No. 13-604

IN THE

Supreme Court of the United States

NICHOLAS BRADY HEIEN,

Petitioner,

v.

NORTH CAROLINA,

Respondent.

On Writ of Certiorari
to the North Carolina Supreme Court

BRIEF FOR PETITIONER

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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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BRIEF FOR PETITIONER

Petitioner Nicholas Brady Heien respectfully requests that this Court reverse the judgment of the North Carolina Supreme Court.

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 749 S.E.2d 278.

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. Pet. App. 1a-28a. This Court granted certiorari on April 21, 2014. 134 S. Ct. 1872 (2014). This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL PROVISION

The Fourth Amendment states 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 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 the question whether an officer's misinterpretation of the traffic code can form the basis for reasonable suspicion. A bare majority of the North Carolina Supreme Court 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," J.A. 26, Officer Matt Darisse of the Surry County Sheriff's Department noticed Vasquez 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." J.A. 15. The officer pulled onto the highway and began following petitioner's 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. 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

construed this statute to require two working lights.[1] Officer Darisse nevertheless 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 back seat 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 for permission to search the vehicle. Vasquez demurred, explaining that the car belonged to petitioner. The officer then asked petitioner if he would "mind if we made a quick check to make sure you don't have any drugs or guns or anything like that" in the car. Def. Ex. 1 (video of the stop taken from dashboard of police cruiser) at 11:50. Petitioner

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[1] The 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).

responded that he "d[id]n't really care." *Id.* at 12:03. The officer then told him to "step on out" of the car and directed him over to the shoulder of the highway. *Id.* at 12:15. The officers rummaged 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, reserving 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 singular article and noun in the statutory phrase "a stop lamp," the court first determined that North Carolina law requires only one working brake light. Pet. App. 34a (citing N.C. Gen. Stat. § 20-129(g)). 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 traffic violation is not an objectively reasonable justification for a traffic stop." Pet. App. 32a.

Having concluded that the stop was invalid, the court of appeals next held that the evidence the officers obtained from that stop had to be suppressed. In federal court and other courts recognizing the "good-faith" exception to the exclusionary rule, police officers' mistakes of law sometimes counsel against suppression. *See, e.g.*, *United States v. Leon*, 468 U.S. 897 (1984). But the North Carolina Constitution, like many other state constitutions, forecloses any such good-faith exception. *See State v. Carter*, 370 S.E.2d 553, 562 (N.C. 1988); Pet. 13 n.5. Accordingly, the State did not argue, and the North Carolina Court of Appeals did not consider, whether the good-faith exception would apply in this situation.

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. The court consequently turned directly to the Fourth Amendment issue.

The North Carolina Supreme Court began that analysis by observing 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." Pet. App. 8a-9a. The North Carolina Supreme 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. The court rested that holding primarily on the view that "the primary command of the Fourth Amendment" is that "law enforcement agents act reasonably." *Id.* 13a. Because officers comply with that directive when they make reasonable mistakes of fact, the North Carolina Supreme Court surmised, "the Fourth Amendment would seem not to be violated" when they make reasonable mistakes of law. *Id.* 13a, 18a. Finally, the court noted that "because we are particularly concerned for maintaining safe roadways, we do not want to discourage our police officers from conducting [traffic] stops for perceived traffic violations," even when no such violations have occurred. *Id.* 14a.

The North Carolina Supreme Court further held that Officer Darisse's mistake was "reasonable." The court explained that even though the subsection of the traffic code dealing specifically with stop lamps speaks only in the singular, another subsection requires motor vehicles to "have all originally equipped *rear* lamps or the equivalent in good working order." Pet. App. 18a-19a (emphasis added) (quoting N.C. Gen. Stat. § 20-129(d)). In light of these varying directives with respect to "stop lamps" and "rear lamps," the court concluded that Officer Darisse "could have reasonably believed that he witnessed a violation of [North Carolina law]." Pet. App. 19a. Accordingly, the North Carolina Supreme Court reversed the judgment of the North Carolina Court of Appeals, and remanded for further proceedings as to whether petitioner's consent to search his car was valid. *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. 24a. The dissenters disagreed with the approach taken by their colleagues on the ground that 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 (quoting *Ornelas v. United States*, 517 U.S. 690, 696-97 (1996)) (internal quotation marks omitted). "There is no room for reasonable mistakes of law under the *Ornelas* articulation of the rule; either the law was violated and the stop is reasonable, or the law was not violated and the stop is not reasonable." 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.* 28a (quoting *United States v. Chanthasouxat*, 342 F.3d 1271, 1280 (11th Cir. 2003)) (internal quotation marks omitted).

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.

6. This Court granted certiorari. 134 S. Ct. 1872 (2014).

SUMMARY OF ARGUMENT

The traffic stop of petitioner's car, based solely on the police officer's misinterpretation of local traffic law, violated the Fourth Amendment.

I. This Court has long held that a traffic stop is valid under the Fourth Amendment only if officers have objectively reasonable suspicion to believe that a law is being violated. That objective inquiry can be properly performed only by measuring the facts against the correct interpretation of the law. Otherwise, the reasonable suspicion doctrine would be at odds with various common-law principles, including the ancient maxim that ignorance of the criminal law is no excuse. Allowing traffic stops based on "reasonable" mistakes of law also would be in tension with multiple canons of statutory construction that aim to prevent the government from benefitting from ambiguity in criminal statutes. Finally, such a rule would subvert the Fourth Amendment's core purpose of constraining officer discretion, for it would confer upon the police the authority to seize motorists when the facts known to the officers, measured against the accurate view of the law, reveal only wholly innocent conduct.

To be sure, the Fourth Amendment tolerates traffic stops based on reasonable mistakes of *fact*. But the reasons for doing so do not carry over to mistakes officers make about applicable law. The Fourth Amendment affords officers leeway to make good-faith mistakes of fact because officers need flexibility to make quick, ad hoc factual assessments in the field – and they are expert in doing so. The law, by contrast, lends itself to careful, ex ante

analysis. And courts evaluating the legality of traffic stops have already shown that they can easily distinguish mistakes of law from those of fact.

II. The reasonableness of an officer's mistake of law can sometimes be relevant to the remedy for a Fourth Amendment violation. In a long line of cases beginning with *Illinois v. Krull*, 480 U.S. 340 (1987), and including *Davis v. United States*, 131 S. Ct. 2419 (2011), this Court has held that evidence should not be suppressed when officers conduct a search or seizure based on certain types of reasonable mistakes of law. This Court likewise has held in cases involving the Fourth Amendment that qualified immunity protects officers from tort liability when they make reasonable mistakes of law.

But in all of these cases, this Court has held or assumed that mistakes of law – as opposed to mistakes of fact – necessarily render officers' searches and seizures violative of the Fourth Amendment. And for several reasons, it is critical that this Court continue to restrict the relevance of the reasonableness of mistakes of law to the question of remedy.

