic." Pet. App. 48a, 122a. The court ruled that all evidence found as a result of the stop, including evidence related to the misdemeanor charges, was suppressed. Pet. App. 122a.

The appellate court decisions ultimately affirm the district court decision.

The prosecution sought leave to appeal to the county circuit court, which denied leave. Pet. App. 48a, 111a–112a. On further appeal by the prosecution, the intermediate appellate court granted leave, raising the issue whether there was a seizure in the first place. Pet. App. 49a, n.3. In its 2020 opinion, the Michigan Court of Appeals noted that that "[w]hen an officer approaches a person and seeks voluntary cooperation through noncoercive questioning, there is no restraint on that person's liberty, and the person is not seized." Pet. App. 104a. The court concluded that "the earliest that the Fourth Amendment was implicated was when Lucynski admitted that he did not have a driver's license, which is when a reasonable person in Lucynski's position might have concluded that he was not free to leave." Pet. App. 106a.

Lucynski appealed, and the Michigan Supreme Court reversed. The court found that Lucynski "was seized when the police blocked the only path of egress from a driveway using a marked police vehicle." Pet. App. 53a. The court further found that the impeding-traffic statute required "actual interference with the normal flow of traffic," Pet. App. 66a, and that the belief of the Deputy Robinson to the contrary was not a reasonable mistake of law, Pet. App. 70a. The court remanded to the Michigan Court of Appeals to determine if the evidence obtained should be excluded. Pet. App. 78a–79a.

On remand in 2023, the Michigan Court of Appeals found that it should not, concluding that "Deputy Robinson did not demonstrate any deliberate, reckless, or grossly negligent conduct." Pet. App. 40a.

But on July 26, 2024, the Michigan Supreme Court again reversed in an order holding that "[u]sing an unreasonable reading of the law to justify a traffic stop is the sort of misconduct that the exclusionary rule is designed to deter." Pet. App. 8a. It then remanded the matter to the lower court. Pet. App. 9a.[1]

The People of the State seek certiorari.

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[1] One might ask how it is that the police pulling behind Lucynski's vehicle in a single-lane driveway, without lights or siren, as any citizen might have done, constitutes a seizure, or how the mistake of law here could be considered unreasonable. But the State does not seek this Court's review of those decisions. It seeks review of the Michigan Supreme Court's holding that a Fourth Amendment violation caused by an unreasonable mistake of law automatically requires suppression of evidence.

REASONS FOR GRANTING THE PETITION

I. Certiorari is warranted to resolve whether evidence obtained as a result of an unreasonable mistake of law by the police must be suppressed even if the police did not engage in deliberate, reckless, or grossly negligent conduct.

When a seizure violates the Fourth Amendment, the question then is whether evidence seized should be excluded. Indeed, "[t]he question whether the exclusionary rule's remedy is appropriate in a particular context has long been regarded as an issue separate from . . . whether the Fourth Amendment rights of the party seeking to invoke the rule were violated by police conduct." *Arizona* v. *Evans*, 514 U.S. 1, 10 (1995) (quoting *Illinois* v. *Gates*, 462 U.S. 213, 223 (1983)).

Even where an officer makes a mistake of law that is *unreasonable* and the Fourth Amendment is violated, "exclusion of evidence does not automatically follow." See *United States* v. *Nicholson*, 721 F.3d 1236, 1256 (10th Cir. 2013) (Gorsuch, J., dissenting). This Court's application of the exclusionary rule has not set a bright-line standard as to when an unreasonable mistake warrants exclusion of evidence seized as a result. Rather, this Court's precedent requires an inquiry that considers both the nature of the police conduct at issue and whether deterrence of that conduct is worth the high price of exclusion. In particular, the Court has made clear that "the exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct," *Herring* v. *United States*, 555 U.S. 135, 145 (2009), not "simple, isolated negligence," *Davis* v. *United States*, 564 U.S. 229, 238 (2011) (cleaned up).

