No. 20-18

In The

Supreme Court of the United States

ARTHUR GREGORY LANGE,

Petitioner,

v.

STATE OF CALIFORNIA,

Respondent.

On Writ Of Certiorari To The Court Of Appeal Of The State Of California, First Appellate Division

BRIEF OF THE NATIONAL FRATERNAL ORDER OF POLICE, AS AMICUS CURIAE IN SUPPORT OF THE JUDGMENT BELOW

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STATEMENT OF INTEREST OF AMICUS CURIAE[1]

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.

Today, law enforcement officers are challenged at every turn. The law permits officers, based on specific and articulable facts, "together with rational inferences from those facts," to conduct brief, investigatory stops of individuals to address violations of the law. *See Terry v. Ohio*, 392 U.S. 1, 21 (1968). These *de minimis* interruptions are aimed at public safety and may last less than minutes. But, in the course of carrying out their duty to protect and serve the public vis-à-vis these brief stops, their authority may be tested by a suspect *in real time* and their actions examined

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[1] In accordance with Rule 37.6, the NFOP 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.

retrospectively under a microscope by the department, public, and news media.

When a law enforcement officer's lawful command is challenged, ignored, or outright disobeyed, and a suspect vanishes into a home or other dwelling, the Fourth Amendment must not turn into a shield to thwart the officer's immediate pursuit. This case from the California Court of Appeal, First Appellate District, presents this Court with an opportunity to clarify some confusion among lower courts and assist law enforcement *and the public* in ascertaining clear expectations for both to follow. It is with this backdrop in mind that the NFOP respectfully seeks to be heard in this matter.

SUMMARY OF ARGUMENT

"Law enforcement is not a child's game of prisoners base, or a contest, with apprehension and conviction depending upon whether the officer or defendant is the fleetest of foot." *State v. Ricci*, 739 A.2d 404, 408 (N.H. 1999) (*citing State v. Blake*, 468 N.E.2d 548, 553 (Ind. Ct. App. 1984)); *see also Gasset v. State*, 490 So.2d 97, 98-99 (Fla. Ct. App. 1986) ("The enforcement of our criminal laws, including serious traffic violations, is not a game where law enforcement officers are 'it' and one is 'safe' if one reaches 'home' before being tagged."). Just as law enforcement officers cannot create an exigent circumstance in order to avoid the Fourth Amendment's warrant requirement, suspects

must not be permitted to trigger the need for a warrant by outracing the police to the sanctity of a home or other dwelling.

An order from a law enforcement officer to "PULL OVER" or "STOP," be it verbal or demonstrated by activating overhead lights or sirens, should be universally understood and obeyed. Unfortunately, it is not. The real time, continuously unfolding nature of law enforcement interaction with the public requires a willingness to make a split-second decision in a life or death scenario. And law enforcement officers operate in an arena of uncertainties. Officers are struggling to discern the rules that they are required to follow. This appears to be a case where this Court can help both law enforcement and the public by setting some parameters.

As set forth below, the NFOP respectfully requests this Court affirm the judgment below. In the alternative, for the benefit of members of the public and the boots-on-the-ground officers, the Court should declare in no uncertain terms: *When a law enforcement officer demonstrates an intent to conduct a brief investigatory (Terry) stop, or to set in motion an arrest in a public place, and the suspect disobeys (or ignores) that officer's lawful order, the officer is justified in entering a home (or other dwelling) without a warrant while in hot pursuit of that suspect.* To be clear, the NFOP does not advocate for unrestrained ambition for its officers to effectuate lawful stops and arrests. To the contrary, the rule set forth herein is *narrow* in that it only applies in a very limited set of circumstances:

(1) the law enforcement officer announces their intent to conduct a *Terry* stop or set in motion an arrest in a public place (i.e., yelling "Stop" or activating the overhead lights or siren on the vehicle);

(2) the suspect disobeys or ignores the officer's order; and

(3) the officer, *in hot pursuit*, follows that suspect into a home or similar dwelling.

