

No. 18-556

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In The  
Supreme Court of the United States

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STATE OF KANSAS,

*Petitioner,*

v.

CHARLES GLOVER,

*Respondent.*

—◆—

On Writ Of Certiorari To The  
Supreme Court Of Kansas

—◆—

**BRIEF OF THE NATIONAL FRATERNAL  
ORDER OF POLICE, AS AMICUS CURIAE  
IN SUPPORT OF PETITIONER**

—◆—

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**STATEMENT OF INTEREST  
OF *AMICUS CURIAE*<sup>1</sup>**

The National Fraternal Order of Police (“NFOP”) is the world’s largest organization of sworn law enforcement officers, with more than 350,000 members in more than 2,100 lodges across the United States. The NFOP is the voice of those who dedicate their lives to protecting and serving our communities, representing law enforcement personnel at every level of crime prevention and public safety nationwide. The NFOP offer their service as *amicus curiae* when important police and public safety interests are at stake, as in this case.

The mission of law enforcement is simple: protect and serve the public. Police officers accomplish that mission through community policing initiatives, the enforcement of various criminal codes, and highway and traffic safety programs. Since the advent of *Terry*, officers have been permitted, based on specific and articulable facts, “together with rational inferences from those facts,” to conduct brief, investigatory stops of individuals to address possible violations of the law. *See Terry v. Ohio*, 392 U.S. 1, 21 (1968). This Court has repeatedly held that such stops apply in the traffic context and do not amount to unreasonable seizures in

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<sup>1</sup> In accordance with Rule 37.6, the FOP and undersigned counsel make the following disclosure statements. The submission of this Brief was consented to by all parties hereto. The Office of General Counsel to the National Fraternal Order of Police authored this Brief in its entirety. There are no other entities which made monetary contributions to the preparation or submission of this Brief.

violation of the Fourth Amendment. *See, e.g., U.S. v. Sharpe*, 470 U.S. 675, 682 (1985); *U.S. v. Hensley*, 469 U.S. 221, 226 (1985); *U.S. v. Cortez*, 449 U.S. 411, 417 (1981).

Traffic stops are one of the most common, yet most dangerous, tasks asked of police officers. Motorists pose not only a danger to themselves and the public, but to officers as well. Enforcement of traffic safety laws is a universally accepted good policing practice. Part of that enforcement includes ensuring unlicensed and uninsured drivers remain off the road.

This case presents the Court with an opportunity to clarify confusion among the lower courts with respect to *when* it is appropriate for an officer to initiate a traffic stop and *what* inquiries an officer may make during the stop. Resolution of the issue before this Court today in favor of the Kansas Supreme Court would strike a serious blow to law enforcement efforts to protect our nation's roads, highways, and communities. It is with this backdrop in mind that the NFOP respectfully seeks to be heard in this matter.



## SUMMARY OF ARGUMENT

Under the Fourth Amendment, it is reasonable for an officer to suspect that a driver is also the registered owner of a vehicle for purposes of an investigatory traffic stop. Moreover, in furtherance of officer and public safety, and in line with this Court's jurisprudence, the Fourth Amendment provides that an officer may make

limited inquiries in connection with such a traffic stop, such as asking to see a driver's license and proof of insurance.

The decision of the Kansas Supreme Court below not only conflicts with numerous state supreme courts and federal circuit courts as Petitioner has pointed out, but it also defies the practical realities of policing and jeopardizes police officer and public safety. Our nation's law enforcement officers are charged with enforcing state highway and traffic safety administration programs, a responsibility that includes patrolling for traffic violations and keeping the roadways free of unlicensed and uninsured drivers. Police officers also have the sworn duty to apprehend individuals with outstanding arrest warrants. Accordingly, when an officer on patrol encounters a vehicle that is registered to either (a) an individual without an active, valid driver's license, or (b) an individual with a warrant out for his or her arrest, that officer should be able to conduct a brief, investigatory traffic stop without fear of violating the Constitution.

1. The balance of interests weighs in favor of allowing officers to stop a vehicle that is registered to an unlicensed driver or an individual who has a warrant out for his or her arrest. Unlicensed<sup>2</sup> and uninsured motorists pose a significant threat to the safety of the tens of

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<sup>2</sup> For purposes of this Brief, "unlicensed" motorists and drivers include persons who lack a valid driver's license as well as persons who have had their valid driver's licenses revoked or suspended.



millions of drivers on U.S. roadways at any given moment. Further, the public benefits when criminal suspects who have evaded seizure are apprehended pursuant to valid arrest warrants. In contrast, checking whether a vehicle is being operated by its registered owner by asking for a driver's license and/or proof of insurance takes a matter of minutes. Additionally, if Respondent's viewpoint is adopted, law enforcement efforts to promote highway and traffic safety will be severely frustrated because officers will be required to obtain more information about the driver of a vehicle to initiate an investigatory traffic stop.