The Michigan Supreme Court's automatic rule—imposing the reflexive sanction of exclusion whenever an officer's mistake of law is deemed unreasonable—cuts out that individual inquiry and thus stands in stark contrast to this Court's approach. And it deepens an existing split of authority where a contingent of courts has resisted this Court's precedent. This Court should grant the petition to correct the Michigan Supreme Court's erroneous understanding and to resolve the split of authority as to whether and how to impose the sanction of exclusion.

A. The Michigan Supreme Court's bright-line rule requiring suppression whenever an officer makes an unreasonable mistake of law conflicts with this Court's precedent.

This Court's touchstone is whether exclusion of evidence consequent to a Fourth Amendment violation would aid in deterrence of police misconduct. A consistent series of decisions makes clear that there is no one-size-fits-all rule for whether unreasonable police mistakes in a given case rise to the level of misconduct necessitating application of the exclusionary rule.

The Michigan Supreme Court's contrary approach—an approach already adopted by other courts—creates an automatic exclusionary rule, eschewing the specific analysis necessary to determine whether an officer's conduct warrants the deterrent sanction of excluding evidence. Had the court correctly followed this Court's direction here, the evidence would not have been suppressed.

1. This Court's decisions call for a case-by-case analysis of whether an officer's conduct was egregious and therefore warrants suppression.

As this Court has explained "time and again," "the *sole* purpose of the exclusionary rule is to deter misconduct by law enforcement." *Davis*, 564 U.S. at 246 (emphasis in original). To that end, exclusion "has always been [a] last resort, not [a] first impulse." *Utah* v. *Strieff*, 579 U.S. 232, 237 (2016) (quoting *Hudson* v. *Michigan*, 547 U.S. 586, 591 (2006)). The exclusionary rule is not "an individual right," and its imposition is always linked to the necessity of "appreciable deterrence" under the circumstances—to discourage "violations in the future," *Herring*, 555 U.S. at 141 (citation omitted), and to "compel respect for the constitutional guaranty," *Davis*, 564 U.S. at 236 (quoting *Elkins* v. *United States*, 364 U.S. 206, 217 (1960)).

Exclusion of evidence is not to be lightly handed out. That is because the "bitter pill" of exclusion "requires courts to ignore reliable, trustworthy evidence bearing on guilt or innocence," compromising the essential truth-seeking function of the courts. *Id*. at 237. "The rule's costly toll upon truth-seeking and law enforcement objectives presents a high obstacle for those urging its application." *Herring*, 555 U.S. at 141 (cleaned up).

This high obstacle is linked to the deliberateness and culpability of the specific officer's conduct and the concomitant need to discourage law enforcement from acting similarly. Case-by-case scrutiny, not "indiscriminate application," *Hudson*, 547 U.S. at 591 (cleaned up), is the mode of review repeatedly called

for by this Court. Indeed, this Court had stated that "*an assessment of the flagrancy* of the police misconduct" is an "important step in the calculus." *Herring*, 555 U.S. at 143 (emphasis added) (quoting *United States* v. *Leon*, 468 U.S. 897, 911 (1984). In a nutshell,

> [t]o trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system. As laid out in our cases, *the exclusionary rule serves to deter deliberate*, *reckless*, *or grossly negligent conduct*, *or in some circumstances recurring or systemic negligence.*

Id. at 144 (emphasis added).[2]

Herring discussed some of this Court's prior cases that warranted suppression. This Court recounted the police misconduct in *Weeks* v. *United States*, 232 U.S. 383 (1914),[3] where "the officers had broken into the defendant's home (using a key shown to them by a

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[2] While *Herring* concerned a police officer's mistake of fact and this case concerns a mistake of law, *Herring* did not limit application of its test to mistake-of-fact cases, instead speaking broadly about "mistaken assumptions," 555 U.S. at 139, and emphasizing that "when police mistakes are the result of negligence such as that described here," the existence of "marginal deterrence does not warrant exclusion of evidence obtained," *id.* at 147. See also *Heien* v. *North Carolina*, 574 U.S. 54, 61 (2014) ("Reasonable suspicion arises from the combination of an officer's understanding of the facts and his understanding of the relevant law. The officer may be reasonably mistaken on either ground.").

