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 SUPREME COURT OF NORTH CAROLINA

BRIEF OF THE STATE OF WISCONSIN, EIGHTEEN OTHER STATES, AND THE DISTRICT OF COLUMBIA AS AMICI CURIAE IN SUPPORT OF RESPONDENT

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QUESTION PRESENTED

Whether a law enforcement officer's objectively reasonable mistake of law can support reasonable suspicion for an investigatory stop under the Fourth Amendment.

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INTEREST OF AMICI CURIAE

Amici States have a compelling interest in the outcome of this case. The question presented is whether a police officer's objectively reasonable mistake of law can form all or part of the reasonable suspicion justifying a traffic stop. Non-consensual traffic stops are made by law enforcement officers every day in every jurisdiction across the country. The legal consequences of those stops are uncertain in jurisdictions where an officer's mistake of law (no matter how reasonable) can render the stop illegal, while a reasonable mistake of fact does not. Compounding this uncertainty is the reality that it is often difficult to determine whether a specific mistake is one of law or one of fact. Amici believe that the North Carolina Supreme Court's decision in this case is correct and should be affirmed. That court's reasoning is consistent with this Court's Fourth Amendment jurisprudence.

SUMMARY OF ARGUMENT

"The touchstone of our analysis under the Fourth Amendment is always 'the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.'" *Pennsylvania v. Mimms*, 434 U.S. 106, 108-09 (1977) (quoting *Terry v. Ohio*, 392 U.S. 1, 19 (1968)). Consistent with that principle, this Court has held that searches and seizures based on police officers' reliance on a statute or ordinance later declared

unconstitutional, or a judicial decision later overruled, are not subject to the exclusionary rule or do not violate the Fourth Amendment in the first place. *See Davis v. United States*, ___ U.S. ___, 131 S. Ct. 2419, 2429 (2011); *Illinois v. Krull*, 480 U.S. 340, 349-50 (1987); *Michigan v. DeFillippo*, 443 U.S. 31, 37-40 (1979). In such cases, officers act reasonably by relying on controlling law.

These cases recognize that law enforcement officers cannot be expected to scrutinize the validity of a law with the expertise of a lawyer or judge. Similarly, a traffic stop based in whole or in part on an officer's objectively reasonable (but erroneous) interpretation of the law should not be deemed invalid under the Fourth Amendment. *See United States v. Sanders*, 196 F.3d 910, 913 (8th Cir. 1999) (courts "should not expect state highway patrolmen to interpret the traffic laws with the subtlety and expertise of a criminal defense attorney").

Several cases from both state and federal courts illustrate the difference between reasonable and unreasonable mistakes of law. Mistakes of law are objectively reasonable under the Fourth Amendment if they arise from an officer's misinterpretation of an unclear, confusing, or counterintuitive statute or set of statutes, as occurred in the present case. Mistakes of law may be objectively unreasonable if they are inconsistent with prior case law or the plain terms of the controlling statute or based solely on an officer's personal views of what the law should be. This case law demonstrates that a consistent and principled distinction can be made between mistakes of law

that violate the Fourth Amendment and those that do not.

Petitioner Nicholas Heien asserts, with minimal analysis, that an officer's reasonable mistake of law should be evaluated according to the maxim that "ignorance of the law is no excuse" and the rule of lenity. While this argument is superficially plausible at first blush, further scrutiny reveals that the policy concerns animating those doctrines are not implicated in the present context. They are simply inapposite.

Finally, this Court should take the opportunity to clarify that reasonable suspicion is the proper level of Fourth Amendment justification for all traffic stops. A small minority of jurisdictions hold otherwise. Three jurisdictions distinguish between stops that must be justified by probable cause and stops that need only be justified by reasonable suspicion. Two jurisdictions require all stops to be justified by probable cause. To ensure that the Court's answer to today's question is applied uniformly in all jurisdictions, the Court should take this opportunity to declare that reasonable suspicion is the correct standard of justification for all traffic stops.

ARGUMENT

I. THIS COURT SHOULD HOLD THAT A REASONABLE MISTAKE OF LAW DOES NOT INVALIDATE AN OTHERWISE LAWFUL TRAFFIC STOP.

Petitioner Nicholas Heien seeks reversal of the North Carolina Supreme Court's decision in this case. In his view, affirmance of that decision will free police officers to interpret the law "aggressive[ly]," and discourage police departments from "using resources at their disposal to ensure that officers on patrol have an accurate understanding of the law" (Pet'r's Br. at 10). If this Court affirms, Heien foresees a nation of rogue officers making near-standardless stops, threatening the civil liberties of innocent drivers from coast to coast.

The reverse is true. The rule carved out by the North Carolina Supreme Court is simple and limited. Neither North Carolina nor amici urge this Court to adopt a rule allowing traffic stops to be made on the basis of *any* legal error. Rather, the States urge that a traffic stop made on the basis of an officer's mistake of law may be upheld if the mistake was *objectively reasonable*. "[E]xisting jurisprudence supplies [a] metric" for which mistakes of law may be deemed reasonable under the Fourth Amendment and which will not (Pet'r's Br. at 30).

