

No. 25-114

IN THE
Supreme Court of the United States

EVELYN-NATASHA LA ANYANE,

Petitioner,

v.

GEORGIA,

Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF GEORGIA**

BRIEF IN OPPOSITION

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INTRODUCTION

This Court has long recognized the “carnage caused by drunk drivers.” *South Dakota v. Neville*, 459 U.S. 553, 558 (1983). And it has long recognized the need to combat that carnage with implied consent laws that generally condition driver’s licenses on compliance with a blood draw when suspected of driving under the influence. *See, e.g., Mitchell v. Wisconsin*, 588 U.S. 840, 851–53 (2019) (plurality op.). Implied consent laws of course allow drivers to refuse to consent to a blood draw, but they often “impose civil penalties and evidentiary consequences on motorists who refuse to comply.” *Birchfield v. North Dakota*, 579 U.S. 438, 476–77 (2016). This Court has uniformly reasoned that, unlike criminal penalties, civil or evidentiary consequences for refusal are “unquestionably legitimate.” *Neville*, 459 U.S. at 560. Petitioner Evelyn-Natasha La Anyane now asks this Court to grant certiorari to question that legitimacy, even though no court has.

This Court’s involvement is completely uncalled for. There is no split of authority—indeed, La Anyane concedes there is an “almost universal” understanding of this Court’s cases, Pet. at 3, and that understanding is plainly correct because this Court has been clear that implied consent laws are constitutional. La Anyane tries to dismiss this Court’s case law as dicta, insisting a split will never develop because courts have treated the dicta as binding. But that’s no reason for certiorari. If it’s truly dicta—and *incorrect* dicta—a split could and would develop among courts. Yet none has, despite case after case after case addressing the issue. In any event, it’s not clear the Supreme Court of Georgia even reached the federal questions La Anyane now wants to present, and it would hardly matter to her ultimate conviction anyway.

And were there any lingering doubt about whether to grant certiorari, it is resolved by La Anyane's arguments being wholly meritless.

This Court should deny La Anyane's petition.

STATEMENT

A. Legal Background

Like every other state, *see Missouri v. McNeely*, 569 U.S. 141, 161 (2013), Georgia has an implied consent law, *see, e.g.*, O.C.G.A. § 40-5-67.1(b)(2). It generally provides that a refusal to consent to a blood draw is admissible as evidence against the driver, *see* Pet.App.3a, and results in that person's driver's license being suspended for at least a year, *id.* at 4a. Where a police officer has "reasonable grounds to believe" a driver is driving under the influence, he reads to that driver a warning describing the implied consent law and consequences of refusal, *id.* at 3a (quoting O.C.G.A. § 40-5-55(a)), and then asks the driver if she will "submit to the state administered chemical tests," *id.* at 4a n.1.

This Court has never questioned the validity of "civil penalties and evidentiary consequences on motorists who refuse to comply" with blood draws when suspected of driving under the influence. *Birchfield*, 579 U.S. at 476–77. Quite the opposite, the Court has always "referred approvingly" to them. *Id.* at 476. The Court has even held that a driver's refusal to consent to a blood test can be used as evidence against him without violating the Fifth Amendment. *Neville*, 459 U.S. at 563–64. That was true even though "the choice to submit or refuse to take a blood-alcohol test will not be an easy or pleasant one for a suspect to make." *Id.* at 564. This Court noted that the ability to refuse was "not without a price" because refusal

could result in the suspension of the driver's license, but it concluded that "penalty for refusing to take a blood-alcohol test is unquestionably legitimate, assuming appropriate procedural protections." *Id.* at 560.

Part of the reasoning in *Neville* was premised on the understanding at the time that States could compel drivers to submit to a blood draw and a driver had "no constitutional right to refuse to take a blood-alcohol test." *See id.* at 560 n.10, 563–64. The Court's later precedent arguably modified some of those underpinnings, but it has never deviated from *Neville*'s conclusion that civil and evidentiary consequences are legitimate. A plurality of the Court has since concluded that "the natural dissipation of alcohol in the bloodstream does not constitute an exigency in every case sufficient to justify conducting a blood test without a warrant." *McNeely*, 569 U.S. at 165. Similarly, a warrantless blood draw cannot be justified *per se* as part of a search incident to arrest. *Birchfield*, 579 U.S. at 476. As for implied consent to blood draws, the Court has said "[t]here must be a limit to the consequences to which motorists may be deemed to have consented by virtue of a decision to drive on public roads." *Id.* at 477. But this Court was clear about what that limit is: "motorists cannot be deemed to have consented to submit to a blood test on pain of committing a *criminal* offense." *Id.* (emphasis added). The Court reiterated, however, that what it said in *Neville* continues to be true: "nothing" in *Birchfield* "should be read to cast doubt on" the "general concept of implied-consent laws that impose civil penalties and evidentiary consequences on motorists who refuse to comply." *Id.* at 476–77.

