No. 18-556

In the Supreme Court of the United States

STATE OF KANSAS, PETITIONER

v.

CHARLES GLOVER

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF KANSAS

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether a law-enforcement officer has reasonable suspicion to stop a moving vehicle for investigatory purposes when he knows that the vehicle's registered owner has a revoked driver's license, and he has no information inconsistent with the owner being the driver.

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INTEREST OF THE UNITED STATES

This case presents the question whether the Fourth Amendment to the federal Constitution permits a police officer to conduct a brief investigatory traffic stop when the officer learns that the registered owner of a moving vehicle has a revoked driver's license, and the officer has no information inconsistent with the owner being the vehicle's driver. Because that question arises in prosecutions brought by the United States, and because federal law-enforcement officers conduct investigatory traffic stops in national parks and on other federal land, the United States has a substantial interest in the resolution of this case.

STATEMENT

During pretrial proceedings on a charge of driving without a license as a habitual violator, in violation of Kansas Statutes Annotated § 8-287 (Supp. 2016), the

trial court granted respondent's motion to suppress evidence. Pet. App. 38-39. On interlocutory appeal, the Kansas Court of Appeals reversed. *Id.* at 21-34. The Kansas Supreme Court granted review and reinstated the trial court's ruling. *Id.* at 1-20.

1. On the morning of April 28, 2016, Deputy Mark Mehrer of the Douglas County Sheriff's Office was on routine patrol in his police cruiser in the city of Lawrence, Kansas, about one mile away from Allen Fieldhouse on the campus of the University of Kansas. Pet. App. 47-48, 60. Deputy Mehrer saw a moving Chevrolet 1500 pickup truck on the road and decided to check the truck's license-plate number through the Kansas Department of Revenue's file service. *Id.* at 60.

When he ran the plate, Deputy Mehrer learned that it was connected to a Chevy 1500 pickup, that the truck was registered to Charles Glover Jr., and that Glover's Kansas driver's license had been revoked. Pet. App. 61. Based on that information, and in the absence of any information inconsistent with the inference that Glover was the driver of the pickup truck, Deputy Mehrer initiated a traffic stop of the truck. *Ibid.*

When he stopped the truck, Deputy Mehrer confirmed that Glover—respondent here—was the driver. Pet. App. 61. Respondent admitted that his driver's license had been revoked. *Id.* at 48. Deputy Mehrer cited respondent for driving with a revoked license as a habitual violator. *Ibid.*; see *id.* at 44-46 (citation); see also Kan. Stat. Ann. §§ 8-285 to 8-287 (Supp. 2016).

2. Respondent was charged in the District Court of Douglas County with that offense. Pet. App. 23. He moved to suppress the evidence obtained from the traffic stop, arguing that the traffic stop had violated the Fourth Amendment on the theory that Deputy Mehrer

had lacked reasonable suspicion of criminal activity. *Id.* at 47-48. The parties stipulated to a factual record for the purpose of deciding the motion. See *id.* at 36; *id.* at 60-61 (factual stipulation). The trial court granted respondent's motion, taking the view that it is not "reasonable" for a law-enforcement officer "to infer that the registered owner of a vehicle is also the driver of the vehicle," even "absent any information to the contrary." *Id.* at 38-39.

The State filed an interlocutory appeal, Pet. App. 58, and the Kansas Court of Appeals reversed, *id.* at 21-34. Joining "the consensus of state supreme courts that have considered this issue," *id.* at 33, the court found the stop constitutionally permissible because "the evidence established that the officer knew the registered owner of [respondent's] vehicle had a suspended driver's license and there was no evidence from which the officer could have inferred that anyone but the registered owner was driving the vehicle," *id.* at 22. The court quoted from a prior decision, addressing a similar issue, considering it "common for a reasonably cautious citizen to honk or wave at a moving vehicle that is owned by a friend without first having identified the vehicle's occupants, and in doing so, rationally expect that the friend will receive the greeting." *Id.* at 27-28 (quoting *State* v. *Hamic*, 129 P.3d 114, 119 (Kan. Ct. App. 2006)).

3. The Kansas Supreme Court granted respondent's petition for review and reinstated the trial court's suppression ruling. Pet. App. 20; *id.* at 1-19. In that court's view, Deputy Mehrer's traffic stop was supported by "only a hunch," rather than "an articulable and reasonable suspicion." *Id.* at 3.