First, holding that such reasonableness is relevant to whether the Fourth Amendment is violated would require courts to embark on the difficult task of determining which types of mistakes of law affect rights and which affect only remedies. Second, importing inquiries about the reasonableness of mistakes of law into the rights stage would preclude courts from considering important evidence relevant to such determinations – such as police customs, training manuals, and

court decisions. While this Court's precedent accepts the validity of such reference points at the remedy stage, it renders them off-limits at the rights stage because they would generate unacceptable variation in what the Fourth Amendment means.

Third, confining the relevance of an officer's mistake of law to the remedy stage safeguards respect for the rule of law. Even in instances where there may be no remedy for equitable reasons, legal clarity that the Fourth Amendment has nonetheless been violated is important in making a system of individual rights effective.

III. Even if this Court were to deem the equitable considerations now pertinent only to remedies suddenly relevant to the meaning of the Fourth Amendment itself, the reasonableness of a misinterpretation of the traffic code would still not render a traffic stop valid. In contrast to situations where police officers' mistakes of law arise from reasonably relying on assurances from courts or legislatures, the officer's mistake here derived from his own overly aggressive interpretation of the law. Only by refusing to excuse such mistakes can officers be properly deterred from engaging in such overly ambitious readings of the traffic code, at the expense of individual liberty.

Other law enforcement incentives also would be skewed if stops based on officer mistakes of traffic law were upheld as proper. Most notably, police departments would be discouraged from using resources at their disposal to ensure that officers on patrol have an accurate understanding of the law. Police departments would also be discouraged from

asking lawmakers to clarify ambiguous laws, for such clarifications would shrink officer discretion.

Indeed, if motorists were subject to seizures based on mistaken interpretations of arguably imprecise laws, it also would be much more difficult – indeed, sometimes downright impossible – for people to avoid being exposed to traffic stops. Whatever the precise definition of "reasonable" in this context, the realm of reasonable interpretations of language in traffic codes across the country is surely much broader than the realm of correct interpretations. And to the extent the North Carolina Supreme Court's holding would allow stops based on reasonable mistakes as to the *existence* of laws, the universe of circumstances allowing officers to impose upon citizens the burdens of traffic stops would be broader still.

The safety objectives of traffic laws do not make police misinterpretations of such laws more tolerable, much less – as the North Carolina Supreme Court suggested (Pet. App. 14a) – desirable. In North Carolina, as elsewhere, it is the legislature's job to decide what traffic activities should be prohibited because they are unsafe. It is the responsibility of law enforcement to learn and enforce those laws. The Fourth Amendment does not allow the police to reinterpret and broaden those laws according to officers' own perceptions of what is necessary to protect public safety.

ARGUMENT

I. "Reasonable Suspicion" Must Be Measured Against The Correct Interpretation Of The Law.

As the Tenth Circuit has explained, the relevant question in a case such as this is: "Against what interpretation of the law should [a court] assess the facts when deciding whether there was reasonable suspicion . . . to make a traffic stop?" *United States v. Nicholson*, 721 F.3d 1236, 1244 (10th Cir. 2013). Should a court assess the facts against the "correct interpretation of the law" or against whatever misinterpretation of the law an officer might reasonably have? *Id.* For the reasons that follow, the reasonable suspicion inquiry requires courts to measure the facts against the correct interpretation of the law.

A. Fourth Amendment Precedent, Tradition, And Purpose Require The Facts Known To The Officer To Be Measured Against The Correct Interpretation Of The Law.

1. The Fourth Amendment provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV. "[S]topping an automobile and detaining its occupants constitute a 'seizure'" within the meaning of the Fourth Amendment. *Delaware v. Prouse*, 440 U.S. 648, 653 (1979). Accordingly, stopping an automobile and detaining the driver "are unreasonable under the Fourth Amendment" unless the police have "at least articulable and reasonable suspicion." *Id.* at 663; *see also Ornelas v. United*

States, 517 U.S. 690, 693 (1996) ("An investigatory stop is permissible under the Fourth Amendment if supported by reasonable suspicion.").

This Court's precedent dictates that reasonable suspicion is an objective test. As this Court has put it, the test requires an officer to have "'a particularized and objective basis' for suspecting the person stopped of criminal activity." *Ornelas*, 517 U.S. at 696 (quoting *United States v. Cortez*, 449 U.S. 411, 417-18 (1981)). In *Whren v. United States*, 517 U.S. 806 (1996), this Court unanimously reaffirmed the need for objectivity in assessing the reasonableness of a traffic stop, holding that an officer's subjective reason for conducting a traffic stop is irrelevant to its legality. *Id.* at 813.

In light of the objective nature of the reasonable suspicion standard, this Court has indicated that assessing reasonable suspicion involves a two-step inquiry. "The first part of the analysis involves only a determination of historical facts." *Ornelas*, 517 U.S. at 696. Next, a court must evaluate "whether the rule of law as applied to the established facts is or is not violated." *Id.* at 697 (quoting *Pullman-Standard v. Swint*, 456 U.S. 273, 289 n.19 (1983)) (internal quotation marks omitted). In other words, the critical question is whether the facts give rise to sufficient reason to believe "that a driver *is violating*" an applicable traffic regulation. *Whren*, 517 U.S. at 817 (emphasis added) (quoting *Prouse*, 440 U.S. at 661).

The only sensible way to perform this inquiry is to measure individualized suspicion "against the correct interpretation of the law, as opposed to any other interpretation, even if arguably a reasonable

one," *Nicholson*, 721 F.3d at 1244. The "essential purpose" of the reasonable suspicion standard, after all, is to constrain "the exercise of discretion by government officials, including law enforcement agents, in order to safeguard the privacy and security of individuals against arbitrary invasions." *Prouse*, 440 U.S. at 653-54 (citations and internal quotation marks omitted). It is arbitrary for officers to effectuate traffic stops when neither the facts known to them, nor any reasonable inferences, indicate anything other than wholly innocent conduct. Even when officers misinterpret the law entirely in good faith, a seizure on that basis is still indiscriminate insofar as it lacks any objective legal justification.

2. Tradition likewise supports evaluating reasonable suspicion with reference to the correct interpretation of traffic law. This Court has repeatedly recognized that post-Founding common law cases can reveal constitutional principles, for the common law generally developed in harmony with such principles. *See, e.g.*, *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 321-24 (2009) (inferring constitutional meaning from late nineteenth-century and early twentieth-century state-law cases); *Atwater v. City of Lago Vista*, 532 U.S. 318, 342-43 (2001) (same).

Under the common law, "[n]o right is held more sacred, or is more carefully guarded . . . than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, *unless by clear and unquestionable authority of law*." *Terry v. Ohio*, 392 U.S. 1, 9 (1968) (emphasis added) (quoting *Union Pac. Ry. Co. v. Botsford*, 141 U.S. 250, 251 (1891))

(internal quotation marks omitted). Thus, although the common law has long protected an officer from tort liability "in every case where he act[ed] under a reasonable mistake as to the existence of *facts*," Restatement of Torts § 121 cmt. i (1934) (emphasis added), the common law has always presumed that officers know the law, and has held them liable in trespass whenever they make warrantless arrests based on incorrect interpretations of statutes.