Only in the scenario described above, does the Fourth Amendment warrant requirement yield according to the ruling advocated for herein. The NFOP submits that such a ruling makes sense for two reasons. First, in pursuing a suspect, experience and training suggest that the officer has already determined the suspect in flight poses a serious threat to public safety. Second, internal mechanisms such as department pursuit policies and officer training exist to make certain these policing practices are carefully considered and do not go unchecked.

1. Law enforcement officer experience and training suggest that the decision to pursue a fleeing suspect is made because that suspect poses a serious threat to public safety. The officer has determined, based upon his or her experience and training, that the danger presented to the public because the individual may be uninsured, unlicensed, intoxicated, armed, or the like, coupled with the suspect's decision to flee, warrants immediate pursuit and apprehension. In other words, the

decision is *not* made without serious consideration and balancing of the various dangers and interests at stake. And only at that point, is the officer is justified in a *warrantless* entry. This principle furthers law enforcement's mission to maintain safe roadways. Furthermore, the Court's affirmation of the judgment below, or in the alternative adoption of the rule set forth herein, will discourage flight for minor offenses.

2. Police departments and law enforcement officers are constrained by internal mechanisms such as pursuit policies and emergency vehicle operations training. These policies and trainings exist *irrespective* of any case law and ensure that a ruling by this Court in favor of law enforcement will not encourage aggressive policing practices.

ARGUMENT

I. A LAW ENFORCEMENT OFFICER IS JUSTIFIED IN MAKING A WARRANTLESS ENTRY IN HOT PURSUIT OF A SUSPECT WHO DISOBEYS A LAWFUL ORDER MADE BY THE OFFICER FOR THE PURPOSE OF CONDUCTING A *TERRY* STOP OR MAKING AN ARREST IN A PUBLIC PLACE.

If an officer decides to pursue a suspect who disobeys a lawful order made by the officer, it is because

the officer's experience and training advise that the suspect poses a serious threat to public safety, irrespective of whether the underlying crime in question is a felony or misdemeanor. In recognition of the many risks associated with pursuing a criminal suspect, law enforcement officers do not pursue individuals unless they have determined that there are exigent circumstances warranting such an action. In other words, from law enforcement's perspective, the decision to pursue means exigent circumstances exist. *See also State v. Nichols*, 484 S.E.2d 507, 508 (Ga. Ct. App. 1997) ("[T]he key to 'hot pursuit' is that the defendant is aware he is being pursued by the police, and is therefore likely to disappear or destroy evidence of his wrongdoing if the officer takes the time to get a warrant. In other words, the 'hot pursuit' provides the exigent circumstances necessary to justify the failure to obtain a warrant."). Should this Court affirm the judgment below, or in the alternative adopt the rule set forth herein, the resulting benefits to the public and law enforcement would greatly outweigh any perceived harms to constitutional principles.

A. Enforcement of highway and traffic safety laws protects the public.

The first resulting benefit is safer roadways. Law enforcement officers are responsible for patrolling our state highways and municipal roads to detect and deter traffic violations. Regardless of whether an officer observes a relatively minor traffic infraction (such as driving with a suspended license, playing loud music,

or honking for no apparent reason) or an objectively more serious violation (such as driving under the influence)—that officer's duty remains the same: to enforce the law in furtherance of public safety by preventing automobile accidents.

The rationale in support of prohibiting conduct like that of the Petitioner is identical to the purpose behind rules prohibiting driving under the influence, leaving the scene of an accident, ignoring stop signs, and driving without insurance or a license. The public is safer when highway and traffic safety laws are enforced, and we entrust law enforcement officers with that duty. Accordingly, when a driver decides that he or she may avoid the consequences of a possible traffic violation by fleeing into a home, public safety considerations justify an officer's warrantless entry into that home to pursue and apprehend the suspect.

i. Unlicensed and uninsured drivers.

Motorists without licenses are considerably more dangerous than validly licensed drivers. Sukhvir S. Brar, California Department of Motor Vehicles, *Estimation of Fatal Crash Rates for Suspended/Revoked and Unlicensed Drivers in California* (2012). 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. An estimated 13% of motorists (equal to 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 our nation's 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.

