No. 13- ___

IN THE

Supreme Court of the United States

NICHOLAS BRADY HEIEN,

Petitioner,

v.

NORTH CAROLINA,

Respondent.

On Petition for a Writ of Certiorari
to the North Carolina Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a police officer's mistake of law can provide the individualized suspicion that the Fourth Amendment requires to justify a traffic stop.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Nicholas Brady Heien respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of North Carolina.

OPINIONS BELOW

The relevant opinion of the Supreme Court of North Carolina (Pet. App. 1a) is published at 737 S.E.2d 351. The relevant opinion of the Court of Appeals of North Carolina (Pet. App. 29a) is published at 714 S.E.2d 827. A subsequent opinion of the North Carolina Court of Appeals (Pet. App. 42a) is published at 741 S.E.2d 1, and an order from the North Carolina Supreme Court affirming that judgment (Pet. App. 41a) is published at ___ S.E.2d ___, 2013 WL 5973918.

JURISDICTION

The final judgment of the North Carolina Supreme Court was entered on November 8, 2013. Pet. App. 41a. An interlocutory decision from the North Carolina Supreme Court, resolving the federal question presented here, was issued in 2012. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL PROVISION

The Fourth Amendment states in relevant part that "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated."

STATEMENT OF THE CASE

The Fourth Amendment permits police officers to stop a motor vehicle and its occupants for law enforcement purposes only when there is at least reasonable suspicion that a law has been violated. This case presents a fundamental and frequently recurring question over which the state courts of last resort and federal courts of appeals are openly and intractably divided: whether an officer's mistaken but understandable view of the law can form the basis for reasonable suspicion. A bare majority of the North Carolina Supreme Court, acknowledging the conflict, held that it can.

1. Early one morning in 2009, petitioner Nicholas Heien and Maynor Javier Vasquez were traveling along Interstate 77 through Surry County, North Carolina. Vasquez was driving petitioner's car while petitioner slept in the back seat. Pet. App. 29a-30a.

While observing traffic on the interstate in order to "look[] for criminal indicators of drivers [and] passengers," Tr. of Suppression Hrg. 19, Officer Matt Darisse of the Surry County Sheriff's Department noticed Vazquez drive by. Pet. App. 29a. The officer thought Vasquez appeared "stiff and nervous," insofar as he was "gripping the steering wheel at a 10 and 2 position, looking straight ahead." Tr. 6. The officer pulled onto the highway and began following the vehicle. Pet. App. 29a.

As petitioner's car approached a slower-moving vehicle, Officer Darisse observed that the car's left brake light was properly functioning, but that the right rear brake light failed to illuminate. Though North Carolina requires all vehicles merely to have "*a* stop lamp," N.C. Gen. Stat. § 20-129(g) (emphasis

added), and no North Carolina appellate court had ever held that this statute requires two working lights, Officer Darisse activated his blue lights and stopped petitioner's vehicle. Pet. App. 29a. Another officer arrived later to assist. *Id.* 30a.

Officer Darisse informed Vasquez and petitioner that he had stopped them "for a nonfunctioning brake light." Pet. App. 2a. He then told Vasquez to step out of the car and asked Vasquez some questions about where he and petitioner were going. Meanwhile, the other officer walked to the backseat window and asked petitioner similar questions, which he answered differently from Vasquez. Officer Darisse also ran checks on Vasquez's driver's license and petitioner's registration, and issued Vasquez a warning citation for the brake light. *Id.* 2a-3a.

After issuing the warning, Officer Darisse asked Vasquez, who remained standing behind the car, for permission to search the vehicle. Vasquez demurred, explaining that the car belonged to petitioner. The officer then asked petitioner, who was still in the back seat, for permission, and petitioner consented to a search. The officers told Vasquez and petitioner to stand on the side of the road. The officers searched through the car for about forty minutes and found a plastic sandwich baggie containing cocaine.

2. The State charged petitioner with trafficking cocaine. (The State also charged Vasquez, and he pleaded guilty to attempted cocaine trafficking.) Petitioner responded by filing a motion to suppress the evidence that the officers had discovered during the search of his car. Petitioner argued that the traffic stop violated the Fourth Amendment because Officer Darisse lacked "reasonable articulable

suspicion that criminal activity had been committed or was being committed, or that a motor vehicle traffic offense or infraction had occurred." Am. Mot. to Suppress at 1. Petitioner also contended that his subsequent consent to the search was invalid. The trial court denied petitioner's motion.

In light of that ruling, petitioner pleaded guilty to two variations of drug trafficking, but he reserved the right to appeal the denial of his motion to suppress. Pet. App. 31a. Petitioner was sentenced to two consecutive prison terms of ten to twelve months.

