No. 11-235

IN THE

Supreme Court of the United States

JAMES ANTOINE FAULKNER,

Petitioner,

—v.—

UNITED STATES OF AMERICA,

Respondent.

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

BRIEF OF DR. IAN AYRES, DR. JEFFREY FAGAN, DR. RICHARD ROSENFELD, ANTHONY THOMPSON, DR. GEOFFREY ALPERT, DAVID RUDOVSKY, DR. ANDREW GELMAN, DR. BERNARD HARCOURT, DR. ROBERT CRUTCHFIELD, DR. CHRISTOPHER WINSHIP, DR. PETER SIEGELMAN, DR. DAVID GREENBERG, DR. JUSTIN WOLFERS, AND TRACEY MEARES AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*

Amici curiae are fourteen academics who submit this Brief in support of James Antoine Faulkner's petition for *certiorari*.[1] All *amici* have an interest in, teach classes on, and have published peer-reviewed research related to police stop and search practices. A primary focus of *amici's* research is collecting and analyzing empirical data concerning police practices in order to promote effective policing and adherence to constitutional mandates. *Amici* consist of the following:

- Dr. Ian Ayres is the William K. Townsend Professor of Law at Yale Law School.

- Dr. Jeffrey Fagan is the Isidor and Seville Sulzbacher Professor of Law and Epidemiology at Columbia University.

- Dr. Richard Rosenfeld is Curators Professor at the Department of Criminology and Criminal Justice at the University of Missouri-St. Louis.

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[1] The parties have consented to the filing of this brief, and letters of consent have been lodged with the Clerk of the Court, in accordance with Supreme Court Rule 37.2(a). Pursuant to Rule 37.6, no counsel for any party has authored this brief in whole or in part, and no person or entity, other than the above-mentioned *amici* or its counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

- Anthony C. Thompson is a Professor of Clinical Law at New York University School of Law.

- Dr. Geoffrey Alpert is a Professor of Criminology and Criminal Justice at the University of South Carolina.

- David Rudovsky is a Partner at Kairys, Rudovsky, Messing & Feinberg LLP and Senior Fellow at the University of Pennsylvania School of Law.

- Dr. Andrew Gelman is a Professor of Statistics and Political Science at the University of Columbia.

- Dr. Bernard Harcourt is the Julius Kreeger Professor of Law and Chair of the Department of Political Science at the University of Chicago.

- Dr. Robert Crutchfield is a Professor of Sociology at the University of Washington.

- Dr. Christopher Winship is a Professor of Sociology at Harvard University.

- Dr. Peter Siegelman is the Roger Sherman Professor of Law at the University of Connecticut School of Law.

- Dr. David Greenberg is a Professor of Sociology at New York University.

- Dr. Justin Wolfers is a Professor of Business and Public Policy at the Wharton School of the University of Pennsylvania.

- Tracey Meares is the Walton Hale Hamilton Professor of Law at Yale Law School.

Amici write in support of the Petition in order to bring to the Court's attention studies and statistics that weigh heavily in favor of granting *certiorari* in this case. As set forth in detail below, a substantial number of unconstitutional stops—such as the courts below found to have happened here—occur annually. Moreover, a material percentage of the United States population has an outstanding warrant. Because most such warrants are for relatively minor violations, they often are not actively enforced. The question of whether the discovery of an outstanding warrant after an unconstitutional stop justifies a search is, therefore, likely to recur frequently, and a ruling from this Court concerning the legality of such a search is warranted. A holding that allows the discovery of an outstanding warrant following an unconstitutional stop to justify a search perversely incentivizes police to broaden the circumstances and rationales for conducting stops and searches of citizens.

SUMMARY OF ARGUMENT

This case presents an important question of law that goes to the heart of the fair and efficient administration of the criminal justice system: whether serendipitous discovery of an outstanding warrant purges the taint of an illegal stop, thus

allowing the police to arrest the stopped individual, search him or her, and use the fruits of that search in a subsequent prosecution. *Amici* urge this Court to grant the writ for two principal reasons.

First, existing social science research indicates that the issue presented in this case is recurring. Research shows that police stop a significant number of citizens without constitutionally sufficient cause. Available data also show that the number of outstanding warrants equals between 6 and 13 percent of the population in some jurisdictions. Thus, although *amici* know of no authoritative nationwide statistics on the number of people with outstanding warrants, by extrapolating from what is known in those jurisdictions, the number of outstanding warrants in the United States may be sufficient to impact between 18 and 39 million people. Many of these warrants are for traffic offenses, misdemeanors, and lesser offenses. The frequency of unconstitutional stops and the large number of outstanding warrants virtually ensures that lower courts will confront the issue presented here time and again.

