IN THE SUPREME COURT OF THE UNITED STATES

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DAVID LOREN WALDECK,

PETITIONER,

vs.

UNITED STATES OF AMERICA,

RESPONDENT.

==========

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

1. Is a reviewing court permitted to insert a "judicial gloss" in construing an unambiguous statute when determining whether a law enforcement officer's mistake in law used to justify a Fourth Amendment seizure is objectively reasonable under *Heien v. North Carolina*, 574 U.S. 54 (2014)?

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No. _____

IN THE UNITED STATES SUPREME COURT

DAVID LOREN WALDECK,

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vs.

UNITED STATES OF AMERICA,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner, David Loren Waldeck (hereinafter Waldeck) respectfully prays that a writ of certiorari issue to review the unpublished memorandum from the United States Court of Appeals for the Ninth Circuit entered on February 18, 2025.

OPINION BELOW

On February 18, 2025, the Ninth Circuit entered an unpublished memorandum affirming the district court's denial Petitioner's convictions and sentences for possession with intent to distribute methamphetamine, fentanyl and cocaine in violation of 21 U.S.C. §§ 841(a)(1). The memorandum is attached in the Appendix (App.) at 1. The Ninth Circuit denied a petition for rehearing and suggestion for rehearing *en banc* on April 29, 2025. App. 5.

JURISDICTION

The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254(1).

CONSTITUTIONAL PROVISION

The Fourth Amendment to the United States Constitution 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.

U.S. Const., amend IV.

RELEVANT MONTANA STATE STATUTES

Montana Code Annotated § 6-8-321(3) states in pertinent part:

> **61-8-321. Drive on right side of roadway--exceptions**
>
> (3)(a) Except as provided in subsection (3)(b) and subject to subsection (4), upon all roadways having two or more lanes for traffic moving in the same direction, a vehicle must be driven in the right-hand lane.
>
> (b) A vehicle being operated upon a roadway having two or more lanes for traffic moving in the same direction is not required to be driven in the right-hand lane when:
>
> (i) overtaking and passing another vehicle proceeding in the same direction;
>
> (ii) traveling at a speed greater than the traffic flow;
>
> (iii) moving left to allow traffic to merge;
>
> (iv) traveling on a roadway within the official boundaries of a city or town ...;

(v) preparing for a left turn at an intersection or into a private road or driveway when a left turn is legally permitted;

(vi) exiting onto a left-hand exit from a controlled-access highway;

(vii) an obstruction or hazardous conditions make it necessary to drive in a lane other than the right-hand lane;

(viii) road or vehicle conditions make it safer to drive in a lane other than the right-hand lane; or

(ix) authorized snow-removal equipment is operating on the roadway.

Mont. Code Ann § 63-8-321(3)(a) and (b).

Montana Code Annotated § 61-8-336 states, pertinent part:

61-8-336. Turning movements and required signals

(1) A person may not turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required by 61-8-333 or turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless the movement can be made with reasonable safety and until an appropriate signal has been given. A person may not turn a vehicle without giving an appropriate signal in the manner provided in this section.

(2) A signal of intention to turn right or left, other than when passing, must be given continuously during not less than the last 100 feet traveled by the vehicle before turning in any business district, residence district, or urban district.

(3) A signal of intention to turn right or left, other than when passing, must be given continuously during not less than the last 300 feet traveled by the vehicle before turning in areas other than those set forth in subsection (2).

Mont. Code Ann. 61-8-336.

STATEMENT OF THE CASE

The government obtained a single count indictment in the District Court of Montana charging Waldeck with possession with intent to distribute methamphetamine, fentanyl and cocaine in violation of 21 U.S.C. § 841(a)(1). Before his jury trial, Waldeck moved the district court to suppress drug trafficking evidence seized from his car during execution of a search warrant obtained after local police stopped him for driving his car in the left-lane of travel on a four-lane highway. During the traffic stop police observed drug paraphernalia and evidence of illegal drug possession, leading to Waldeck's arrest and the search warrant. The district court denied the motion.[1]

The jury convicted Waldeck. The district court sentenced him to a 280 month term in prison. Waldeck appealed the district court's order denying his motion to suppress evidence. A panel in the Ninth Circuit affirmed the district court's order. App. 2.[2]

The Facts

On October 24, 2022, Investigators Christian Charette-Haynes and Vernon Fisher of the Flathead Tribal Police Department in the Flathead Reservation in Montana were investigating suspected drug trafficking activities of Kelsea Rodriguez in Polson, Montana. During the investigation, they observed Rodriguez at the Port of Polson Motel parking lot. She drove away in a green Honda CRV. The investigators stopped the vehicle because Rodriguez had outstanding warrants for her arrest.