In light of the above, there is a substantial public interest in maintaining the safety of our roadways which justifies a *de minimis* intrusion on constitutional protections when a driver suspected of driving without a license and/or insurance, flees from an

officer, and the officer makes a warrantless entry in hot pursuit of that suspect. The public expects—and law enforcement 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 Officer Weikert in this case, and of all police officers who effectuate traffic stops under similar circumstances, illustrate the embodiment of that duty.

ii. Intoxicated drivers.

Every day, almost 30 people in the United States die in drunk driving crashes—the equivalent of one person every 50 minutes. *Drunk Driving*, National Highway Traffic Safety Administration, https://www.nhtsa.gov/risky-driving/drunk-driving (last visited Jan. 11, 2021). Drunk driving crashes claim more than 10,000 lives per year. *Id.* Furthermore, about one third of all drivers arrested for drunk driving are repeat offenders. *Traffic Tech*, Technology Transfer Series (Feb. 1995), https://one.nhtsa.gov/people/outreach/traftech/1995/tt085.htm. According to Mothers Against Drunk Driving (MADD), drunk driving costs the United States $132 billion per year. *Statistics*, MADD, https://www.madd.org/statistics/ (last visited Jan. 11, 2021). According to the CDC, in 2016, more than 1 million drivers were arrested for driving under the influence of alcohol or narcotics. *Impaired Driving: Get the Facts*, CDC, https://www.cdc.gov/transportationsafety/impaired_driving/impaired-drv_factsheet.html (last visited Jan. 11, 2021). Too often, law enforcement officers are the only line of defense against this fatal threat to

the public by removing these drivers from the roadways.

An officer in the same position as California Highway Patrol Officer Aaron Weikert could reasonably suspect that Petitioner was driving while intoxicated based on his actions of playing loud music, honking his horn four to five times for no apparent reason, and slowing to a stop in the middle of the road. And Officer Weikert's pursuit of Petitioner in his patrol vehicle put Petitioner on notice that the police were, at the very least, suspicious of his conduct. Thus, any delay caused by the time it took Officer Weikert to obtain a warrant created a circumstance that may have resulted in the destruction of evidence. If Petitioner's arrest had been delayed, he would have had the opportunity to drink alcohol in his home, thereby obscuring the source of any alcohol in his system and making it difficult, if not impossible, to determine the amount of alcohol that was in his system while he was driving his vehicle. Moreover, even if Petitioner did not try to destroy evidence of his blood-alcohol level, this evidence would naturally dissipate during any delay.

Accordingly, the public benefits greatly when an officer, in hot pursuit of a suspected drunk driver that has ignored the officer's commands to "Stop" or "Pull over," makes a warrantless entry to effectuate the stop and/or arrest. Experience and training suggests that nearly one-third of these drivers are or will be repeat offenders. The public should not be expected to rely on intoxicated drivers to police themselves in furtherance of the public interest to free the roadways from drunk

drivers. The actions of Officer Weikert in this case—and of all law enforcement officers who pursue individuals under similar circumstances—are necessary to maintain the safety of our roadways.

B. Discourage flight for minor offenses.

The second resulting benefit is that suspected offenders will be discouraged from fleeing for objectively minor violations of the law. If such evasions were permitted, every attempted stop of an individual by law enforcement (whether on foot or in a vehicle) could potentially result in a race back to the individual's home or another private dwelling. To be sure, a contrary holding would lead to the opposite problem: in every case involving a minor offense, the suspect would have an incentive to flee law enforcement because flight itself would not justify application of the hot pursuit doctrine.

The Ohio Supreme Court adopted this approach and reasoning in *Middletown v. Flinchum*. Middletown police officers observed appellant Thomas Flinchum's car stopped at a red traffic light. *Middletown v. Flinchum*, 765 N.E.2d 330 (Ohio 2002). When the light changed, the appellant spun his car's tires. *Id.* The officers then observed the appellant stopping his car and then rapidly accelerating, causing the car to fishtail as it made a right turn. *Id.* At that point, the officers decided to follow him. *Id.* The officers attempted to approach the vehicle twice, but each time the appellant fled. *Id.* Eventually, the officers spotted the vehicle parked with the appellant standing beside it. *Id.* When

