No. 14-

In the
Supreme Court of the United States

ILLINOIS,
PETITIONER,

v.

DERRICK A. CUMMINGS,
RESPONDENT.

On Petition for a Writ of Certiorari
to the Illinois Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Fourth Amendment permits a police officer to request a driver to produce his license during a lawfully-initiated traffic stop but after reasonable suspicion or probable cause has dissipated, where the officer's conduct is reasonable under the totality of circumstances and the stop is not unreasonably prolonged.

TABLE OF CONTENTS

Page

TABLE OF CONTENTS-Continued

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES-Continued

TABLE OF AUTHORITIES-Continued

TABLE OF AUTHORITIES-Continued

Constitutional Provision:

Statutes:

TABLE OF AUTHORITIES-Continued

Other Authorities:

PETITION FOR A WRIT OF CERTIORARI

The State of Illinois respectfully petitions for a writ of certiorari to review the judgment of the Illinois Supreme Court.

OPINIONS BELOW

The opinion of the Illinois Supreme Court (App. 1a-27a) is reported at 6 N.E.3d 725 (2014). The opinion of the Illinois Appellate Court, Third Judicial District, (App. 28a-36a) is reported at 984 N.E.2d 1162 (2013). The Oral Ruling of the Circuit Court of the Fourteenth Judicial Circuit, Whiteside County, Illinois granting respondent's motion to suppress (App. 42a-47a), the Circuit Court's Oral Ruling denying petitioner's motion to reconsider (App. 38a-41a), and its Order denying petitioner's motion to reconsider (App. 37a) are unreported.

JURISDICTION

The Illinois Supreme Court entered judgment on March 20, 2014. On April 22, 2014, the Illinois Supreme Court allowed the State's motion to stay that court's mandate pending the filing and resolution of a petition for a writ of certiorari in this Court. On June 11, 2014, Justice Kagan extended until August 17, 2014 the time to file this petition for certiorari, which is extended to August 18, 2014 pursuant to Supreme Court Rule 30.1. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides in relevant part: "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

The decision below affirms the suppression of evidence—the lack of a valid driver's license—obtained during a traffic stop. The Illinois Supreme Court held that although the traffic stop was initiated lawfully, the police officer's request for a driver's license nonetheless violated the Fourth Amendment. The court so held because that request was not "related to" the reason for the stop, App. 15a, which was an outstanding arrest warrant for the vehicle's owner, a woman, and because when he made the request, the officer knew that respondent, a man, was not the subject of the warrant. The Illinois Supreme Court concluded that the request for the license was not "tethered to" the arrest warrant and was therefore unconstitutional. App. 10a. The Illinois Supreme Court's analysis failed to evaluate the reasonableness of the particular stop and the officer's conduct during it, instead announcing a rule that is erroneous and, by the court's own admission, App. 14a, in conflict with other state and federal appeals courts. The judgment below should be reversed, either summarily or after briefing and argument.

1. On January 27, 2011, Officer Shane Bland of the Sterling, Illinois, police department, noticed a van with what appeared to be an expired

registration. App. 2a. A check revealed that although the registration was valid, there was an outstanding arrest warrant for the vehicle's owner, a woman named Pearlene Chattic. *Ibid.* Bland pulled up next to the van at a stop sign and attempted to identify the driver, but he did not have a clear view. App. 2a-3a. Officer Bland initiated a traffic stop, exited his vehicle, and approached the driver's side of the van. App. 3a. He saw that the driver, respondent, was a man, and was thus not Chattic. App. 3a. There were no passengers. *Ibid.*

Bland testified that "standard operating procedure" was to ask for a driver's license and proof of insurance during every traffic stop. *Ibid.* Bland therefore asked to see respondent's driver's license and proof of insurance. *Ibid.* Respondent did not have a valid license, so Bland cited him for driving with a suspended license. App. 2a-3a.

2. In the Whiteside County trial court, respondent moved to suppress the evidence obtained from the traffic stop. App. 2a. After a hearing at which respondent and Bland testified, the trial court found that the facts were not in dispute and credited Bland's testimony that he could not determine the driver's sex prior to the stop. App. 3a, 43a, 45a. Nonetheless, the trial court held that Bland's request for respondent's license was unconstitutional because he "could tell right away [respondent] wasn't her" and "[o]nce he makes that determination on a very simple reason for the stop * * * going anywhere further with that, without further explanation to an individual who * * * clearly had to believe that he was not free to leave," violated the Fourth Amendment. App. 4a, 47a. The State filed a motion

to reconsider, which the trial court denied. App. 37a, 41a.