3. On appeal, the North Carolina Court of Appeals reversed. Emphasizing the statutory phrase "*a* stop lamp" (as well as the phrase "*the* stop lamp"), the court first determined that North Carolina law requires only one working brake light. Pet. App. 34a (emphasis added) (citing N.C. Gen. Stat. § 20-129(g)).[1] Because petitioner's vehicle had a working brake light, it was in compliance with that law. The court of appeals then held that the stop violated the Fourth Amendment, explaining that "an officer's mistaken belief that a defendant has committed a

[1] The relevant subsection of the statute reads in full: "No person shall sell or operate on the highways of the State any motor vehicle, motorcycle or motor-driven cycle, manufactured after December 31, 1955, unless it shall be equipped with a stop lamp on the rear of the vehicle. The stop lamp shall display a red or amber light visible from a distance of not less than 100 feet to the rear in normal sunlight, and shall be actuated upon application of the service (foot) brake. The stop lamp may be incorporated into a unit with one or more other rear lamps." N.C. Gen. Stat. § 20-129(g).

traffic violation is not an objectively reasonable justification for a traffic stop." *Id.* 32a.

Having concluded that the stop was invalid, the court of appeals did not address petitioner's challenge to the validity of his subsequent consent. Pet. App. 39a-40a.

4. The North Carolina Supreme Court granted discretionary review, and by a 4-3 vote reversed. The State did not dispute, and the North Carolina Supreme Court therefore assumed, that North Carolina law requires only one working brake light. *See* Pet. App. 7a. But the court observed that "[v]arious federal and state courts have provided different answers" to the question "whether a stop is . . . permissible when an officer witnesses what he reasonably, though mistakenly, believes to be a traffic violation." *Id.* 8a-9a; *see also id.* 18a (acknowledging that courts "are divided" on the issue). And the court adopted the minority view on the issue, holding that "so long as an officer's mistake is reasonable, it may give rise to reasonable suspicion." *Id.* 18a. In the court's view, "requiring an officer to be more than reasonable, mandating that he be perfect, would impose a greater burden than that required under the Fourth Amendment." *Id.* 13a.

The North Carolina Supreme Court further held that Officer Darisse's mistake was "reasonable" because "[w]hen the stop at issue in this case occurred, neither this Court nor the Court of Appeals had ever interpreted our motor vehicle laws to require only one properly functioning brake light." Pet. App. 19a. Accordingly, it reversed the judgment of the North Carolina Court of Appeals, and

remanded for further proceedings on petitioner's consent argument. *Id.* 19a-20a.

Three justices dissented and argued that the court should have followed the majority of courts in holding that "an officer's mistake of law cannot be the basis for reasonable suspicion." Pet. App. 23a. The dissenters explained that the court's decision "introduces subjectivity into what was previously a well-settled objective inquiry." *Id.* 21a. They disagreed with the approach taken by their colleagues because the permissibility of investigatory searches and seizures turns simply on "whether the rule of [state] law as applied to the established facts *is or is not violated*." *Id.* 23a (internal quotation marks omitted) (quoting *Ornelas v. United States*, 517 U.S. 690, 696-97 (1996)). Thus, "according to the United States Supreme Court, it does not matter what the officer subjectively thinks the law is." Pet. App. 23a. Quoting an Eleventh Circuit decision on the issue, the dissent also stressed "the fundamental unfairness of holding citizens to the traditional rule that ignorance of the law is no excuse while allowing those entrusted to enforce the law to be ignorant of it." *Id.* 27a (internal quotation marks omitted) (quoting *United States v. Chanthasouxat*, 342 F.3d 1271, 1280 (11th Cir. 2003)).

5. On remand, the North Carolina Court of Appeals rejected petitioner's challenge to the validity of his consent. Pet. App. 42a-61a. The North

Carolina Supreme Court did as well, thus upholding petitioner's conviction and sentence. *Id.* 41a.[2]

6. This petition follows.

REASONS FOR GRANTING THE WRIT

I. Federal And State Courts Are Split Over Whether A Traffic Stop Supported Only By An Officer's Mistaken Interpretation Of The Law Can Comport With The Fourth Amendment.