Requiring law enforcement to obtain additional information about a driver while operating their own patrol cars will jeopardize officer and public safety. Traffic stops are already one of the most dangerous tasks required of police officers. The moment an officer believes a vehicle may be operated by someone who lacks a valid license or who has an outstanding arrest warrant should be enough to permit the officer to initiate a stop.

2. Nothing in this Court's Fourth Amendment jurisprudence requires officers to establish more than reasonable suspicion before conducting an investigatory stop. Therefore, where an officer knows (1) a vehicle is registered to an unlicensed and/or uninsured driver, (2) there is no evidence to suggest the owner is not driving at the time, and (3) it is illegal to operate a vehicle without a valid license, the officer has both a particularized

and objective basis to stop the vehicle, along with the rational inference that one of the most likely drivers of any given vehicle is the same individual who owns it. The same is true where an officer knows a vehicle is registered to an individual who is the subject of an outstanding arrest warrant. Requiring the officer to verify the driver is indeed the registered owner—whereby the officer would need to be *practically certain* rather than have “reasonable suspicion” that criminal activity was afoot—is more than this Court’s Fourth Amendment jurisprudence requires. Such a standard will ultimately frustrate police officers’ ability to conduct traffic stops and apprehend violators of the law.

3. This Court has established significant protections for the public in its Fourth Amendment traffic stop jurisprudence. This case presents an opportunity for the Court to further clarify expectations of encounters between police officers and citizens during such stops. It is reasonable for an officer to initiate a traffic stop under the assumption that the driver of a vehicle is also the registered owner of that vehicle. Further, the officer may conduct related inquiries of the driver such as asking for a driver’s license and proof of insurance. These may be conducted while preserving privacy interests and without violating an individual’s right to be free from unreasonable seizure.



**ARGUMENT****I. POLICE OFFICERS MUST BE PERMITTED TO CONDUCT BRIEF, INVESTIGATORY TRAFFIC STOPS TO PROTECT THE SAFETY OF THE PUBLIC AND THE OFFICER.**

Public safety is the number one goal for law enforcement, and the public is safer when police officers are permitted to briefly investigate potentially dangerous situations without fear of violating the Constitution. If this Court adopts the Kansas Supreme Court's decision in this matter, then law enforcement officers throughout the country will lack any independent means to investigate potential traffic violations when a vehicle's license plate indicates that the driver may be unlicensed, uninsured, or have a warrant out for his or her arrest.

In the interests of both public and officer safety, and in keeping with established Fourth Amendment principles, officers are reasonable to presume that the registered owner of a vehicle is the same person driving the vehicle for purposes of an investigatory traffic stop. Moreover, such stops do not violate the Fourth Amendment's prohibition on unreasonable seizures because officers can quickly determine if the driver is the same person as the vehicle's owner by making limited inquiries in connection with the stop, such as asking to see a driver's license and proof of insurance. Such inquiries constitute a minimal intrusion yet substantially further public safety interests.

**A. Enforcement of Highway and Traffic Safety Laws Protects the Public.**

Police officers are responsible for patrolling state highways and municipal roads to detect and deter traffic law violations. During the course of their ordinary duties, officers often encounter motorists who may not have committed a traffic violation but who nevertheless pose an equally significant threat to the safety of others on the road. Such motorists include unlicensed drivers, uninsured drivers, and drivers with a warrant out for their arrest. *Amici* will first address unlicensed and uninsured drivers together, as they often coincide.