Second, in jurisdictions in which the discovery of a warrant following an unconstitutional stop justifies a search, police officers will be perversely incentivized to conduct more unlawful stops and searches. Police already have few incentives to clear outstanding warrants for minor offenses. If the discovery of an uncleared warrant validates a search after an unconstitutional stop, the incentive to clear warrants will be further reduced and the existence of a substantial population of citizens with outstanding

warrants (which can be particularly high in certain neighborhoods and among certain populations) will incentivize the police to conduct stops without having an articulable constitutionally justifiable basis. Moreover, recent studies show that the burden of that perverse incentive is likely to fall most heavily upon African-Americans and Hispanics who already are more likely to be stopped without constitutional justification and are more likely to have outstanding warrants.

REASONS FOR GRANTING THE WRIT

I. This Court Should Grant the Petition for *Certiorari* Because the Issue Presented is Important and Likely to Recur.

This case presents an opportunity for the Court to resolve a constitutional issue that available social science data suggest affects a large number of people and arises in many cases, making it worthy of the Court's attention. The data indicate that the absence of procedural standards (such as a search warrant) applicable to a police officer's decision to effect a vehicular or pedestrian stop results in a large number of unlawful stops like the one giving rise to this case, almost certainly in the hundreds of thousands each year. The available data also show that a significant portion of the U.S. population has an outstanding warrant. These two findings make it highly likely that courts around the country will continue to have to decide the issue raised in this petition and that guidance from this Court is

necessary to ensure uniform application of the Fourth Amendment nationwide.[2]

A. Police Regularly Stop and Search Drivers and Pedestrians Without Adequate Constitutional Justification.

The existing studies on the incidence of unconstitutional stops uniformly have concluded that they are relatively common. A 2004 study of traffic stops and searches in Richmond, Virginia, for example, found that a large proportion of the stops and searches conducted by the police likely were unconstitutional.[3] In this study, two disinterested panels of legal experts analyzed 115 warrantless stops and searches and found that 30 percent of them were unlawful. Based on this error rate, the study authors estimated that the Richmond police alone may conduct between 12,000 and 15,000 illegal stops and searches annually.[4]

Two other studies of pedestrian stops likewise found high levels of unconstitutional stops and searches. In 1999, the New York Attorney General studied New York City Police Department ("NYPD") officers' recorded rationales in 10,000 pedestrian

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[2] As demonstrated in the petition for *certiorari*, there is a substantial split in the courts that have addressed this issue. (Pet. for Cert. 8–15.)

[3] Jon B. Gould & Steven D. Mastrofski, *Suspect Searches: Assessing Police Behavior Under the U.S. Constitution*, 3 Criminology & Pub. Pol'y 315, 325, 331 (2004).

[4] *Id.*

stops.[5] The study methodology was conservative, counting as lawful any stop with a rationale that a court *might* find constitutional.[6] Despite its conservative methodology, the study concluded that 15.4 percent of pedestrian stops were unconstitutional.[7]

A similar study in 2010 reviewed more than 2.2 million pedestrian stops conducted by NYPD officers in the years 2004 to 2009.[8] Estimates of legal sufficiency were again generous—the Study coded as "justified" any stop for which a "conditionally justified" and an "additional circumstance" were both indicated on the stop form, despite the likelihood that some of those stops were

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[5] Eliot Spitzer, The New York City Police Department's "Stop & Frisk" Practices: A Report to the People of the State of New York from the Office of the Attorney General 56–59 (1999) (hereinafter, Spitzer Study).

[6] *Id.* at 88, 160.

[7] *Id.* at 161.