The Kansas Supreme Court characterized the traffic stop in this case as requiring two "assumptions that are

unreasonable": namely, that a vehicle's registered owner is "likely the primary driver," and that the "the owner [of a vehicle] will likely disregard the suspension or revocation [of his license] and continue to drive." Pet. App. 9, 12. The court stated further that "Kansas law does not allow this type of inference stacking." *Id.* at 13 (citing *State* v. *Banks*, 397 P.3d 1195 (Kan. 2017)). The court also believed that upholding the lawfulness of the traffic stop here would risk "shift[ing] the burden to the defendant to establish why reasonable suspicion did not exist," *id.* at 9, and "motivat[ing] officers to avoid * * * learning facts that suggest the registered owner is not driving," *id.* at 14. The court noted, but dismissed as "unpersuasive," decisions of other courts finding that similar stops were constitutional. *Id.* at 17-18 (collecting cases).

SUMMARY OF ARGUMENT

The Kansas Supreme Court erred in requiring the suppression of the evidence from the traffic stop in this case. When a police officer learns that the registered owner of a moving vehicle has a revoked driver's license, and he is aware of no information inconsistent with the reasonable inference that the registered owner is the driver, the Fourth Amendment permits the officer to conduct a brief investigatory stop to determine safely whether the vehicle is being driven unlawfully.

The Fourth Amendment allows a police officer to conduct an investigatory traffic stop based on "reasonable suspicion" of criminal activity, which this Court has described as "'some minimal level of objective justification'" for the stop. *United States* v. *Sokolow*, 490 U.S. 1, 7 (1989) (citation omitted). An officer's reasonable suspicion will frequently be based on both the facts he observes and "commonsense judgments and inferences

about human behavior." *Illinois* v. *Wardlow*, 528 U.S. 119, 125 (2000).

As the overwhelming majority of courts to have addressed the issue have recognized, an officer can reasonably infer, in the absence of any inconsistent information, at least a fair possibility that the driver of a vehicle is its registered owner. That inference is reasonable because "common sense and ordinary experience suggest that a vehicle's owner is, while surely not always, very often the driver of his or her own car." *United States* v. *Cortez-Galaviz*, 495 F.3d 1203, 1207 (10th Cir. 2007) (Gorsuch, J.), cert. denied, 552 U.S. 1123 (2008). Law-enforcement officers frequently rely on similar inferences to perform a wide range of duties, including arresting persons wanted on outstanding warrants, locating particular suspects in fast-moving criminal investigations, and searching for abducted children. The inference is likewise applicable, and supports a traffic stop, when it suggests that a vehicle is being driven unlawfully by the registered owner whose driver's license has been revoked. The Fourth Amendment does not require officers to presume that the registered owner would not be driving on a revoked or suspended license, and any such presumption would not be empirically justified.

Respondent does not appear to dispute that *some* further investigation by Deputy Mehrer was appropriate on the facts here. The Fourth Amendment permits that further investigation to take the form of a brief traffic stop; contrary to respondent's proposal, an officer is not required instead to attempt to maneuver into position to peer inside the vehicle to verify the driver's identity. This Court has rejected the proposition that officers with reasonable suspicion must nevertheless

refrain from initiating a traffic stop, and respondent's investigatory alternative is in any event impractical. It will not always be possible to pull alongside a moving vehicle to peek at the driver, and trying to do so will often be unsafe—indeed, police departments train their officers not to attempt such a maneuver.

Nor do investigatory traffic stops like the one here, which require particularized and objective suspicion, invite inappropriate police practices. The reasonable-suspicion standard for a traffic stop is minimal because the degree of intrusion on liberty that attends a traffic stop is minimal. And a stop will be particularly brief in cases where the driver turns out not to be the registered owner; if, for example, the officer sees that the driver is a different gender than the registered owner, the justification for the stop may dissipate as soon as the officer reaches the vehicle, unless the officer independently acquires reasonable suspicion of a different crime.

The Kansas Supreme Court's decision misapplied the Fourth Amendment. It ratcheted up the reasonable-suspicion standard to a level well above the one established by this Court's precedents. And it imported a state-law principle disfavoring "inference stacking," Pet. App. 13, that has no place in the constitutional analysis. The decision below should be reversed.