B. Proceedings Below

Police pulled Petitioner Evelyn-Natasha La Anyane over for failing to maintain her lane and not using her high-beam headlights properly. Pet.App.5a. The officers noticed that La Anyane's eyes were "red" and "glassy," her breath smelled of alcohol, her speech was slurred, and her shirt appeared to have a red wine stain on it. *Id.* She admitted to having had one drink. *Id.* Suspecting La Anyane was driving under the influence, the officers performed several field sobriety tests, "including horizontal-gaze nystagmus, walk and turn, and one-leg stand." *Id.* La Anyane failed. *Id.* The officers also "administered a preliminary breath test, which La Anyane also failed." *Id.* The officers then arrested her. *Id.*

With La Anyane under arrest, the officers read her Georgia's statutory implied consent warning, and La Anyane consented to having her blood drawn and tested. *Id.* The test showed her blood alcohol content was "0.117 grams per 100 milliliters, which is above the legal limit of 0.08." *Id.*

La Anyane was charged with, and pleaded not guilty to, "failure to maintain lane, failure to dim lights, and DUI less safe," all of which are misdemeanors. *Id.* at 5a–6a. DUI less safe requires proving a driver is under the influence of alcohol to the extent it is "less safe" to drive; it doesn't require proving anything specific about a driver's blood alcohol content. *Id.* at 17a (citing O.C.G.A. § 40-6-391(a)(5)). La Anyane moved to suppress the results of the blood test, arguing her consent "was not truly voluntary" because Georgia's implied consent warning is "inherently coercive, inaccurate, and misleading because it falsely implies that motorists are required to submit to testing" and "incorrectly states that the refusal to submit

will be admissible at trial ... contrary to constitutional guarantees (both state and federal).” *Id.* at 6a (quotations omitted and alterations adopted). The trial court denied the motion to suppress, and a jury found La Anyane guilty on all counts. *Id.*

The Supreme Court of Georgia affirmed La Anyane’s convictions, rejecting her contention that Georgia’s implied consent warning is “unconstitutionally coercive” because it supposedly contains false and misleading statements. *Id.* at 7a (quotation omitted). La Anyane argued that the implied consent warning’s statements that the privilege to drive is conditioned on submitting to the blood test and that refusal may be used as evidence at trial “mislead drivers about their constitutional right not to agree to chemical testing.” *Id.* at 8a. But the Supreme Court of Georgia concluded otherwise: that “neither of the two parts of the implied-consent warning that she objects to is coercive for the reasons she gives.” *Id.*

The court rejected outright La Anyane’s contention that the implied consent warning tells drivers they are “required” to submit because it plainly tells them they can refuse. *Id.* It also rejected La Anyane’s apparent contention “that the very notion of implied consent is improper,” reasoning that a driver “retains the right to refuse a chemical test without being charged with another crime.” *Id.* at 10a. The court acknowledged that “refusal may have civil consequences,” but pointed out that “neither [it] nor the United States Supreme Court has held that such consequences are unconstitutional.” *Id.* at 10a (citing *Birchfield*, 579 U.S. at 476–77). La Anyane separately contended that the implied consent warning is “unconstitutionally coercive because it tells drivers, falsely, that their refusal to consent to a blood test can

be used against them.” *Id.* at 11a. The Supreme Court of Georgia rejected the argument that “that statement is ‘false’ as she claims.” *Id.* The statement is instead “consistent with Georgia law,” which does allow using the refusal evidence at trial. *Id.* The court further noted that it has never “held that evidence of a driver’s refusal to consent to having her blood drawn for testing cannot be used against her.” *Id.* at 12a. The court also concluded that “that question is not before [it] in this case” because “La Anyane does not contend that refusal evidence may not be used against her, nor could she, because she did not refuse to have her blood drawn, so no such evidence of refusal exists in this case.” *Id.* at 12a.