**i. Unlicensed and uninsured drivers.**

Police officers have an affirmative duty to keep our highways and roads safe, which includes confirming drivers are licensed and insured in compliance with state laws. As Petitioner notes, motorists without licenses are considerably more dangerous than validly licensed drivers. Pet. at 17 (citing Sukhvir S. Brar, California Department of Motor Vehicles, *Estimation of Fatal Crash Rates for Suspended/Revoked and Unlicensed Drivers in California* (2012)). Indeed, in 2017, a full 16% of passenger vehicle deaths involved unlicensed drivers, and studies in 2011 and 2012 found that 20% of all fatal crashes involved at least one driver who was not validly licensed. Fatality Analysis Reporting System, U.S. DEPARTMENT OF TRANSPORTATION NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION,

<https://www.nhtsa.gov/research-data/fatality-analysis-reporting-system-fars> (last visited June 19, 2019). Unlicensed drivers are also nine times more likely to leave the scene of a crash than those with valid licenses. And, unlicensed driving is not a rare phenomenon. For example, in the City of Milwaukee, more than 43,000 drivers have been cited for driving while unlicensed, suspended, or revoked in the last three years. Bryan Polcyn and Stephen Davis, “*I don’t need a license:” Deadly Crashes Often Caused by Drivers Who Have Never Been Licensed*, FOX 6 NOW (May 22, 2019, 10:14 PM) <https://fox6now.com/2019/05/22/i-dont-need-a-license-to-drive-deadly-crashes-have-common-thread/>.

Moreover, when a driver is unlicensed, it is almost guaranteed that he or she is also uninsured. Forty-nine states and the District of Columbia require drivers to have auto liability insurance before they can legally drive a car, but insurance companies also have the right to restrict operation of the vehicles they insure to only those persons who are legally qualified to drive. *See* 7 AM. JUR. 2D *Automobile Insurance* § 238 (2019); 58 OHIO JUR. 3D *Insurance* § 950 (2019); *Uninsured Motorists*, NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS (July 16, 2018), [https://www.naic.org/cipr\\_topics/topic\\_uninsured\\_motorists.htm](https://www.naic.org/cipr_topics/topic_uninsured_motorists.htm). Thus, an estimated 13% of motorists (one out of every eight drivers) are uninsured. *Uninsured Motorists*, NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS (July 16, 2018). These drivers not only represent a threat to the safety of the roadways, but they have a significant collateral impact on the public at large—after all, it is validly

licensed and insured motorists who bear the costs created by uninsured drivers in the form of uninsured motorist coverage. Further, victims of car accidents involving uninsured motorists may struggle to obtain compensation for their injuries.

Accordingly, the public benefits greatly when an officer is permitted—based on the knowledge that the owner of a vehicle is unlicensed—to conduct a brief, investigatory stop of the vehicle to determine: (1) if the driver is indeed the owner; and (2) if the driver is insured. It is sound policy and good policing to stop vehicles that may be driven by someone that is unlicensed and likely uninsured. The public expects—and police officers have sworn a duty to enforce—policies that are designed to increase the safety of the tens of millions of drivers throughout the country. The actions of Deputy Mehrer in this case and all police officers who effectuate traffic stops under similar circumstances illustrate the embodiment of that duty.

## **ii. Drivers with warrants.**

The Court's resolution of this issue will have implications far beyond law enforcement's ability to remove unlicensed or uninsured motorists from the road—it will have a lasting impact on officers' ability to apprehend known and wanted criminal suspects. In their ordinary course of duties, police officers often encounter vehicles that are registered to an individual with an outstanding arrest warrant. According to the Kansas Supreme Court, however, officers are not able

to pull over such vehicles without more evidence about the driver. This rule not only recasts the reasonable suspicion standard espoused by this Court, but it strips police officers of critical opportunities to perform one of the most fundamental duties of law enforcement.

The NFOP respectfully submits that this Court should reject the Kansas Supreme Court’s rationale and adopt the reasoning accepted by the various state supreme courts referenced in Petitioner’s Brief and the Supreme Court of Kentucky in *Traft v. Commonwealth*, 539 S.W. 3d 647 (Ky. 2018). In *Traft*, a patrol officer performed a license plate check on a passing vehicle that had not committed any traffic violations. *Id.* at 648. The check indicated that the registered owner of the vehicle had an active warrant for failing to appear in court, and based on this information, the officer initiated a traffic stop and discovered that the registered owner was in fact driving the car. *Id.* The Kentucky Supreme Court held that, despite the fact that the officer did not know the identity of the driver prior to initiating the stop, “the fact that the owner of the vehicle was subject to seizure for violation of the law create[d] an articulable and reasonable suspicion for an officer to initiate a traffic stop.” *Id.* at 651 (“This was not a case of a ‘snooping deputy’ harassing a law-abiding citizen . . . it was a case of an officer carrying out his sworn duty and abiding by terms of a warrant issued by a court. . .”).