ARGUMENT

THE TRAFFIC STOP IN THIS CASE WAS LAWFULLY BASED ON REASONABLE SUSPICION THAT A VEHICLE WAS BEING DRIVEN BY ITS REGISTERED OWNER WHOSE LICENSE HAD BEEN REVOKED

Because the Fourth Amendment protects "against unreasonable searches and seizures," U.S. Const. Amend. IV, the "central inquiry" is "the reasonableness in all the circumstances of the particular governmental

invasion of a citizen's personal security," *Terry* v. *Ohio*, 392 U.S. 1, 19 (1968). This case concerns the reasonableness of a police officer's brief stop of a vehicle based on information that the vehicle's registered owner has a revoked driver's license. As most state and federal courts to consider the issue have recognized, officers can reasonably rely on the inference, derived from experience and common sense, that it is at least fairly possible that a vehicle on the road is being driven by its registered owner. And in the absence of evidence inconsistent with that inference, knowledge that a particular vehicle's registered owner has a revoked driver's license justifies a brief traffic stop to investigate safely whether the vehicle is being driven illegally.

A. A Law-Enforcement Officer Can Reasonably Suspect That A Vehicle Is Being Driven By Its Registered Owner Whose License Has Been Revoked

The Fourth Amendment permits "brief investigative stops," including "traffic stop[s]" of vehicles, based on "'reasonable suspicion'" of criminal activity. *Navarette* v. *California*, 572 U.S. 393, 396-397 (2014) (citation omitted). The traffic stop in this case was supported by reasonable suspicion that respondent, whose driver's license had been revoked, was the driver of his own pickup truck.

1. The reasonable-suspicion standard requires more than a "'hunch,'" but "considerably less than proof of wrongdoing by a preponderance of the evidence." *United States* v. *Sokolow*, 490 U.S. 1, 7 (1989) (quoting *Terry*, 392 U.S. at 27). It is also "less demanding than" the standard for probable cause, which itself requires only "'a fair probability that contraband or evidence of a crime will be found.'" *Ibid.* (quoting *Illinois* v. *Gates*,

462 U.S. 213, 238 (1983)). Reasonable suspicion requires only "'some minimal level of objective justification' for making the stop." *Ibid.* (citation omitted).

This Court has recognized that an officer's reasonable suspicion will frequently rest on "rational inferences" that the officer draws from "specific and articulable facts." *Terry*, 392 U.S. at 21; see *United States* v. *Cortez*, 449 U.S. 411, 418 (1981) (observing that "a trained officer draws inferences and makes deductions" from observations). The reasonable-suspicion standard "takes into account 'the totality of the circumstances,'" *Navarette*, 572 U.S. at 397 (citation omitted), and permits officers to "draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them," *United States* v. *Arvizu*, 534 U.S. 266, 273 (2002). In evaluating an officer's basis for reasonable suspicion, courts "cannot reasonably demand scientific certainty * * * where none exists." *Illinois* v. *Wardlow*, 528 U.S. 119, 124-125 (2000). Instead, an officer's rational inferences and deductions need only find support in "commonsense judgments and inferences about human behavior." *Id.* at 125.

This Court has emphasized that an officer's reasonable suspicion based on his observations and inferences "need not rule out the possibility of innocent conduct." *Navarette*, 572 U.S. at 403 (citation omitted). For example, an officer may stop a car reported to have been driving recklessly based on an inference of drunk driving, even though that behavior "might also be explained by, for example, a driver responding to 'an unruly child or other distraction.'" *Ibid.* (citation omitted). Or an officer may reasonably suspect drug smuggling from a minivan that appeared deliberately to avoid law-

enforcement checkpoints, even if the driver's actions could also "suggest[ ] a family * * * on a holiday outing." *Arvizu*, 534 U.S. at 277. And while it "is undoubtedly true" that "there are innocent reasons for flight from police," flight in a high-crime area supports a reasonable suspicion of criminal activity. *Wardlow*, 528 U.S. at 125. At bottom, "in order to satisfy the 'reasonableness' requirement of the Fourth Amendment, what is generally demanded of the many factual determinations that must regularly be made by agents of the government * * * is not that they always be correct, but that they always be reasonable." *Illinois* v. *Rodriguez*, 497 U.S. 177, 185-186 (1990).

2. In this case, Deputy Mehrer had reasonable suspicion to stop respondent's vehicle based on two undisputed facts and one rational inference. Deputy Mehrer knew that Charles Glover was the registered owner of the Chevy 1500 pickup truck. Pet. App. 60-61. He also knew that Glover had a revoked Kansas driver's license. *Id.* at 61. Those facts, combined with the commonsense inference that a vehicle may be driven by its registered owner, indicated that further investigation of the pickup truck was "reasonably warrant[ted]," *Terry*, 392 U.S. at 21, to determine whether the truck's driver was committing the offense of driving on a revoked license.