The Supreme Court of Georgia’s ultimate holding was that the implied consent warning the officers read to La Anyane was not “a ‘false’ warning, at least about the consequences of refusing a blood test.” *Id.* That meant La Anyane’s “claim fails at its premise: because she has not established that the implied consent warning was ‘false,’ her claim that it is unconstitutionally coercive on that basis fails.” *Id.* at 12a–13a. And La Anyane had offered no other reason to conclude her consent was involuntary under the totality of the circumstances. *Id.* at 13a.

Finally, the court noted that La Anyane had “briefly” contended the “implied-consent warning is unduly coercive because it tells drivers their driver’s licenses may be suspended for a year if they refuse a blood test.” *Id.* at 13a n.5. It rejected that argument because the warning contains “a correct statement of Georgia law,” and because “La Anyane offers no support for the argument that such a civil penalty is unconstitutional, nor” was the court “aware of any.” *Id.*

REASONS FOR DENYING THE PETITION

There is no reason to grant certiorari. Most obviously, there is no split on the questions presented. For decades, every court, including this Court, has agreed that implied consent laws can carry civil and evidentiary consequences. La Anyane herself concedes that courts have an “almost universal” understanding of this Court’s precedent. Pet. at 3. Recognizing her problem, she claims a split “is unlikely to develop” because state courts treat as a holding language from this Court that she calls dicta. *Id.* at 10. But that’s hardly a reason for certiorari. Either the dicta is a holding and courts rightly follow it, it is correct dicta and courts rightly follow it, or it is *incorrect* dicta and courts—at least one or two—will reject it. Whichever route, this Court’s intervention is not called for now, when absolutely every court agrees on the right answer.

There are also at least two glaring vehicle problems. For one, the Supreme Court of Georgia’s holding was cabined to its understanding that La Anyane attacked the accuracy of Georgia’s implied consent warning. Pet. App.12a. It did not address the broader substantive merits of the challenges La Anyane now advances against Georgia’s implied consent laws. There is thus no actual reasoning on the questions presented for this Court to review. Past that, La Anyane’s conviction did not even require proving a particular blood alcohol content level, so the admission of her blood test hardly matters. The other evidence against her was overwhelming: she admitted to drinking, failed several field-sobriety tests, and failed a breath test, among other things. If the Court does feel the need to weigh in on implied consent laws, it should do so in a case where the blood draw may actually matter.

Even if La Anyane could get past the lack of a split and the vehicle problems, there's another major problem: Her contentions are unprecedented and plainly meritless. Despite implied consent laws having a long history, no court *ever* has held that they impose unconstitutional conditions on driver's licenses. Nor would that make sense. Implied consent laws do not condition driver's licenses on submission to a blood draw because they expressly allow drivers to *refuse* consent. True, there are consequences to refusal, but there is no constitutional right to a *consequence-free* refusal. *See, e.g., Neville*, 459 U.S. at 564 (refusal "is not without a price" of license suspension but that price is "unquestionably legitimate"). Separately, no court has ever held that civil and evidentiary consequences coerce involuntary consent to blood draws. That is unsurprising because, even with those consequences, "the refusal rate is high" in some states. *Birchfield*, 579 U.S. at 449. That fatally undermines La Anyane's premise that implied consent laws somehow by their very nature *coerce* people into consenting involuntarily.

This Court should deny La Anyane's petition.

I. There is no split of authority or any other reason to address the questions presented.

As La Anyane herself admits, courts share the "almost universal" understanding that civil penalties and evidentiary consequences for refusing to comply with an implied consent law are constitutional. Pet. at 3. That is true even though "[a]ll fifty states have implemented some form of implied-consent law," Pet. at 5 (citing *McNeely*, 569 U.S. at 160–61), and even though driving under the influence arrests are hardly uncommon. There thus have been and will continue to be ample opportunities for a split to develop. Yet none has.