As the first Restatement of Torts memorialized the rule: "[A]n officer is not privileged to arrest another whom he reasonably suspects of having committed an act which the officer, through a *mistake of law reasonable in one of his position*, believes to be a common law felony." Restatement of Torts § 121 cmt. i (1934) (emphasis added); *see also* Restatement (Second) of Torts § 121 cmt. i (1965) (reaffirming this rule). Indeed, the Restatement addressed the precise form of mistake at issue here, expressly foreclosing any exception for mistakes of law based on an ambiguous "statute . . . [that] is not judicially construed [contrary to the officer's view] until after the arrest is made." Restatement of Torts § 121 cmt. i; *see also id.* ("No protection is given to a peace officer who, however reasonably, acts under a mistake of law" of this type).

The Michigan Supreme Court's decision in *Malcomson v. Scott*, 23 N.W. 166 (Mich. 1885), illustrates this rule. There, an officer arrested the plaintiff on facts that did not constitute the charged crimes of larceny or embezzlement. The court held the arrest invalid, explaining that "[a]n officer of justice is bound to know what the law is, and if the facts on which he proceeds, if true, would not justify

action under the law, he is a wrong-doer." *Id.* at 168. As that court continued: "[V]iolations of law by those who are appointed to protect instead of destroy private security, deserve no favor." *Id.*

English common law developed based on the same presumption. In *Carratt v. Morley*, (1841) 113 Eng. Rep. 1036, for instance, an arresting officer was held liable for false imprisonment based on his mistake of law when there was no jurisdiction to make the arrest. A treatise summarized the rule this way: If "the Court has no jurisdiction over the cause before it, the whole proceeding is bad, and any one who enforces the process of the Court therein will be liable to an action for false imprisonment; *for he is presumed to know the law* and therefore to be cognisant of the want of jurisdiction." 1 W. Blake Odgers & Walter Blake Odgers, The Common Law of England 481 (2d ed. 1920) (emphasis added) (footnote omitted). Though there was possibly an exception to this rule for officers acting under the direction of a magisterial warrant, officers were entitled to no protection from liability when acting on their own. *Id.* at 481-82.

3. Measuring facts against the correct interpretation of the law maintains the proper relationship between citizens and their government, as reflected in several doctrinal precepts.

First and foremost, *Whren*'s anti-subjectivity rule gives officers "broad leeway" to conduct traffic stops regardless of whether their subjective intent corresponds to the legal justifications for their actions. *United States v. Miller*, 146 F.3d 274, 279 (5th Cir. 1998). "But the flip side of that leeway is that the legal justification must be objectively

grounded" in a correct interpretation of the law. *Id.* In other words, if officers can detain a motorist for any traffic violation, no matter how small and regardless of their subjective motives, they should not be able to detain a motorist when the observed facts, measured against the correct interpretation of the law, reveal only wholly innocent conduct.

Evaluating the legality of police officers' actions against the correct interpretation of the law also is consistent with the standard to which ordinary citizens are held. "[T]he background presumption" – fundamental to the administration of criminal law – is that "every citizen knows the law." *Bryan v. United States*, 524 U.S. 184, 193 (1998). Accordingly, "the traditional rule" is that "ignorance of the law is no excuse." *Id.* at 196. 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 W. Holmes, Jr., The Common Law 48 (1881).[2]

It takes little reflection to see the "fundamental unfairness" of holding citizens to that maxim "while

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[2] This concept is as deeply entrenched in North Carolina as anywhere else. As the North Carolina Supreme Court recognized long ago, "'Ignorance of the law excuses no one.' This may be sometimes a hard rule, but, without it, society, as we have it organized, would go to pieces. 'It lies at the foundation of the administration of justice. And there is no telling to what extent, if admissible, the plea of ignorance would be carried, or the degree of embarrassment that would be introduced in every trial by conflicting evidence upon the question of ignorance.'" *State v. McLean*, 28 S.E. 140, 143 (N.C. 1897) (quoting *State v. Boyett*, 32 N.C. (10 Ired.) 336, 343 (1849)).

allowing those entrusted to enforce the law to be ignorant of it." *United States v. Chanthasouxat*, 342 F.3d 1271, 1280 (11th Cir. 2003) (internal quotation marks omitted). Indeed, when a police officer drives as a citizen, he can be held accountable for any violations of the traffic code, no matter how reasonable any mistake he might make may turn out to be. It would be counterintuitive, to say the least, to presume that an officer knows the law in his capacity as a citizen, but to abandon that presumption when he acts to enforce the law. Put in more absolute terms, "failure to understand the law by the very person charged with enforcing it is *not* objectively reasonable." *United States v. Tibbetts*, 396 F.3d 1132, 1138 (10th Cir. 2005).

Finally, various canons of statutory construction reinforce the principle that the government should not benefit from mistaken interpretations of ambiguous or otherwise confusing criminal laws. Under the "venerable rule" of lenity, *United States v. R.L.C.*, 503 U.S. 291, 305 (1992) (opinion of Souter, J.), "penal laws are to be construed strictly" in order to prevent the government from restraining individual liberty absent clear authority to do so, *United States v. Wiltberger*, 18 U.S. (5 Wheat.) 76, 95 (1820). Thus, "when choice has to be made between two readings of what conduct Congress has made a crime, it is appropriate, before we choose the harsher alternative, to require that Congress should have spoken in language that is clear and definite." *United States v. Bass*, 404 U.S. 336, 347 (1971) (quoting *United States v. Universal C.I.T. Credit Corp.*, 344 U.S. 218, 221-22 (1952)) (internal quotation marks omitted). And if a criminal statute

is so indeterminate that "men of common intelligence must necessarily guess at its meaning," the law is constitutionally void for vagueness. *United States v. Lanier*, 520 U.S. 259, 266 (1997) (quoting *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926)).

The same canons apply to state statutes. In North Carolina, for example, "any statute enacted in the exercise of the police power must be strictly construed so as to result in the least interference with personal liberty." *In re Appeal from Denial of Application to Dredge and/or Fill of Broad and Gales Creek Cmty. Ass'n*, 261 S.E.2d 510, 512 (N.C. Ct. App. 1980) (citing 3 Strong's N.C. Index 3d, Constitutional Law §§ 11, 11.1 (1976)), *rev'd on other grounds*, 266 S.E.2d 645 (N.C. 1980). And, of course, the void-for-vagueness doctrine applies equally to state laws. *See, e.g.*, *Giaccio v. Pennsylvania*, 382 U.S. 399, 404-05 (1966).

The North Carolina Supreme Court's holding that a police officer may act upon an unduly expansive interpretation of law, "yet still act reasonably under the circumstances," Pet. App. 13a, is at odds with these principles of construction. To the extent a traffic statute is ambiguous, the government's power to restrain individual liberty should shrink, not expand.

B. There Is No Basis For Treating Mistakes Of Law The Same As Mistakes Of Fact.

The North Carolina Supreme Court resisted measuring reasonable suspicion against the correct interpretation of the law partly so that it could treat mistakes of law "the same" as mistakes of fact, which the Fourth Amendment tolerates so long as the

mistakes are objectively reasonable. Pet. App. 18a. But there is nothing improper or undesirable about treating mistakes of law differently than mistakes of fact. To the contrary, the traditional legal reasons for treating such errors as distinct apply in the context of the Fourth Amendment as much as anywhere else.