In order to conduct a traffic stop, the Fourth Amendment mandates that the police have at least "reasonable suspicion" that a traffic law has been violated. *Delaware v. Prouse*, 440 U.S. 648, 663 (1979). As the North Carolina Supreme Court acknowledged, "federal and state courts have provided different answers" to the question whether "an officer's mistake of law" – which occurs where an officer accurately perceives a driver's conduct but incorrectly believes that the traffic code prohibits that conduct – may "give rise to [such] reasonable suspicion." Pet. App. 7a, 9a. At least ten federal courts of appeals and state courts of last resort hold that such mistakes can never supply reasonable suspicion for a stop, while five such courts hold that

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[2] The second appeal in the North Carolina Supreme Court focused exclusively on the consent issue. Petitioner was not allowed under North Carolina law to reassert his mistake-of-law claim in that proceeding, nor was he required to do so in order to preserve the argument for review in this Court, *see, e.g.*, *Urie v. Thompson*, 337 U.S. 163, 172-73 & n.12 (1949); *Gant v. Oklahoma City*, 289 U.S. 98, 100 (1933).

"when an officer witnesses what he reasonably, though mistakenly, believes to be a traffic violation," the Fourth Amendment allows the stop. Pet. App. 8a.

1. The majority of federal courts of appeals and state courts of last resort to address the issue have concluded – like the dissent below – that a mistake of law cannot supply the reasonable suspicion necessary to justify a traffic stop.

Five federal circuits have squarely adopted this rule. *See United States v. Miller*, 146 F.3d 274, 279 (5th Cir. 1998) (even when a "reasonable person" would have thought the conduct unlawful, a traffic stop violates the Fourth Amendment when the driver's behavior did not actually violate state law); *United States v. McDonald*, 453 F.3d 958, 962 (7th Cir. 2006) (same); *United States v. King*, 244 F.3d 736, 741 (9th Cir. 2001) ("[A]n officer's mistake of law cannot form the basis for reasonable suspicion to initiate a traffic stop" even if the officer's "interpretation of traffic law was reasonable."); *United States v. Nicholson*, 721 F.3d 1236, 1244 (10th Cir. 2013) ("Like most of our sister circuits, we judge the facts against the correct interpretation of the law, as opposed to any other interpretation, even if arguably a reasonable one."); *United States v. Chanthasouxat*, 342 F.3d 1271, 1279-80 (11th Cir. 2003) (same). Three others have endorsed the majority rule in the course of upholding traffic stops

that they concluded were not based on mistakes of law.[3]

Five state courts of last resort also have squarely held that a mistake of law "*cannot* provide objective grounds for reasonable suspicion." *Hilton v. State*, 961 So. 2d 284, 298 (Fla. 2007) (rejecting the argument that the officers' "reasonable, but incorrect, interpretation of the law justified the stop"); *see also State v. Louwrens*, 792 N.W.2d 649, 652 (Iowa 2010) (same); *Martin v. Kansas Dep't of Revenue*, 176 P.3d 938, 948 (Kan. 2008) (same); *State v. Anderson*, 683 N.W.2d 818, 824 (Minn. 2004) ("[W]hether made in good faith or not, the officer was mistaken in his interpretation of [the law], and therefore he lacked a particularized and objective basis for stopping [the defendant]."); *State v. Lacasella*, 60 P.3d 975, 981-82 (Mont. 2002) (same).[4]

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[3] *See United States v. Coplin*, 463 F.3d 96, 101 (1st Cir. 2006) (stating that "[s]tops premised on a mistake of law, even a reasonable, good-faith mistake, are generally held to be unconstitutional," but upholding a stop predicated on a mistake of fact, not law); *United States v. Harrison*, 689 F.3d 301, 309 (3d Cir. 2012) (explaining that "a search conducted pursuant to a police officer's mistake as to the governing law, even if reasonable, is not permitted under the Fourth Amendment" before noting that the mistake was one of fact, not law); *United States v. Booker*, 496 F.3d 717, 722, 724 (D.C. Cir. 2007) (same), *vacated on other grounds*, 556 U.S. 1218 (2009).

[4] The District of Columbia Court of Appeals has adopted the majority position in the context of reviewing the validity of an arrest. *See In re T.L.*, 996 A.2d 805, 816 (D.C. 2010) ("[A]n officer's mistake of *law*, however reasonable, 'cannot provide the objective basis for reasonable suspicion or probable cause' needed to justify a search or seizure." (citations omitted)).

The Eleventh Circuit's opinion in *Chanthasouxat* applies the majority rule in a typical manner. There, an officer stopped the van in which the defendants were riding "for failure to have an inside rearview mirror." 342 F.3d at 1272. Although this condition did not actually violate the traffic code, the government argued that the officer's reasonable belief that it did nonetheless justified the stop. *Id.* at 1276. Such a belief was reasonable, the government contended, because the officer had previously written "more than 100 tickets for this 'violation'" and relied on advice from a city magistrate and his police training. *Id.* at 1279. The Eleventh Circuit agreed that the officer's "mistake of law was reasonable under the circumstances," but it held that the government's argument posed "the wrong question." *Id.* In the court's view, no mistake of law, "no matter how reasonable or understandable," can "provide reasonable suspicion or probable cause to justify a stop." *Id.* Thus, the stop violated the Fourth Amendment. *Id.* at 1280.