[8] Expert Report of Jeffrey Fagan 18, October 15, 2010, *Floyd et al. v. City of New York et al.*, U.S. District Court for the Southern District of New York, No. 08-Cv-1034 (SAS), *available at*, http://ccrjustice.org/files/Expert_Report_Jeffrey Fagan.pdf (hereinafter, Fagan Study). The study was conducted in connection with the case *Floyd et al. v. City of New York et al.*, No. 08-Cv-1034 (SAS) (S.D.N.Y.). Like the Spitzer Study, the Fagan Study analyzed the constitutionality of the stops based only on the rationale recorded by police. *Id.* at 18, 48–49. Also like the Spitzer Study, the Fagan Study assessed stops as constitutionally justified, unjustified, or indeterminate. *Id.* at 50.

unconstitutional.[9] Based on the officer's recorded rationale, the study found that 6.7 percent of stops were unconstitutional and 24.4 percent of stops lacked sufficient information to determine constitutionality, representing 149,836 unconstitutional stops, and 544,189 questionable stops.[10]

B. There is a Nationwide Backlog of Unserved Warrants for Years-Old Infractions and Minor Offenses.

Nationwide, a large number of warrants go unserved for a variety of reasons, including understaffing in law enforcement, tight budgets, and overcrowding jails.[11] The available data from county

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[9] *Id.* at 50.

[10] *Id.* at 56; Op. & Order 38–39, 62–66, Aug. 31, 2011, *Floyd et al. v. City of New York*, No. 08-Civ-1034 (S.D.N.Y.) (citing to Fagan Study in support of denial of summary judgment for defendant).

[11] *E.g.*, Philip J. Van de Veer, *No Bond, No Body, and No Return of Service: The Failure to Honor Misdemeanor and Gross Misdemeanor Warrants in the State of Washington*, 26 Seattle Univ. L. Rev. 847, 851–852 (2003) (citing jail over-capacity as officers' reasons for not serving warrants for misdemeanors even when discovered during traffic stops); Keegan Kyle, *Fact Check: The County's Outstanding Warrants Backlog*, Voice of San Diego, May 5, 2010 2:36 PM, http://www.voiceofsandiego.org/fact/article_4ef7c914-588e11f-a253001cc4c03286.html (reporting that as of 2010, the San Diego County Sherriff's Department limited "booking some misdemeanor offenders to curtail overcrowding" of jails); Tom Gantert, *Unserved Arrest Warrants Piling Up for Washtenaw County Police Agencies*, MLive.com, May 13, 2009, 11:19 AM/4:55 PM, http://www.mlive.com/news/

and state law enforcement agencies across the nation show that the backlogs are enormous:

- In 2007, Pennsylvania had a backlog of approximately 1.4 million unserved warrants, enough to account for 11.3 percent of the state's population.[12]

- In 2005, Kentucky had a backlog of approximately 265,000 to 385,000 unserved warrants, a number that would account for as much as 9.5 percent of the state's population.[13]

- In 2002, California had a backlog of more than 2.5 million unserved warrants, a number

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ann-arbor/index.ssf/2009/05/unserved_arrest_warrants_pilin.html.

[12] *Pa. Database: 1.4 Million Warrants Unserved: New State Computer System Finds More Than 100 Outstanding For Homicide*, Assoc. Press (updated 4/8/07 6:50 PM ET) (hereinafter, Associated Press), http://www.msnbc.msn.com/id/18013262/ns/us_news-crime_and_courts/; Census 2000 Data for the State of Pennsylvania, U.S. Census Bureau, http://www.census.gov/census2000/states/pa.html (assuming one warrant per individual).

[13] Greg Hager, Legislative Research Commission, Improved Coordination and Information Could Reduce the Backlog of Unserved Warrants, Research Report No. 326 (July 14, 2005) (hereinafter Kentucky Backlog Report), www.lrc.ky.gov/lrcpubs/RR326.pdf; Census 2000 Data for the State of Kentucky, U.S. Census Bureau, http://www.census.gov/census2000/states/ky.html (assuming one warrant per individual).

sufficient to equal 7.4 percent of the state's population.[14]

- In 2002, Seattle, Washington had a backlog of 40,000 unserved warrants, a number sufficient to cover 7.1 percent of the city's population.[15] During the same period, the State of Washington had an additional 235,000 to 370,000 outstanding misdemeanor and gross misdemeanor warrants, numbers sufficient to cover 3.9 to 6.3 percent of the state population.[16]

Even assuming that some people are subject to more than one warrant, the number of affected individuals is very large.

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[14] Bill Lockyer, Att'y Gen. of Cal., *Symposium: Leadership Issues in Criminal Justice Policy: Introduction*, 33 McGeorge L. Rev. 665, 668 (2002); Census 2000 Data for the State of California, U.S. Census Bureau, http://www.census.gov/census2000/states/ca.html (assuming one warrant per individual).