The lack of a split is unsurprising. As *Birchfield* states, this Court’s precedent has “referred approvingly to the general concept of implied-consent laws that impose civil penalties and evidentiary consequences on motorists who refuse to comply.” 579 U.S. at 476–77. On the other hand, *criminal* penalties for refusal—such as making refusal itself a crime—do reach the “limit to the consequences to which motorists may be deemed to have consented by virtue of a decision to drive on public roads.” *Id.* at 477. Courts throughout the country have *all* understood this Court’s precedent to mean what it quite clearly says: implied consent laws do not coerce consent when they impose civil penalties like the suspension of one’s license or evidentiary consequences like the use of the refusal as evidence of guilt. *See, e.g., Commonwealth v. Hunte*, 337 A.3d 483, 511 (Pa. 2025); *State v. Kilby*, 961 N.W.2d 374, 378–79 (Iowa 2021) (collecting cases); *Commonwealth v. Bell*, 211 A.3d 761, 776 (Pa. 2019); *State v. Hood*, 917 N.W.2d 880, 891–92 (Neb. 2018); *State v. Rajda*, 196 A.3d 1108, 1119–20 (Vt. 2018) (collecting cases); *State v. LeMeunier-Fitzgerald*, 188 A.3d 183, 191–94 (Me. 2018); *Fitzgerald v. People*, 394 P.3d 671, 674 (Colo. 2017); *State v. Storey*, 410 P.3d 256, 269 (N.M. Ct. App. 2017).

La Anyane insists that a “deep split ... is unlikely to develop because state courts have treated dicta in *Birchfield* ... as though it were a holding of the Court.” Pet. at 10. But one of three things must be true. Either what La Anyane calls dicta is actually a holding, in which case there is no need for this Court’s review. Or it is dicta but it is correct, in which case there is no need for this Court’s review. Or it is *incorrect* dicta and courts will inevitably develop a split, in which case there is no need for this Court’s review. No option supports this Court’s review at this point.

Besides, La Anyane’s premise about dicta overlooks that when courts think this Court has said something in mere dicta, especially unreasoned or unsupported dicta, they can and oftentimes do deviate from it. *See, e.g., Singh v. Uber Techs. Inc.*, 939 F.3d 210, 223 (3d Cir. 2019); *Nu Image, Inc. v. Int’l All. of Theatrical Stage Emps., Moving Picture Technicians, Artists & Allied Crafts of United States, Its Territories & Canada, AFL-CIO, CLC*, 893 F.3d 636, 642 (9th Cir. 2018); *IFC Interconsult, AG v. Safeguard Int’l Partners, LLC*, 438 F.3d 298, 311 (3d Cir. 2006). There is no reason that cannot happen here, especially if La Anyane’s arguments have any merit. If a split “is unlikely to develop,” Pet. at 10, it is only because nobody will ever agree with La Anyane (which is not surprising because her contentions are meritless).

La Anyane has no real response to her trilemma. She just accuses state courts of “reflexively” treating *Birchfield*’s so-called dicta as binding without “a considered analysis of constitutional principles.” Pet. at 6a–7a. That presumes *Birchfield* (plus this Court’s other precedent, such as *Neville*) is *all* just easily dismissed as unreasoned dicta, which it isn’t. But past that, La Anyane simply misrepresents the many decisions issued by several courts that often go into great detail about this Court’s precedent and that have plenty of their own independent reasoning. *See, e.g., Kilby*, 961 N.W.2d at 378–79; *Rajda*, 196 A.3d at 1115–21; *Fitzgerald*, 394 P.3d at 674–76. Even the example La Anyane identifies as a “clear illustration” of her point shows the opposite of what she presents it for. Pet. at 24. She says the Pennsylvania Supreme Court did not give the implied consent issue “careful attention and analysis” because it treated *Birchfield* as binding. *Id.* 24a–25a (citing *Hunte*, 337 A.3d at 511). It is true that the Pennsylvania Supreme Court eventually treated

Birchfield as binding, but only after discussing the issue for 12 pages and implying reservations about *Birchfield*'s rule as to civil and evidentiary consequences. *See Hunte*, 337 A.3d at 499–512 & n.149. That court's nearly 5,000-word discussion hardly indicates a lack of "careful attention and analysis." Pet. at 24.

Contradicting her position that a split is unlikely to develop on the questions presented, La Anyane also argues that the Kentucky Supreme Court actually has gone the other way. *See* Pet. at 26a–27a (citing *Commonwealth v. McCarthy*, 628 S.W.3d 18, 22 (Ky. 2021)). At most, *McCarthy* proves a split *can* develop, which undermines the entire premise of La Anyane's petition.

