No. 12-9490

In The Supreme Court of The United States

LORENZO NAVARETTE,
JOSE P. NAVARETTE,

Petitioners,

v.

THE STATE OF CALIFORNIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION FIVE

PETITIONERS' REPLY BRIEF

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OPPOSITION IDENTIFIES ADDITIONAL REASON TO GRANT THIS PETITION

The Opposition To Petition For Writ Of Certiorari ("Opposition") raises only one new point, documenting the conflict among the federal courts of appeal as to whether the "collective knowledge doctrine," which this Court applied in *United States v. Hensley*, 469 U.S. 221, 229-236 (1985), extends to information known by civilian dispatchers but not conveyed to the detaining officers. Opposition at 10-13.

Hensley involved the detention of a person by one police department based on a bulletin issued by another police department that stated the person was wanted for investigation of a felony. *Hensley,* 469 U.S. at 229. After discussing the need for detaining officers to be able to rely on information known to officers in another jurisdiction, this Court held:

> Assuming the police make a *Terry* stop in objective reliance on a flyer or bulletin, we hold that the evidence uncovered in the course of the stop is admissible if the police who *issued* the flyer or bulletin possessed a reasonable suspicion justifying the stop,...

Hensley, 469 U.S. at 233, citing *Terry v. Ohio*, 392 U.S. 1 (1968)(emphasis in original).

The Second Circuit has held that, while *Hensley*

affirmed officers can rely on reasonable suspicion or probable cause determinations made by other officers, "[i]mputing information known only to the civilian operator and not conveyed to the dispatching and then arresting officers would extend the doctrine beyond its current jurisprudential parameters and vitiate the privacy safeguards of the Fourth Amendment ...." *United States v. Colon*, 250 F.3d 130, 137 (2d Cir. 2001.) The Tenth Circuit has refused to extend the common knowledge doctrine to information that was not communicated from one officer to another, noting that *Hensley* and other cases applying the doctrine "all have involved actual communication to the arresting officer of either facts or a conclusion constituting probable cause or an arrest order." *United States v. Shareef*, 100 F.3d 1491, 1503-1505 (10th Cir. 1996).

As the Opposition at 12 demonstrates, the Sixth, Seventh and Ninth Circuits conflict with the Second and Tenth Circuits on this issue, upholding detentions or arrests even though the information required to make a proper determination as to reasonable suspicion or probable cause was known only to civilian dispatchers, not to the officers on the scene or to any

other police officer.[1]

Contrary to the argument in the Opposition at 10-11, this case provides a perfect opportunity for the Court to determine which group of federal courts of appeal has correctly interpreted *Hensley*. Although the original tip in this case stated that a specific vehicle "[r]an the reporting party off the roadway" (Clerk's Transcript on Appeal ("CT") CT 71), both the dispatcher and the detaining officer testified that the officer was only told to be on the lookout for a "reckless driver" in a particular vehicle. (CT 64, 71-72, 76, 82, 87-88, 98.) The Opposition correctly notes that the First Appellate District found there was substantial evidence to support an implied finding that the "dispatcher told the officers that the suspect vehicle ran the reporting party off the roadway," Opposition at 11, citing Appendix at A-20, but the appellate court's conclusion is simply contrary to the testimony of the dispatcher and the officer.

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[1] *United States* v. *Kaplansky*, 42 F.3d 320, 326-327 (6th Cir. 1994)(officers could rely on dispatcher's conclusionary statement that person was "suspicious"); *United States* v. *Whitaker*, 546 F.3d 902, 903-905, 908-911, 909 n.12 (7th Cir. 2008)(rejecting analysis in *Colon* where dispatcher did not convey complete information to officer); *United States* v. *Fernandez-Castillo*, 324 F.3d 1114, 1117-1121, 1117 n.3 (9th Cir. 2003)(dispatcher "distilled and paraphrased" information about erratic driver, and detention was justified because detaining officers was also able to corroborate erratic driving).

CONCLUSION

Other than its discussion of the common knowledge doctrine, the Opposition raises no new points. The Attorney General of California argues at length that, in deciding this case below, the First Appellate District properly followed *Florida v. J.L.*, 529 U.S. 266 (2000) and other precedents, Opposition at 4-10, but does not dispute that this petition raises an important question of federal constitutional law that has sharply divided the courts of last resort in more than fifteen states. Opposition at 8-10 and 9 nn. 3-4. The Opposition raises no jurisdictional defects and, with the exception of the issue addressed in this Reply Brief, cites no factual disputes.

This Court should grant certiorari and resolve the critical Fourth Amendment issue of whether anonymous tips about drunk or reckless drivers can provide the reasonable suspicion necessary for a constitutional vehicle stop when – like the officers in *J.L.* – the detaining officers can only confirm the innocent details provided by the tipster.

Respectfully submitted,

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