1. The reasons for condoning mistakes of fact under the reasonable suspicion standard do not carry over to mistakes of law. The Fourth Amendment affords officers flexibility when it comes to facts because they need to make quick, ad hoc assessments and are better positioned than courts to make those judgments. As this Court has explained, "[b]ecause many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part." *Illinois v. Rodriguez*, 497 U.S. 177, 186 (1990) (quoting *Brinegar v. United States*, 338 U.S. 160, 176 (1949)). This is why "what is generally demanded of the many factual determinations that must regularly be made by agents of the government . . . is not that they always be correct, but that they always be reasonable." *Rodriguez*, 497 U.S. at 185-86; *see also Hill v. California*, 401 U.S. 797, 804 (1971) (arrest based on mistake of fact was valid because officers' actions were "a reasonable response to the situation facing them at the time"). And reasonableness in this respect is informed not only by historical facts known to officers but also by inferences and deductions that officers are "trained" to draw – "inferences and deductions that might well elude an untrained person." *United States v. Cortez*, 449 U.S. 411, 418 (1981).

But legal determinations are different. In contrast to factual inferences, legal analysis is not something that officers must do on the fly or that officers are better trained than courts to undertake. A traffic law, "unlike the case-by-case factual possibilities entailed in probable cause and reasonable suspicion assessments, has an ex ante epistemic baseline." Wayne A. Logan, *Police Mistakes of Law*, 61 Emory L.J. 69, 86 (2011) (footnote omitted). Here, for instance, the North Carolina General Statutes either require one working brake light or they require all such lights to be operational. Nothing an officer might suddenly confront in the field could affect that purely legal question.

The North Carolina Supreme Court objected that reasonable suspicion is a "commonsense, non-technical conception[] . . . 'on which reasonable and prudent men, not legal technicians, act.'" Pet. App. 16a (quoting *Ornelas*, 517 U.S. at 695 (quoting in turn *Illinois v. Gates*, 462 U.S. 213, 231 (1983))). But this quotation speaks only to "the factual and practical considerations" that go into a reasonable-suspicion determination. Pet. App. 16a. When it comes to legal assessments, ordinary people are not legal technicians either, and they are held responsible for the law as correctly interpreted. Thus, just as courts have long distinguished between criminal defendants' mistakes of fact and law and held them accountable for the latter, *see Reynolds v. United States*, 98 U.S. 145, 167 (1878), so should they maintain this distinction when evaluating law enforcement's claims of reasonable suspicion.

2. Nor is there any need to consider mistakes of fact and law together simply because of feasibility concerns. The North Carolina Supreme Court asserted that "it is not always clear whether a mistake is one of fact or of law." Pet. App. 18a. But courts evaluating the legality of traffic stops have already shown themselves easily able to maintain their usual practice of considering mistakes of law and fact separately. *See, e.g.*, *United States v. Martin*, 411 F.3d 998, 1000-01 (8th Cir. 2005) (distinguishing the question of fact whether the right brake light was broken from the question of law whether the applicable motor vehicle code required two working brake lights); *Chanthasouxat*, 342 F.3d at 1272, 1274 (distinguishing question of fact whether van had inside rear-view mirror from question whether local law required vehicles to have inside rear-view mirror). The North Carolina courts likewise easily distinguished between the two in this case. Pet. App. 8a-9a.

The only case the North Carolina Supreme Court cited to suggest any difficulty distinguishing law and fact in this context was *United States v. Miguel*, 368 F.3d 1150 (9th Cir. 2004). Yet, in that case, the Ninth Circuit had no trouble differentiating between the two. The officers correctly understood the traffic law at issue to prohibit driving an unregistered vehicle. But they nevertheless stopped the defendant's car, "rel[ying] on inaccurate information in a computer database" indicating that the registration had expired. *Id.* at 1154. Hence, the court easily concluded that the officers' "mistake was one of fact" and thus did not taint the stop. *Id.*

II. The Reasonableness Of A Mistake Of Law Is Relevant Only To The Issue Of Remedy.

The rule that the Fourth Amendment measures the legality of searches and seizures against the correct interpretations of the law does not necessarily mean that courts must completely blind themselves to the reasonableness of mistakes that officers make in this respect. At least with respect to certain types of mistakes of law, the reasonableness of a police officer's mistake of law is relevant to the remedy for a Fourth Amendment violation. But its relevance is strictly limited to that inquiry.

A. This Court's Precedent Restricts The Relevance Of Good-Faith Mistakes Of Law To The Issue Of Remedy.

This Court's Fourth Amendment jurisprudence vigilantly distinguishes between rights and remedies – confining the relevance of the reasonableness of any mistake of law only to the latter sphere. There is no reason to muddy that distinction here.

1. This Court has stressed time and again that the question whether an officer violates the Fourth Amendment and the question whether, if so, the evidence obtained should be suppressed are "separate, analytically distinct issue[s]." *Davis v. United States*, 131 S. Ct. 2419, 2431 (2011); *see also Illinois v. Gates*, 462 U.S. 213, 223 (1983) ("The question whether the exclusionary rule's remedy is appropriate in a particular context has long been regarded as an issue separate from the question whether the Fourth Amendment rights of the party seeking to invoke the rule were violated by police conduct.").

In *United States v. Leon*, 468 U.S. 897 (1984), this Court held that when officers act "in objectively reasonable reliance on a subsequently invalidated search warrant," the evidence they obtain should not be suppressed. *Id.* at 922. At the same time, this Court explained that courts should address this "good-faith issue" separately from "the Fourth Amendment question," and that "[t]he good-faith exception . . . is not intended to signal our unwillingness strictly to enforce the requirements of the Fourth Amendment." *Id.* at 924-25; *see also id.* at 923 (good-faith exception "leave[s] untouched the probable-cause standard"). In other words, the fact that an officer reasonably relies on a magistrate's issuance of an illegitimate warrant does not render the officer's conduct consistent with the Fourth Amendment; it merely means that the evidence obtained should not be suppressed.

2. The North Carolina Supreme Court broke from this framework here. Emphasizing that "the primary command of the Fourth Amendment [is] that law enforcement agents act reasonably," the court reasoned that when "[an] officer's mistake of law is objectively reasonable, . . . the Fourth Amendment would seem not to be violated." Pet. App. 13a. However tidy this syllogism may appear, it is erroneous. This Court has repeatedly held that the reasonableness of a mistake of law – just like the reasonableness of an officer's reliance on a warrant – is relevant only to the issue of remedy.