2. In direct contrast, one federal court of appeals and four state courts of last resort (including the North Carolina Supreme Court) hold that stops based on mistakes of law are valid where the underlying mistake is objectively reasonable. *See United States v. Martin*, 411 F.3d 998, 1001 (8th Cir. 2005) & *United States v. Washington*, 455 F.3d 824, 827 (8th Cir. 2006); Pet. App. 12a-18a (adopting the Eighth Circuit's approach); *Travis v. State*, 959 S.W.2d 32, 34 (Ark. 1998) (upholding a stop where the officer "reasonably, albeit erroneously" interpreted the relevant statute); *Moore v. State*, 986 So. 2d 928, 935 (Miss. 2008) (same); *State v. Wright*, 791 N.W.2d 791,

798-99 (S.D. 2010) (adopting the Eighth Circuit's approach).

The Eighth Circuit's decision in *Martin* illustrates the minority position. There, an officer stopped the defendant's car after observing that his right brake light was out. 411 F.3d at 1000. In response to the defendant's argument that the stop violated the Fourth Amendment because the traffic code required only one brake light, the Eighth Circuit held that the determinative question was not "whether Martin actually violated the [law] . . . but whether an objectively reasonable police officer could have formed a reasonable suspicion that Martin was committing a code violation." *Id.* at 1001. The Eighth Circuit then concluded that because the officer's "misunderstanding" that the traffic code required two brake lights was "reasonable," the stop did not violate the Fourth Amendment. *Id.* at 1002.

3. Over time, the conflict over whether reasonable mistakes of law can justify a stop has grown deeper and more entrenched. Courts confronting the issue for the first time are no longer contributing to any process of percolation. Rather, as the North Carolina Supreme Court's opinion in this case illustrates, courts now are choosing between two well-developed options in a widely recognized conflict. Pet. App. 9a; *see also Coplin*, 463 F.3d at 101 (collecting cases on both sides of the split); *McDonald*, 453 F.3d at 961 (adopting the view of the "majority of circuits" after recognizing the two sides of the divide); *Louwrens*, 792 N.W.2d at 652 (choosing the "majority rule" after recognizing both approaches); *Wright*, 791 N.W.2d at 797-99 & n.2 (choosing the minority approach after collecting cases on both sides of the

split). Moreover, no court that has previously addressed the question presented has changed its position, despite opportunities to do so. *See, e.g.*, *United States v. Hastings*, 685 F.3d 724, 727 (8th Cir. 2012) (reaffirming *Martin*, 411 F.3d 998); *United States v. Raney*, 633 F.3d 385, 392 n.2 (5th Cir. 2011) (reaffirming *Miller*, 146 F.3d 274).

II. The Question Presented Is Critically Important To The Administration Of Criminal Justice.

It is critical that this Court clarify the law surrounding the innumerable traffic stops that occur every day and the viability of criminal prosecutions that arise from them.

1. Traffic stops are the single most common reason for citizen contact with the police. According to a recent Bureau of Justice Statistics study, at least 45 percent of the approximately 40 million Americans (18.8 million people) who have face-to-face contact with a police officer in a given year do so in the context of a traffic stop. U.S. Dep't of Justice, Bureau of Justice Statistics, Contacts Between Police and the Public, 2008, at 2-3 (2011).

In North Carolina alone, police have carried out an average of 1.17 million stops per year during the past decade. Frank R. Baumgartner & Derek Epp, North Carolina Traffic Stop Statistics Analysis – Final Report to the North Carolina Advocates for Justice Task Force on Racial and Ethnic Bias 5 (2012). Roughly 450,000 of these stops resulted in police searches. *Id.* at 6.