The Illinois Supreme Court not only reached the same conclusion but went a step further and held that

even where the officer ultimately finds out that the driver is *not* the registered owner, the officer may nevertheless ask the driver for a license and proof of insurance because the stop was lawfully initiated in the first place. In *People v. Cummings*, a man was driving a vehicle registered to a woman who had an outstanding warrant out for her arrest. *People v. Cummings*, 46 N.E.3d 248, 249 (Ill. 2016). The officer initiated a traffic stop of the vehicle despite an inability to see who was driving. *Id.* Upon approaching the vehicle, the officer saw the driver was a man, but the officer proceeded to ask for a driver's license and proof of insurance. *Id.* The male driver did not have a driver's license and the officer cited him for driving with a suspended license. *Id.* The Illinois Supreme Court held that even though the officer's reasonable suspicion vanished upon seeing the driver was a man and therefore not the registered owner, the stop was lawful, and the officer could therefore make the "ordinary inquiries incident to a stop." *Id.* at 253. Such inquiries further the public safety in keeping the roadways clear of unlicensed and uninsured drivers.

Imagine the following scenario: During a night shift, a police officer is driving at a distance behind a vehicle. The officer's patrol car automatically scans the vehicle's license plate. The vehicle has not committed a traffic violation, but the scan reveals that an arrest warrant has been issued for the owner of the vehicle for suspected involvement in a murder. The officer has no idea if the owner is indeed driving the vehicle, and the officer has no way to safely verify that information



without initiating a traffic stop. But under the principle established by the Kansas Supreme Court, the officer is unreasonable to suspect that the owner of the vehicle is in fact driving the vehicle directly in front of them, and therefore cannot stop the vehicle—even briefly—to verify the driver’s identity without violating the driver’s Fourth Amendment rights.

In short, the Court’s resolution of this issue will directly impact police officers’ abilities to protect their communities. The tens of millions of drivers on our nation’s roads at any given moment are undeniably served when law enforcement removes unlicensed, uninsured drivers from the road, as is the overall public when police officers apprehend individuals with warrants out for their arrest. Accordingly, in the interest of public safety, this Court should reject the Respondent’s argument and hold that it is reasonable for an officer to assume that the registered owner of a vehicle is also its driver for the purposes of an investigative stop.

### **B. Brief, Investigatory Traffic Stops Promote Officer Safety.**

Although enforcing traffic laws is one of the most common tasks a police officer performs, it is also one of—if not the most—dangerous. *See Arizona v. Johnson*, 555 U.S. 323, 330 (2009) (noting traffic stops are “especially fraught with danger to police officers”). Officers have no idea who or what they are approaching when they stop a vehicle, and they must contend with

countless variables in each stop: the location, *i.e.*, the neighborhood/surrounding area; other occupants in the vehicle; oncoming traffic; one-officer patrol cars; the presence of weapons; the possibility of an impaired driver; and so on. See Dean Scoville, *The Hazards of Traffic Stops*, POLICE MAG. (Oct. 19, 2010), <https://www.policemag.com/340410/the-hazards-of-traffic-stops>; see also *Anatomy of a Traffic Stop*, CITY OF PORTLAND OREGON, <https://www.portlandoregon.gov/police/article/258015> (last visited June 19, 2019) (“[O]fficers usually have little idea if [they] are stopping a Dad on his way to work or someone who just robbed a bank, willing to do whatever it takes to escape.”); Tyler Emery, *Police Officers Say No “Routine Stop” is Ever Routine*, WHAS11 (Dec. 27, 2018, 7:09 PM), <https://www.whas11.com/article/news/local/police-officers-say-no-routine-traffic-stop-is-ever-routine/417-ebbf708-273b-4129-bdbe-a096068474d2> (“[Officers] have to worry about where the vehicle is stopped, how much traffic is there, is it an interstate, is it an isolated area where backup [is] not close.”). From 2000–2009, 119 officers were killed conducting traffic stops, making traffic stops a leading cause of death for police officers during that period. See Henry Pierson Curtis, *Traffic Stops Among Most Dangerous Police Duties*, ORLANDO SENTINEL, Dec. 9, 2010 <https://www.orlandosentinel.com/news/os-xpm-2010-12-09-os-traffic-stops-deadly-20101209-story.html> (citing the National Law Enforcement Officers Memorial Fund).