[15] Jane Hadley, *City Will Purge Thousands of Older Arrest Warrants*, Seattle Post-Intelligencer Reporter, Dec. 7, 2001, 10:00 PM http://www.seattlepi.com/default/article/City-will-purgethousands-of-older-arrest-warrants-1074018.php; Census 2000 Data for the City of Seattle, Washington, U.S. Census Bureau, http://www.census.gov/main/www/cen2000.html (assuming one warrant per individual).

[16] Van de Veer, *supra* note 11, at 852 n.33 and accompanying text; Census 2000 Data for the State of Washington, U.S. Census Bureau, http://www.census.gov/census2000/states/wa.html (assuming one warrant per individual).

The huge backlog of unserved warrants has led police departments to prioritize attempting to serve warrants for the most serious crimes first. The result is that the vast majority of the unserved warrants are related to relatively minor offenses.[17] The available data indicate that common violations among unserved warrants include unpaid parking tickets, failure to appear in court, failure to comply with the terms of release, and failure to pay court-ordered fines:[18]

- In spring 2011, more than half of approximately 50,000 unserved warrants in Prince George's County, Maryland were for vehicle infractions; only 642 were for serious felonies.[19]

- In 2010, 57,349—or 76 percent—of outstanding warrants in San Diego, California were for non-felony offenses.[20]

- In 2009, in New York City, warrants were issued for failure to appear ("FTA") in court in

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[17] Gantert, *supra* note 11; Kentucky Backlog Report, *supra* note 11, at 4.

[18] Science Applications Int'l Corp., Un-served Arrest Warrants: An Exploratory Study 3 (2004) (hereinafter, SAIC Study).

[19] Matt Zapotosky, *Prince George's County Sees Big Backlog of Warrants, Including for Felony Charges*, washington post.com, March 9, 2011, http://www.washingtonpost.com/wpdyn/content/article/2011/03/09/AR2011030905580.html.

[20] Kyle, *supra* note 11.

1,174 cases in which the charge was a non-Penal Law or non-Vehicle and Traffic Law violation, such as an "open container" or a public urination offense.[21] Also, FTA warrants were issued in 92,994 misdemeanor cases.[22]

- In 2007, 1.2 million of Pennsylvania's backlog of 1.4 million warrants were for lesser offenses, including traffic violations.[23]

- In 2005, almost a third of the misdemeanor warrants issued in Kentucky since 2000 remained outstanding, almost twice the percentage of unserved felony warrants issued over the same period.[24] Most of the unserved warrants were bench warrants, many of which were issued for writing bad checks or failing to pay court fines.[25]

- In 2001, 59.8 percent of outstanding warrants in Montgomery County, Maryland were for failure to appear in court, and over 50 percent

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[21] New York City Criminal Justice Agency, Inc., Annual Report 2009 27 (Dec. 2010).

[22] *Id.*

[23] Associated Press, *supra* note 12.

[24] Kentucky Backlog Report, *supra* note 13, at 17.

[25] *Id.* at 3, 9.

of those warrants were related to traffic violations and failure to pay traffic fines.[26]

Moreover, many outstanding warrants are for old crimes. In 2011, approximately half of the 50,000 outstanding warrants in Prince George's County, Maryland were more than three years old.[27] As of 2011, Durham, North Carolina had approximately 49,465 outstanding warrants "dating to the 1970s."[28]

Given the large number of unserved warrants, a significant number of persons who are stopped without constitutional justification will be found, after a post-stop warrant search, to have an outstanding warrant. The question of whether those persons may lawfully be searched and evidence collected may be used in a prosecution for another crime is thus both a recurring and important issue.

II. Police Officers Will Alter Their Behavior Based on the Rule that Is Adopted, and the Eighth Circuit's Rule Is Likely to Give Officers a Perverse Incentive to Make More Unconstitutional Stops.

This Court has frequently recognized that law enforcement officials know the law and conform their conduct to the Constitution so as to maximize the

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[26] SAIC Study, *supra* note 18, at 9.

[27] Zapotosky, *supra* note 19.