3. The State appealed. In a two-to-one decision, the Illinois Appellate Court affirmed. App. 28a-36a. After noting that the parties did not dispute that Bland initiated the stop lawfully, the court held that the stop "should have ceased" "as soon as Bland determined that Chattic was not the driver of the van." App. 32a. The dissent argued that the traffic stop was not unduly prolonged and that after a lawfully-initiated stop an officer may explain the basis for the stop and request a license, even once reasonable suspicion has dissipated. App. 35a.

4. In a five-to-two decision, the Illinois Supreme Court affirmed. App. 1a-27a. The majority reasoned that traffic stops "are less like formal arrests, and more like investigative detentions," and addressed the reasonableness of the stop under *Terry v. Ohio*, 392 U.S. 1 (1968). App. 7a. The court explained that "[s]uch a detention is reasonable if it was initially justified, and it was 'reasonably related in scope to the circumstances which justified the interference in the first place.'" *Ibid.* (quoting *Terry*, 392 U.S. at 20). The majority held that because "Bland lacked reasonable suspicion after he learned [respondent] could not be the subject of the outstanding arrest warrant, his request for [respondent's] license impermissibly prolonged the stop and violated the fourth amendment." App. 15a-16a.

In so concluding, the majority reasoned that a "traffic stop that is initially justified can become unlawful 'if it is prolonged beyond the time reasonably required' to complete the purpose of the stop." App. 7a (internal citation omitted) (quoting

Illinois v. Caballes, 543 U.S. 405, 407 (2005)). According to the majority, "*Caballes* links the reasonableness of a traffic stop's duration to the reason for the stop," and to "pass constitutional muster, a request for identification must be tethered to * * * the reason for the stop." App. 10a. The majority held that the officer's request was not tethered to the stop's purpose because he had already concluded that the driver was not the vehicle's registered owner. App. 10a-11a.

Chief Justice Garman, joined by one other justice, dissented. The dissenters found no "tethering" principle in *Caballes* and argued that the majority was attempting to resurrect the very test that *Caballes* rejected. App. 17a-19a. The dissent explained that *Caballes* upholds police conduct in a traffic stop so long as it does not unreasonably prolong the stop and the stop is otherwise executed in a reasonable manner. *Ibid.* (citing *Caballes*, 543 U.S. at 407-08). Here, because the stop was not prolonged beyond the "'ordinary inquiries incident to such a stop,'" the dissent argued, Bland's license request should be upheld. App. 17a, 25a (quoting *Caballes*, 543 U.S. at 408).

In finding the stop and the license request reasonable, Chief Justice Garman noted that the stop was initiated lawfully and that the intrusion on privacy interests was "minimal" and not subject to the unbridled discretion of police officers. App. 24a-25a. Finally, the dissent expressed concern that the majority's holding would hinder the ability of law enforcement officals to maintain the control necessary to ensure their safety during traffic stops, which are "'especially fraught with danger to police

officers.'" App. 26a (quoting *Michigan v. Long*, 463 U.S. 1032, 1047 (1983)).

REASONS FOR GRANTING THE PETITION

This Court should grant certiorari in this case to resolve a split over appropriate police conduct during a traffic stop once reasonable suspicion (or probable cause)[1] has dissipated or the purpose of the stop has