As courts have overwhelmingly recognized, it is rational for a police officer to infer "that the driver of a vehicle is its registered owner, absent indications to the contrary," and that inference can support reasonable suspicion for a traffic stop. *State* v. *Tozier*, 905 A.2d 836, 839 (Me. 2006); see, *e.g.*, *United States* v. *Pyles*, 904 F.3d 422, 424-425 (6th Cir. 2018); *United States* v. *Cortez-Galaviz*, 495 F.3d 1203, 1207 (10th Cir. 2007) (Gorsuch, J.), cert. denied, 552 U.S. 1123 (2008); *United*

States v. *McBrown*, 149 F.3d 1176, 1998 WL 413981, at *10 (5th Cir.) (Tbl.), cert. denied, 525 U.S. 909 (1998); *Traft* v. *Commonwealth*, 539 S.W.3d 647, 651 (Ky. 2018); *People* v. *Cummings*, 46 N.E.3d 248, 249 (Ill. 2016); *State* v. *Edmonds*, 58 A.3d 961, 964-965 (Vt. 2012); *State* v. *Vance*, 790 N.W.2d 775, 781-782 (Iowa 2010); *Armfield* v. *State*, 918 N.E.2d 316, 321-322 (Ind. 2009); *State* v. *Neil* 207 P.3d 296, 297-298 (Mont. 2009); *Commonwealth* v. *Deramo*, 762 N.E.2d 815, 818 (Mass. 2002); *State* v. *Richter*, 765 A.2d 687, 689 (N.H. 2000); *State* v. *Pike*, 551 N.W.2d 919, 921-922 (Minn. 1996); see also *State* v. *Donis*, 723 A.2d 35, 41-42 (N.J. 1998) (stating the point in dictum); *State* v. *Smith*, 905 N.W.2d 353, 359 (Wis. 2018) (observing that the point was undisputed). But see, *e.g.*, *State* v. *Martinez-Arvealo*, 797 S.E.2d 181, 182, 184 (Ga. Ct. App. 2017).

If a truck registered to "Charles Glover Jr." drives by, it is reasonable to think that "Charles Glover Jr." may be the driver. As the court below noted, *some* vehicles are registered to one person but driven most days by another, as in families that "may have several drivers sharing vehicles legally registered in the names of only one or two of the family members." Pet. App. 11; see Br. in Opp. 19. But that does not eliminate reasonable suspicion because "common sense and ordinary experience suggest that a vehicle's owner is, while surely not always, very often the driver of his or her own car," and the very purpose of the *Terry* rule permitting stops based on reasonable suspicion is to provide "authorization to investigate equivocal facts." *Cortez-Galaviz*, 495 F.3d at 1207, 1208 (Gorsuch, J.); see, *e.g.*, *Wardlow*, 528 U.S. at 125 (explaining that *Terry* v. *Ohio*, *supra*, permitted officers to "detain * * * individuals to

resolve * * * ambiguity" over whether their suspicious conduct was criminal).

This Court has long recognized that "there could, of course, be circumstances in which wholly lawful conduct might justify the suspicion that criminal activity was afoot." *Sokolow*, 490 U.S. at 9 (quoting *Reid* v. *Georgia*, 448 U.S. 438, 441 (1980) (per curiam)). Accordingly, although criminal activity may not be certain, the inference that the registered owner may be the one driving his own vehicle is reliable enough to support reasonable suspicion for an investigatory traffic stop when it suggests a crime. See, *e.g.*, *Wardlow*, 528 U.S. at 124-125 (finding that an officer was "justified in suspecting that [the defendant] was involved in criminal activity, and, therefore, in investigating further"); cf. *Navarette*, 572 U.S. at 410 (Scalia, J., dissenting) (suggesting that a probability of "1 in 10 or at least 1 in 20" could give rise to reasonable suspicion).