2. Resolving whether a stop predicated on a reasonable but mistaken view of the law violates the

Fourth Amendment is essential to provide greater clarity to law enforcement agents, police departments, lawyers, and trial judges. Police officers and departments need to know whether they may conduct traffic stops only for actual state-law offenses, or whether their authority is even broader. Furthermore, the answer to this question dictates the admissibility of evidence seized pursuant to stops based on mistakes of law in as many as sixteen states. Fourteen state high courts have made clear, and two others have indicated, that their state constitutions require suppressing all evidence the police obtain from searches or seizures conducted in violation of the Fourth Amendment, even when the police acted in "good faith."[5]

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[5] The following state supreme courts have squarely rejected the good faith exception to the exclusionary rule: *State v. Marsala*, 579 A.2d 58, 59 (Conn. 1990); *Dorsey v. State*, 761 A.2d 807, 814 (Del. 2000); *Gary v. State*, 422 S.E.2d 426, 428 (Ga. 1992); *State v. Guzman*, 842 P.2d 660, 677 (Idaho 1992); *State v. Cline*, 617 N.W.2d 277, 283 (Iowa 2000), *abrogated on other grounds by State v. Turner*, 630 N.W.2d 601 (Iowa 2001); *Commonwealth v. Upton*, 476 N.E.2d 548, 554 n.5 (Mass. 1985); *State v. Canelo*, 653 A.2d 1097, 1102 (N.H. 1995); *State v. Johnson*, 775 A.2d 1273, 1282 (N.J. 2001); *State v. Gutierrez*, 863 P.2d 1052, 1053 (N.M. 1993); *People v. Bigelow*, 488 N.E.2d 451, 458 (N.Y. 1985); *State v. Carter*, 370 S.E.2d 553, 562 (N.C. 1988); *Commonwealth v. Edmunds*, 586 A.2d 887, 888 (Pa. 1991); *State v. Oakes*, 598 A.2d 119, 121 (Vt. 1991). Illinois law likewise precludes any good faith exception when, as here, the police lack a warrant. *People v. Krueger*, 675 N.E.2d 604, 606 (Ill. 1996). Two other state high courts have indicated, without expressly holding, that their constitutions preclude any good faith exception. *State v. Lopez*, 896 P.2d 889, 902 (Haw. 1995); *Garza v. State*, 632 N.W.2d 633, 640 (Minn. 2001).

Even within jurisdictions recognizing the good faith exception to the exclusionary rule enunciated in *United States v. Leon*, 468 U.S. 897 (1984), and its progeny, every court to hold that stops such as the one here violate the Fourth Amendment and to address whether such a holding requires suppression has held that it does. Specifically, the Seventh, Ninth, and Eleventh Circuits have held that officers' misinterpretations of ambiguous traffic statutes do not satisfy *Leon*'s "good faith" standard. *United States v. McDonald*, 453 F.3d 958, 962 (7th Cir. 2006); *United States v. Lopez-Soto*, 205 F.3d 1101, 1106 (9th Cir. 2000); *United States v. Chanthasouxat*, 342 F.3d 1271, 1279-80 (11th Cir. 2003).[6]

3. Clarifying whether mistakes of law can support traffic stops is especially important in areas of the country where state high courts have adopted different approaches to this Fourth Amendment issue than have the federal courts of appeals covering the same jurisdiction. Such is the case in three states.

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[6] These circuit decisions predate this Court's ruling in *Davis v. United States*, 131 S. Ct. 2419 (2011), that evidence obtained from a search conducted in compliance with binding, but later abrogated, circuit precedent satisfies *Leon*'s "good faith" standard. But the Eleventh Circuit has held that reliance on a clear statement from the judiciary is different from a situation, as here, where the police make a mistake of law regarding a legal question that the courts have not previously addressed. *United States v. Davis*, 598 F.3d 1259, 1266-67 (11th Cir. 2010), *aff'd*, 131 S. Ct. 2419 (2011); *see also United States v. Johnson*, 457 U.S. 537, 562 (1982) (excluding evidence obtained from a search whose constitutionality was "unsettled" at the time it was conducted).

See State v. Louwrens, 792 N.W.2d 649 (Iowa 2010) (disagreeing with Eighth Circuit); *State v. Anderson*, 683 N.W.2d 818 (Minn. 2004) (same); *Moore v. State*, 986 So.2d 928 (Miss. 2008) (disagreeing with Fifth Circuit). This creates the "odd inconsistency" that evidence obtained from a stop based on a mistake of law is admissible in one sovereign's courts but not the other's. *See Louwrens*, 792 N.W.2d at 654. Creating a uniform approach to stops based on mistakes of law will eliminate such inconsistency and any undesirable forum shopping to which it may give rise.

III. This Case Is An Ideal Vehicle For Resolving The Conflict.

For two reasons, this case presents the right opportunity for this Court to address the issue whether a mistake of law alone may supply the reasonable suspicion necessary to make a traffic stop.