[1] There is disagreement in the lower courts about how the level of suspicion governs the conduct of traffic stops. See, e.g., *United States v. Childs*, 277 F.3d 947, 952-54 (7th Cir. 2002) (en banc) (holding that whether an officer may ask questions unrelated to the traffic stop's purpose may depend in part on whether the stop was supported by reasonable suspicion or probable cause); *United States v. Harrison*, 606 F.3d 42, 45 (2d Cir. 2010) (per curiam) ("When a traffic stop is supported by probable cause, the occupants of the car have no 'right to be released the instant the steps to check license, registration, and outstanding warrants, and to write a ticket, had been completed.'") (quoting *Childs*, 277 F.3d at 953); *United States v. Everett*, 601 F.3d 484, 488 n.4 (6th Cir. 2010) (imposing same standard regardless of whether stop was initiated due to reasonable suspicion or probable cause). For purposes of this case, however, this Court need not reach that question, which was not in dispute in the Illinois Supreme Court. See App. 10a (discussing Bland's reasonable suspicion to pull respondent over); App. 16a (Garman, C.J., dissenting) (same). Because what is justifiable under reasonable suspicion would certainly be permissible under the higher standard of probable cause, this Court can provide guidance for all traffic stops simply by resolving this case on the assumption that the stop here was initiated under reasonable suspicion. Alternatively, because there was in fact probable cause to initiate the stop here, see *Hill v. California*, 401 U.S. 797, 803-04 (1971) (when officers had probable cause to arrest defendant, they had probable cause to arrest other person who was not occupant but was only person in defendant's apartment when police arrived), this Court could limit its holding to such traffic stops without addressing stops initiated with reasonable suspicion. Or this

otherwise been fulfilled, a split that the Illinois Supreme Court itself acknowledged. App. 14a. And certiorari is warranted because police officers need consistent guidance about the standards by which their conduct is evaluated, especially given the large numbers of traffic stops that occur each day. See *infra* at 12-13. Finally, this Court should reverse the judgment below because the Illinois Supreme Court both ignored this Court's longstanding direction that "the touchstone of the Fourth Amendment is reasonableness," *Ohio v. Robinette*, 519 U.S. 33, 39 (1996), and effectively created an unworkable rule that a traffic stop must cease immediately once the requisite suspicion has dissipated or the purpose of the stop is fulfilled.

I. This Court Should Resolve The Split Over Whether The Fourth Amendment Requires A Traffic Stop To Cease The Moment Suspicion Dissipates Or The Stop's Purpose Is Otherwise Satisfied.

A. There is a clear split among the federal appellate and state high courts.

1. Despite this Court's regular reminders that "the touchstone of the Fourth Amendment is reasonableness," *id.* at 39, and that the question of reasonableness must be evaluated on the totality of circumstances, see *ibid.*, lower courts are split regarding whether the Fourth Amendment

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Court could conclude that since the suspicion had dissipated by the time of Bland's disputed actions, the precise level of suspicion that initially justified the stop is not relevant.

categorically prohibits police from extending a traffic stop, however briefly, including by requesting a driver's license, after reasonable suspicion or probable cause has dissipated or the purpose of the stop has otherwise been fulfilled.

Some courts have heeded this Court's instructions. These courts apply a case-by-case reasonableness analysis to evaluate the constitutionality of a particular extension of a traffic stop. The Eighth Circuit, for example, has expressly embraced the view that because "'the constitutional standard is reasonableness measured by the totality of the circumstances, we should not be governed by artificial distinctions.'" *United States v. Rodriguez*, 741 F.3d 905, 907-08 (8th Cir. 2014), pet'n for cert. filed, No. 13-9972 (May 1, 2014) (quoting *United States v. $404,905.00 in U.S. Currency*, 182 F.3d 648, 649 (8th Cir. 1999)).[2] As a result, that court has upheld a number of canine sniffs that took place after the original purpose of the stop has been fulfilled, focusing not on the relationship between the dog sniff and the original purpose of the stop but rather on whether, under the circumstances, the stop was unreasonably prolonged. See, e.g., *ibid.* (upholding "seven- or eight-minute delay" as *de minimis* and thus reasonable); *United States v. Alexander*, 448 F.3d 1014, 1017 (8th Cir. 2006) (four-minute delay upheld); *United States v. Martin*, 411 F.3d 998, 1002 (8th Cir. 2005) (two-minute delay upheld).

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[2] A petition for writ of certiorari is pending in *Rodriguez v. United States*, No. 13-9972 (filed May 1, 2014). This Court could grant certiorari in both cases or hold one in abeyance while deciding the other.