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[1] *United States v. Waldeck*, 664 F.Supp.3d 1169 (D.C. Mont., 2023).

[2] Waldeck also challenged the district court's admission of a government's expert testimony at trial. That issue is not included in this petition.

During the stop, Ms. Rodriguez disclosed to Haynes and Fisher that a person named "David" would be driving a red Dodge Charger, transporting large quantities of methamphetamine and fentanyl to the reservation to sell. She indicated that she was to receive drugs from "David." Rodriguez was not taken into custody on the warrants due to overcrowding at the local jail.

After releasing Rodriguez, Haynes and Fisher returned to Polson and located a red Charger at the Kwataqnuk Resort and Casino parking lot. The parking lot is located across the street from the Port of Polson Motel where they originally identified Rodriguez. The investigators learned that the Charger was registered to David Waldeck.

Fischer and Haynes saw a person matching Waldeck's description enter the Charger, drive across the street and meet up with Rodiguez in the Port of Polson Motel parking lot. They did not observe any behavior consistent with a drug sale or exchange.

Waldeck then departed and drove the Charger heading south on Highway 93, a two-lane road that eventually becomes a four-lane highway. Haynes and Fisher followed Waldeck and watched as he drove for several miles in the left lane. He was not passing any vehicles and was traveling below the posted speed limit. A silver car came up on Waldeck's vehicle and could not pass him due to his travel in the left-hand lane. *Id.* The officers decided to stop Waldeck for failure to drive in the right-hand lane, they believed was required by Montana Law. Mont. Code Ann. § 61-8-321(3)(a), unless Waldeck was passing and overcoming a vehicle traveling in the right-hand lane. Waldeck kept driving in the left lane "a bit farther," and took a legal left turn on Minesinger Trail where the officer's stopped him.

Haynes' body cam video shows several left-hand turn lanes to the left of Waldeck's travel

on Highway 93 after it turned into a four-lane highway. *See*, DktEntry 32 (Haynes' body cam video).[3] Fischer testified there were "five intersections where he could have made a left-hand turn."

Haynes told Waldeck that "the reason why we pulled you over was - when you're traveling on the highway, you cannot be traveling in a passing lane ... unless you're ... going to be overtaking any vehicles...." (DktEntry 32) (Haynes' body-cam video at 0:02:52). The investigators saw Suboxone, a Schedule III controlled substance, in the cup holder of the car, and observed pepper spray on the front passenger seat.

Haynes asked Waldeck out of his car. When Waldeck opened the door, Haynes saw a glass pipe, known to be used to smoke methamphetamine, with white residue in it, indicating it contained methamphetamine. Haynes retrieved the glass pipe. And, when Fisher touched the pipe, he could feel it was warm, indicating recent use.

The investigators arrested Waldeck for possessing a dangerous drug. They arranged a tow of Waldeck's car and secured a search warrant. Execution of the search warrant yielded $1,300.00 cash, a digital scale, several baggies, 472.4 grams of fentanyl pills, 863.9 grams of methamphetamine, and around 500 grams of cocaine.

The Courts Below.

Waldeck moved the district court to suppress the evidence seized from his car for lack of reasonable suspicion that he violated Mont. Code Ann. § 61-8-321(3)(a), requiring a car to be driven in the right-hand lane on roadways with more than one lane of travel in the same

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[3] The video cam was filed with the Ninth Circuit in *United States v. Waldeck,* CA No. 23-2235, Docket Number 32.

direction.[4] The district court concluded that Investigator Haynes "overstate[d] the scope of authorized left-hand lane travel" when he informed Waldeck that he violated the law because he could not drive in the "passing lane, which could be used only to overtake other vehicles." *Waldeck.* 664 F.Supp.3d at 1178. The district court, nonetheless, concluded that the "officers' understanding of the law governing the use of the passing lane was reasonable, and their observations gave them reasonable suspicion to investigate the traffic stop." *Id.* (citing *Heien v. North Carolina*, 574 U.S. 54, 66 (2014)). The Ninth Circuit panel, however, did not address *Heien*. App. 2.

