No. 13-604

IN THE

Supreme Court of the United States

NICOLAS BRADY HEIEN,

Petitioner,

v.

STATE OF NORTH CAROLINA,

Respondent.

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

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

Having persuaded a bare majority of its state supreme court to take the minority position on a Fourth Amendment issue of obvious consequence, the State offers a hodgepodge of arguments to try to evade this Court's review. None has any force. The conflict over whether a so-called reasonable mistake of law can justify a traffic stop is widespread and mature. And this case presents the perfect opportunity to resolve it.

1. Neither of the State's attempts to undermine the vitality of the conflict withstands scrutiny.

a. The State acknowledges that the North Carolina Supreme Court's holding conflicts with holdings from the First, Tenth, and Eleventh Circuits. BIO 4-5. The State also does not dispute that the holding conflicts with the Ninth Circuit's decision in *United States v. King*, 244 F.3d 736, 741 (9th Cir. 2001), as well as with holdings from the Florida, Iowa, Kansas, Minnesota, and Montana Supreme Courts. *See* Pet. 8-9. Finally, the State agrees that the North Carolina Supreme Court's holding aligns with holdings from several other jurisdictions. BIO 4. Those explicit and implicit acknowledgements are more than enough to confirm the existence of a deep division of authority warranting this Court's review.

The State nevertheless quibbles over whether the Seventh Circuit's decision in *United States v. McDonald*, 453 F.3d 958 (7th Cir. 2006), and the Fifth Circuit's decision in *United States v. Miller*, 146 F.3d 274 (5th Cir. 1998), also conflict with the decision below. *See* BIO 5-6. These quibbles lack merit. In *McDonald*, the Seventh Circuit squarely

held that "even a reasonable mistake of law cannot support probable cause or reasonable suspicion" and that "[i]t makes no difference that an officer holds an understandable or 'good faith' belief that a law has been broken." 453 F.3d at 961-62. In *Miller*, the Fifth Circuit likewise held that even when a "reasonable person" at the time of a traffic stop would construe state law to prohibit the conduct that the officer observed, the traffic stop violates the Fourth Amendment if that construction of state law turns out to be incorrect. 146 F.3d at 279.

b. The State also suggests that "this Court has not previously found this conflict to be sufficiently compelling to merit review." BIO 6. But none of the three cases the State cites cleanly presented the question presented here.

In *United States v. Smart*, 393 F.3d 767 (8th Cir.), *cert. denied*, 545 U.S. 1211 (2005), in contrast to this case, *see* Pet. App. 7a, 34a; BIO 18, the police officer did not make any mistake of law. Instead, the officer simply discovered, after stopping the defendant's car for failing to display an in-state license plate in a proper manner, that the car's license plate was from a different state than the officer thought it might have been when he initiated the stop. *Smart*, 393 F.3d at 769-70.

In *United States v. Hastings*, 685 F.3d 724 (8th Cir. 2012), *cert. denied*, 133 S. Ct. 958 (2013), there was likewise no holding below that the police officer misinterpreted the unsafe-driving law at issue. To the contrary, the government maintained that the officer correctly understood and applied state law, *see* Br. for Appellee 15-17, 2011 WL 6167477, and the

Eighth Circuit did not disagree with that contention, *see* 685 F.3d at 727-28.

Lastly, in *United States v. Southerland*, 486 F.3d 1355 (D.C. Cir.), *cert. denied*, 552 U.S. 965 (2007), the petition for certiorari did not even challenge the legality of the traffic stop. *See* Pet. for Cert. i, *Southerland v. United States*, No. 07-6262 (focusing only on subsequent arrest). And for good reason: The D.C. Circuit assumed that the officers "were mistaken that [state] law required display of the front plate on the bumper." *Southerland*, 486 F.3d at 1359. But the stop was still valid because – in contrast to this case – the facts the officers observed seemingly violated state law as properly construed. In particular, state law required front license plates to be "securely fastened" and "clearly visible," and the defendant's license plate was merely sitting on his dashboard. *Id.* at 1358-59; *see also* Pet. 15-16 (distinguishing similar cases from the facts here).

Accordingly, this case appears to the first one squarely presenting the question of whether a so-called reasonable mistake of law can provide reasonable suspicion to effectuate a traffic stop.

2. When the State sought review of this case in the North Carolina Supreme Court, it explained that the case raised an issue "of major significance." State's Pet. for Disc. Rev. 3.[1] The State now contends, for two reasons, that the question presented "is not critically important." BIO 7. The State was right the first time.