Nor is the Eighth Circuit unique. See, e.g., *State v. Overbey*, 790 N.W.2d 35, 42-43 (S.D. 2010) (reasonable for police to perform dog sniff after issuing citation where defendant did not wait for prolonged period). See also *State v. Candelaria*, 245 P.3d 69, 75 (N.M. Ct. App. 2010) ("As long as the vehicle has been validly stopped, for whatever reason, police may always ask the driver to produce" license, registration, or insurance documents, "even after the original suspicion evaporates," because the driver has no legitimate expectation of privacy in such documents.) (citing *State v. Reynolds*, 890 P.2d 1315, 1316-18 (N.M. 1995)); *State v. Box*, 73 P.3d 623, 630 (Ariz. Ct. App. 2003) (detention after issuing written warning to perform dog sniff lasted less than one minute and was *de minimis*). Moreover, some courts have found it reasonable for officers to ask for driver's licenses when the initial contact is precipitated by a lawfully-initiated motorist-assist or community-caretaker stop, even once it is clear that the driver needs no help. See *State v. Godwin*, 826 P.2d 452, 456 (Id. 1992) (officer asked for license of driver of car waiting for different car stopped for vehicle equipment violation); *State v. Ellenbecker*, 464 N.W.2d 427, 428-30 (Wis. Ct. App. 1990) (answering affirmatively "whether an officer who learns that a motorist needs no assistance may still demand to see a driver's license and conduct a status check at the scene"); *Reynolds*, 890 P.2d at 1320 (upholding as reasonable detention and request for license and identification during stop precipitated by safety concern).

But other courts, like the Illinois Supreme Court here, have adopted a bright-line rule that once suspicion dissipates or the purpose of the stop is

otherwise satisfied, no further inquiry or detention is permissible in the absence of new reasonable suspicion. In *United States v. De La Cruz*, 703 F.3d 1193, 1196-99 (10th Cir. 2013), for example, the Tenth Circuit struck down a request for identification by federal agents who had determined that the person they had stopped was not the person they were looking for, explaining that "[o]nce reasonable suspicion has been dispelled, '[e]ven a very brief extension of the detention without consent or reasonable suspicion violates the Fourth Amendment.'" *Id.* at 1197 (quoting *United States v. Burleson*, 657 F.3d 1040, 1045 (10th Cir. 2011)).

Other courts have likewise adopted this bright-line rule. See, e.g., *People v. Mason*, 310 P.3d 1003, 1007 (Colo. 2013) ("Because the officers lacked reasonable articulable suspicion to detain the defendant for further questioning or investigation after issuing him a summons and completing the traffic stop, the contraband seized from his vehicle was properly suppressed as the product of an illegal detention."); *State v Louthan*, 744 N.W.2d 454, 462 (Neb. 2008) (rejecting *de minimis* rule and holding that officer cannot extend traffic stop after fulfilling purpose of stop even momentarily for dog sniff without additional reasonable suspicion); *State v. Howard*, 803 N.W.2d 450, 460 (Neb. 2011) (applying *Louthan* rule). The split is entrenched and ready for resolution.

2. Not only do the cases adopting a bright-line rule conflict with cases from other state and federal appellate courts, including state high courts, but they are logically inconsistent with the case law evaluating for reasonableness activity that prolongs

a traffic stop where that activity takes place *before* the purpose of the stop is satisfied. Most federal courts of appeals to address the question agree that "the proper inquiry is whether the totality of the circumstances surrounding the stop indicates that the duration of *the stop as a whole*—including any prolongation due to suspicionless unrelated questioning—was reasonable." *Everett,* 601 F.3d at 494 (italics in original) (internal quotation marks omitted). See also, e.g., *United States v. Guijon-Ortiz*, 660 F.3d 757, 766 (4th Cir. 2011) (applying *de minimis* exception and holding that "principal inquiry * * * is the 'officer's diligence—i.e., his persevering or devoted application to accomplish the undertaking of ascertaining whether the suspected traffic violation occurred, and, if necessary, issuing a ticket.'") (quoting *Everett*, 601 F.3d at 494); *United States v. Fernandez*, 600 F.3d 56, 61 (1st Cir. 2010) (asserting that neither request of passenger's license nor records check "prolonged the duration of the original stop"); *Harrison*, 606 F.3d at 45 ("We hold that this additional questioning [of five to six minutes] did not prolong the stop so as to render it unconstitutional."); *United States v. Turvin,* 517 F.3d 1097, 1102 (9th Cir. 2008) (upholding "brief pause[] to ask questions during traffic stop[], even if those questions are unrelated to the purpose of the stop"). See also *State v. Jenkins*, 3 A.3d 806, 826 (Conn. 2010) ("These inquiries are permissible even if they are irrelevant to the initial purpose of the stop, namely, the traffic violation, so long as they do not 'measurably extend' the stop beyond the time necessary to complete the investigation of the traffic violation and issue a citation or warning."). But see *United States v. Macias*, 658 F.3d 509, 518-19 (5th