Instead, the panel determined that "the investigators had reasonable suspicion that Waldeck had violated Montana traffic law" which "requires vehicles to be driven in the right-hand lane on all roadways having two or more lanes in one direction." App. 2 (citing Mont. Code Ann. § 61-8-321(3)(a)). Although the panel recognized legal exceptions to the right-hand lane travel requirement "for drivers 'preparing' to turn left or 'exiting' left," it determined that "Waldeck did not fall within these exceptions." *Id.* (citing Mont. Code Ann. § 61-8-321(3)(b)(v) and (vi)). The panel concluded that Waldeck "drove nearly three miles in the left-hand lane and passed several intersections without making any indication that he intended to turn or exit left." *Id.*

The Montana statute does not contain any limitation on how far a vehicle may travel in the left-hand lane when "preparing" for a left turn or exiting a highway. Mont. Code Ann. § 61-8-

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[4] Waldeck also challenged the stop of his vehicle for lack of probable cause that he was involved or about to be involved in drug trafficking. The panel did not reach this issue since it concluded the investigators had reasonable suspicion to stop Waldeck because he violated the right-hand lane travel requirement in Mont. Code Ann. § 61-8-321(3)(a). App. 2.

321(3)(b)(v) and (vi). Nor do the statutory exceptions require a vehicle to *indicate the intent* to turn left while "*preparing*" for a left turn or when exiting the roadway from the left-hand lane. *Id.* (emphasis added).

REASONS FOR GRANTING THE WRIT

1. The question of whether a reviewing court is permitted to insert a "judicial gloss" in construing an unambiguous statute when determining whether a law enforcement officer's mistake in law used to justify a Fourth Amendment seizure is objectively reasonable under *Heien v. North Carolina*, 574 U.S. 54 (2014), is an important question not previously resolved, but should be, by the Court and resolution of the question is important for maintaining consistency in the decisions of the lower courts. The Ninth Circuit decided this case in a way that conflicts with *Heien*.

"A traffic stop for a suspected violation of law is a "seizure" of the occupants of the vehicle and therefore must be conducted in accordance with the Fourth Amendment." *Heien v. North Carolina*, 574 U.S. 54, 60 (2014) (citing *Brendlin v. California*, 551 U.S. 249, 255-59 (2007). Indeed, "the ultimate touchstone of the Fourth Amendment is 'reasonableness.'" *Id.* (quoting *Riley v. California*, 573 U.S. 373, 381-82 (2014) (quotations in original) (quoting *Brigham City*, 5478 U.S. 398, 402 (2006)). "To be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them 'fair leeway for enforcing the law in the communities protection.'" *Id.* at 60-61 (quoting *Brinegar v. United States*, 338 U.S. 160, 176 (1949)). The Court held that "reasonable suspicion can rest on a mistaken understanding of the scope of the legal prohibition" so long as a law enforcement officer's mistake in law is reasonable. *Id.* at 60-61 ("The limit is that 'the mistakes must be those of reasonable men.").

The Court reiterated, "[t]he Fourth Amendment tolerates only *reasonable* mistakes, and those mistakes ... must be *objectively* reasonable." *Id* at 67 (emphasis in original). The inquiry of

"objective reasonableness" of an officer's mistake in law "is not as foregiving as the one employed in the distinct context of deciding whether an officer is entitled to qualified immunity for a constitutional or statutory violation." *Id.* at 67. "[A]n officer can gain no Fourth Amendment advantage through a sloppystudy of the laws he is duty-bound to enforce." *Id.*

Justice Kagan's concurring opinion emphasizes limitations on an officer's ability to seize and detain someone based on a mistake in law. *Id.* at 68-71 (Kagan, J., concurring). Justice Kagan wrote that "an officer's 'subjective understanding' [of the law] is irrelevant" ... and this "means the government cannot defend an officer's mistaken legal interpretation on the ground that the officer was unaware of or untrained in the law." *Id.* at 69.