he saw the officers stop near his car, the appellant ran towards the rear entrance of a house. *Id.* at 331. He was pursued by one of the officers on foot, who yelled "Stop" and "Police" several times, to no avail. *Id.* As the foot pursuit continued, the officer heard a door slam open on the house. *Id.* The officer then observed the appellant standing in a kitchen approximately five feet inside the home. *Id.* Without the appellant's permission, the officer entered the home and arrested him. *Id.* The appellant was charged with reckless operation of a motor vehicle, driving under the influence, and resisting arrest. *Id.* He argued that the Middletown police unlawfully entered his home without probable cause and under no exigent circumstances, because his traffic violation was merely a misdemeanor. *Id.*

Finding that the appellant's arguments were without merit, the Ohio Supreme Court held that when officers, having identified themselves, are in hot pursuit of a suspect who flees to a house in order to avoid arrest, the police may enter without a warrant regardless of whether the offense for which the suspect is being arrested is a misdemeanor. *Id.* As the court explained:

> [W]e see no reason to . . . give [appellant] a free pass merely because he was not charged with a more serious crime. The basic fact remains that appellant fled from police who were in lawful pursuit of him and who had identified themselves as police officers. . . . In so holding, we do not give law enforcement unbridled authority to enter a suspect's residence at whim or with blatant disregard for the constraints of the Fourth Amendment, but

> rather limited to situations present in today's case.

Id. at 332.

The Ohio Supreme Court's holding in *Flinchum* supports the on-the-ground realities faced by officers. The real time nature of law enforcement means that once flight occurs, the underlying offense becomes an afterthought. At the forefront of the officer's mind include questions like why is this person fleeing? Are there innocent bystanders at risk? Is the suspect on foot or in a vehicle? What are the environmental conditions? Is the suspect armed? Are drugs and/or alcohol involved? Is back-up available?

Indeed, the rule set forth by the Ohio Supreme Court, which the NFOP supports, applies to the limited circumstances when: (1) the law enforcement officer announces their intent to conduct a *Terry* stop or set in motion an arrest in a public place (i.e., by yelling "Stop" or activating the overhead lights or siren on the vehicle); (2) the suspect disobeys or ignores the officer's order; and (3) the officer, in hot pursuit, follows that suspect into a home. This is a workable mandate that both the public and law enforcement can implement, setting reasonable expectations for all encounters.

C. The rule set forth herein only applies to "hot pursuits." If the pursuit "cools," the officer's warrantless entry is no longer justified.

Finally, the sought-after ruling is narrow. This case, and similar factual circumstances faced by law enforcement, only concerns "hot" pursuits. The doctrine of hot pursuit applies whether a police officer engages in a high-speed chase or merely approaches a suspect who immediately retreats into a house. *See State v. Paul*, 548 N.W.2d 260, 265 (Minn. 1996). Indeed, this Court noted in *United States v. Santana* that, although hot pursuit usually means some sort of a chase, "it need not be an extended hue and cry 'in and about [the] public streets.'" 427 U.S. 38, 43 (1976). However, not every pursuit is necessarily "hot" and there may be a point when a pursuit is no longer sufficiently continuous to be considered "hot" so as to justify the warrantless entry of a home. *See, e.g.*, *Blanchester v. Hester*, 612 N.E.2d 412 (Ohio Ct. App. 1992) (warrantless entry of defendant's residence to arrest him for failure to yield the right-of-way and fleeing and eluding was unjustified where no hot pursuit occurred; there were no witnesses that saw any lights or heard any sirens and the distance which defendant traveled from the point of the police encounter to his home was short—0.2 miles); *State v. Hitch*, 491 N.E.2d 1147 (Ohio Cty. Ct. 1985) (hot pursuit become "cold" during the 20 minutes that lapsed before back-up assistance arrived and the police's subsequent warrantless entry); *State v. Ballou*, 186 P.3d 696 (Idaho Ct. App. 2008) (hot

pursuit doctrine did not apply where 40 minutes elapsed between the time police officers lost sight of the suspect and the time the officers knocked on the suspect's apartment door).