[3] *Overruled in part by Elkins* v. *United States*, 364 U.S. 206 (1960).

neighbor), confiscated incriminating papers, then returned again with a U.S. Marshal to confiscate even more." *Herring*, 555 U.S. at 143–44 (citing *Weeks*, 232 U.S. at 386). And the officers "were so lacking in sworn and particularized information" that a warrant would have been obviously deficient. *Id.* (citing *Weeks*, 232 U.S. at 393–94). Likewise, this Court held up as a paradigm warranting suppression the police conduct in *Mapp* v. *Ohio*, 367 U.S. 643 (1961), where "[o]fficers forced open a door to Ms. Mapp's house, kept her lawyer from entering, brandished what the court concluded was a false warrant, then forced her into handcuffs and canvassed the house for obscenity." *Herring*, 555 U.S. at 144 (citing *Mapp*, 367 U.S. at 644–45). Cases involving "nonrecurring and attenuated negligence," this Court emphasized, are "far removed" from misconduct like that in *Weeks* and *Mapp*. *Id.*

Then-judge Gorsuch in dissent in *United States* v. *Nicholson* pointed to the "new culpability framework" laid out in *Herring*, 555 U.S. at 129, 141. He viewed the nonculpable state of "simple, isolated" negligence mentioned there as mostly likely referring to " 'simple' (or ordinary) negligence that doesn't occur very often (and so in this sense is 'isolated')." *Nicholson*, 721 F.3d at 1257 (Gorsuch, J., dissenting).

And more recently, the Sixth Circuit in *United States* v. *Marsh* found that "[t]he officers' mistake of law was objectively reasonable, so the traffic stop of Marsh's vehicle did not violate the Fourth Amendment." 95 F.4th 464, 470 (6th Cir. 2024). Judge Murphy, concurring, noted that "[e]ven if the officers violated the Fourth Amendment by unreasonably interpreting Tennessee law, one might wonder whether

exclusion of this evidence would provide the proper remedy—a '*distinct issue*.'. . . The question whether the officers in this case unreasonably—that is, negligently—interpreted Tennessee's left-turn law is a difficult one. But a finding that the officers acted negligently generally would not suffice to exclude the evidence that they uncovered. . . . I see no reason why the basic 'culpability' framework that the Court has used in its recent exclusionary-rule cases should not extend to an officer's interpretation of the law." *Id.* at 474–75 (Murphy, J., concurring) (emphasis added).

In short, the idea that "police negligence *automatically triggers* suppression cannot be squared with the principles underlying the exclusionary rule." *Herring*, 555 U.S. at 147 (emphasis added).

2. The Michigan Supreme Court created a bright-line rule inconsistent with this Court's approach.

In the face of this Court's plain requirement of "an assessment of flagrancy," *Herring*, 555 U.S. at 143, and denouncement of "automatic[ ] triggers," *id.* at 147, and "indiscriminate application" of the exclusionary rule, *Hudson*, 547 U.S. at 591, the Michigan Supreme Court contravened this Court's precedent.

The court below did not mince words in concluding "that a seizure based on an officer's unreasonable interpretation of the law warrants application of the exclusionary rule," Pet. App. 6a (emphasis omitted), and in emphasizing that "the Fourth Amendment cannot excuse an unreasonable mistake of law," Pet. App. 6a. The court established a bright-line rule that any and

all unreasonable mistakes of law require exclusion of any evidence without further inquiry regarding the appropriateness of that sanction.