But *McCarthy* is not any evidence of a current split. The implied consent law in that case imposed *criminal* penalties in the form of an enhanced sentence, and the defendant challenging the law *did* refuse to consent to a blood draw and had the refusal evidence used against him. *McCarthy*, 628 S.W.3d at 23, 29. *McCarthy* did not address unconstitutional conditions or involuntary consent as there was no consent. The Supreme Court of Kentucky instead held that the defendant's refusal could not be used as evidence against him. *Id.* at 36. That is an issue the Supreme Court of Georgia expressly did not decide. Pet.App.12a. And the Kentucky court's holding turned expressly on its *own* precedent that "Kentucky courts have already recognized that where a search warrant was required to conduct a search, a defendant's refusal to consent to that search cannot be used against him as evidence of guilt." *McCarthy*, 628 S.W.3d at 35; *see also id.* at 41 (Vanmeter, J., concurring in part and dissenting in part) (stating "if an evidentiary prohibition exists, that prohibition must be found in our state law" and noting the

majority found the prohibition in state court precedent). Everything about that is different from the questions presented here: There were criminal penalties at play, there was no consent given, and the ultimate holding was based on state court precedent.¹

La Anyane also points to *Dortch v. State*, 544 S.W.3d 518 (Ark. 2018), as a pseudo-example of a split. Pet. at 27–28. The Supreme Court of Arkansas held Arkansas’ implied consent statute was unconstitutional because as a matter of purely state law the license revocation allowed was “a penalty that is criminal in nature.” *Id.* at 528. That holding was tied to the idiosyncrasies of how the Arkansas code phrased and treated the license revocation. *See id.* at 527–28. And as La Anyane acknowledges, Pet. at 28, the court adopted the exact rule La Anyane protests: that it is only *criminal* penalties that can make consent involuntary. Otherwise, there would have been no need to consider whether the license revocation under Arkansas law was criminal or civil. *Dortch* shows the opposite of a split.

1. The Supreme Court of Kentucky also distinguished *Neville*’s holding that refusal evidence can be used against a defendant as inapplicable because “*Neville* did not involve a refusal under threat of criminal penalties” and “more importantly, *Neville* was focused solely on the Fifth Amendment.” *McCarthy*, 628 S.W.3d at 34. The first point shows why *McCarthy* is on its own terms distinguishable from this case. The second point simply makes no sense. There’s no reason to think the Fourth and Fifth Amendments call for different considerations on the use of refusal evidence. If anything, the Fifth Amendment, which is *the* amendment dedicated to self-incrimination, would arguably have *stricter* standards for when refusal evidence can be used. La Anyane also makes a brief and largely unexplained pass at distinguishing *Neville* on the Fourth-versus-Fifth Amendment basis, Pet. at 22, and it likewise fails.

For years, every court has agreed on the questions presented. La Anyane doesn't even dispute that. That is not the stuff of certiorari.

II. This case is a poor vehicle for addressing the questions presented as they meaningfully differ from what the Supreme Court of Georgia decided.

In addition to the lack of a meaningful split, certiorari is unwarranted both because it's not clear the Supreme Court of Georgia actually addressed the questions presented and because, ultimately, the use of La Anyane's blood test results was not necessary to sustain her conviction.

The Supreme Court of Georgia defined its opinion by reference to Georgia's implied consent warning not being "coercive for the reasons [La Anyane] gives." Pet. App.8a. The court understood La Anyane's position to be that the warning is "false" because it is "misleading" about a person's right to refuse consent to a blood draw. *Id.* at 8a–13a. Its ultimate holding was that nothing in the details of the warning that officers gave La Anyane was an incorrect statement of *current* law. It concluded that "La Anyane's claim fails at its premise[] because she has not established that the implied-consent warning was 'false.'" *Id.* at 12a. La Anyane does not seek certiorari to advance a challenge about the accuracy or inaccuracy of the details or wording of Georgia's implied consent warning. So the thrust, if not all, of the Supreme Court of Georgia's reasoning is not about the questions La Anyane presents.