In *Illinois v. Krull*, 480 U.S. 340 (1987), for example, the Court declined to require suppression when police officers conducted a search in "reasonable" reliance on a state statute that was later

declared unconstitutional. *Id.* at 357. But despite the officer's good-faith reliance on the statute, the Court still "[a]ssum[ed] . . . the Illinois Supreme Court was correct" when it concluded that the search in question violated the Fourth Amendment. *Id.* at 359. This assumption was consistent with several previous decisions – all of which the Court cited and accepted – where this Court explicitly held that officers violated the Fourth Amendment when conducting searches in reliance on statutes later deemed unconstitutional. *See id.* at 355-57 n.12 (citing *Torres v. Puerto Rico*, 442 U.S. 465 (1979); *Almeida-Sanchez v. United States*, 413 U.S. 266 (1973); and *Berger v. New York*, 388 U.S. 41 (1967)).

Similarly, in *Davis v. United States*, the Court ruled that suppression was inappropriate when officers conducted a search in "objectively reasonable reliance" on binding, but erroneous, appellate precedent. 131 S. Ct. at 2423-24. At the same time, this Court left no doubt that despite the reasonableness of the officer's actions, the search in question "turned out to be unconstitutional." *Id.* at 2428. Therefore, while the reasonableness of an officer's mistake of law can bear on whether to suppress evidence at the remedy stage, the good-faith nature of the officer's mistake cannot render the search or seizure "reasonable" within the meaning of the Fourth Amendment.

This Court's qualified immunity jurisprudence reinforces this point. In that context, this Court has explained that "the same standard of objective reasonableness that we applied in the context of a suppression hearing in *Leon* defines the qualified immunity accorded an officer." *Groh v. Ramirez*, 540

U.S. 551, 565 n.8 (2004) (quoting *Malley v. Briggs*, 475 U.S. 335, 344 (1986)). And this Court has held repeatedly that officers conducting searches or seizures that they "reasonably believe to be lawful" are entitled to immunity from damages. *Anderson v. Creighton*, 483 U.S. 635, 641 (1987). Yet this Court has never held that such reasonableness means that the Fourth Amendment was not violated.

To the contrary, this Court in *Anderson* started from the premise that the officers "violate[d] the Fourth Amendment." 483 U.S. at 636. It also expressly held in *Wilson v. Layne*, 526 U.S. 603 (1999), that the officers "violated petitioners' Fourth Amendment right[s]" even though "a reasonable officer could have believed" that the search at issue was lawful, *id.* at 614-15; *see also Saucier v. Katz*, 533 U.S. 194, 206 (2001) (while "reasonable, but mistaken, beliefs as to the facts" render searches or seizures consistent with the Fourth Amendment, "reasonable mistakes as to the legality of their actions" entitle officers only to qualified immunity). Thus, contrary to the North Carolina Supreme Court's supposition, there can be no doubt that an officer can make a reasonable mistake of law and still conduct an "unreasonable" search or seizure under the Fourth Amendment.

These qualified immunity cases also make clear that the North Carolina Supreme Court's concern (Pet. App. 16a) that officers should not be expected "to accurately forecast how a reviewing court" will later interpret the law was misplaced. In *Wilson*, this Court acknowledged that the officers there could not have been "expected to predict the future course of constitutional law." 526 U.S. at 617 (quoting

Procunier v. Navarette, 434 U.S. 555, 562 (1978)). Yet this Court had little difficulty unanimously concluding that the reasonableness of the officers' actions did not render their conduct consistent with the Fourth Amendment. *Wilson*, 526 U.S. at 605-06. The legality of officers' actions must be measured against the correct interpretation of the law, regardless of whether that interpretation was readily discernable at the time.

3. The North Carolina Supreme Court ignored all of this precedent, instead contending that its reasoning was "perhaps somewhat supported" by this Court's decision in *Michigan v. DeFillippo*, 443 U.S. 31 (1979). Pet. App. 12a. In *DeFillippo*, this Court granted certiorari "to review the Michigan court's holding that evidence should be suppressed on federal constitutional grounds, although it was obtained as a result of an arrest pursuant to a presumptively valid ordinance" that later turned out to be unconstitutional. 443 U.S. at 35. The Court held that in light of the fact that the officer conducted the arrest at issue in "good-faith reliance on [the] ordinance," the evidence obtained as a result of the arrest "should not have been suppressed." *Id.* at 33, 40. This holding is perfectly consistent with the remedial holdings in *Leon*, *Krull*, and *Davis* – and in no way supports the ruling below that seizures based on reasonable mistakes of law do not even violate the Fourth Amendment.

To be sure, the *DeFillippo* opinion also contains language suggesting that the reasonableness of the officer's mistake of law rendered the arrest itself constitutional. This Court stated at one point, for instance, that "[t]he subsequently determined

invalidity of the Detroit ordinance on vagueness grounds does not undermine the validity of the arrest." 443 U.S. at 40. But this language is a relic of an earlier time, when this Court treated the issue whether to suppress evidence as "synonymous with" the issue whether the Fourth Amendment was violated. *Arizona v. Evans*, 514 U.S. 1, 13 (1995); *see also Davis*, 131 S. Ct. at 2427 (describing the earlier conflation of these two issues).

The true focus of this Court's attention in *DeFillippo* was on the exclusionary rule. Asking whether any "conceivable purpose of deterrence would be served by suppressi[on]," this Court concluded that the officer "should not have been required to anticipate that a court would later hold the ordinance unconstitutional." 443 U.S. at 37-38 & n.3. This Court analogized this reasoning to its earlier decision in *Pierson v. Ray*, 386 U.S. 547 (1967), in which this Court assumed that an arrest was unconstitutional but held that the officers were entitled to qualified immunity because the illegality of the officers' actions was unclear at the time. *See DeFillippo*, 443 U.S. at 38. In short, *DeFillippo* held that the search in question was valid because suppression was inappropriate, not because the reasonableness of the officer's mistake of law somehow rendered the search itself legitimate under the Fourth Amendment. Properly construed against today's landscape, therefore, *DeFillippo* is a case solely about the exclusionary rule, not the meaning of the Fourth Amendment itself.

Lest there be any doubt, this Court has since characterized *DeFillippo* as a case only about suppression. In *Illinois v. Gates*, the Court cited the

case for the proposition that "exclusion [is not] required when law enforcement agents act in good-faith reliance upon a statute or ordinance that is subsequently held to be unconstitutional." 462 U.S. at 256 (White, J., concurring). And in *Leon*, this Court described *DeFillippo* as "not requir[ing] suppression of the fruits of a search incident to an arrest made in good-faith reliance on a substantive criminal statute that subsequently is declared unconstitutional." *Leon*, 468 U.S. at 911-12; *see also id.* at 911 (explaining that *DeFillippo* relied on "the purposes underlying the exclusionary rule"). Several federal courts of appeals likewise now treat the subsequent invalidation of a substantive criminal statute that gave rise to an arrest simply as reason to suspend the exclusionary rule.[3] It is too late in the day to reverse course now and recast *DeFillippo* as a case truly about the meaning of the Fourth Amendment itself.

B. It Is Crucial That This Court Continue To Restrict The Relevance Of Good-Faith Mistakes Of Law To The Issue Of Remedy.