The NFOP and its members recognize that there are circumstances that can cause a hot pursuit to "cool," and therefore, require a warrant to enter a private dwelling. However, the Court need not use this case to produce a bright-line between where a hot pursuit is no longer considered "hot." Rather, the NFOP draws the Court's attention to this point merely to highlight the narrow nature of the sought-after ruling.

II. DEPARTMENT PURSUIT POLICIES AND OFFICER TRAINING MAKE CERTAIN THAT WARRANTLESS ENTRY WHILE IN HOT PURSUIT OF A FLEEING SUSPECT IS RARE AND OBJECTIVELY JUSTIFIED.

The decision to pursue a suspect who only seconds earlier disobeyed a lawful command from law enforcement is the most critical risk-reward dilemma faced by officers. In the ideal scenario, the offender will be quickly apprehended with no harm done to the offender, the officer, or any bystanders. Unfortunately, police pursuits can have dangerous and sometimes deadly implications. Thus, the decision to pursue is only made after careful consideration. In recognition of law enforcement's monumental responsibility to act in the public's best interest, officers are trained on how to assess various factors before deciding to pursue

a suspect. In addition, most departments have implemented comprehensive pursuit policies that must be followed by the officers.

All that is to say, *simply because the officer is justified in entering a home during a hot pursuit without a warrant, does not mean that they will.* A ruling by this Court affirming the judgment below, or adopting the rule set forth herein, will *not* negate law enforcement training on assessing risk factors or eliminate police department policies on safely pursuing criminal suspects.

A. Police departments implement and enforce internal policies that clearly define when pursuit of a fleeing suspect is—and is not—appropriate.

"Vehicle pursuits expose innocent citizens, law enforcement Deputies and fleeing violators to the risk of serious injury or death." *Sonoma County Sheriff's Office, Section 314—Vehicle Pursuits, Policies and Procedures.* In other words, law enforcement officers appreciate the danger of a "hot pursuit." Pursuit policies are designed to protect the officer *and* the public. Departments balance the need to immediately apprehend a fleeing suspect with the risk created by the chase in order to form the foundation of police pursuit policies. David P. Schultz, Ed Hudak, and Geoffrey P. Alpert, Ph.D., *Evidence-Based Decisions on Police Pursuits: The Officer's Perspective*, Law Enforcement Bulletin

(Mar. 1, 2010), https://leb.fbi.gov/articles/featured-articles/evidence-based-decisions-on-police-pursuits-the-officers-perspective.

For example, the "Vehicle Pursuit" policy adopted by the Sonoma County, California Sheriff's Office[2] provides, in part, (1) when to initiate a pursuit, (2) when to terminate a pursuit, and (3) pursuit driving tactics. The policy asks deputies to consider the following in deciding whether to initiate a pursuit:

> (a) Seriousness of the known or reasonably suspected crime and its relationship to community safety.
>
> (b) The importance of protecting the public and balancing the known or reasonably suspected offense and the apparent need for immediate capture against the risks to Deputies, innocent motorists and others.
>
> (c) Apparent nature of the fleeing suspect(s) (e.g., whether the suspect(s) represent a serious threat to public safety).
>
> (d) The identity of the suspect(s) has been verified and there is comparatively minimal risk in allowing the suspect(s) to be apprehended at a later time.
>
> (e) Safety of the public in the area of the pursuit, including the type of area, time of day,

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[2] The NFOP does not suggest that Officer Weikert's actions were governed by the Sonoma County Sheriff's Office policy on vehicle pursuits. The Sonoma County policy is cited only as an example of a pursuit policy.

> the amount of vehicular and pedestrian traffic and the speed of the pursuit relative to these factors.
>
> (f) Pursuing officer(s) familiarity with the area of the pursuit, the quality of radio communications between the pursuing units and the dispatcher/supervisor and the driving capabilities of the pursuing Deputies under the conditions of the pursuit.
>
> (g) Weather, traffic and road conditions that substantially increase the danger of the pursuit beyond the worth of apprehending the suspect.
>
> (h) Performance capabilities of the vehicles used in the pursuit in relation to the speeds and other conditions of the pursuit.
>
> (i) Vehicle speeds.
>
> (j) Other persons in or on the pursued vehicle (e.g., passengers, co-offenders and hostages).
>
> (k) Availability of other resources such as helicopter assistance.
>
> (l) The police unit is carrying passengers other than Deputies. Pursuits should not be undertaken with a prisoner(s) in the police vehicle.