That bright-line rule cannot be squared with this Court's precedent, which requires that the challenged police conduct be "sufficiently deliberate" and "sufficiently culpable" to warrant the exclusion of evidence in order to "deter deliberate, reckless, or grossly negligent conduct." *Herring*, 555 U.S. at 144; see also *Hudson*, 547 U.S. at 591 (decrying "indiscriminate application" of the exclusionary rule); *Davis*, 564 U.S. at 238 ("We abandoned the old, 'reflexive' application of the doctrine."). The dissent below rightly pointed out that the majority's "categorical application of the exclusionary rule for conduct that does not warrant that remedy, [stands] in contradiction to current Supreme Court caselaw." Pet. App. 14a (Zahra, J., dissenting); see also Pet. App. 21a (Zahra, J., dissenting) ("[A] majority of the Court in this case has simply disregarded the United States Supreme Court's precedent regarding the exclusionary rule . . . .").

Not only does the Michigan Supreme Court's automatic rule fail to heed this Court's consistent refrain, the one-size-fits-all approach would effectively equate the egregious misconduct from *Weeks* and *Mapp* to all circumstances in which a police officer acted on what a court later determined was an unreasonable understanding of the law. But as this Court cautioned, the flagrant police action in those cases is decidedly different from mere "nonrecurring and attenuated negligence." *Herring*, 555 U.S. at 144 (citing *Mapp*, 367 U.S. at 644–45). The dissent below correctly observed that the majority's bright-line rule

"equates all unreasonable mistakes of law with police misconduct that is 'deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence.' " Pet. App. 13a, n.12 (Zahra, J., dissenting) (quoting *Herring*, 555 U.S. at 144). This is directly contrary to the deterrent principles that undergird application of the exclusionary rule.

3. The officer's conduct was not "deliberate, reckless, or grossly negligent."

The Michigan Supreme Court's analytical error led to its erroneous conclusion. Several aspects of the case highlight that there was no "deliberate, reckless, or grossly negligent conduct" warranting application of the exclusionary rule. *Herring*, 555 U.S. at 144.

First, roughly two decades before the proceedings in this case, a unanimous Michigan Court of Appeals panel had issued an opinion that understood the statute *just as Deputy Robinson had*. In a non-binding opinion, the Michigan Court of Appeals had held that the impeding-traffic statute "did not require a showing of an actual impediment to the smooth flow of traffic in order to establish a violation of the statute." *People* v. *Salters*, No. 215396, 2001 WL 765852, at *2 (Mich. Ct. App. Jan. 26, 2001), abrogated by *People* v. *Lucynski*, 983 N.W.2d 827 (Mich. 2022).

In the face of this existing, 20-year-old reading by three members of Michigan's appellate judiciary, the Michigan Supreme Court nevertheless held that

Deputy Robinson's understanding of the statute was "unreasonable." While this is remarkable, so be it.[4]

But was the officer's mistake any more than, at most, negligent? In the well-trod arena of tort law, the black-letter concept of unreasonableness is directly tied to basic negligence, not some more culpable action. See, e.g., *Moning* v. *Alfono*, 254 N.W.2d 759, 762 (Mich. 1977) ("Negligence is conduct involving an unreasonable risk of harm."). And this Court's precedent recognizes the space between the negligent and the flagrant. See *Herring*, 555 U.S. at 145 (recounting *Franks* v. *Delaware*, 438 U.S. 154 (1978), in which "police negligence in obtaining a warrant did not even rise to the level of a Fourth Amendment violation, let alone meet the more stringent test for triggering the

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[4] Throughout state court proceedings, the People strongly contested the idea that the deputy's understanding of Michigan Compiled Laws § 257.676b(1) was unreasonable. In deference to a proper presentation of the jurisprudential significance of the question presented, the People do not contest that holding by the Michigan Supreme Court for purposes of this petition, even though the finding of unreasonableness is dubious, at best. Justice Kagan's concurring opinion in *Heien* asserted that "the test" of whether an officer's understanding is unreasonable is "when the law at issue is 'so doubtful in construction' that a reasonable judge could agree with the officer's view." 574 U.S. at 70 (Kagan, J., concurring) (quoting *The Friendship*, 9 F. Cas. 825, 826 (C.C.D. Mass. 1812) (No. 5,125)). Here, three seasoned judges of the Michigan Court of Appeals, all of whom served as trial judges prior to their service as appellate judges, unanimously agreed with the officer's view. *Lucynski*, 983 N.W.2d at 854 (citing *People* v. *Salters*, No. 215396, 2001 WL 765852, at *2 (Mich. Ct. App. Jan. 26, 2001) (unpublished)). One wonders how Deputy Robinson would have been on firmer legal ground, per the majority below, if he had disagreed with or disregarded a unanimous (though non-binding) state appellate court decision.