Therefore, requiring an officer who already possesses specific and articulable facts to obtain

*additional* evidence in order to conduct a traffic stop not only heightens the reasonable suspicion standard, but it makes an already-dangerous situation even worse. Many police departments now operate “mobile data terminals” in their squad cars. Darlene Cedres, *Mobile Data Terminals and Random License Plate Checks: The Need for Uniform Guidelines and a Reasonable Suspicion Requirement*, 23 RUTGERS COMPUTER AND TECH. L.J. 391, 396 (1997); Jim McKay, *New Smartphone Platform Could Replace Police Laptops, Mobile Terminals*, TECHWIRE (April 11, 2019), <https://www.techwire.net/news/new-smartphone-platform-could-replace-police-laptops-mobile-terminals.html>. To access a mobile data terminal, an officer must first enter a user code. Cedres, *Mobile Data Terminals* at 396. Once logged in, officers have access to the Department of Motor Vehicles and National Crime Information Center databases. *Id.* The officer can enter license plate numbers into these databases, which will yield information about the corresponding vehicle, such as registration and the owner’s name. *Id.* From there, the officer can use the owner’s name to run an additional search for the owner’s address, social security number, and driver’s license status. *Id.* This information will appear to the officer on different results pages across multiple applications—much like when the typical office worker has multiple tabs or windows open on his or her desktop computer screen at once. But unlike the average corporate employee, police officers access and consume this information *while they are driving*.

The practical impact of the decision from the Kansas Supreme Court on police officer safety can be described in the following hypothetical scenario. A one-officer police cruiser, while driving on the highway, runs a license plate check on the vehicle in front of it, which reveals that the owner of the vehicle is unlicensed. The officer knows unlicensed drivers typically do not have valid car insurance. However, in order to meet the standard for “reasonable suspicion” now required under Kansas law to initiate a traffic stop, the officer runs an additional search—while continuing to follow the vehicle down the highway—to obtain additional information about the owner, including a physical description. The officer then pulls alongside of the suspected vehicle and looks over—all while continuing to drive—to determine if the person driving matches the physical description of the owner on the officer’s computer system. The officer determines the description matches the driver. Next, the officer slows down to maneuver back behind the vehicle, activates the patrol lights, and effectuates the stop.

Conversely, assume in the hypothetical scenario described above that the officer is unable to positively identify the driver as the owner of the vehicle. There are various reasons why that may often be the case: tinted windows, heavy traffic, severe weather, or time of day. In those situations, the officer would presumably be unable to stop the vehicle and, as a result, a possibly unlicensed, uninsured driver would remain on the road.

The danger posed to the public in the above scenarios are undeniable, but the danger posed to the officer is equally frightening. Section I.A. *supra*. The wave of recent initiatives across the country to end distracted driving apparently do not apply law enforcement.<sup>3</sup> See Quin Schwartz, *PennDOT Campaign Promotes Awareness of Distracted Driving*, THE HERALD (June 16, 2019), [https://www.sharonherald.com/news/local\\_news/shenango/penn-dot-campaign-promotes-awareness-of-distracted-driving/article\\_a5887fd2-8feb-11e9-a8b2-f79289c920e8.html](https://www.sharonherald.com/news/local_news/shenango/penn-dot-campaign-promotes-awareness-of-distracted-driving/article_a5887fd2-8feb-11e9-a8b2-f79289c920e8.html). Indeed, each *day* in the United States nine people are killed and more than 1,000 are injured in crashes that reportedly involve a distracted driver. *Distracted Driving*, CENTERS FOR DISEASE CONTROL AND PREVENTION, [https://www.cdc.gov/motorvehiclesafety/distracted\\_driving/index.html](https://www.cdc.gov/motorvehiclesafety/distracted_driving/index.html) (last visited June 19, 2019) (citing *Traffic Safety Facts Research Notes 2016: Distracted Driving*, U.S. DEPARTMENT OF TRANSPORTATION NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812517> (last visited March 25, 2019)). If the decision below stands, then law enforcement will be forced to divert their attention from safe driving in order to obtain the heightened “reasonable suspicion” now required for a traffic stop.

In short, officers already experience significant safety risks during traffic stops, but Respondent would

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<sup>3</sup> Distracted driving is defined as anything that takes attention away from driving. Sending a text message, talking on a cell phone, using a navigation system, and eating while driving are a few examples of distracted driving.

place officers in even more peril by requiring “more evidence” to initiate a lawful traffic stop. Such additional obligations are unnecessary in light of this Court’s Fourth Amendment case law and would directly counteract police officers’ duty to increase the safety of our nation’s roads.