Law-enforcement officers routinely rely on very similar inferences to perform a wide range of duties. See *Navarette*, 572 U.S. at 402 (majority opinion) (recognizing that "the accumulated experience of thousands of officers" can support reasonable suspicion). For example, officers regularly stop vehicles registered to a person with an outstanding arrest warrant on the reasonable suspicion that the suspect may be in the vehicle, and several courts have recognized that those stops are lawful. See, *e.g.*, *Pyles*, 904 F.3d at 424-425; *McBrown*, 149 F.3d 1176, 1998 WL 413981, at *10; *Traft*, 539 S.W.3d at 651; *Cummings*, 46 N.E.3d at 249; *People* v. *Jones*, 678 N.W.2d 627, 631 (Mich. Ct. App. 2004); *State* v. *Steiger*, No. 981805, 2002 WL 76778, at *1 (Utah Ct. App. Jan. 17, 2002).

The inference that a person may be driving his own car has also played a role in rapidly developing criminal investigations focused on a particular suspect. FBI agents apprehended the infamous "Beltway Snipers," John Allen Muhammad and Lee Boyd Malvo, after investigators came to suspect Muhammad, alerted the public to the description and license plate number of a blue 1990 Chevy Caprice registered to him, and received a tip from a citizen who spotted that car at a rest stop off Interstate 70 in Maryland. See *Muhammad* v. *State*, 934 A.2d 1059, 1074 (Md. Ct. Spec. App. 2007); see also Federal Bureau of Investigation, *Famous Cases and Criminals*: *Beltway Snipers*, https://www.fbi.gov/history/famous-cases/beltway-snipers.

Officers also frequently depend on license-plate and registered-owner information when issuing AMBER Alerts to attempt to recover abducted children. See U.S. Dep't of Justice, *AMBER Alert Best Practices* 18-19 (2d ed. Apr. 2019) (describing license plate information as a "[c]ore [i]nformation [e]lement[ ]" for an AMBER Alert), https://www.ojjdp.gov/pubs/252759.pdf. In the critical hours immediately following a suspected abduction, officers might know little more than the suspected abductor's name, description, and the vehicle registered to him. See, *e.g.*, KYTX/KVUE, *Woman found dead, Amber Alert issued for missing children* (Jan. 2, 2018) (describing an AMBER Alert providing a description and license plate for a vehicle connected to a suspected abductor of two girls in Texas), https://www.ktbs.com/news/woman-found-dead-amber-alert-issued-for-missing-children/article_52664b88-efae-11e7-b6f5-6b877581340e.html. If a suspected abductor's vehicle were seen driving on the highway following an

AMBER Alert, it would be reasonable for law enforcement to stop that vehicle in search of the missing children—indeed, an officer would be expected to make such a stop. See, *e.g.*, CBS News, *Police: Missing Texas girls found safe days after mother found dead* (Jan. 4, 2018) (describing how the two Texas girls were found when a police officer in Colorado "spotted the suspect vehicle based on the AMBER Alert"), https://www.cbsnews.com/news/police-missing-round-rock-texas-girls-found-safe-after-disappearing-after-mother-found-dead.

3. The stop at issue in this case relied on a very similar inference. This is not a case in which the "totality of the circumstances" included facts that would "dispel the reasonable suspicion" that a crime was occurring. *Navarette*, 572 U.S. at 403-404. In a different case where, for example, an officer happens to see that a driver's gender or apparent age does not match the information the officer has about the car's registered owner, that information would undercut reasonable suspicion that the registered owner is the person driving. See, *e.g.*, *Pyles*, 904 F.3d at 425; *Donis*, 723 A.2d at 37; *Pike*, 551 N.W.2d at 922 ("[I]f the officer knows that the owner of a vehicle has a revoked license and further, that the owner is a 22-year-old male, and the officer observes that the person driving the vehicle is a 50- or 60-year-old woman, any reasonable suspicion of criminal activity evaporates."). Here, however, Deputy Mehrer was not aware of any information inconsistent with the inference that respondent was driving his Chevy pickup truck.

Respondent's contrary argument is circular and lacks support in either law or fact. According to respondent (Br. in Opp. 19-20), the criminal nature of

the suspected conduct—driving on a revoked license—is *itself* reason not to suspect such conduct. But any "deterrent effect of a suspended license" on a person's willingness to drive, *id.* at 20, is not much different from the criminal law's general deterrent effect on crime, which has never been a factor in the reasonable-suspicion inquiry. It would make little sense to discount "reasonable suspicion of criminal activity," *Navarette*, 572 U.S. at 398, for the tautological reason that it is reasonable suspicion of *criminal* activity. The Kansas Supreme Court's similar suggestion that "Deputy Mehrer should have presumed [respondent] was obeying the revocation order," Pet. App. 13, is contrary to this Court's recognition that the circumstances justifying an investigatory stop may be "ambiguous and susceptible of an innocent explanation." *Wardlow*, 528 U.S. at 125.