Cir. 2011) (holding that any questioning that is unrelated in scope to original reason for stop and that extends the time of the stop at all must be justified by separate reasonable suspicion).

Indeed, even the Tenth Circuit, which issued *De La Cruz*, and the Illinois Supreme Court have held that that an officer may conduct limited questioning unrelated to the stop's justification *before* issuing a citation. See *United States v. Alcaraz-Arellano*, 441 F.3d 1252, 1259 (10th Cir. 2006) (no constitutional problem where questions "did not appreciably lengthen the detention"); *United States v. Valenzuela*, 494 F.3d 886, 888 (10th Cir. 2007) ("The detention arising from a traffic stop does not become unreasonable merely because the officer asks questions unrelated to the initial purpose for the stop, provided those questions do not unreasonably extend the amount of time the subject is delayed."); *People v. Harris*, 886 N.E.2d 947, 956-58 (Ill. 2008) (holding that requesting identification and running warrant check on occupants of lawfully-stopped vehicle does not violate Fourth Amendment). These cases are logically incompatible with those courts' subsequent bright-line restrictions on officers' conduct once the purpose of the stop is fulfilled, as the dissents in those later cases pointed out. *De La Cruz*, 703 F.3d at 1203 (Briscoe, C.J., dissenting) (citing *Alvarez-Arellano*, 441 F.3d at 1258-59); App. 17a-18a (Garman, C.J., dissenting) (citing *Harris*, 886 N.E.2d at 957-58, 960). Moreover, the tension between the older and the newer holdings creates an incentive for police officers to extend the business of the stop artificially so that they do not run afoul of *De La Cruz* and *Cummings*.

Due to the significant split that the Illinois Supreme Court's decision below exacerbated and the logical incompatibility of its holding with other case law governing the scope of questioning during traffic stops, and with, as explained in Part II, *infra*, this Court's own precedent, certiorari and reversal are warranted.

B. The question is important and recurring.

The numerous cases cited above demonstrate that the question presented here recurs frequently. Millions of traffic stops occur throughout the country annually. In Illinois alone, in 2012, there were 2,132,006 traffic stops. Illinois Traffic Stop Study, 2012 Annual Report, at 2.[3] Moreover, these stops represent a majority of the interactions between citizens and police. According to recently available data from the Bureau of Justice Statistics, in 2008, over fifty-nine percent of the more than forty million United States residents who interacted with police did so due to traffic stops. Christine Eith and Matthew R. Durose, Contacts between Police and the Public, 2008, Table 2, at 3 (Bureau of Justice Statistics 2011).[4]

In light of the frequency of traffic stops and their central role in the relationship between law enforcement and the public, officers and citizens

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[3] Available at www.idot.illinois.gov/Assets/uploads/files/Transportation-System/Reports/Safety/Traffic-Stop-Studies/2012/2012%20Illinois%20Traffic%20Stop%20Summary.pdf (last visited, August 15, 2014).

[4] Available at www.bjs.gov/content/pub/pdf/cpp08.pdf (last visited, August 15, 2014).

alike need clear guidance on the parameters of traffic stops. Requesting a license as a routine part of any such stop, see *infra* at 17, however, is in doubt for police departments in some states, including Illinois.