Thus, a Sonoma County law enforcement officer has no less than *twelve* factors to consider before initiating a pursuit. If these factors weigh in favor of hot pursuit,

the officer will have determined that a sufficient exigency exists to warrant such a dangerous endeavor.

As another example, the Columbus, Ohio Police Department ("CPD") Vehicular Pursuit Policy states as follows:

> II. Policy Statements
>
> A. A respect for human life shall guide officers in determining whether to engage in or terminate a vehicular pursuit. Officers shall act within the boundaries of legal guidelines and Division policy when engaging in a vehicular pursuit.
>
> B. Sworn personnel shall terminate a pursuit if the immediate danger of initiating or continuing the pursuit is greater than the immediate or potential danger to the public if the suspect remains at large.

Columbus Police Division Directive 5.02, Vehicular Pursuits. The CPD Policy goes on to state:

> 1. Sworn personnel shall not engage in vehicular pursuits unless:
>
> a. There is reasonable suspicion the suspect vehicle was used in, contains evidence of, is needed for the investigation of, or an occupant committed or has an active felony warrant for an offense involving:
>
> (1) The attempted, threatened, or actual infliction of serious physical harm to a person, or

> (2) The display, threatened use, or use of a deadly weapon.
>
> b. The suspect, presents a greater danger to human life than the potential and immediate dangers of pursuing the suspect. Fleeing, in and of itself, does not constitute a danger to human life for the purpose of this section.

Id. Thus, a Columbus police officer is only authorized to pursue a suspect if specific circumstances apply.

Approximately 20% of police departments with a pursuit policy only allow pursuits for felony offenses. Mac Demere, *Why High-Speed Police Chases Are Going Away*, Popular Mechanics (May 30, 2013), https://www.popularmechanics.com/cars/a9096/why-high-speed-police-chases-are-going-away-15532838/ (citing IACP study). And half of police departments with such a policy require officers to end the pursuit when the suspect has been identified. *Id.*

In addition to officer and public safety concerns discussed, pursuit policies are necessary due to resource constraints within a department. Pursuit often requires back-up. In jurisdictions where one or two officers are responsible for patrolling a large area, a pursuit may be unsustainable. Accordingly, pursuits are relatively rare occurrences.

These are institutional controls and practical realities that exist irrespective of any common law. As a result, a ruling by this Court in support of the judgment below, or in the alternative, adopting the rule set forth herein, will *not* grant law enforcement officers

carte blanche entry into homes during a hot pursuit, because departments in every jurisdiction have detailed pursuit policies like the examples cited above which restrict an officer's ability to initiate a pursuit in the first place. Moreover, law enforcement officers must obey these internal policies or risk insubordination charges and discipline.

B. Law enforcement officers are well-trained to make appropriate determinations on pursuit.

Law enforcement officers are trained to balance the goals of law enforcement in apprehending suspects with the public's safety interests. In addition to following their department's pursuit policy, officers are trained to evaluate multiple considerations before first, initiating a pursuit, and second, following the suspect into a home. These considerations include, but are not limited to, environmental conditions; the time and place; the availability of back-up; whether the suspect is armed; evidence or the presence of drugs and/or alcohol; the presence of passengers or accomplices; the likelihood of apprehension; the presence of innocent bystanders; and when to abandon pursuit.

In addition, an officer must be aware of any personal capabilities that may affect his or her ability to pursue a criminal suspect and accomplish the overall mission of the law enforcement, which is to protect and serve the public. David P. Schultz, Ed Hudak, and Geoffrey P. Alpert, Ph.D., *Evidence-Based Decisions on*

Police Pursuits: The Officer's Perspective. Consequently, *merely because the officer may be justified in entering a home during a hot pursuit, does not mean that they will.* Each situation involving a potential pursuit will present different circumstances, and the various considerations outlined above are constantly evolving and happening *in real time*. Officers must be afforded the discretion and freedom to rely on their training in these situations.