[28] Keith Upchurch, *Warrants Roundup Here Nets Scores*, The Herald-Sun, June 22, 2011, at C1.

probability of successful prosecutions. *See Illinois v. Krull*, 480 U.S. 340, 349–50 (1987) (rejecting application of the exclusionary rule to suppress evidence collected through law enforcement's reasonable reliance on state statute). This Court reiterated that view last term in *Davis v. United States*, 564 U.S. ___, Slip Op. at 1 (2011). In *Davis*, the Court held that the exclusionary rule does not apply to evidence collected in a search later determined to be illegal that was conducted in reliance on binding appellate court precedent. *Id.* at 1. The Court noted that to suppress evidence collected in objectively reasonable reliance on binding precedent "would deter . . . conscientious police work." *Id.* at 11. The majority went on to state, "[r]esponsible law-enforcement officers will take care to learn 'what is required of them' under Fourth Amendment precedent and will conform their conduct to these rules." *Id.* (citing *Hudson v. Michigan*, 547 U.S. 586, 599 (2006)). "[W]hen binding precedent specifically authorizes a particular police practice, well-trained officers will and should use that tool to fulfill their crime-detection and public-safety responsibilities." *Id.* This Court also noted the expectation that most police officers will conform their behavior to existing precedent in *Hudson v. Michigan*, 547 U.S. 586 (2006), observing that "[n]umerous sources are now available to teach officers . . . . what is required of them under this Court's cases, how to respect constitutional guarantees in various situations, and how to craft an effective regime for internal discipline." *Id.* at 599.

These observations are consistent with police training practices. The Police Executive Research Forum ("PERF"), a national organization of police executives, instructs that police "should understand that the protection of . . . civil rights is a central and affirmative part of the police mission . . . . [including] to be free from unreasonable search and seizure . . . ."[29] PERF also instructs that police be educated and trained on "statutes and case law relating to search and seizure . . . ."[30] The NYPD, one of the nation's largest police departments, trains its officers on the legal standards governing "stop and frisk."[31] Such instruction includes legal rules surrounding what constitutes "reasonable suspicion" under Terry, and includes "exploration of hypothetical situations [and] discussions about whether specific factual scenarios meet the relevant legal tests."[32] Moreover, the NYPD's written training objectives list "the ability to understand and articulate factors which may justify a 'stop' or frisk."[33]

Because, as the Court held in *Davis*, "[r]esponsible law-enforcement officers will . . .

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[29] Lorie Friddel et al., Racially Based Policing: A Principled Response, Report of the Police Executive Research Forum 82 (2001).

[30] *Id.* at 92.

[31] Spitzer Study, *supra* note 5, at 61.

[32] *Id.*

[33] *Id.*

conform their conduct" to Fourth Amendment precedent, *Davis*, 564 U.S. ___, Slip Op. at 11, police officers are likely to conform their conduct to the rules announced by the lower courts on whether the discovery of an outstanding arrest warrant removes the taint of an illegal stop. Training materials are likely to be amended to reflect changes in the rules regulating police stops. Most vehicular and pedestrian stops are warrantless, and individual police officers must determine for themselves whether sufficient cause for the stop exists. In some cases, the basis for a stop is clear. In other cases, however, the officer may be motivated to stop a vehicle or a pedestrian based on an instinct that something is amiss even if he cannot articulate a factual basis for the stop that would satisfy the Fourth Amendment.[34]

If the officer knows that discovering a warrant will preclude any challenge to the admissibility of subsequently discovered evidence, his decision as to whether to conduct a stop is likely to be affected. In marginal cases, or even cases where the officer knows that sufficient cause does not exist, the officer's decision may be influenced by his view of the likelihood that the individual might have an outstanding warrant. Although there is no objective way to tell by surveillance whether a driver or pedestrian has a warrant, an officer may know that a higher percentage of people in a particular

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[34] Geoffrey Alpert et al., Police Suspicion and Discretionary Decision Making During Citizen Stops, 23 Criminology 407, 415–16, 425–26 (2005).

neighborhood, or a higher percentage of a particular category of persons, has outstanding warrants. The officer may conclude based on such factors that the possibility he will discover a warrant provides sufficient additional incentive to make a stop. This would result in a larger number of constitutionally improper stops, including stops of persons for whom there turns out to be neither reasonable suspicion nor an outstanding warrant.

Moreover, knowledge that an outstanding warrant—even for minor offenses—provides a ready-made justification to remove the taint on evidence collected in a search subsequent to an illegal stop will provide a perverse incentive for police to leave warrants unserved. This especially would be true for warrants for traffic offenses and other minor crimes, which already receive the lowest level of police attention. Research shows that simple actions such as notification and reminder programs can reduce the incidence of warrants for minor offenses—especially warrants issued for failure to appear in court.[35] However, law enforcement agencies will be less likely to undertake such efforts, but instead will be incentivized to leave such warrants unserved and thereby create a large, permanent class of searchable people, especially in certain neighborhoods, if the discovery of an outstanding warrant removes the taint of evidence collected during an unlawful stop.