Moreover, Illinois requires its police officers to collect certain demographic information about drivers pulled over in many traffic stops, regardless of whether a traffic citation issues, for purposes of statistical analysis to determine whether police practices appear to have a disparate impact on minorities. 625 ILCS 5/11-212 (2012). Other states have similar provisions. See, e.g., Conn. Gen. Stat. § 54-1m (2013); Kan. Stat. Ann. § 22-4611a (2013); La. Rev. Stat. Ann. § 32:398.10 (2013); Mo. Rev. Stat. § 590.650 (2013); N.C. Gen. Stat. § 114-10.01 (2013); R.I. Gen. Laws § 31-21.1-4 (2013); Tex. Code Crim. Proc. Art 2.133 (2013); Wash. Rev. Code § 43.43.480 (2013); W. Va. Code. § 17G-2-3 (2013). Yet police officers may not be able to continue traffic stops long enough to comply with these simple and entirely benign requirements. See 26a & n.3 (Garman, C.J., dissenting). This Court should resolve this important and recurring issue.

C. This case is an ideal vehicle for resolving the conflict.

This case turns on a pure question of law, and the facts are straightforward and undisputed. Bland could not determine the driver's sex prior to approaching the vehicle, but he recognized that respondent was not the subject of the arrest warrant before asking for his license. The State did not contend that the length of the stop was justified because Bland developed suspicion of any separate

criminal activity, and the Illinois Supreme Court was clear that the license request, by itself, violated the Fourth Amendment. There are no disputes of fact that would impede a resolution of the legal question.

Nor can it be disputed that Bland's actions were reasonable. He requested respondent's license and registration at the very beginning of the stop, and he did so as a "matter of routine." App. 3a, 24a. Thus, this case turns entirely on whether reasonableness is the appropriate criterion. If it is, then Bland's actions are constitutional. It is only through the categorical rule adopted by the Illinois Supreme Court that the interaction's legality can be questioned.

Finally, the issue presented here is one of pure federal law. The Illinois Supreme Court did not rely on—indeed, did not even mention—the State constitution. Cf. *Long*, 463 U.S. at 1041 (holding that this Court does not have jurisdiction over state court decisions relying on "adequate and independent state grounds").

The legal question here is isolated, distilled, and uncomplicated by factual disputes. It is the ideal vehicle to resolve this critical Fourth Amendment issue.

II. This Court Should Reverse The Illinois Supreme Court And Make Clear That An Officer May Request A Driver's License During A Lawfully-Initiated Traffic Stop Where The Officer's Conduct Is Reasonable Under The Totality Of Circumstances And The Stop Is Not Unreasonably Prolonged.

The Illinois Supreme Court erred in holding that the request for a license from the driver of a lawfully-stopped vehicle, by itself, impermissibly prolonged the stop in violation of the Fourth Amendment where the requisite suspicion for the stop had dissipated. Although no case from this Court squarely addresses the issue, this Court's precedents, and in particular its most recent teachings on the proper conduct of traffic stops, point to only one possible conclusion, making reversal—either summary or plenary—appropriate.

1. Because a traffic stop is a seizure, a police officer must have reasonable suspicion to initiate it. *Navarette v. California,* 134 S. Ct. 1683, 1688 (2014); *Terry,* 392 U.S. at 21-22. Here, there is no dispute that Bland acted properly when he pulled respondent over. App. 10a-11a, 16a. See *supra* at 6 n.1. All that is at issue is Bland's conduct *after* he lawfully initiated the stop.

2. "[T]he 'touchstone of the Fourth Amendment is reasonableness.'" *Robinette*, 519 U.S. at 39 (quoting *Florida v. Jimeno*, 500 U.S. 248, 250 (1991)). And reasonableness turns on "the totality of the circumstances." *Ibid.* Despite both this teaching and the fact that this Court has deliberately and "consistently eschewed bright-line rules," *ibid.,* the

Illinois Supreme Court effectively created a rule requiring police officers to end traffic stops at the very moment that reasonable suspicion dissipates or, presumably, as soon as the purpose of the stop is otherwise fulfilled. This holding cannot be squared with *Robinette*'s rejection of the Ohio Supreme Court's rule that after fulfilling the purpose of a traffic stop, the police officer must inform the driver that he is free to go before asking for consent to search his car. *Id.* at 36, 39-40. In other words, this Court has already held that even where a police officer has no further justification to hold the driver, continuing the interaction may well be reasonable and thus lawful.