1. This case indisputably turns on a pure mistake of law. That is, the officers made a mistake concerning the number of brake lights required by the statute, not a factual mistake concerning whether petitioner's vehicle had a properly functioning brake light. Moreover, because the State has never suggested that petitioner violated any other traffic law, this mistake of law was the only possible basis for the stop. Thus, this case is different than one where an officer, despite harboring a misunderstanding concerning the particular statute giving rise to the stop, nonetheless observed facts that could provide a basis for the stop. *See, e.g.*, *United States v. Wallace*, 213 F.3d 1216, 1217 (9th Cir. 2000) ("Although the officer misunderstood the tinting law, he was correct that the tinting he saw was illegal, and accordingly, had probable cause to

stop the car."); *State v. Barnard*, 658 S.E.2d 643, 644 (N.C. 2008) (conduct indicated violation of a different statute).

2. The question presented is outcome-determinative in petitioner's case. North Carolina is one of the states whose constitution precludes any good faith exception to the exclusionary rule. *State v. Carter*, 370 S.E.2d 553, 562 (N.C. 1988). Accordingly, as the North Carolina Court of Appeals' opinion makes clear, if the traffic stop violated the Fourth Amendment, then the drugs and other evidence the police seized during the stop must be suppressed and petitioner's conviction must be reversed. Pet. App. 39a-40a.

IV. The North Carolina Supreme Court Erred In Holding That A Mistaken Understanding Of The Law Can Support A Traffic Stop.

Contrary to the North Carolina Supreme Court's holding, a traffic stop contravenes the Fourth Amendment when the officer's decision to make the stop is based on a "subjective mistake of law" as to the existence of a traffic violation, regardless of whether that mistake is "reasonabl[e]," Pet. App. 8a.

A. A Traffic Stop Violates The Fourth Amendment When The Traffic Code, As Properly Construed, Does Not Provide Any Objective Basis For The Stop.

A straightforward application of this Court's precedent demonstrates that mistakes of law cannot support traffic stops.

1. The constitutionality of a traffic stop depends on whether the facts observed by the officer support at least reasonable suspicion that a traffic law (or some other law) was violated. *Ornelas v. United States*, 517 U.S. 690, 696 (1996); *Delaware v. Prouse*, 440 U.S. 648, 663 (1979). In order to apply this standard, a court must make two distinct inquiries. The court first must determine what the law at issue requires or prohibits. Second, the court must assess whether the facts observed by the officer establish a sufficient likelihood that a law was broken. Thus, this Court has described the validity of a seizure as turning on "whether the rule of law as applied to the established facts is or is not violated." *Ornelas*, 517 U.S. at 697 (internal quotation marks and citation omitted).

In *Whren v. United States*, 517 U.S. 806 (1996), this Court further clarified that "[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis." *Id.* at 813. "[A]s long as the circumstances, viewed objectively, justify [the police officer's] action," the officer's subjective state of mind is irrelevant. *Id.* (quoting *Scott v. United States*, 436 U.S. 128, 136, 138 (1978)).

The logic of *Whren* is inherently two-sided: if an officer's subjective motive or belief cannot invalidate an objectively justified traffic stop, then it cannot save an objectively unjustified one. In other words, *Whren* grants officers "broad leeway to conduct searches and seizures regardless of whether their subjective intent corresponds to the legal justification for their actions. But the flip side of that leeway is that the legal justification must be objectively grounded." *United States v. Miller*, 146 F.3d 274,

279 (5th Cir. 1998) (footnote omitted). Where the actions the officer observes provide no basis for concluding that any law, as properly construed, has been violated, an officer's subjective misunderstanding of the law cannot create the suspicion the Fourth Amendment requires.

The Eighth Circuit, whose approach the North Carolina Supreme Court endorsed here, Pet. App. 12a, has tried to finesse this problem by asserting that even under its view, an officer's "subjective good faith belief about the content of the law is irrelevant," *United States v. Washington*, 455 F.3d 824, 827 (8th Cir. 2006). According to the Eighth Circuit, "the constitutionality of [a] traffic stop . . . depends on whether [the officer's] belief that a state law was violated was objectively reasonable." *Id.*; *accord United States v. Martin*, 411 F.3d 998, 1001 (8th Cir. 2005). But conceptualizing the test in this manner reveals an even more fundamental flaw in the minority view.

Ordinary people are charged with knowledge of substantive criminal law, and if they make mistakes of law, they may not (absent special statutory exceptions) assert such mistakes as a defense to liability. This is so no matter how "objectively reasonable" a mistake may be. As this Court has put it time and again, "ignorance of the law is no excuse." *Bryan v. United States*, 524 U.S. 184, 196 (1998). Indeed, as Justice Holmes famously explained, "to admit the excuse at all would be to encourage ignorance where the law-maker has determined to make men know and obey." Oliver Wendell Holmes, The Common Law 48 (1881).