Justice Kagan also emphasized that "modern qualified immunity doctrine protects 'all but the plainly incompetent or those who knowingly violate the law.'" *Id.* (citing *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)). Therefore, an objectively reasonable mistake of law "is satisfied when the law at issue is '*so doubtful in construction*' that a reasonable judge could agree with the officer's view.'" *Id.* at 70 (quoting *The Friendship*, 9 F.Cas. 825, 826 (No. 5,125) (emphasis added). In other words, a conclusion that an officer's mistaken interpretation of view of the law is reasonable is not satisfied when the statute underlying the seizure is unambiguous. Justice Kagan instructed:

> A court tasked with deciding whether an officer's mistake of law can support a seizure thus faces a straightforward question of statutory construction. If the statute is genuinely ambiguous, such that overturning the officer's judgment requires hard interpretive work, then the officer has made a reasonable mistake. But if not, not. As the Solicitor General made the point at oral argument, the statute must pose a "really difficult" or "very hard question of statutory interpretation." Tr. of Oral Arg. 50. And indeed, both North Carolina and the Solicitor General agreed that

> such cases will be "exceedingly rare." Brief for Respondent 17; Tr. of Oral Arg. 48.

Heien, 574 U.S. at 70. *Heien* establishes that the test for reasonableness of an officer's mistake in law depends largely on the clarity of the statute being used by the officer to justify a stop. *Id.*

Heien involved an officer's decision to stop the defendant because the car he was driving had a right brake light that did not work. *Id.* at 57. North Carolina law required a single working "stop lamp." Since the car's left brake light worked, the defendant moved to suppress cocaine that was seized from the car and used to charge the defendant with trafficking cocaine. The defendant claimed the officer's mistaken interpretation of the traffic code used to justified the stop required suppression of the evidence. *Id.* 58.

The intermediate court of appeals reversed the trial court's order denying the defendant's motion to suppress, concluding that North Carolina required just one working "stop lamp." It held that the officer's mistake in applying the law required suppression of the evidence. *Id.* at 58-59. The Supreme Court of North Carolina reversed the court of appeals because "a nearby" traffic code required "'all originally equipped *rear lamps*' be functional." *Id.* at 59 (emphasis added). The North Carolina Supreme Court held that the officer's mistake in law was reasonable in light of this nearby traffic code and upheld the constitutionality of the stop. *Id.*

The Court agreed with the North Carolina Supreme Court, writing:

> Here we have little difficulty concluding that the officer's error of law was reasonable. Although the North Carolina statute at issue refers to "a stop lamp," suggesting the need for only a single working brake light, it also provides that "[t]he stop lamp may be incorporated into a unit with one or more other rear lamps." N.C. Gen.Stat. Ann. § 20–129(g) (emphasis added). The use of "other" suggests to the everyday reader of English that a "stop lamp" is a type of "rear lamp." And another subsection of the same provision

> requires that vehicles "have all originally equipped rear lamps or the equivalent in good working order," § 20–129(d), arguably indicating that if a vehicle has multiple "stop lamp[s]," all must be functional.
>
> The North Carolina Court of Appeals concluded that the "rear lamps" discussed in subsection (d) do not include brake lights, but, given the "other," it would at least have been reasonable to think they did. Both the majority and the dissent in the North Carolina Supreme Court so concluded, and we agree. *See* 366 N.C., at 282–283, 737 S.E.2d, at 358–359; id., at 283, 737 S.E.2d, at 359 (Hudson, J., dissenting) (calling the Court of Appeals' decision "surprising"). This "stop lamp" provision, moreover, had never been previously construed by North Carolina's appellate courts. *See id.*, at 283, 737 S.E.2d, at 359 (majority opinion). It was thus objectively reasonable for an officer in Sergeant Darisse's position to think that Heien's faulty right brake light was a violation of North Carolina law. And because the mistake of law was reasonable, there was reasonable suspicion justifying the stop.

Id. at 67–68. In sum, the Court upheld the stop due to the officer's reasonable mistake in law since the other traffic code provisions created ambiguity between the meaning of "a stop lamp" and "rear lamps," and there was no appellate decision in North Carolina that clarified the meaning of "stop lamp." *Id.* at 68.

The Seventh Circuit's decision in *United States v. Stanbridge*, 813 F.3d 1032 (7th Cir. 2016), is instructive. There, the policed stopped the defendant for failing to use his turn signal for at least 100 feet before pulling off the road to the right and parking his car next to the curb. *Id.* at 1033-34. Illinois law requires "[a] signal of intention to turn right or left when required must be given continuously during not less than the last 100 feet ... before turning within a business for residence district..." *Id.* at 1036. The law also requires a driver to use a signal when "changing lanes" but does not have a distance requirement *Id.* The defendant challenged the stop, claiming that he did not violate the 100 feet requirement because his moving to the curb did not constitute

a left turn. *Id.* at 1034.