## **II. POLICE OFFICERS MUST BE ABLE TO CONDUCT BRIEF, INVESTIGATORY TRAFFIC STOPS UNDER A CLEARLY DEFINED REASONABLE SUSPICION STANDARD.**

This Court has analogized the “usual” traffic stop to a so-called “*Terry* stop.” *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984). It is undisputed that an officer who lacks probable cause but whose “observations lead him reasonably to suspect” that a particular person has committed, is committing, or is about to commit a crime may nevertheless briefly detain that person in order to “investigate the circumstances that provoke suspicion.” *Id.* (citing *U.S. v. Brignoni-Ponce*, 422 U.S. 873 (1975)). As this Court announced in *Terry*, where an officer can point to specific and articulable facts, taken together with rational inferences from those facts, the officer is justified in conducting a brief, investigatory traffic stop. *See Terry v. Ohio*, 392 U.S. 1, 21 (1968).

In other words, the Fourth Amendment does not require a police officer who lacks probable cause to make an arrest “to simply shrug his shoulders and allow a crime to occur or a criminal to escape.” *Adams v.*

*Williams*, 407 U.S. 143, 145 (1972). Indeed, it would be considered poor policing for an officer *not* to conduct a brief, investigatory stop simply because the driver “might not” be the unlicensed, uninsured owner or the owner subject to an outstanding arrest warrant. But that is precisely what the Kansas Supreme Court decision would have officers do if they could not somehow independently verify or produce “more evidence” that the driver was also the owner of the vehicle in question.

**A. The Reasonable Suspicion Standard Utilized by Police Officers to Conduct Traffic Stops is Well-Established and Practical.**

The decision below leaves law enforcement in a precarious position. Law enforcement understand that they do not need probable cause to conduct a traffic stop—this Court has made that very clear. *See U.S. v. Arvizu*, 534 U.S. 266, 273 (2002) (“Because the balance between the public interest and the individual’s right to personal security tilts in favor of a standard less than probable cause in [brief investigatory stops of persons or vehicles], the Fourth Amendment is satisfied if the officer’s action is supported by reasonable suspicion to believe that criminal activity may be afoot.”) (internal citations omitted). In contrast, the Kansas Supreme Court mandates that officers produce “more evidence” to justify a traffic stop. *State v. Glover*, 422 P.3d 64, 72 (Kan. 2018).

This mandate is troublesome for three reasons. First, as discussed above, such a requirement would create unnecessary additional safety risks for the millions of people on the road—officers and civilians alike. Section I *supra*. Second, this Court’s Fourth Amendment jurisprudence requires only reasonable suspicion prior to initiating a traffic stop. *Rodriguez v. U.S.*, 135 S. Ct. 1609, 1616 (2015); *U.S. v. Arvizu*, 534 U.S. 266 (2002); *Navarette v. California*, 572 U.S. 393 (2014). Requiring “more evidence” distorts the reasonable suspicion standard that has governed the initiation of traffic stops for decades. Finally, public safety interests—which are served by the proper enforcement of traffic codes and outstanding arrest warrants—justify brief, investigatory stops conducted under reasonable suspicion to ensure the individual driving is not unlicensed, uninsured, or evading arrest.

Although the Kansas Supreme Court held that Deputy Mehrer needed corroborating evidence to initiate a traffic stop, this Court has been consistent regarding the level of evidence necessary to establish reasonable suspicion for a traffic stop—it cannot be based on a mere “hunch,” but the standard requires “considerably less than proof of wrongdoing by a preponderance of the evidence, and obviously less than is necessary for probable cause.” *Navarette*, 572 U.S. at 397 (citing *Alabama v. White*, 496 U.S. 325 (1990)). And in each case, reasonable suspicion “is dependent upon both the content of information possessed by police and its degree of reliability.” *Id.* (internal citations omitted). An officer has reasonable suspicion if, based on



the “totality of the circumstances,” the officer has “a particularized and objective basis for suspecting legal wrongdoing.” *U.S. v. Arvizu*, 534 U.S. 266, 273 (2002) (citing *U.S. v. Cortez*, 449 U.S. 411, 417–18 (1981)). Such circumstances include the officer’s “own experience and specialized training to make inferences from and deductions about the cumulative information available.” *Id.*