There is considerable case law drawing the line between legal errors that will and will not be

tolerated in this context. These cases deem only those mistakes of law arising from unclear and confusing statutory directives to be objectively reasonable. This analytical approach accords with the jurisprudence recognizing the good-faith exception to the exclusionary rule, and provides a just and workable framework for assessing reasonableness in these circumstances.

"The touchstone of our analysis under the Fourth Amendment is always 'the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.'" *Pennsylvania v. Mimms*, 434 U.S. 106, 108-09 (1977) (quoting *Terry v. Ohio*, 392 U.S. 1, 19 (1968)).

Heien argues that "this Court's Fourth Amendment jurisprudence vigilantly distinguishes between rights and remedies—confining the relevance of the reasonableness of any mistakes of law only to the latter sphere" (Pet'r's Br. at 23). It is true that most of the cases examining the consequences of mistakes of law have been concerned with the remedy side of the equation, *i.e.*, whether the exclusionary rule applies. *See*, *e.g.*, *United States v. Leon*, 468 U.S. 897 (1984). But, as North Carolina shows in its brief, the fact that these cases have generally addressed the mistake of law question on the "remedies" side does not mean mistakes of law cannot be considered on the "rights" side (Resp't's Br. at 26-30). No decision of this Court has ever suggested such a dichotomy.

Moreover, as North Carolina also shows, this Court did address the mistake of law question on the

rights side in *Michigan v. DeFillippo*, 443 U.S. 31 (1979). The question there was whether probable cause for arrest could be based on a city ordinance later declared unconstitutional: "The ordinance is relevant to the validity of the arrest and search only as it pertains to the 'facts and circumstances' we hold constituted probable cause for arrest." *Id.* at 40. In other words, could a reasonable mistake of law provide probable cause to arrest? The Court held that the arrest was lawful despite being based on an ordinance later declared unconstitutional. In the Court's words: "The subsequently determined invalidity of the Detroit ordinance on vagueness grounds *does not undermine the validity of the arrest made for violation of that ordinance* . . . ." *Id.* at 40 (emphasis added). Significantly, although *DeFillippo* was without question *not* an exclusionary rule case, it did look to the exclusionary rule's deterrence rationale to support its conclusion. *Id.* at 38 n.3.

Contrary to Heien's characterization of how this Court has treated *DeFillippo* in recent years, it has not been transmogrified into an exclusionary rule case. In *Leon*, cited by Heien, the Court described the decision this way:

> The same attention to the purposes underlying the exclusionary rule *has characterized decisions not involving the scope of the rule itself*. We have not required 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 (citing *DeFillippo*) (emphasis added). Heien also cites Justice White's concurrence in *Illinois v. Gates*, 462 U.S. 213 (1983), which predated *Leon*'s announcement of a good-faith exception to the exclusionary rule. In his concurrence, Justice White portrayed *DeFillippo* as a suppression case to support his argument that it was time to adopt a good-faith exception. *See id.* at 257 (White, J., concurring). No other Justice of this Court ever seconded Justice White in this characterization of *DeFillippo*, and even he acknowledged that *DeFillippo* "did not modify the exclusionary rule itself," but merely "upheld the validity of an arrest made in good-faith reliance on an ordinance subsequently declared unconstitutional." *Id.* at 257 n.12.

Just as *DeFillippo* consulted exclusionary rule jurisprudence to confirm its conclusion that the arrest in that case did not violate the Fourth Amendment, 443 U.S. at 38 n.3, it is appropriate for the Court in this case to consult the more recent *Leon* jurisprudence to analyze whether a traffic stop based on an officer's reasonable mistake of law violates the Fourth Amendment. As in *DeFillippo*, this jurisprudence provides persuasive (but not binding) authority.

Leon announced a "good-faith exception" to the exclusionary rule where a law enforcement officer relies on a facially valid search warrant. The purpose of the exclusionary rule is to "deter police misconduct," *id.* at 916, particularly where it has been "substantial and deliberate." *Id.* at 906 (quoting *Franks v. Delaware*, 438 U.S. 154, 171 (1978)).

"[A]ssuming that the rule effectively deters some police misconduct and provides incentives for the law enforcement profession as a whole to conduct itself in accord with the Fourth Amendment, it cannot be expected, and should not be applied, to deter objectively reasonable law enforcement activity." *Id.* at 918. Indeed, punishing a law enforcement officer for objectively reasonable acts "can in no way affect his future conduct unless it is to make him less willing to do his duty." *Id*. at 920 (quoting *Stone v. Powell*, 428 U.S. 465, 539-40 (1976) (White, J., dissenting)).

The objective standard of the good-faith exception does not reward individual officers or their departments for poor training; on the contrary, it "requires officers to have a reasonable knowledge of what the law prohibits." *Id.* at 919 n.20.