The district court denied the defendant's motion. *Id.* at 1034-35. The court concluded that the law was ambiguous. *Id.* Therefore, officer's mistaken belief that the law required the defendant to activate the left turn signal at least 100 feet before pulling into the curb was reasonable. *Id.* The Seventh Circuit reversed. *Id.* at 1038.

In doing so, the Seventh Circuit concluded that the officer's "misunderstanding was *not* objectively reasonable." *Id.* at 1037 (emphasis in original). The court found that the statute used by the officer to justify the stop, "isn't ambiguous, and *Heien* does not support the proposition that a police officer acts in an objectively reasonable manner by misinterpreting an *unambiguous* statute." *Id.* (emphasis in original). The Seventh Circuit concluded that the officer "simply was wrong about what the provision required." *Id.* at 1038.

United States v. Stevenson, 43 F.4th 641 (6th Cir. 2022) also helps. In *Stevenson*, the officer stopped the defendant for failing to stop his car in a residential driveway before driving across a sidewalk to enter the public road. *Id.* at 643. During the stop, the officer seized a firearm from the car, leading to a federal indictment for unlawful possession of the firearm. *Id.* The defendant moved to suppress the firearm because the sidewalks that ran perpendicular to and on both sides of the driveway, abutted the driveway, but did not actually cross over the driveway. *Id.* at 643-44. The district court denied the motion and the defendant appealed.

The relevant Ohio traffic law states: "'[t]he driver of a vehicle ... emerging from a[] ... driveway withing a ... residence district shall stop the vehicle ... immediately prior to driving onto the sidewalk or on to the sidewalk area extending across the ... driveway, or in the event there is no sidewalk area, shall stop at the point nearest the street to be entered where the driver has a

view of approaching traffic thereon." *Id.* at 644. The defendant maintained that this provision requires a driver to stop if the sidewalk actually crossed the driveway. *Id.* The officer testified he stopped the defendant because the sidewalk on each side of the driveway was a "sidewalk area." *Id.*

The Sixth Circuit said of the officer, "[r]ight or wrong, Mason reasonably relied on [the statutory provision] to stop" the defendant. *Id.* The decision noted that there were no cases that "defined the phrase 'sidewalk area.'" *Id.* at 646. The decision went on to say "[f]or [the officer's] interpretation of the phrase 'sidewalk area' to be unreasonable [the statutory provision] must have clearly permitted Stevenson's conduct." *Id.* (citing *Heien*, 574 U.S. at 70 (Kagan J and Ginsburg, J., J., concurring. ("'If the statute is genuinely ambiguous, such that overturning the officer's judgement requires interpretive work, then the officer has made a reasonable mistake.").

The Sixth Circuit observed the Ohio law defined "sidewalk," but does not define "sidewalk area." *Id.* 646-67. The court concluded that, based on the definition of both "sidewalk" and "area," "the phrase 'sidewalk area extending across the ... driveway' is ambiguous." "Sidewalk area" could be as the defendant argued, a sidewalk area that crosses the driveway, or as the officer believed "a driveway area 'intended' for pedestrians to walk from one sidewalk to the other." *Id.* Therefore, the Sixth Circuit concluded that the officer's interpretation was objectively reasonable and the stop was valid. *Id.*

In *United States v. McLemore*, 887 F.3d 861 (8th Cir. 2016), the officer stopped the defendant for a vehicle equipment violation "because she 'could not see the numbers or letters on [the] temporary registration tag which the DOT requires' from her police cruiser." *Id.* at 866. The officer testified she could read the numbers on the plate when she "got to the trunk area." *Id.* at

864.

The officer patted down the defendant and discovered a firearm. He was charged in a federal indictment with unlawful possession of a firearm. *Id.* The district court granted the defendant's motion to suppress the firearm. The government appealed and argued that the officer's stop was objectively reasonable "because she was unable to read what appeared to be a temporary registration card taped to its rear window." *Id.*

The Iowa law states:

> A vehicle may be operated upon the highways of [Iowa] without registration plates for a period of forty-five days after the date of delivery of the vehicle to the purchaser from a dealer if a card bearing the words "registration applied for" is attached on the rear of the vehicle. The card shall have *plainly stamped or stenciled* the registration number of the dealer from whom the vehicle was purchased and the date of delivery of the vehicle.

Id. at 865 (emphasis added).