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[1] This brief is available at http://www.ncappellatecourts.org/show-file.php?document_id=84542.

a. Contrary to the State's suggestion (BIO 7-8), the question whether a so-called reasonable mistake of law can provide reasonable suspicion to effectuate a traffic stop is not one that arises only "rarely." In recent years, no fewer than six federal courts of appeals and nine state courts of last resort have found it necessary to decide the issue. Pet. 8-11. Given the pervasiveness of traffic stops and the degree of winnowing that occurs between such stops and appeals, common sense dictates that these appellate decisions represent only the tip of the iceberg.

b. The question presented has great import for jurisdictions across the country.

i. The State argues that the question presented may not matter in the fourteen to sixteen states that have rejected the "good faith" exception to the exclusionary rule. Specifically, the State suggests that even if this Court were to hold that traffic stops based on reasonable mistakes of law comport with the Fourth Amendment, courts in those states might hold that such stops "nevertheless violate the respective provisions of their individual state constitutions." BIO 10. But the issue whether evidence obtained from illegal seizures is subject to exclusion is distinct from whether a traffic stop constitutes an illegal seizure in the first place. Pet. 19. And the State itself acknowledges that the North Carolina Supreme Court rested its illegal-seizure analysis here directly and exclusively on the Fourth Amendment. BIO 10. So has every other state court to decide the issue. Pet. 9-11 (citing cases). Accordingly, there is no reason to think that any state's lack of a "good faith" exception to the

exclusionary rule would cause it to decide – in the teeth of a Fourth Amendment holding from this Court to the contrary – that stops based on reasonable mistakes of law violate state constitutions.

As a more general matter, states are *always* free to afford their citizens heightened protection against unreasonable searches or seizures. Yet this reality has never been thought to provide this Court with reason to refrain from resolving conflict over the Fourth Amendment. To the contrary, this Court has stressed that even when there are grounds to believe that state courts would construe state counterparts to the Fourth Amendment to provide heightened protection against searches or seizures, there still is "an important need for uniformity in federal law" that warrants expenditure of this Court's resources. *Michigan v. Long*, 463 U.S. 1032, 1040 (1983). The State offers no reason to diverge here from this settled rule of practice.

ii. With respect to jurisdictions that recognize the good faith exception, the State argues that resolving the question presented would not matter because even if traffic stops based on reasonable mistakes of law violate the Fourth Amendment, "ordinarily the evidence would not be suppressed under the Fourth Amendment." BIO 8 n.2. But the only case the State cites to support that assertion is *Davis v. United States*, 131 S. Ct. 2419 (2011). And, as the Petition already noted, all three federal courts of appeals to consider the question have distinguished the situation in *Davis*, which involves police reliance on a clear statement from the judiciary, from the situation here, which involves a mistake of law concerning an

issue the judiciary has not previously addressed. *See* Pet. 14 & n.6 (citing cases). The State offers no response to these decisions or any explanation why this Court would extend the good faith exception into such territory. There is consequently strong reason to believe that if this Court were to hold stops such as the one at issue here unconstitutional, that holding would impact criminal prosecutions in every jurisdiction in the country.

It also is important to bear in mind that the question presented – like any Fourth Amendment issue – also matters well beyond the confines of criminal prosecutions. At its core, the Fourth Amendment regulates police officers' primary behavior. If the Fourth Amendment permits officers to make traffic stops based on misconceptions about state law, for example, then it "would reduce the incentives for police forces to be well trained in the law" and "cause an exponential increase in [traffic] stops." NACDL Amicus Br. 15. Indeed, if the State's conception of the Fourth Amendment is correct, local police departments across the country could adopt policies directly instructing their officers to stop motorists based on any and all "reasonable" interpretations of local traffic law, regardless of whether such interpretations are correct. By contrast, if the State's view of the Fourth Amendment is mistaken, such policies would violate the Constitution. (They also would expose police departments to lawsuits for damages under 42 U.S.C. § 1983. *See Monell v. Dept. of Social Servs.*, 436 U.S. 658, 690-95 (1978).) Neither policymakers nor motorists should be left in the dark in this respect.