3. During a lawful traffic stop, a police officer is not limited to actions and inquiries related to the reasons for the original stop *as long as* the officer does not unreasonably prolong the stop. *Arizona v. Johnson,* 555 U.S. 323, 333 (2009) ("An officer's inquiries into matters unrelated to the justification for the traffic stop * * * do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop."). [5] Indeed, this Court has

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[5] *Johnson*'s statement is in tension with the three-decades-old language of the plurality in *Florida v. Royer,* 460 U.S. 491 (1983). In *Royer,* the plurality explained that taking a traveler's identification and airline ticket and removing him from the main airport concourse into a small, closet-sized room for questioning constituted an arrest for which probable cause was necessary. *Id.* at 501-05. In the course of reaching this holding, the *Royer* plurality stated that, in a *Terry* stop, the "investigatory detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop." *Id.* at 500. *Johnson* rejects such a rigid rule, 555 U.S. at 333, and such

upheld a canine sniff that was entirely unrelated to the traffic offense that precipitated the stop. *Caballes,* 543 U.S. at 407-09. Thus, contrary to the Illinois Supreme Court's reasoning, there is no requirement that everything that happens during the traffic stop be "tethered to" that original purpose. See App. 10a. Instead, the reasonableness of the stop depends on the officer's overall conduct in light of the original purpose.

4. The nature of the officer's inquiries and actions are central to the reasonableness inquiry. In evaluating reasonableness, this Court has noted that in addition to investigating the original reason for the stop, there may be other "ordinary inquiries incident to such a stop." *Caballes,* 543 U.S. at 408. Indeed, once lawfully pulled over, the reasonable driver undoubtedly *expects* to be asked for his license, as even the Illinois Supreme Court acknowledged. App. 10a (noting that "a police officer's request for a driver's license may be an expected, preliminary, and routine part of every traffic stop"). See also *Berkemer v. McCarty*, 468 U.S. 420, 437 (1984) ("A motorist's expectations, when he sees a policeman's light flashing behind him, are that he will be obliged to spend a short period of time answering questions and waiting while the officer checks his license and registration, that he may then be given a citation, but that in the end he most likely will be allowed to continue on his way."). Thus, a request for a license at the beginning of a lawful traffic stop, as in the instant case, see *supra* at 14, is

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a rule is inconsistent with this Court's case law, as described in this Part of this petition. This case provides an opportunity for this Court to resolve any lingering confusion.

not intrinsically unreasonable.[6] In fact, in Illinois and likely in other states, such a request will often be part of officers' routine collection of data mandated by state law. See *supra* at 13.

And in evaluating whether an officer's conduct is reasonable, this Court has also considered the nature of the privacy interests allegedly infringed. Thus, in *United States v. Place*, 462 U.S. 696 (1983), and in *Caballes*, this Court based its constitutional analysis of canine sniffs in part on the fact that their intrusion on any legitimate privacy interest is minimal. See *Place,* 462 U.S. at 707 (noting "limited disclosure" of information available through canine sniff and determining that canine sniff in public place is not a search); *Caballes,* 543 U.S. at 409 (holding that "the use of a well-trained narcotics detection dog * * * during a lawful traffic stop, generally does not implicate legitimate privacy interests").

Likewise, as in this case, there is no invasion of legitimate privacy interests when an officer asks a lawfully-stopped driver for the license he is required by law to have. See 625 ILCS 5/6-112 (2012). Drivers who, like respondent, are driving unlawfully have no legitimate privacy interest in hiding that fact. See *Caballes*, 543 U.S. at 408 (refusing to credit as legitimate a privacy interest in carrying contraband) (citing *United States v. Jacobson,* 466 U.S. 109, 123

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[6] Indeed, this Court could narrowly reverse the Illinois Supreme Court here simply by holding that the request for a license is one of the "ordinary inquiries incident to such a stop," *Caballes,* 543 U.S. at 408, and thus presumptively constitutional.

& n.22 (1984)). And for the legal driver, providing the license is highly unlikely to lead to the revelation of personal or embarrassing information. See *id.* at 409 (noting that erroneous drug dog alert does not "in and of itself, reveal[] any legitimate private information"). See also *Delaware v. Prouse*, 440 U.S. 648, 657 (1979) (comparing greater "anxiety" likely produced by individual traffic stops to lesser fear and annoyance caused by traffic checkpoints where all cars must stop); App. 23a-25a (Garman, C.J., dissenting) (relying on reasoning of *Prouse*).