Moreover, even if it were relevant, the deterrent effect of a revoked or suspended driver's license appears to be relatively minimal. One recent study estimated that "as many as 75% of suspended drivers continue to drive." American Ass'n of Motor Vehicle Administrators, *Reducing Suspended Drivers and Alternative Reinstatement Best Practices* 3 (Nov. 2018) https://www.aamva.org/reducingsuspendeddriversaternativereinstatementbp; see Pet. Br. 14 n.2 (citing additional sources).

B. Respondent Provides No Sound Basis For Disputing The Reasonableness Of The Traffic Stop In This Case

Respondent and the court below effectively acknowledge (Br. in Opp. 10, 23; Pet. App. 8) that a prudent law-enforcement officer, who learns that the registered owner of a vehicle on the road has a revoked driver's license, has a basis to investigate further. They suggest, however, that the Fourth Amendment limits

the initial phase of any further investigation to "seek[ing] to confirm the identity of the driver" *without* making a traffic stop, Pet. App. 8, such as by attempting to "observe[ ] the driver's gender or height," Br. in Opp. 23. That suggestion is legally and factually unsound.

1. As a legal matter, the reasonableness of a traffic stop under the Fourth Amendment does not depend on whether an officer could have investigated more before making the stop. This Court has made clear that when a law-enforcement officer has "a reasonable basis to suspect" a crime, the "reasonableness of the officer's decision to stop a suspect does not turn on the availability of less intrusive investigatory techniques." *Sokolow*, 490 U.S. at 11; see *Navarette*, 572 U.S. at 404 ("[A]n officer who already has such a reasonable suspicion need not surveil a vehicle at length in order to personally observe suspicious driving."). The mere potential for further investigation that does not involve a traffic stop provides no reason to raise the bar for what is required to establish reasonable suspicion.

A State's "vital interest in ensuring that only those qualified to do so are permitted to operate motor vehicles," *Delaware* v. *Prouse*, 440 U.S. 648, 658 (1979), outweighs the minimal intrusion of a traffic stop supported by reasonable suspicion. Individuals have "a lesser expectation of privacy in a motor vehicle" both "because its function is transportation and it seldom serves as one's residence or as the repository of personal effects," and because vehicles "are subject to pervasive and continuing governmental regulation and controls, including periodic inspection and licensing requirements." *New York* v. *Class*, 475 U.S. 106, 112-113 (1986) (citations omitted); see also *California* v. *Carney*, 471 U.S. 386,

392 (1985); *United States* v. *Martinez-Fuerte*, 428 U.S. 543, 561 (1976).

Moreover, traffic stops intrude on privacy only modestly, because while they interfere with a motorist's freedom of movement, see *Prouse*, 440 U.S. at 657, this Court has recognized that "most traffic stops resemble, in duration and atmosphere, the kind of brief detention authorized in *Terry* [v. *Ohio*]," under which an officer with reasonable suspicion may "detain [a] person briefly" and "ask * * * a moderate number of questions." *Berkemer* v. *McCarty*, 468 U.S. 420, 439 & n.29 (1984). A stop may last no longer than "the time needed to handle the matter for which the stop was made" and "attend to related safety concerns." *Rodriguez* v. *United States*, 135 S. Ct. 1609, 1612, 1614 (2015). In the case of a stop of the sort at issue here, that time may be quite short. If, for example, an officer learns upon approaching a stopped vehicle that the driver is definitely not the registered owner suspected of driving without a license (say, because the driver and the owner are different genders), then the driver "must be allowed to go on his way," *Wardlow*, 528 U.S. at 126, without any further delay, *Rodriguez*, 135 S. Ct. at 1614, unless the officer "independently" acquires reasonable suspicion of a different crime, *id.* at 1616. See *Holly* v. *State*, 918 N.E.2d 323, 326 (Ind. 2009) (finding that an officer's reasonable suspicion regarding a female unlicensed driver was dispelled once he approached the vehicle and saw a male in the driver's seat). A traffic stop based on that sort of reasonable-but-ultimately-incorrect suspicion should last only a few moments.

2. The principal alternative to a traffic stop proffered by respondent and the court below is for an officer to attempt to pull alongside the suspect vehicle and peer

inside to see if the driver matches any known characteristics of the unlicensed registered owner. See Br. in Opp. 10, 23; Pet. App. 8, 13. Even if the possibility of that maneuver were legally relevant, imposing it as a constitutional requirement would be impractical and unsafe.