Moreover, this Court has already held that the reasonable suspicion standard applies to the type of traffic stops currently at issue. In *Delaware v. Prouse*, an officer initiated a traffic stop of a vehicle to check the driver’s license and registration. 440 U.S. 648, 650 (1979). Prior to initiating the stop, the officer had observed no traffic violations, equipment violations, suspicious activity, and had not run a check on the license plate. *Id.* Instead, the officer merely encountered the vehicle in his patrol area and decided to initiate a stop because he “wasn’t answering any complaints.” *Id.* at 650–51. This Court held that such “discretionary spot checks” were not permitted under the Fourth Amendment. *Id.* at 654–62 (quoting *Terry v. Ohio*, 392 U.S. 1, 2 (1968)) (“To insist neither upon an appropriate factual basis for suspicion directed at a particular automobile nor upon some other substantial and objective standard or rule to govern the exercise of discretion ‘would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches.’”). The Court also held that an officer must at least have reasonable suspicion in order to initiate a traffic stop:

***[E]xcept in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law,*** stopping an automobile and detaining the driver in order to check his driver's license and the registration of the automobile is unreasonable under the Fourth Amendment.

440 U.S. 648, 663 (1979) (emphasis added). Consequently, if an officer *does* have reasonable suspicion that a driver is unlicensed or is otherwise subject to seizure for violation of law (*i.e.*, the subject of an arrest warrant), then the Fourth Amendment allows that officer to stop the driver to check his or her license.

This case therefore involves one of the very “situations” that the Court specifically carved out in *Prouse* as permissible under the Fourth Amendment, but the Kansas Supreme Court effectively extended *Prouse* beyond its narrow holding. *Prouse* only provides that random, discretionary stops based on *no specific or articulable facts whatsoever* violate the Fourth Amendment. However, the Kansas Supreme Court and Respondent contend that *Prouse* also applies to situations where an officer conducts a license plate check and determines the owner of the vehicle is unlicensed or subject to an outstanding arrest warrant—in other words, where an officer has specific and articulable facts about a specific vehicle and can make rational inferences about the person driving that vehicle. Such a

conclusion is illogical and completely at odds with *Prouse*.

Respondent's position ignores longstanding precedent that establishes reasonable suspicion as the appropriate standard for initiating traffic stops. That position should be disfavored. If the decision below is left to stand, how much "more evidence" will an officer be required to produce to justify stopping a vehicle registered to an unlicensed driver, or perhaps to an individual with an outstanding warrant? If the officer must confirm the identity of the individual before initiating the stop, then the officer no longer needs reasonable suspicion but rather a preponderance of evidence. The reasonable suspicion standard would all but evaporate in the context of traffic stops.

Conversely, under this Court's current—and far more workable—reasonable suspicion standard, if a police officer encounters a vehicle and knows that (a) the vehicle is registered to an unlicensed individual; (b) there is no evidence to suggest the unlicensed individual is *not* driving the vehicle at that time; and (c) it is against the law to operate a vehicle without a valid driver's license, then such information amounts to a "particularized and objective basis" for suspecting legal wrongdoing. *Arvizu*, 534 U.S. at 273.<sup>4</sup> At that point, an officer need only conduct a brief, investigatory stop and either (a) confirm the suspicion that the driver is indeed the unlicensed owner and respond accordingly,

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<sup>4</sup> Again, the same analysis must be true for the scenario involving an individual with an outstanding warrant.

or (b) validate that the driver is licensed and insured. In this scenario, the intrusion on Fourth Amendment rights is minimal. What's more, the public benefits from roadways that are free from unlicensed, uninsured drivers and the officer does not have to jeopardize his safety or that of others to obtain enough evidence to initiate an investigatory stop.

**B. There are Sufficient Protections in Place for Citizens Such that Privacy Interests and the Right to be Free from Unreasonable Seizure are Preserved.**

Undoubtedly, certain traffic stops may result in innocent seizures, but those seizures are not unreasonable under the Fourth Amendment. This Court recognized that its holding in *Terry* accepts the risk that officers may stop innocent people. *Illinois v. Wardlow*, 528 U.S. 119, 126 (2000); *Arvizu*, 534 U.S. at 277 (“A determination that reasonable suspicion exists, however, need not rule out the possibility of innocent conduct.”). Such a risk is an inherent and necessary compromise for the safety of our roadways. However, this Court’s jurisprudence provides adequate protection for the public’s privacy interest in being free from unreasonable searches and seizures during these stops by drawing a bright line against officers improperly prolonging a stop with inquiries outside the “mission” of the stop. Consequently, any concern that allowing officers to presume the owner of the vehicle is also the driver for purposes of conducting a brief, investigatory

traffic stop will allow police unfettered discretion to extend traffic stops is unwarranted.