3. The State next asserts that "[t]his is not an appropriate vehicle to resolve the issue." BIO 11. But each of the arguments the State advances to support this assertion are unpersuasive.

a. When the State sought review of this case in the North Carolina Supreme Court, it explained "[t]he *sole fact* necessary to this petition is that [the] right brake light of the vehicle in which defendant was traveling was malfunctioning or inoperable." Pet. for Disc. Rev. 2 (emphasis added). The State now contends, however, that "petitioner's failure to raise this issue to the trial court in the first instance has left the record incomplete as to a number of other facts that may be relevant" to the legality of the stop. BIO 12. The State's new position is doubly wrong.

As an initial matter, petitioner *did* argue in the trial court that the traffic stop "was an illegal seizure in violation of the Fourth Amendment" because North Carolina statutes "require a vehicle neither to have all brake lights in good working order nor to be equipped with more than one brake light." Pet. App. 3a; *see also* Tr. 13. The State thus had every incentive to develop all evidence allegedly justifying the stop. After a hearing, the trial court held that the traffic stop was constitutional for the sole reason that "Sergeant Darisse had a 'reasonable and articulable suspicion that the subject vehicle and the driver were violating the laws of this State by operating a motor vehicle without a properly functioning brake light.'" Pet. App. 5a (quoting trial court ruling). The North Carolina Supreme Court likewise condoned the stop exclusively on this basis. Pet. App. 8a-20a. Hence, the record and available legal theories have been fully developed.

At any rate, the State's musings concerning other grounds that might support the traffic stop are baseless. The State first suggests that perhaps petitioner's car could have been following another vehicle too closely or was "exceeding the speed limit." BIO 12. But there is zero reason to suspect the former and Officer Darisse expressly testified that the car "wasn't speeding." Tr. 19. The State next suggests that maybe "the officer stopped petitioner simply to inform him his brake light was out as a safety concern." BIO 12. But Officer Darisse explicitly testified that he deemed the faulty light to be "improper" and wrote out a "warning ticket" for the perceived traffic violation. Tr. 14; *accord* Pet. App. 2a. Lastly, the State suggests uncertainty concerning whether the officer here "even understood, interpreted, or weighed" the state statutes concerning brake lights. BIO 12. But Officer Darisse obviously contemplated those laws enough to stop petitioner's car "for a nonfunctioning brake light" and to issue a "warning ticket" for that supposed violation of state traffic law. Pet. App. 2a.

Taking all of this into account, the North Carolina Supreme Court explained that this case turns on "whether a stop is . . . permissible when an officer witnesses what he reasonably, though mistakenly, believes to be a traffic violation" *and "the conduct fails simultaneously to indicate another law is being violated."* Pet. App. 9a (emphasis added). That is exactly as petitioner describes the issue. The State's attempt to cloud the situation is groundless.

b. The State also briefly suggests that the question presented may not be outcome-determinative because it could argue on remand that

the good faith exception to the exclusionary rule should apply here. BIO 13. But the State "abandoned" any such argument by failing to raise it below. N.C. R. App. P. 28(a). In any event, the State itself acknowledges that the North Carolina Constitution precludes any "good faith" exception to the exclusionary rule. BIO 9, 13; *see also State v. Carter*, 370 S.E.2d 553, 562 (N.C. 1988).

4. The State's argument on the merits provides no reason to deny review in light of the entrenched conflict here. The argument is also unconvincing on its own terms.

The State primarily contends that the Fourth Amendment's "reasonableness" standard affords police officers flexibility not only with respect to factual assessments but also with respect to legal determinations. BIO 13-21. The Petition and NACDL's amicus brief already explain why that contention is erroneous. *See* Pet. 21-23; NACDL Amicus Br. 3-11. To summarize: determining the meaning of law is the province of the judiciary, not police officers – in part to avoid inconsistent outcomes under undifferentiated facts. Accordingly, the "reasonable suspicion" test requires potentially incriminating facts to be assessed "against the correct interpretation of the law, as opposed to any other interpretation, even if arguably a reasonable one." *United States v. Nicholson*, 721 F.3d 1236, 1244 (10th Cir. 2013).

Contrary to the State's suggestions, this rule does not require police officers to establish that "a specific law or statute was in fact, or was even likely broken," BIO 20; *see also id.* 17-18. Instead, the requirement that "reasonable suspicion" be measured against the

correct interpretation of the law simply clarifies that while the Fourth Amendment grants officers leeway with respect to factual assessments, it would be inconsistent with our constitutional structure to allow those entrusted with enforcing the law to restrain people's liberty based on incorrect legal assumptions. As the majority of lower courts already recognize, this is hardly too much to ask.

CONCLUSION

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

Respectfully submitted,

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