It takes little reflection to see "the fundamental unfairness" of holding citizens to strict compliance with the law "while allowing those entrusted to enforce the law" to interpret and apply the law more flexibly. *United States v. Chanthasouxat*, 342 F.3d 1271, 1280 (11th Cir. 2003) (internal quotation marks omitted). "Reciprocal expectations of law-abidingness between government and its citizens can scarcely be expected to endure if one party – the government – need not uphold its end of the bargain." Wayne A. Logan, *Police Mistakes of Law*, 61 Emory L.J. 69, 91 (2011) (footnotes omitted). Indeed, if anything, those charged with enforcing the law should be expected to have a better – not worse – understanding than the general public. Any rule that undermines this actuality, and that rewards police officers with more authority when they are ignorant of the law they are supposed to be enforcing, flouts our most basic constitutional values.

2. To be sure, this Court has held that an officer's "good faith" belief that a search or seizure was lawful can be relevant to determining whether to *suppress* illegally obtained evidence. In a series of cases beginning with *United States v. Leon*, 468 U.S. 897 (1984), this Court has held that evidence need not be suppressed when the police obtain it in "objectively reasonable reliance" on a state statute later held unconstitutional, *Illinois v. Krull*, 480 U.S. 340, 342, 349-50 (1987), or on binding, but later abrogated, appellate precedent, *Davis v. United States,* 131 S. Ct. 2419, 2434 (2011).

But exclusion "is an issue separate from the question whether the Fourth Amendment rights of the party . . . were violated." *Leon*, 468 U.S. at 906

(quoting *Illinois v. Gates*, 462 U.S. 213, 223 (1983)) (internal quotation marks omitted). In none of the *Leon* "good faith" cases has this Court ever suggested that good faith goes to the question whether the Fourth Amendment was violated in the first place. To the contrary, in each of the cases in which this Court has held that the good faith exception did not require suppression, it has nonetheless taken it as a given that the Fourth Amendment was violated. *See, e.g.*, *Davis*, 131 S. Ct. at 2428 (noting that the search "turned out to be unconstitutional"); *Krull*, 480 U.S. at 347 ("evidence [wa]s obtained in violation of the Fourth Amendment"). In short, if police officers base their searches or seizures on conceptions of the law that turn out to be incorrect, their actions are, by definition, "unreasonable" under the Fourth Amendment.[7]

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[7] The North Carolina Supreme Court ignored *Davis*, *Krull*, and *Leon*, focusing instead on this Court's holding in *Michigan v. DeFillippo*, 443 U.S. 31 (1979), that an arrest for violating an ordinance that was later declared unconstitutional did not violate the Fourth Amendment. *See* Pet. App. 12a. But even if relying on a local law later deemed unconstitutional were the same as relying on a misunderstanding of local law, *DeFillippo* is a relic of an earlier time, when this Court "treated identification of a Fourth Amendment violation as synonymous with application of the exclusionary rule." *Arizona v. Evans*, 514 U.S. 1, 13 (1995). Even though cast in some places as a Fourth Amendment decision, the reasoning in *DeFillippo* really focused on whether "the evidence discovered in the search of respondent should . . . have been suppressed." *DeFillippo*, 443 U.S. at 38-40 & n.3; *compare Davis*, 131 S. Ct. at 2427 (explaining that deterrence and other factors considered in *DeFillippo* are relevant to whether the exclusionary rule applies, not to whether the Fourth Amendment was violated).

B. The North Carolina Supreme Court's Rationales For Permitting Stops Based On Mistakes Of Law Do Not Withstand Scrutiny.

The North Carolina Supreme Court offered two primary justifications for holding that a so-called "reasonable mistake of law" can support a traffic stop: (1) "the primary command of the Fourth Amendment" is merely "that law enforcement agents act reasonably," Pet. App. 12a; and (2) allowing traffic stops based on reasonable but incorrect understandings of law furthers society's "interest in keeping its roads safe" at a "minimal" cost to motorists, *id.* 14a.

1. Petitioner accepts that the police officers' mistake of law here was understandable, insofar as an officer understandably might not have known at the time of the stop that North Carolina law required only one working brake light instead of two. But that does not mean that this mistake was capable of providing "reasonable suspicion" under the Fourth Amendment. Unlike mistakes of fact, the Fourth Amendment does not tolerate police mistakes of law.

a. The reasonable suspicion standard condones traffic stops based on factual suppositions that turn out to be incorrect because "many situations which confront officers in the course of executing their duties are more or less ambiguous," and "law enforcement officials must be expected to apply their judgment" to draw factual inferences based on probabilities. *Illinois v. Rodriguez*, 497 U.S. 177, 186 (1990) (internal quotation marks and citation omitted). Furthermore, officers often must form and apply their judgment in a "necessarily swift" manner

based on rapidly developing "on-the-spot observations." *Terry v. Ohio,* 392 U.S. 1, 20 (1968); *see also United States v. Robinson,* 414 U.S. 218, 235 (1973) (stressing need for "quick *ad hoc* judgment" by officers). The reasonable suspicion standard thus reduces the "quantum of evidence" necessary to justify traffic stops and certain other police actions. *Griffin v. Wisconsin*, 483 U.S. 868, 877 n.4 (1987). Officers need ultimately not be correct; their factual predictions need only be "reasonable."