For one thing, the tactic would not work in many cases—where the weather is bad, the car has tinted windows, or the road has only one lane going in a particular direction, among other situations. See *United States* v. *Williams*, 796 F.3d 951, 958 (8th Cir. 2015) ("Common sense dictates that police officers will often be unable to confirm the race or gender of a driver before initiating a traffic stop."), cert. denied, 136 S. Ct. 1450 (2016). It is no answer for respondent to suggest (Br. in Opp. 23) that the reasonable-suspicion inquiry could take account of such difficulties. The question under the Fourth Amendment is whether the officer had enough information to reasonably suspect criminal activity, not whether he could have, in theory, acquired more. See *Navarette*, 572 U.S. at 404. If the facts here would be sufficient for a stop in the rain, they were sufficient for a stop with the sun shining.

Furthermore, even when the peek-in maneuver would be possible, requiring an officer to attempt it would "strike[ ] against basic principles of safety because it puts the onus on the officer to maneuver himself into a position to clearly observe the driver in the midst of traffic." *Armfield*, 918 N.E.2d at 322 (brackets and citation omitted). Asking a police officer to take his eyes off the road to look inside another vehicle long enough to observe the driver, and then to compare that information to biographical data from the officer's on-board computer, would frequently create a hazard

for the officer, other motorists, or both. See *Vance*, 790 N.W.2d at 782 (explaining that a "verification requirement * * * would not only place the stopping officer in danger but also the traveling public in general"); *United States* v. *Sinkler*, 91 Fed. Appx. 226, 228 (3d Cir. 2004) (describing a high-speed chase that occurred after an officer attempted to pull alongside a vehicle to identify the driver); see also, *e.g.*, Stephen M. James, *Distracted Driving Impairs Police Patrol Officer Driving Performance*, 38 Policing: An International Journal of Police Strategies & Management, 505, 505-516 (2015), https://www.dailyherald.com/assets/PDF/DA147896112.pdf; Scott Friedman, *Distractions Lead to Frequent Police Crashes in Texas* (Jan. 30, 2013), https://www.nbcdfw.com/investigations/series/driven-to-distraction/Distractions-Lead-to-Frequent-Police-Crashes-in-Texas -164342516.html.

Because such a maneuver would be unsafe, police officers are trained not to attempt it. Officers instead are trained generally to keep their vehicles positioned behind a suspect's vehicle. See, *e.g.*, *United States* v. *Rodella*, 804 F.3d 1317, 1338 (10th Cir. 2015) (noting that the New Mexico Department of Public Safety's Law Enforcement Academy teaches candidates "not to pull in front of or alongside a suspect vehicle" for safety reasons), cert. denied, 137 S. Ct. 37 (2016); *Bryant* v. *Hall*, No. C01-2871, 2002 WL 1034108, at *8 (N.D. Cal. May 17, 2002) (describing officer's testimony that his "normal procedure was to pull behind a vehicle because it was dangerous to pull alongside a suspect vehicle"); Jean Reynolds, *Police Officer Training: 8 Ways to Ensure Safety During Traffic Stops*, Virtual Academy (Jan. 17, 2016) (noting safety advantages created by an officer keeping his patrol vehicle behind a suspect's

vehicle), https://virtualacademy.com/ensuring-officer-safety-during-traffic-stops/#.XMiYAOhKhjU.

The Fourth Amendment does not force officers to adopt a different approach. This Court recognized in *Terry* that it would "[c]ertainly * * * be unreasonable to require that police officers take unnecessary risks in the performance of their duties." 392 U.S. at 23. It is all the more unreasonable to require them to do so when the risk would extend to the endangerment of innocent civilians on the road. But that is precisely what respondent's additional-corroboration requirement would do, all to avoid a minimally invasive traffic stop that will be especially short if the officer's reasonable inference that the registered owner is driving turns out to be mistaken.

3. Respondent's concern (Br. in Opp. 22) that permitting a traffic stop in circumstances like those here will "create perverse incentives," by "discouraging officers" from learning additional facts before making a stop, is misplaced. A similar argument could be made in *any* reasonable-suspicion case; the inevitable result of finding reasonable suspicion is that an officer has enough information to initiate a stop and so need not gather additional facts before doing so. And the practical and safety-related issues just discussed make this case a particularly poor context in which to accept such an argument. Nor does respondent explain why officers would have a meaningful incentive to avoid learning additional facts about a driver when they can safely do so, just to conduct an exceedingly short traffic stop if the driver turns out to be someone other than the registered owner.