La Anyane instead seeks to argue that implied consent laws, apparently by definition, violate the doctrine of unconstitutional conditions and *per se* coerce involuntary consent. But the Supreme Court of Georgia didn't address those issues on their own merits. As to unconstitutional

conditions, it noted that La Anyane “*seems* to contend the very notion of implied consent is improper.” *Id.* at 10a (emphasis added). But it rejected her argument because Georgia’s implied consent “warning itself is clear that the driver can refuse consent.” *Id.* at 10a. In other words, the court concluded that Georgia licenses aren’t conditioned on submission at all because refusal is allowed. The court did also note that neither it nor this Court has held that “civil consequences” for refusal “are unconstitutional,” but it never addressed that question on the merits or under any “unconstitutional conditions” reasoning. *Id.*²

As for involuntary consent, the court in a footnote stated that La Anyane “briefly” contended Georgia’s implied consent law is “unduly coercive” because refusal results in license suspension. Pet.App.13a n.5. Even then, the court framed things by reference to the accuracy of the implied consent warning in the light of current law, stating that the implied consent warning’s statement about license suspension “is a correct statement of Georgia law” and that “La Anyane offers no support for the argument that such a civil penalty is unconstitutional, nor [was it] aware of any.” *Id.* The court elsewhere explained expressly that it was not addressing the evidentiary use of refusal evidence. That “question [was] not before” it because “La Anyane [did] not contend that refusal evidence may not be used against her, nor could she, because she did not refuse to have her blood drawn, so no such evidence of

2. La Anyane’s unconstitutional conditions contention has another problem: her license was not suspended based on a refusal to consent because she did consent. But a driver’s license is the benefit she claims is unconstitutionally conditioned. *See* Pet. at 13. The facts of this case thus don’t even present the question of unconstitutional conditions.

refusal exists in this case.” *Id.* Even on that issue, the court explained that Georgia’s implied consent warning is not “‘false’ as [La Anyane] claims” because it is “consistent with Georgia statutory law” and no existing law prohibits the evidentiary use. *Id.* at 11a. That again shows the Supreme Court of Georgia’s focus on the accuracy of Georgia’s implied consent warning under existing law, not separate challenges to it moving forward.

To be sure, La Anyane may respond that she disagrees with how the Supreme Court of Georgia characterized and ultimately addressed her arguments. But certiorari is not meant for line editing state court opinions to correct how a state court understood a party’s arguments.

There’s an additional vehicle problem. La Anyane’s conviction would have been the same with or without the blood alcohol content evidence. She was convicted of DUI less safe, which does not require proving a particular blood alcohol content level. Pet.App.16a–17a. DUI less safe instead requires proving only that a person is driving “[u]nder the influence of alcohol to the extent that it is less safe for the person to drive.” O.C.G.A. § 40-6-391(a) (1). Take out the evidence that La Anyane’s blood alcohol content level was 0.117 (over the legal limit of 0.08), and the evidence is that she failed to maintain her lane, used her high-beam headlights improperly, had red and glassy eyes, had breath that smelled of alcohol, had slurred speech, had a shirt stained with red wine, admitted to having had one drink, failed at least three field-sobriety tests, and failed a preliminary breath test. Pet.App.5a. That is clearly enough for a jury to find La Anyane guilty of DUI less safe. So La Anyane’s challenge to Georgia’s implied consent law, which turns on the use of the blood draw evidence, ultimately doesn’t matter to her conviction.

Even if the question were fit for this Court’s review at all, it should be done in a case where the question might matter.

III. The Supreme Court of Georgia’s decision was correct.

To the extent the Supreme Court of Georgia actually addressed the questions presented, it was correct to reject La Anyane’s contentions. Her first contention is that implied consent laws—apparently *in their entirety*—are unconstitutional because they impose unconstitutional conditions on the right to drive. And her second contention is that implied consent laws—apparently *per se*—coerce involuntary consent. Those positions are unprecedented and wrong.

The doctrine of unconstitutional conditions generally provides that the government cannot “withhold [a] benefit because someone refuses to give up constitutional rights.” *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 608 (2013). “All fifty states have implemented some form of implied-consent law,” Pet. at 5 (citing *McNeely*, 569 U.S. at 160–61), but La Anyane cites no example of any court ever holding that any of those laws contain unconstitutional conditions. That’s not surprising. As far back as 1983, this Court said that suspending a person’s driver’s license if she refuses to consent to a blood draw is “unquestionably legitimate.” *Neville*, 459 U.S. at 560. This Court has expressly said it has not “cast doubt” on that, even when changing other aspects of the rules around warrantless blood draws. *Birchfield*, 589 U.S. at 477. That long-established law makes sense, too, because “[i]f [La Anyane’s] position were the law no drunk driver would ever submit to a blood test,” and DUI laws would be toothless. *Hood*, 917 N.W.2d at 892. That would be a serious problem because “[blood alcohol content] tests

are needed for enforcing laws that save lives.” *Mitchell v. Wisconsin*, 588 U.S. 840, 851 (2019) (plurality op.).