The evidence established that the temporary registration card on the defendant's car complied with Iowa law. *Id.* "[T]he government's position ... [was] that an Iowa police officer may stop a vehicle displaying a proper form of temporary registration card whenever the officer cannot read the dealer registration number and the card's expiration date from inside the officer's following police cruiser." *Id.* at 866. The Sixth Circuit rejected this position. *Id.*

The government then argued, if the officer did not have reasonable suspicion to conduct a stop based on a registration card violation, "she was acting under an objectively reasonable mistake of law in believing that her inability to read the card was a violation of Iowa law." *Id.* at 867. The Sixth Circuit rejected that argument, stating, "the argument that the officer's made a reasonable mistake of Iowa law is without merit ... [because] it is not reasonable to construe the

requirement of 'plainly stamped or stenciled' information ... as meaning information that can be read from a pursuing police officer's cruiser." *Id.*

These circuit cases reinforce the legal principles set out in *Heien*. An objectively reasonable mistake of law may be found only if the state law underlying an officer's decision to stop and detain a defendant is open to interpretation such that "a reasonable judge could agree with the officer's view." *Heien*, 574 U.S. at 70 (Kagan, J., concurring). Reviewing courts are limited to the language of the statute or other companion statutes relevant to the inquiry to determine the reasonableness of the officer's decision. *Id.* at 67-68.

The Ninth Circuit here did not find that the statutory language in Mont. Code. Ann. § 61-8-321(3)(a) or the relevant subparagraphs (b)(v) or (vi) are ambiguous. App. 2. The panel, instead, concluded that Waldeck actually violated the statute requiring right-hand lane travel because "[h]e drove nearly three miles in the left-lane and passed several intersections without making any indication that he intended to turn left or exit." *Id.*

The left-turn exception to the right-hand lane requirement has no distance requirement when the operator of a vehicle is "preparing" to turn left from the highway. Mont. Code Ann. § 61-8-321(3)(b)(v). Moreover, that exception does not require the operator of the vehicle to indicate an intent to turn left no matter how long the operator is traveling in the left-hand lane. *Id.* All that Montana law requires is that the operator of the vehicle initiate a left turn signal at least 300 feet before making the left turn. Mont. Code Ann. 61-8-336(3).

The Ninth Circuit added a requirement to the exceptions in § 61-8-321(3)(b)(v) and (vi) that an operator of a vehicle must indicate an intent to turn left when the operator travels a distance greater than the court believed was reasonable when "preparing" to turn left or exit the

highway to the left. In other words, the Ninth Circuit added a "judicial gloss" to § 61-8-321(3)(b)(v) and (vi) to justify the stop. Due process prohibits courts from adding such a gloss on unambiguous statutes. *See e.g.*, *United States v. Lanier*, 520 U.S. 259, 266 (1997) ("due process bars courts from applying a novel construction of a criminal statute to conduct that neither the statute nor any prior judicial decision has fairly disclosed to be within its scope") (citations omitted); *see also*, *McLemore*, 887 F.3d at 867 ("it is not reasonable to construe" an unambiguous statute as having a requirement that is not included in its terms.).

Waldeck turned left from the four-lane highway. The officers did not claim that he failed to signal at least 300 feet from the turn as required under § 61-8-336(3). As the district court found, Investigator Haynes "understate[d] the scope of authorized left-hand lane travel." *Waldeck*, 664 F.Supp.3d at 1178. The question then becomes whether the officers' mistaken belief that Waldeck violated § 61-8-321(3)(a) requiring right-hand lane travel by his travel in the left-hand lane is reasonable.

Section 61-8-321(3)(b)(v) is unambiguous. It permits the operator of a vehicle to travel in the left-hand lane when "preparing" for a left turn. When the officers activated the patrol car's overhead lights, Waldeck did not change lanes to the right to stop on the right shoulder of the highway. Waldeck, in fact, turned left, presumably abiding by the 300 feet signaling requirement in § 61-8-336(3). At that point, the officers could not stop and detain Waldeck. It became apparent that he was driving in the left-hand lane in preparation to turn left off the highway as permitted under § 61-8-321(3)(b)(v) and did make a valid left turn. *See*, *McLemore*, 887 F.3d at 864 (after stopping the defendant, the officer could read the numbers on the valid temporary registration card when she "got to the trunk area" after initiating the stop) *Id.* at 864.

a. This case provides the Court with an ideal vehicle to provide additional guideance for lower courts in determining whether a law enforcement officer's stop of a defendant is objectively reasonable under *Heien* that will ensure a proper and consistent application of constitutional principles under the Fourth Amendment.