This Court should preserve the distinction it has so carefully drawn in recent years between Fourth Amendment rights and remedies, under which good-faith mistakes of law are relevant only to the latter, for three important reasons: (1) the distinction avoids

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[3] *See, e.g.*, *United States v. Cardenas-Alatorre*, 485 F.3d 1111, 1114-17 (10th Cir. 2007); *United States v. Meek*, 366 F.3d 705, 714 (9th Cir. 2004); *United States v. Dexter*, 165 F.3d 1120, 1125 (7th Cir. 1999).

having to make complicated determinations concerning which kinds of mistakes of law are relevant to Fourth Amendment rights themselves and which are relevant only to remedies; (2) the distinction ensures that courts evaluating assertions of good faith can consider all of the evidence relevant to those assertions; and (3) the distinction enables courts to make clear to the populace that police officers, just like ordinary citizens, act unlawfully when they act based on misconceptions of law.

1. The North Carolina Supreme Court's approach would require courts to resolve new and difficult questions in order to determine which mistakes of law generate violations of rights and which implicate the availability of remedies. For example, would it violate the Fourth Amendment for an officer to conduct a stop under the reasonable belief that a statute forbids the conduct he observed, even though no such statute exists? *See United States v. Chanthasouxat*, 342 F.3d 1271, 1278 (11th Cir. 2003) (no statute mandating an inside rear-view mirror). Where the officer mistakenly but reasonably believes that two neighboring jurisdictions' laws are the same? *See United States v. Martin*, 411 F.3d 998, 1001 (8th Cir. 2005) (tribal brake light law did not match state brake light law). Or where the police officer made a reasonable mistake of Fourth Amendment law regarding an issue that the regional appellate court had not directly spoken to at the time of the stop? *See United States v. Aguiar*, 737 F.3d 251, 261 (2d Cir. 2013). Nothing in the North Carolina Supreme Court's opinion or elsewhere in existing jurisprudence supplies any metric for sorting out which of these mistakes of law would violate the

Fourth Amendment and which would be fodder only for suppression arguments.

Indeed, it is entirely unclear how adopting the North Carolina Supreme Court's rule could be squared with this Court's already-existing case law. In *Krull* and *Davis*, this Court treated reasonable reliance on erroneous judicial and legislative pronouncements of law as violating the Fourth Amendment. *See supra* at 23-24 (discussing those cases). But surely it is *less* offensive to rely on affirmative (but wrong) authority from the legislative or judicial branches than it is for police officers to rely on their own misreadings of local statutes. If the former violates the Fourth Amendment, so too must the latter.

2. Restricting the relevance of the reasonableness of police mistakes of law to the issue of suppression also allows courts to consider materials that can be relevant to the equitable task of devising proper remedies but that are off-limits when deciding whether the Fourth Amendment was violated.

For instance, in order to assess whether an officer's mistake of law was reasonable, courts need to inquire into whether the interpretation of law on which the officer acted was consistent with "state custom or practice." *United States v. Washington*, 455 F.3d 824, 828 (8th Cir. 2006). If so, the mistake is less blameworthy and less in need of deterrence. *See id.* In *Herring v. United States*, 555 U.S. 135 (2009), this Court held that such inquiries are pertinent in determining whether to suppress evidence, explaining that when an officer's mistake is an "isolated" occurrence and a "well trained officer would [not] have known that the search was illegal,"

suppression is inappropriate. *Id.* at 137, 145 (quoting *Leon*, 468 U.S. at 922 n.23) (internal quotation marks omitted).

Yet at the rights stage this Court has forbidden courts from examining whether an officer acted in contravention of local training or custom. As this Court explained in *Whren v. United States*, 517 U.S. 806 (1996), inquiries concerning whether the officer acted contrary to "usual police practices" or "standard procedures" are "trivialities" that do not bear on the legality of the officer's actions. *Id.* at 814-15. Hence, a proper inquiry into the reasonableness of a police officer's mistake of law can be performed only during the remedy stage.

Similarly, courts determining whether a mistake of law was reasonable also must inquire whether the officer's interpretation of the law was consistent with "state case law," or written "police manuals or training materials." *Washington*, 455 F.3d at 828. *Compare Davis*, 131 S. Ct. at 2428-29 (mistake was reasonable because local appellate precedent condoned officer's actions), *and Wilson*, 526 U.S. at 616 (fact that officers' actions were consistent with common police practice and some court decisions rendered their mistake of law reasonable), *with United States v. Lopez-Valdez*, 178 F.3d 282, 289 (5th Cir. 1999) (holding that state appellate court decision clarifying meaning of relevant traffic law rendered officer's mistake of law unreasonable). Indeed, the North Carolina Supreme Court in this case found it pertinent that "[w]hen the stop at issue in this case occurred, neither th[at] Court nor the Court of Appeals had ever interpreted [the State's] motor

vehicle laws to require only one properly functioning brake light." Pet. App. 19a.

But this Court admonished in *Whren* that even insofar as they are objective, "police manuals and standard procedures" cannot inform "the search and seizure protections of the Fourth Amendment" itself. 517 U.S. at 815. Reliance on such local reference guides would impermissibly dictate that the meaning of the Fourth Amendment would "vary from place to place and from time to time." *Id.*

The same is true with respect to local case law. Such variance is acceptable with respect to potential *remedies* for Fourth Amendment violations – indeed, states may choose (as North Carolina has) to require the suppression of all evidence obtained from illegal searches and seizures, regardless of whether officers acted in good faith, *see Gates*, 462 U.S. at 252 (White, J., concurring); *State v. Carter*, 370 S.E.2d 553, 562 (N.C. 1988). But when it comes to "whether or not a search [or seizure] is reasonable within the meaning of the Fourth Amendment" itself, geographic variation according to local dictates is unacceptable. *California v. Greenwood*, 486 U.S. 35, 43 (1988).

In short, in order to consider the full panoply of evidence necessary to administer inquiries into whether mistakes of law were made in good faith, courts must conduct those inquiries at the remedy stage, where they have the tools necessary to properly evaluate the reasonableness of police officers' mistakes of law. Introducing the concept of good faith into the Fourth Amendment itself would create upheaval and instability.

3. Lastly, confining the relevance of an officer's mistake of law to the remedy stage safeguards respect for the rule of law. As Justice Brandeis explained in *Olmstead v. United States*, 277 U.S. 438 (1928), "Our Government is the potent, the omnipresent teacher. For good or ill, it teaches the whole people by its example. . . . If the Government becomes a lawbreaker, it breeds contempt for the law." *Id.* at 485 (Brandeis, J., dissenting). It thus is critical that courts be able to tell people that police violate the Fourth Amendment when they act based on misinterpretations of the law.

This is so even if courts ultimately withhold a remedy. Doctrines such as the good-faith exception to the exclusionary rule and qualified immunity are sometimes said to create "a right-remedy gap" in the administration of constitutional law. John C. Jeffries, Jr., *The Right-Remedy Gap in Constitutional Law*, 109 Yale L.J. 87, 87 (1999). But even where such a gap exists, a court's act of stating that a right was violated "helps protect rights from being obliterated by competing concerns. Rights rhetoric fosters a love of liberty that makes a system of individual rights effective." J. Harvie Wilkinson III, *The Dual Lives of Rights: The Rhetoric and Practice of Rights in America*, 98 Calif. L. Rev. 277, 279 (2010). Put another way, even when equitable considerations counsel against suppressing ill-gotten evidence, it "disserves basic rule-of-law values" for courts to deny the illegitimacy of police mistakes of law. Wayne A. Logan, *Police Mistakes of Law*, 61 Emory L.J. 69, 90 (2011).