The requirement that an officer reasonably suspect that a particular person (the registered owner) is at that

moment committing a crime (driving on a revoked license) also belies respondent's suggestion that a stop in circumstances like those here would give rise to the sort of "standardless and unconstrained discretion" that this Court rejected in *Delaware* v. *Prouse*. Br. in Opp. 20 (quoting 440 U.S. at 661). The law-enforcement practice at issue in that case involved stops "for the purpose of checking the driving license of the operator and the registration of the car, where there [was] neither probable cause to believe nor reasonable suspicion that the car [was] being driven contrary to the laws" or any other recognized basis for a seizure. *Prouse*, 440 U.S. at 650. This case, by contrast, does not involve "spot checks * * * at the unbridled discretion of law enforcement officers," *id.* at 661, but instead a stop premised on what the officer knew about a specific vehicle.

The basis for stopping respondent's pickup truck was both "particularized" and "objective." *Navarette*, 572 U.S. at 396 (citation omitted). It involved a "a suspicion that the particular individual being stopped [was] engaged in wrongdoing," *Cortez*, 449 U.S. at 418, because it was based on the sum of the information known about *this* Chevy 1500 pickup truck and its specific registered owner. And the stop relied on objective facts that could have been observed by any other officer with access to the same information, in conjunction with an inference that is commonplace both within and beyond law enforcement: namely, that the registered owner of a vehicle is often the driver.

C. The Kansas Supreme Court Misapplied The Fourth Amendment To The Circumstances Of This Case

As the foregoing discussion demonstrates, the Kansas Supreme Court's decision in this case was analytically flawed. The court's view that reasonable suspicion

required "assum[ing]" that a vehicle's registered owner is "*likely* the *primary* driver" and "will *likely* disregard the suspension or revocation [of his license] and continue to drive," Pet. App. 12 (emphasis added), applied a standard much higher than what the Fourth Amendment demands. See, *e.g.*, *Sokolow*, 490 U.S. at 7 (explaining that the standard of reasonable suspicion is "considerably less than proof of wrongdoing by a preponderance of the evidence" and less than the "'fair probability'" of wrongdoing that establishes probable cause) (citation omitted); see pp. 7-8, *supra*. That legal misunderstanding, in turn, presumably informed the Kansas court's characterization of the inference that a vehicle is being driven by its registered owner who has a revoked license as "unreasonable," Pet. App. 9; see *id.* at 11-12—a characterization that in any event does not accord with common sense, law-enforcement experience, or empirical data. And both of those errors—as well as a failure to consider the practical realities—underlay the Kansas court's conclusion that finding reasonable suspicion on the facts here would place an onus on defendants that should instead be placed on law-enforcement officers. See *id.* at 9, 12, 14-15.

Furthermore, even if the Kansas Supreme Court was correct to view this case as requiring two separate inferences (that registered owners may drive their own vehicles and that they may do so with a revoked license), the court erred in reasoning that "Kansas law does not allow" those two inferences "to be stacked" together. Pet. App. 13 (citing *State* v. *Banks*, 397 P.3d 1195 (Kan. 2017)). A rule of Kansas state law about the quantum of evidence needed to support a conviction beyond a reasonable doubt, see *Banks*, 397 P.3d at 1200, has no bearing on the Fourth Amendment's reasonable-suspicion

standard for a brief investigatory stop. See *Gates*, 462 U.S. at 235 (explaining that the demands of the "finely tuned" beyond-a-reasonable-doubt standard used "in formal trials" have "no place" in the context of the Fourth Amendment). And this Court has never suggested a nonsensical, confusing, and difficult-to-apply rule under which the reasonable-suspicion analysis is limited to a single inference. See, *e.g.*, *Arvizu*, 534 U.S. at 273 (explaining that officers may draw "inferences * * * and deductions," plural, from "the cumulative information available to them").

At bottom, Deputy Mehrer's commonsense inference that respondent might be driving respondent's own pickup truck was reasonable. And because respondent's driving of the truck on a revoked license would be a crime, the Fourth Amendment permitted the officer to stop him briefly to safely conduct further investigation.

CONCLUSION

The judgment of the Kansas Supreme Court should be reversed.

Respectfully submitted.

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