This reasoning does not apply to mistakes of law. In contrast to factual assessments, an officer's comprehension of the law should be formed ahead of time and with the opportunity to clarify any uncertainty. The question whether a traffic law prohibits certain conduct does not depend on police judgment or the amount of evidence that is available to them; it turns on what the traffic code says and what courts interpret the code's words to mean. Accordingly, mistakes of law, no matter how understandable, "cannot" give rise to "the objectively reasonable grounds for providing reasonable suspicion." *United States v. McDonald*, 453 F.3d 958, 962 (7th Cir. 2006) (internal quotation marks and citation omitted). Only correct interpretations of law can provide a basis for such suspicion.

b. A rule allowing stops based on reasonable mistakes of law would also be difficult to administer. The Eighth Circuit's cases implementing this rule suggest that "police manuals or training materials, state case law, legislative history, or any other state custom or practice" can establish a mistake's reasonableness. *Washington*, 455 F.3d at 828; *see also Martin*, 411 F.3d at 1001 (noting the absence of

evidence regarding "prior enforcement" and "the training of police").

This Court's decision in *Whren*, however, expressly precluded courts from considering local "police enforcement practices" when determining whether reasonable suspicion existed. 517 U.S. at 814-15. Such practices are bound to "vary from place to place and from time to time," even among counties or agencies within the same jurisdiction, and this Court refused to "accept that the search and seizure protections of the Fourth Amendment are so variable." *Id.* at 815. So too here. Looking to local manuals and customs to determine whether a mistake of law was reasonable would yield impermissible variability in the protections of the Fourth Amendment within a given state.

2. Nor do the North Carolina Supreme Court's assertions concerning the limited intrusiveness and supposed public-safety goals of traffic stops support its mistake-of-law holding.

a. Contrary to the North Carolina Supreme Court's suggestion that a traffic stop "is not a substantial interference with the detained individual," Pet. App. 14a, this Court has long made clear that a traffic stop is a significant Fourth Amendment event. It involves a "physical and psychological intrusion visited upon the occupants." *Prouse*, 440 U.S. at 657. Traffic stops "interfere with freedom of movement, are inconvenient, and consume time" and they "may create substantial anxiety." *Id.*

Insofar as such stops are less intrusive than other kinds of seizures, the Fourth Amendment already accounts for the lesser degree of intrusion by reducing the quantum of suspicion needed for officers

to pull over motorists; reasonable suspicion instead of probable cause will suffice. *Id.* at 661, 663. The comparatively modest intrusion involved, however, does not remove the need for *some* legitimate suspicion.

b. The North Carolina Supreme Court's remarks concerning society's "interest in keeping its roads safe," *see* Pet. App. 14a, similarly miss the mark.

The officer here stopped petitioner's car because he believed it was violating state traffic law, not for independent safety reasons. Pet. App. 5a. When police officers conduct stops for violating traffic laws, these stops are valid only if supported by reasonable suspicion. *See Whren*, 517 U.S. at 811-12. Any purported safety justification for the stop – or for the state law purportedly being enforced – does not alter the Fourth Amendment calculus. After all, most every state law (traffic and otherwise) serves some underlying safety function. Only when officers act strictly in a community caretaking capacity, free from any investigatory purpose, does public safety become relevant. *Id.*; *see also South Dakota v. Opperman*, 428 U.S. 364, 368 (1976).

Indeed, the North Carolina Supreme Court's assertion that safety considerations should entitle police officers "to interpret our motor vehicle laws reasonably" (but incorrectly), Pet. App. 14a, would effectively allow police officers to redefine the content of the traffic code. This would usurp the role of legislatures and courts. If the governmental branches designated to make and interpret laws do not believe that certain conduct is sufficiently unsafe to be unlawful (and, by implication, to justify pretextual stops under *Whren*), then police officers

have no basis to second-guess that decision. Here, the North Carolina legislature determined that one working brake light, not two, was the appropriate standard for safety. The responsibility of law enforcement was to learn and apply that rule, not re-interpret it.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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November 13, 2013