Police departments around the country have developed innovative training programs to prepare officers for the critical—and often dangerous—moment in which they must decide whether to pursue a fleeing suspect. For example, the Ohio Department of Public Safety offered a six-hour training program with both classroom instruction and practical exercises from Ohio State Highway Patrol Emergency Vehicle Operations Instructors and veteran race car drivers, designed to heighten the skill level of officers around the state to operate a patrol vehicle in the most efficient and safest manner possible. *See Law officers complete advanced emergency vehicle operations training at Mid-Ohio Sports Car Course*, richlandsource (Mar. 25, 2014), https://www.richlandsource.com/news/law-officers-complete-advanced-emergency-vehicle-operations-training-at-mid-ohio-sports-car-course/article_1eec26f4-b409-11e3-9468-001a4bcf6878.html.

Furthermore, advances in technology have reduced the overall number of police pursuits in recent years, a trend which is likely to continue as new technology becomes accessible to more police departments.

See Bridget Bowden, *In Hot Pursuit Of Public Safety, Police Consider Fewer Car Chases*, NPR (July 23, 2015), https://www.npr.org/2015/07/23/425598535/even-if-a-car-chase-will-help-police-nab-a-suspect-some-don-t. Helicopters and drones are available in many departments to assist in tracking a fleeing suspect. There is also StarChase, a system that shoots a GPS-tracking dart from the front of police car onto a fleeing vehicle. As further technological advances continue to supplant the necessity of traditional "hot pursuits" on foot or by vehicle, the sought-after ruling herein may apply to an ever decreasing number of scenarios.

A ruling by this Court in favor of law enforcement would merely remove one consideration for the officer out of the dozens that factor into a decision to pursue. A ruling to the contrary will alienate rank-and-file officers by suggesting that law enforcement cannot be trusted to make calculated decisions on when and when not to pursue a suspect.

Finally, the NFOP would be remiss if it did not mention the parade of horribles Petitioner and others may argue will occur should the Court side with Respondent and amici. For example, some may express concern about hot pursuits leading to arrests for the most minor offenses, such as walking an unlicensed puppy. Should this fact pattern occur—wherein an officer briefly stops an individual suspected of walking an unlicensed puppy, the individual flees into a home, and the officer follows the individual into the home without a warrant—the state court would be free to hold as a matter of state law that hot pursuit of a

suspect for failure to properly license their puppy cannot justify warrantless entry into a home. Furthermore, the department pursuit policies and officer training discussed above will govern the officer's conduct. Until courts are fraught with similar actions by law enforcement, the lower court's determination, or in the alternative the rule expressed herein, is most in line with reality.

CONCLUSION

Law enforcement officers are struggling to ascertain the rules and expectations by which they perform their public safety function. This Court can help. A ruling in support of the judgment below, or in the alternative, adopting the rule set forth herein, benefits both law enforcement and the public. First, it promotes public safety, especially on the roadways. Officers are experienced and trained, through brief, investigatory (*Terry*) stops, to detect and determine if a driver is unlicensed, uninsured, intoxicated, or even armed. When a suspect attempts to subvert a stop, there is a risk that unlawful and dangerous conduct may go undetected. It further discourages flight. Second, it is not a broad pronouncement of law enforcement authority. Instead, it is a clarification that sets expectations for police and public.

Finally, controls such as department pursuit policies and officer training ensure that the sought-after ruling will not lead to aggressive policing practices.

Instead, these institutional mechanisms make certain pursuit of a fleeing suspect (and subsequent warrantless entry) is rare and objectively justified.

For the foregoing reasons, the NFOP respectfully requests this Court affirm the judgment below, or in the alternative adopt the rule set forth herein, and find that when a law enforcement officer demonstrates an intent to conduct a brief investigatory (*Terry*) stop, or set in motion an arrest in a public place, and the suspect disobeys (or ignores) that officer's lawful order, the officer, while in hot pursuit of that suspect, is justified in a warrantless entry.

Respectfully submitted,

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