III. Even If This Court Were To Import Good-Faith Considerations Into The Fourth Amendment Issue Here, The Holding Below Would Still Be Incorrect.

Even if this Court were to introduce the equitable and consequential considerations relevant in exclusionary rule cases into the meaning of the Fourth Amendment itself – thereby disavowing its statements in *Illinois v. Krull*, 480 U.S. 340 (1987), and *Davis v. United States*, 131 S. Ct. 2419 (2011), regarding the Fourth Amendment violations there; implicitly overruling its holdings in qualified immunity cases that seizures based on reasonable mistakes of law still violate the Fourth Amendment; and treating *Michigan v. DeFillippo*, 443 U.S. 31 (1979), as a case about rights instead of remedies – the North Carolina Supreme Court's holding would still not withstand scrutiny. The question whether to excuse police mistakes of law based on good-faith behavior turns on how doing so would "influence" the police and other relevant actors. *Krull*, 480 U.S. at 360 n.17. Refusing to excuse mistakes of the type at issue here has appreciably beneficial consequences in this respect. It ensures that officers are incentivized to learn and apply correct interpretations of the traffic code, and it prevents individuals from having to refrain from wholly innocent conduct to avoid exposing themselves to traffic stops.

A. Law Enforcement Officers Should Be Encouraged To Learn And Apply The Correct Interpretation Of The Law.

1. The North Carolina Supreme Court erred in suggesting that officers should not be discouraged

from conducting traffic stops for perceived, but non-existent, traffic violations. Pet. App. 16a.

When officers reasonably rely on the assurances of third parties – whether from magistrates in warrants, legislatures in statutes, courts in opinions, or clerks transmitting another police department's records – expressly authorizing searches or seizures, there is "nothing to deter." *Davis*, 131 S. Ct. at 2423; *see also id.* at 2429; *Herring v. United States*, 555 U.S. 135 141 (2009) (summarizing other cases). But this Court has explicitly reserved the question whether the same reasoning applies when an officer "act[s] outside the scope of [a] statute," but "in good faith, believes he is acting within the scope of a statute." *Krull*, 480 U.S. at 360-61 n.17.

Furthermore, this Court held in *United States v. Johnson*, 457 U.S. 537 (1982), that suppression is appropriate when officers make a mistake in the absence of any third-party directive about an "unsettled" point of law. *Id.* at 561; *see also United States v. Leon*, 468 U.S. 897, 913 (1984) (reaffirming *Johnson*). In this circumstance, this Court explained, deterrence has an important role to play. Officers on patrol are "engaged in the often competitive enterprise of ferreting out crime." *Leon*, 468 U.S. at 913-14 (quoting in turn *United States v. Chadwick*, 433 U.S. 1, 9 (1977) (quoting in turn *Johnson v. United States*, 333 U.S. 10, 14 (1948))). A refusal to excuse mistakes of law provides an "incentive to err on the side of constitutional behavior." *Johnson*, 457 U.S. at 561; *see also Davis*, 131 S. Ct. at 2435 (Sotomayor, J., concurring) ("[W]hen police decide to conduct a search or seizure in the absence of case law

(or other authority) . . . exclusion of the evidence obtained may deter" violations of law).

An individual officer's misinterpretation of a traffic law closely resembles the situation in *Johnson*. As in *Johnson*, a misinterpretation of the traffic code involves an officer on patrol taking an overly aggressive view of a legal issue on which "reasonable minds . . . may differ." *United States v. Davis*, 598 F.3d 1259, 1267 (11th Cir. 2010), *aff'd*, 131 S. Ct. 2419 (2011) (internal quotation marks and citation omitted). As the only three courts of appeals to have squarely considered the question (all in the context of evaluating the applicability of the good-faith exception to the exclusionary rule) have recognized, this is very different than relying on an explicit directive from a court or legislature. *Id.*; *see also United States v. McDonald*, 453 F.3d 958, 962 (7th Cir. 2006); *United States v. Chanthasouxat*, 342 F.3d 1271, 1280 (11th Cir. 2003); *United States v. Lopez-Soto*, 205 F.3d 1101, 1106 (9th Cir. 2000). And it is something worthy of deterrence – at least in the sense of deeming such seizures as unconstitutional.

Indeed, in a world in which police officers would be allowed to conduct traffic stops anytime state law could reasonably be interpreted to prohibit the conduct the officer observed, officers would be all but invited to read traffic statutes aggressively. Instead of trying to determine the best reading of the law, authorities wishing to vigorously enforce the law would be encouraged to identify the broadest possible range of *plausible* readings of any given traffic law, for such an approach would support traffic stops in the greatest number of cases.

Not only would this incentive be problematic on its own terms, but it also would threaten to put officers' interpretive practices at odds with well-established doctrines of strict construction, lenity, and vagueness. *See supra* at 18-19. When officers confront ambiguous statutes on which they lack outside guidance, they should be encouraged to do exactly what other branches of the government must: construe ambiguous statutes narrowly, in favor of individual liberty. Only by measuring reasonable suspicion against the correct interpretation of the law can the Fourth Amendment ensure these incentives are aligned.

2. Measuring reasonable suspicion against the correct interpretation of the law also encourages officers to take advantage of available tools to become more familiar with the law. Officers have a variety of means at their disposal to help them determine the meaning of traffic laws, including the extensive availability of targeted legal education at police training academies, increasingly powerful technology in officers' cruisers and pockets, and the ability to ask for clarifications from individuals trained in the law (such as local counsel or lawyers in an attorney general's office). Only by refusing to excuse officers' mistakes of law would officers be properly motivated to make use of these resources.

What is more, law enforcement agencies typically have unique relationships with lawmakers and access to the legislative process. *See, e.g.*, Rachel E. Barkow, *Administering Crime*, 52 UCLA L. Rev. 715, 728 (2005); Darryl K. Brown, *Democracy and Decriminalization*, 86 Tex. L. Rev. 223, 232 n.31 (2007). If police departments are struggling to

determine the correct meaning of certain laws, the Fourth Amendment should encourage them to ask legislatures to clarify the statutes – not to eschew such clarification for fear that removing ambiguity in traffic statutes will restrict their power.[4]

B. Citizens Should Not Be Exposed To Traffic Stops For Engaging In Wholly Innocent Conduct.

Measuring reasonable suspicion against the correct interpretation of the traffic code also avoids problematic consequences for law-abiding citizens.