Indeed, "it is well established that an officer may ask a suspect to identify himself in the course of a *Terry* stop." *Hiibel v. Sixth Judicial Dist. Court of Nev., Humboldt Cnty.*, 542 U.S. 177, 186 (2004). Following that reasoning, many federal circuit courts have concluded that police may ask for identification from passengers as a matter of course during traffic stops. *See Fernandez*, 600 F.3d at 62 (holding that officer "did not need an independent justification to ask [passenger] for identification"); *United States v. Diaz-Castaneda*, 494 F.3d 1146, 1152 (9th Cir. 2007) ("The police may ask people who have legitimately been stopped for identification without conducting a Fourth Amendment search or seizure."); *United States v. Soriana-Jarquin*, 492 F.3d 495, 500 (4th Cir. 2007) ("If an officer may 'as a matter of course' and in the interest of personal safety order a passenger physically to exit the vehicle, * * * he may surely take the minimally intrusive step of requesting passenger identification.") (quoting *Maryland v. Wilson*, 519 U.S. 408, 410 (1997)); *United States v. Rice*, 483 F.3d 1079, 1084 (10th Cir. 2007) ("because passengers present a risk to officer safety equal to the risk presented by the driver, an

officer may ask for identification from passengers and run background checks on them as well"). If police can ask a passenger for a license without separate suspicion, surely that is true for the driver.[7]

That the officer here acted pursuant to "standard operating procedure," App. 3a, 24a, and "as a matter of routine," *ibid.,* also contributes to the reasonableness of the license request. There are good reasons for such procedures. Most notably, traffic stops are "especially fraught with danger to police officers." *Long,* 463 U.S. at 1047. It is thus crucial that police officers remain in control of the situation during such stops. Indeed, this Court has so recognized in allowing officers to order drivers and passengers alike to step out of the vehicle during a lawful stop for a traffic violation. See *Pennsylvania v. Mimms*, 434 U.S. 106, 109-10 (1977) (per curiam) (drivers); *Wilson*, 519 U.S. at 414-15 (passengers). Reasonable procedures like asking for a license can help the officer maintain control and authority while eliminating the possibility that such requests will be made in a discriminatory or otherwise unreasonable

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[7] To illustrate the point further, police may, without any individualized suspicion, ask for identification at checkpoints that have been set up permissibly. See *United States v. Martinez-Fuerte*, 428 U.S. 543, 558 (1976) (upholding checkpoints stops by border patrol that "involve[d] only a brief detention of travelers during which all that is required of the vehicle's occupants is a response to a brief question or two and possibly the production of a document evidencing a right to be in the United States") (internal citations and quotation marks omitted). See also *United States v. Brock*, 632 F.3d 999, 1002-03 (7th Cir. 2011) (officers at sobriety checkpoint may request license). Thus, if a traffic stop is initially justified, requesting a driver's license does not, by itself, create a Fourth Amendment violation, regardless of the presence of individualized suspicion.

manner. Cf. *Prouse*, 440 U.S. at 661 (noting problem of officers having "standardless and unconstrained discretion").

5. A contrary rule would provide perverse incentives. It would encourage officers to delay asking for key information, confirming or dispelling reasonable suspicion or probable cause, or issuing a citation, so that they can continue to ask questions. And it would open the floodgates of litigation regarding the exact moment that each traffic stop should have ended. To be sure, in this case, Bland immediately knew that respondent was not the subject of the warrant, but in many cases, the identity of the driver, even the driver's sex or race, might not be obvious, leading to inevitable litigation over what the officer should have known before asking for the license. Likewise, in numerous other scenarios involving lawful traffic stops, the exact moment that reasonable suspicion or probable cause dissipates will be unclear.

* * *

This Court should clarify that no artificial line at the "end" of a traffic stop replaces reasonableness as the relevant touchstone. See *United States v. Sharpe*, 470 U.S. 675, 685 (1985) ("Much as a 'bright line' rule would be desirable, in evaluating whether an investigative detention is unreasonable, common sense and ordinary human experience must govern over rigid criteria."). This Court should thus reverse the Illinois Supreme Court, either summarily or after full briefing and argument.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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