The “mission” of the traffic stop defines the scope of the precautions an officer can (and should) take in conducting the stop. *See Rodriguez v. U.S.*, 135 S. Ct. 1609, 1616 (2015). This Court has defined which inquiries fall squarely within that mission. For example, in *Rodriguez v. United States*, this Court held that the authority for a seizure that occurs during a traffic stop ends when the tasks tied to the suspected traffic infraction are completed. *See Rodriguez*, 135 S. Ct. at 1614 (2015). The exception to this rule is that officers may make certain basic inquiries unrelated to the suspected traffic infraction, provided that they do not lengthen the traffic stop. *See Johnson*, 555 U.S. at 333 (holding that an officer’s inquiries into matters unrelated to the justification for the traffic stop do not convert the stop into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop); *Illinois v. Caballes*, 543 U.S. 405 (2005) (holding that a dog sniff conducted during a traffic stop does not violate the Fourth Amendment). Such permitted, unrelated inquiries include checking the driver’s license, inspecting the automobile’s registration, and requesting proof of insurance. *Rodriguez*, 135 S. Ct. at 1615. Undoubtedly, most are familiar with the “routine” of a traffic stop: the officer will inform the person who is pulled over why they are being stopped and ask to see a driver’s license and proof of insurance.

Accordingly, this case presents the Court with an opportunity to clarify confusion among lower courts regarding two issues. First, for the purposes of a traffic stop, an officer is reasonable to assume the registered owner is also the driver at the time. Second, once the stop is effectuated, the officer may only make the “ordinary inquiries” incident to a traffic stop once the mission of the stop is completed—*i.e.*, once the officer determines that the driver is or is not the registered owner.

In short, *amici* respectfully submit that this Court adopt the reasoning of the Illinois Supreme Court in *People v. Cummings*. In *Cummings*, the Illinois Supreme Court not only recognized that officers have reasonable suspicion to initiate a traffic stop based upon the knowledge that the registered owner of the vehicle has an active warrant out for their arrest, it also held that *even* where the officer ultimately finds out that the driver is *not* the registered owner, the officer may nevertheless ask the driver for a license and proof of insurance because the stop was lawfully initiated in the first place. *Cf. People v. Cummings*, 46 N.E.3d 248, 248 (Ill. 2016) (holding that an officer’s request for defendant’s driver’s license did not impermissibly prolong the traffic stop, even though the officer’s reasonable suspicion to arrest vanished upon seeing the driver was not the vehicle’s registered owner); *But see State v. Coleman*, 890 N.W.2d 284, 301 (Iowa 2017) (holding that when the reason for a traffic stop is resolved and there is no other basis for reasonable suspicion, then the driver must be allowed to leave

“without further ado.”). These ordinary inquiries will not “measurably extend the duration of the stop.” *Johnson*, 555 U.S. at 333.

It will take an officer no more than a few moments to verify the driver’s license and proof of insurance. As noted by this Court in *Rodriguez*, “[t]hese checks serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly.” *Rodriguez*, 135 S. Ct. at 1614. As such, even where the validly licensed and insured driver is stopped because he or she is borrowing an unlicensed neighbor’s car, the brief encounter with police will not amount to an unreasonable seizure in violation of the Fourth Amendment. Any delay in the stop would be a *de minimis* intrusion on the driver’s Fourth Amendment rights.

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## CONCLUSION

From the officer perspective, the purpose of a traffic stop serves two greater interests: (1) enforcement of the highway and traffic laws; and (2) “related safety concerns” such as confirming the driver is validly licensed and insured. *See id.* at 1614. In light of these interests, it must be lawful for officers to presume the registered owner of a vehicle may also be the driver for purposes of conducting a traffic stop. In addition, officers must be permitted to make ordinary inquiries such as checking for valid license and registration even if the investigatory stop reveals that the driver is indeed

not the owner. Not only are such inquiries logical, routine, and minimal, but they are justified by the overriding public safety interest in roads and highways free of unlicensed and uninsured drivers.

For the foregoing reasons, the NFOP respectfully requests this Court overrule the Kansas Supreme Court and hold that police officers are reasonable to assume the registered owner of a vehicle is also the driver in order to conduct a traffic stop in accordance with the Fourth Amendment.

Respectfully submitted,

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