exclusionary rule"). This Court requires more than simple negligence—needing a showing of "deliberate, reckless, or grossly negligent conduct." *Herring*, 555 U.S. at 144.

The Michigan Supreme Court majority opinion asserted that its ruling will deter officers from operating under an incorrect understanding of the law. Pet. App. 4a–6a. This reasoning is curious given the existence of an intermediate appellate court's decades-old interpretation matching Deputy Robinson's understanding. In the absence of a published appellate opinion or an opinion from a state's highest court, should we not *encourage* law enforcement officers to follow unanimous (even if nonbinding) decisions of state appellate courts, rather than encourage novel statutory readings in the hope that a future binding decision will ratify that understanding? As the dissent below put it, "the unpublished Court of Appeals opinion justif[ied] Robinson's understanding at least with regard to whether Robinson's conduct was so insolent and flagrant that the evidence obtained in his encounter with defendant should be subject to exclusion." Pet. App. 24a (Zahra, J., dissenting). That Deputy Robinson's understanding was wrong, or even, as the Michigan Supreme Court found, unreasonable, suggests only that Deputy Robinson is not a trained lawyer with a better understanding of the criminal law than three appellate judges. It does not mean he acted with the culpability that necessitates excluding evidence.

Second, the deputy's conduct on the day in question does not evidence egregious police misconduct. To the contrary, it evidences no misconduct whatsoever. Deputy Robinson "observed two cars stopped in the

middle of the road," with the drivers appearing to be talking to each other out of their driver's side windows, Pet. App. 45a, an unusual enough instance to raise a conscientious officer's antennae. Deputy Robinson followed one of the vehicles, with the stated intent to stop the driver "for impeding traffic." Pet. App. 45a. He followed Lucynski's vehicle, which soon turned onto a single-lane driveway, and parked his police cruiser in it, behind Lucynski. Pet. App. 45a. Within a few minutes—through a series of questions that Lucynski readily answered, captured on Deputy Robinson's activated body camera—Deputy Robinson learned that Lucynski did not live there, did not have a valid driver's license, and had both smoked marijuana minutes before and consumed alcohol that morning. Pet. App. 46a.

What Deputy Robinson did not do: break into someone's house, bar an attorney from their client, rely on a false warrant, *Herring*, 555 U.S. at 143–44 (recounting *Weeks*, 232 U.S. at 386, and *Mapp*, 367 U.S. 644–45), or otherwise engage in aggressive or unwarranted tactics that might suggest "intentional or culpable" conduct, *id*. at 144. Ultimately, a faithful application of this Court's exclusionary rule precedent to Deputy Robinson's conduct would have yielded a different result. The initial dissent aptly characterized the conduct of Deputy Robinson here: "Deputy Robinson's conduct in this case was not only reasonable, it was exemplary, good police work." Pet. App. 95a (Zahra, J. dissenting).

B. Courts are divided on whether, once a Fourth Amendment violation is found to be an unreasonable mistake of law, exclusion of evidence follows inexorably.

The Michigan Supreme Court is not the only court to create and apply a simple (but incorrect) rule—if an unreasonable mistake of law occurred, exclusion must follow. This Court should intervene to ensure consistent and nationwide application of this Court's exclusionary rule precedents.