This case brings directly into focus the limitations of the *Heien* decision as detailed in Justice Kagan's concurring opinion: (1) "an officer's 'subjective understanding' is irrelevant" to the inquiry of whether officer's action were objectively reasonable; and (2) "the inquiry ... is more demanding than the one courts undertake before awarding qualified immunity," which protects "all but the plainly incompetent [officers] or those who knowingly violate the law." *Heien*, 574 U.S. at 69 (Kagan, J., concurring) (quoting *Ashcroft v. al-Kidd,* 563 U.S. 731, 743 (1986)).

A reviewing court, "deciding whether of officer's mistake in law can support a seizure thus faces a straight forward question of statutory construction." *Id.* at 70. An officer's decision to stop someone on a mistaken interpretation of the law is objectively reasonable only if the relevant "statute is genuinely ambiguous, such that overturning the officer's judgment requires hard interpretive work." *Id.* With this in mind, a finding that the officer's mistaken interpretation of the law is objectively reasonable "will be 'exceedingly rare.'" *Id.* (citation omitted).

Justice Kagan concluded that, if the officer in *Heien* was mistaken that North Carolina required more than one "stop lamp," North Carolina also permitts "a stop lamp to be incorporated into one or more *other* rear lamps," and requires "*all* originally equipped rear lamps [be] ... in good working order." *Id.* Therefore, "a court could easily take the officer's view (deciding that a break light *is* a rear lamp, and if a car comes equipped with more than one, as

modern cars do, all must be in working order.)" *Id.* (emphasis added). Justice Kagan emphasized, "[t]he critical point is that the statute poses a quite difficult question of interpretation...." *Id.* at 71.

The facts here are starkly different than those in *Heien.* This case gives the Court the opportunity to reiterate the principles from *Heien* and further define what constitutes an objectively reasonable interpretation of a law enforcement officer uses to justify an investigatory stop.

In Investigator Haynes' view, Waldeck was prohibited from driving in the left-hand lane unless less he was driving in that lane to pass and overtake a vehicle driving in the right-hand lane. *Waldeck,* 664 F.Supp.3d at 1178. An interpretation of § 61-8-321(3)(b) that demonstrates the Haynes belief is mistaken is not difficult and the relevant statute is not ambiguous.

Section 61-8-321(3)(b) contains nine exceptions to the requirement that a vehicle travel in the right-hand lane on a roadway with two or more lanes traveling in the same direction. This includes two exceptions permitting left-hand lane travel for vehicles that are "preparing" to turn left off of the highway, or when exiting the highway. § 61-8-321(3)(b)(v) and (vi). Since the relevant statute unambiguously contains exceptions that permit left-hand lane travel beyond waht Haynes believed, Haynes' mistaken interpretation cannot be said to be an "objectively reasonable" mistake in law.

The Ninth Circuit strayed from the standards in *Heien* that limit a courts task in reviewing the reasonableness of an officer's mistake in law in a manner that offers the Court an excellent vehicle to drive home the points Justice Kagan emphasized in her concurring opinion. Rather than conduct "a straight forward question of statutory construction" to determine whether the

relevant statute is "genuinely ambiguous," the Ninth Circuit construed the statute as containing an additional requirement in the exceptions in § 61-8-321(3)(b)(v) and (vi). The Ninth Circuit wrote into the statutes a requirement that a driver of vehicle "preparing" for a left turn from the highway, or to exit the highway to "indicate that he intended to turn or exit." App. 2; *Heien*, 574 U.S. at 70 (Kagan, J., concurring).

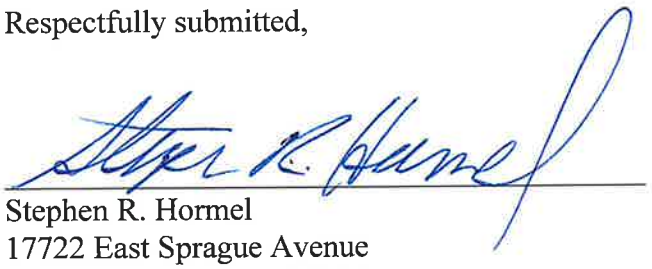
Heien does not permit such an exercise in statutory construction. This Court should take the opportunity on the facts here to resolve the question presented.

CONCLUSION

Based on the foregoing, it is requested that this Court grant this petition for writ of certiorari.

Dated this 25th day of July, 2025.

Respectfully submitted,



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