1. The North Carolina Supreme Court suggested that a traffic stop "is not a substantial interference with the detained individual." Pet. App. 14a. This Court has recognized, however, that citizens have a "private interest in avoiding" traffic stops, *Whren v. United States*, 517 U.S. 806, 817-18 (1996), because such seizures *are* a substantial infringement on one's liberty. A traffic stop constitutes a "possibly unsettling show of authority," *Delaware v. Prouse*, 440 U.S. 648, 657 (1979), and involves "the loss of our freedom to come and go as we please without police interference," *Navarette v. California*, 134 S. Ct. 1683, 1697 (2014) (Scalia, J., dissenting). Traffic

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[4] This is not to say that the onus to generate unambiguous laws falls primarily on law enforcement agencies, or on this Court through the tool of constitutional jurisprudence. It is primarily the job of legislatures to enact clear laws. At the same time, "[t]he less the courts insist on precision, the less the legislatures will take the trouble to provide it." Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 301 (2012).

stops moreover "create substantial anxiety," "interfere with freedom of movement, are inconvenient, and consume time." *Prouse*, 440 U.S. at 657.

More seriously, a simple mistaken traffic stop can escalate into a series of increasingly invasive acts. Police effectuating traffic stops may conduct protective pat-downs, *Pennsylvania v. Mimms*, 434 U.S. 106 (1977), which this Court has recognized "must surely be an annoying, frightening, and perhaps humiliating experience," *Terry v. Ohio*, 392 U.S. 1, 24-25 (1968). They also may request consent to conduct consensual searches, which, as this case demonstrates, can be difficult for motorists to refuse. Officers who conduct traffic stops also have the discretion to arrest offending motorists, *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001), which can then lead to involuntary searches of the person's possessions, *United States v. Robinson*, 414 U.S. 218 (1973), strip searches, *Florence v. Bd. of Chosen Freeholders*, 132 S. Ct. 1510 (2012), and possibly even the collection of DNA samples, *Maryland v. King*, 133 S. Ct. 1958 (2013).

2. It would be much more difficult – indeed, sometimes downright impossible – for people to avoid being exposed to the possibility of traffic stops if a mistake of law could supply reasonable suspicion. Traffic laws are classic *malum prohibitum* statutes; they typically proscribe conduct not because it is inherently blameworthy but rather to further more regulatory objectives. That being so, the main way for citizens to avoid tripping over such statutes is to familiarize themselves with the traffic code. People study the code in order to take the driving tests

necessary to obtain driver's licenses, and potentially also when deciding whether to spend the money to fix a particular piece of equipment on an old car.

Yet under the North Carolina Supreme Court's holding, people seeking to avoid exposing themselves to the burdens of traffic stops would have to discern not only their legal obligations but also some unidentified sphere of wholly innocent activity that a police officer could reasonably believe is also prohibited. The North Carolina Supreme Court did not offer any definition of what would constitute a "reasonable" mistake of law in this respect. But in the context of qualified immunity, this Court has defined a reasonable mistake of law as "protect[ing] 'all but the plainly incompetent or those who knowingly violate the law.'" *Ashcroft v. al-Kidd*, 131 S. Ct. 2074, 2085 (2011) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)). Only when the proper interpretation of law is "beyond debate" is a mistake of law unreasonable. *al-Kidd*, 131 S. Ct. at 2083; *see also Butler v. McKellar*, 494 U.S. 407, 415 (1990) (mistakes of law are "reasonable" for purposes of habeas retroactivity analysis unless the issue was not "susceptible to debate").

Similarly, in the context of deciding whether interpretations of ambiguous statutes are eligible for *Chevron* deference, this Court has explained that such interpretations are reasonable "even if the . . . reading differs from what the court believes is the best statutory interpretation." *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 980 (2005). This reasonableness test affords agencies "a wide berth" when construing ambiguous statutes. *Nat'l Ass'n of Regulatory Util.*

Comm'rs v. Interstate Commerce Comm'n, 41 F.3d 721, 728 (D.C. Cir. 1994).

Whatever precise formulation would apply here, there can be no doubt that the scope of conduct covered by "reasonable" interpretations of traffic codes would be much broader than the scope of conduct covered by correct interpretations of those laws. That being so, officers would have much broader discretion to initiate traffic stops, and citizens would be forced to give a wide berth to the traffic code to account for this expansion of authority.

Even more troubling, officers would sometimes have the power to stop a motorist no matter what the motorist does. When a driver has only two choices and the governing law is capable of being reasonably read to prohibit either choice, an officer could stop the driver either way. Take, for example, the stop at issue in *United States v. McDonald*, 453 F.3d 958 (7th Cir. 2006). There, the driver came to a ninety-degree curve where the road changed names. The local traffic code did not clearly specify whether using a signal under this circumstance was necessary, or even permissible. After the driver activated his signal, the officer "concluded that McDonald did not need to use his turn signal at the bend in the road and that he must have improperly used the signal." *Id.* at 960. Yet had the defendant not signaled, an officer might also reasonably have believed that taking the ninety-degree curve onto a road of a different name required a signal.

Worse yet, were a court to adopt the position that an officer can make a reasonable mistake about the very *existence* of a law, the citizen's quandary would only deepen, for now she would have to hypothesize

about the non-existent laws that might reasonably exist, but do not. This was the case in *Travis v. State*, 959 S.W.2d 32 (Ark. 1998), in which the court held that a traffic stop for failing to display an expiration date sticker on a license plate comported with the Fourth Amendment, even though state law required no such sticker. *Id.* at 33-35. Surely it is unfair to require citizens seeking to steer clear of police contact to imagine what an officer might reasonably believe should be against the law but is not.

3. The North Carolina Supreme Court advanced a different perspective: It asserted that "most motorists would actually prefer" to be stopped whenever an officer reasonably believes such a seizure is necessary to "maintain[] safe roadways," even if the motorist is fully in compliance with the traffic code. Pet. App. 14a. But there can be no argument that the stop at issue here was meant to address any safety concern. The officer in this case was conducting criminal interdiction, "looking for criminal indicators," J.A. 13, 26. The officer stopped petitioner's car because he believed he had observed a violation of state traffic law, not because he had any safety concerns. Pet. App. 5a. And the officer ultimately wrote "a warning ticket for a brake light, improper equipment." J.A. 22.

In any event, the North Carolina Supreme Court's safety rhetoric ignores the critical distinction between those who write the laws and those who enforce them. In North Carolina, as elsewhere, it is first and foremost "the legislature's job" to decide which activities are unsafe and thus should be prohibited, not a police officer's. Pet. App. 27a

(Hudson, J., dissenting). And the North Carolina General Assembly has squarely addressed the extent to which vehicles on the State's roadways must have working brake lights – determining that a single working light is sufficient. Pet. App. 34a. Especially when a legislature has considered and resolved an issue as directly as this, the responsibility of law enforcement is to learn and apply what the statute provides, not reinterpret and broaden the law according to officers' own intuitions about what they think would best protect public safety.

* * *

At bottom, this case involves a simple proposition: This Court should demand of the officers who stopped petitioner exactly what those officers intended to demand of him as a citizen – knowledge of the law. Anything less would undermine long-settled relationships between the people and their government. It would also destabilize this Court's carefully delineated Fourth Amendment doctrine distinguishing rights from remedies. There is no good reason to inflict such damage upon our constitutional structure.

CONCLUSION

For the foregoing reasons, the judgment of the North Carolina Supreme Court should be reversed.

Respectfully submitted,

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