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[35] *See, e.g.*, New York City Criminal Justice Agency, Inc., *supra* note 21, at 30–34.

Not only is the rule endorsed below likely to result in more improper stops, but there also is a substantial risk that police officers may use race as a factor in guessing the likelihood that an individual has an outstanding warrant. Data from the Los Angeles Police Department shows that African-Americans were three-and-a-half times more likely, and Hispanics were almost one-and-a-half times more likely, to have outstanding warrants than were White persons.[36]

African-Americans and Hispanics already are disproportionately represented among those stopped by the police, relative to their population and rates of criminal activity.[37] A study of 2.8 million stops in

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[36] Based on additional analysis of the data on stops and searches reported in Ian Ayres & Jonathan Borowsky, A Study of Racially Disparate Outcomes in the Los Angeles Police Dep't, Report Prepared for the ACLU of Southern California & Appendix (October 2008), *available at*, http://islandia.law.yale.edu/ayres/indexcivil.htm (additional analysis on file with *amici*).

[37] *E.g.*, Amanda Geller & Jeffrey Fagan, *Pot as Pretext: Marijuana, Race, and the New Disorder in New York City Street Policing*, 7 J. Empirical Legal Studies 591, 595 (2010); David Rudovsky, *Litigating Civil Rights Cases to Reform Racially Biased Criminal Justice Practices*, 39 Colum. Hum. Rts. L. Rev. 97, 102–04 (2007–08) (discussing *State v. Soto*, 734 A.2d 350 (N.J. Super. Ct. Law Div. 1996) and Plaintiff's Fourth Monitoring Report, Pedestrian and Car Stop Audit 1–2, *NAACP v. City of Philadelphia*, No. 96-cv-6045 (E.D. Pa. 1998)); The Alpert Group, Miami-Dade Police Department Racial Profiling Study 53–54, 57, 132, 137 (2004); Amy Kearns, Race and Criminal Justice in Monroe County, Indiana, Report from the Monroe County Racial Justice Task Force 3 (2003).

New York City from 2004 to 2009 showed that the large majority of those stops—80 percent—were of African-Americans and Hispanics.[38] And stops were significantly concentrated in neighborhoods with higher concentrations of African-American and Hispanic populations.[39] However, the rate of arrests among people stopped by the NYPD was approximately 10 percent less for African-Americans than for White persons[40]—suggesting that police approached the decision to stop minorities with a more relaxed view of the need for constitutional justification,[41] a conclusion also reached by the Spitzer Study, which found that police were less likely to make an arrest when the stop was of an African-American or Hispanic person.[42]

If the post-stop discovery of an outstanding warrant justifies a subsequent search without regard to the legality of the stop, police officers will have a greater incentive to stop an African-American or Hispanic person than a White person, exacerbating the existing disparity. The consequences of such an outcome will include

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[38] Fagan Study, *supra* note 8, at 22.

[39] *Id.* at 25–29

[40] *Id.* at 64 tbl.14, 68 fig.14.

[41] Geller & Fagan, *supra* note 37, at 595; Andrew Gelman et al., *An Analysis of the New York City Police Department's "Stop-and-Frisk" Policy in the Context of Claims of Racial Bias*, 102 J. Am. Stat. Ass'n 813, 822 (2007).

[42] Spitzer Study, *supra* note 5, at 111–12, 117.

diminishment of citizen-police relations, leading to reduced police effectiveness, and potentially risks to public safety—studies show that the legitimacy with which a population views police practices in a precinct directly correlates to police effectiveness and public safety.[43] A rule—such as the Eighth Circuit's—that increases the potential for unconstitutional stops would undermine police legitimacy, particularly in majority-minority neighborhoods.

The rule adopted by the Eighth Circuit and other jurisdictions will have the unintended, but likely consequences of increasing the number of unconstitutional stops and exacerbating racial disparities already present in police stop and search practices. Those likely consequences make it important for this Court to examine and rule upon the competing interests of law enforcement and individual rights at issue in this case, and as to which the lower courts have reached conflicting conclusions.

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[43] Geller & Fagan, *supra* note 37, at 624–25; Tom R. Tyler & Jeffrey Fagan, *Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities*, 6 Ohio State J. Crim. Law 231, 262–65 (2008).

CONCLUSION

For the foregoing reasons, this Court should issue a writ of *certiorari* to the Eighth Circuit.

Respectfully submitted,

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September 23, 2011