Without anything to actually support her position, La Anyane just insists that the “logic” of the unconstitutional conditions must apply “to the Fourth Amendment,” even though this Court has never done so. Pet. at 12. But even assuming the doctrine should apply to the Fourth Amendment generally, that doesn’t mean it should apply to implied consent laws specifically. And what La Anyane completely ignores in her black-or-white presentation of the unconstitutional conditions doctrine is that the “Constitution does not forbid every government-imposed choice in the criminal process that has the effect of discouraging the exercise of constitutional rights.” *Rajda*, 196 A.3d at 1119 (quoting *Jenkins v. Anderson*, 447 U.S. 231, 236 (1980)) (collecting examples); *see also Bell*, 211 A.3d at 773 (similar).

Plus, La Anyane is making a category error. Contrary to her framing, Georgia’s implied consent law does not actually demand the waiver of a constitutional right because it allows a person to *refuse* to consent to a blood test. La Anyane wisely stops short of saying that, in *addition to* the right to refuse a blood test, drivers *also* have the unheard of *supplemental* right to be completely free from any consequences of their refusal. That position would be unsupportable and, frankly, bizarre. *See, e.g., Jenkins*, 447 U.S. at 236. In *Neville* this Court rejected concerns about refusals to consent having “a price” and requiring a decision that’s not an “easy or pleasant one for a suspect to make.” 459 U.S. at 560, 564. The “criminal process often requires suspects and defendants to make difficult choices,” and the implied consent law context is no different. *Id.* at 564. And to reiterate: this Court

has never “cast doubt” on those conclusions. *Birchfield*, 579 U.S. at 477. All of that just underscores the faulty premise of La Anyane’s position that Georgia’s implied consent statute conditions a driver’s license on waiving a constitutional right.

La Anyane may say the constitutional right being impermissibly conditioned is the right to refuse a blood draw free from coercion, but that just collapses with her second question presented that implied consent laws—apparently categorically—coerce involuntary consent. That position is just as unsupportable. Again, this Court has, for over 40 years, squarely rejected it. *See Birchfield*, 579 U.S. at 476–77; *McNeely*, 569 U.S. at 161; *Neville*, 459 U.S. at 560–61. There is no reason to revisit the long-settled issue now.

La Anyane’s position would entirely displace the well-established and workable totality of the circumstances test for assessing voluntary consent with an apparent blanket rule that implied consent laws *always* coerce consent. But *Birchfield* hewed to the totality of the circumstances test: It remanded one of the three cases at issue specifically for the lower courts to assess the totality of the circumstances of a defendant’s consent “given the partial inaccuracy” of a warning an officer gave. *Birchfield*, 579 U.S. at 478. La Anyane’s dramatic rewrite of how to conduct a Fourth Amendment voluntariness inquiry is unfounded. Indeed, the very fact that La Anyane’s position requires a radical revision to deeply entrenched case law suggests it’s wrong.

Regardless, civil and evidentiary consequences in the implied consent context are not coercive in the relevant sense. Even if consequences to an action make that action less likely, that does not *coerce* it. This Court has explained that, even with implied consent laws carrying civil and

evidentiary consequences for refusal, “in some States, the refusal rate is high.” *Birchfield*, 579 U.S. at 449. That was the very reason states felt the need to start criminalizing the refusal itself—because the civil and evidentiary consequences were clearly not *coercing* any consent but leaving it voluntary. *Id.* That would not be possible if La Anyane was right that implied consent laws are somehow inherently coercive, and therefore unconstitutional. That alone eviscerates La Anyane’s premise, and with it her entire contention. This is simply not the kind of difficult issue that calls out for this Court’s review.

Again, Georgia’s implied consent law just does what this Court has said (and reiterated) is “unquestionably legitimate.” *Neville*, 459 U.S. at 560; *see also Birchfield*, 579 U.S. at 476–77. There’s no need for this Court to question what’s unquestionable.

CONCLUSION

For the reasons set out above, this Court should deny the petition.

Respectfully submitted,

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