In *United States* v. *Flores*, 798 F.3d 645, 646–47 (7th Cir. 2015), a state trooper pulled over a driver whose vehicle had a license plate with its edges obscured, even though its identifying numbers and letters remained readable. The subsequent stop yielded a large quantity of heroin. *Id.* at 647. The driver moved to suppress on the ground that the officer's understanding of the law—that *any* obstruction of *any* part of the license plate was sufficient to meet the plate-display law—was not only wrong but unreasonable. After finding the officer's understanding unreasonable, the court jumped immediately to its conclusion that the evidence should automatically be suppressed. *Id.* at 650 ("[I]f the officer's mistake of law is unreasonable, the evidence collected from the traffic stop should be suppressed.").

The Fifth and First Circuits have also contravened *Herring* by excluding evidence based solely on a finding that a traffic stop was based on an unreasonable mistake of law. See, e.g., *United States* v. *Alvarado-Zarza*, 782 F.3d 246, 249–51 (5th Cir. 2015) (suppressing evidence seized following a traffic stop premised on an objectively unreasonable mistake of

law and fact without conducting separate exclusionary rule analysis); *United States* v. *Lawrence*, 675 F. App'x 1, 3 (1st Cir. 2017) (stating that "if a mistake of law leads an officer to initiate a traffic stop but the mistake is objectively unreasonable, any evidence stemming from the traffic stop should be suppressed").

Several state appellate courts have similarly bypassed *Herring*. See, e.g., *State* v. *Robertson*, 223 N.E.3d 56, 78 (Ohio Ct. App. 2023) (refusing to consider whether exclusion of evidence was specifically warranted where the officer committed a mistake of law rather than a mistake of fact); *People* v. *Jackson*, 193 N.E.3d 916, 922 (Ill. App. Ct. 2022) ("Officer Hodge's belief that Joiner committed a traffic violation for failing to signal was not objectively reasonable. . . . As a result, Hodge's traffic stop violated defendants' constitutional rights, and the evidence seized pursuant to the stop must be suppressed.") (citations omitted); *State* v. *Eldridge*, 790 S.E.2d 740, 500 (N.C. Ct. App. 2016) (suppressing evidence seized upon an unreasonable mistake of law without conducting a separate exclusionary rule analysis); *Darringer* v. *State*, 46 N.E.3d 464, 474, 476 (Ind. Ct. App. 2015) (same).

For these courts, as with the Michigan Supreme Court, the question of exclusion is not necessarily a distinct issue from that of the substantive Fourth Amendment violation.

On the other hand, and consistent with *Hudson*, *Herring*, and *Strieff*, among others, the Eighth Circuit and a number of state courts have held that, under the circumstances of the case, unreasonable mistakes

that were not "flagrant" did not require exclusion. See *United States* v. *Herrera-Gonzalez*, 474 F.3d 1105, 1113 (8th Cir. 2007) ("An unreasonable mistake alone is not sufficient to establish flagrant misconduct."); *Delker* v. *State*, 50 So. 3d 300, 303–04 (Miss. 2010) (finding that an officer's mistake as to jurisdiction was an "innocent mistake" and not the type of flagrant conduct that would warrant application of the exclusionary rule); *State* v. *Monafo*, 384 P.3d 134, 140 (N.M. Ct. App. 2016) ("Though Deputy Seely's mistake of law in making the first stop of Defendant may have been objectively unreasonable, an unreasonable mistake alone is not sufficient to establish flagrant misconduct in an attenuation analysis."); *State* v. *Newland*, 253 P.3d 71, 77 (Utah Ct. App. 2010) ("[t]hat [the officer's] actions were unreasonable, however, is not the determinative factor; all Fourth Amendment violations are by definition unlawful and therefore unreasonable. Rather, the officer's actions had to rise to the level of purposeful or flagrant to invoke the exclusionary rule").

In sum, the conflict with settled precedent and the inconsistency among jurisdictions require this Court's review. The mistake here was at worst negligent and does not warrant the high societal price of excluding probative evidence.

CONCLUSION

The lower court's decision should be summarily reversed or the petition for a writ of certiorari should be granted.

Respectfully submitted,

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