The reasonable-knowledge requirement does not oblige officers on the beat to be expert legal technicians. In *State v. Spillers*, 847 N.E.2d 949 (Ind. 2006), a search warrant was issued based on the detective's understanding of his informant's "declaration against penal interest." After a four-page analysis "examining more carefully existing case law" on the penal interest doctrine, the Indiana Supreme Court found that the detective was wrong on the law. *Id.* at 958. Nevertheless, it concluded that his error was objectively reasonable. The obligation to know what the law prohibits "does not mean that officers are required to engage in extensive legal research and analysis before obtaining search warrants." *Id.*; *accord United States v. Cardall*, 773 F.2d 1128, 1133 (10th Cir. 1985)

("the knowledge and understanding of law enforcement officers and their appreciation for constitutional intricacies are not to be judged by the standards applicable to lawyers"); *State v. Johnson*, 660 So.2d 648, 654 (Fla. 1995) ("Officers are not expected to possess a lawyer's understanding of the nuances of Fourth Amendment law.").

However, officers are expected to know the clear and fundamental dictates of the laws they are called upon to enforce, and the procedures regulating their enforcement of those laws. Thus, in *Dodson v. State*, 150 P.3d 1054 (Okla. Ct. Crim. App. 2006), the court held that *Leon* could not save the issuance and use of an anticipatory search warrant. Such warrants may be constitutional, the court reasoned, but they were impermissible under the Oklahoma statutes. "[A]nticipatory search warrants are not authorized by Oklahoma law and are therefore not valid. . . . A well-trained officer in Oklahoma should have known that such warrants were not specifically allowed under our statutes." *Id.* at 1058; *accord State v. Allen*, 69 P.3d 232, 233, 236 (Nev. 2003) (en banc) (reasonably knowledgeable law enforcement officer expected to know unambiguous Nevada statutory requirements for search warrants).

This Court's decisions after *Leon* reflect its understanding that a well-trained officer's knowledge of the law cannot be expected to be as sophisticated as that of a lawyer or a judge. Thus, in *Illinois v. Krull*, 480 U.S. 340 (1987), this Court decided that an officer's reliance upon a state statute subsequently declared to be unconstitutional came within the good-faith exception to the exclusionary

rule. The Court noted that "the application of the exclusionary rule properly has been restricted to those situations in which its remedial purpose is effectively advanced" and its "deterrent effect . . . achieved." *Id.* at 347.

> Unless a statute is clearly unconstitutional, an officer cannot be expected to question the judgment of the legislature that passed the law. If the statute is subsequently declared unconstitutional, excluding evidence obtained pursuant to it prior to such a judicial declaration will not deter future Fourth Amendment violations by an officer who has simply fulfilled his responsibility to enforce the statute as written.

Id. at 349-50; *see also Davis v. United States*, __ U.S. __, 131 S. Ct. 2419, 2429 (2011) (when police conduct search in objectively reasonable reliance on binding appellate precedent later overturned, exclusionary rule does not apply).

The reasoning of *Leon* and its progeny illuminates the problem of whether traffic stops premised on reasonable mistakes of law violate the Fourth Amendment. *Cf. DeFillippo*, 443 U.S. at 38 n.3 (consulting exclusionary rule's deterrence rationale to support conclusion that reasonable mistake of law does not vitiate probable cause for arrest). If reasonableness is the touchstone of the Fourth Amendment, law enforcement officers should not be expected to interpret the law flawlessly every time. As the North Carolina Supreme Court reasoned in this case: "An officer may make a

mistake, including a mistake of law, yet still act reasonably under the circumstances. . . . [R]equiring an officer to be more than reasonable, mandating that he be perfect, would impose a greater burden than that required under the Fourth Amendment." *State v. Heien*, 737 S.E.2d 351, 356 (N.C. 2012). An objectively reasonable mistake of law should not, on its own, be enough to invalidate a traffic stop.

Amici agree with the North Carolina Supreme Court that a law enforcement officer's mistake of law should be judged by what a reasonably knowledgeable officer can and should be expected to know about the law. These expectations must be limited by the reality that most officers have not been to law school, and should not be faulted for misconstruing unclear or confusing statutes. Where, as here, lawyers and judges contest the meaning of a complex traffic statute as a case wends its way through the appellate process, a police officer cannot be judged "unreasonable" if his statutory interpretation ultimately fails appellate scrutiny.

As the court below observed:

> Concerns about the rules of construction regarding the substantive statutes at issue seem to us to be more applicable to the subsequent interpretation of a statute and not to a routine traffic stop that needs to be based only on reasonable suspicion. A *post hoc* judicial interpretation of a substantive traffic law does not determine the reasonableness of a previous traffic stop within the meaning of the state and federal constitutions. Such a

> *post hoc* determination resolves whether the conduct that previously occurred is actually within the contours of the substantive statute. But that determination does not resolve whether the totality of the circumstances present at the time the conduct transpired supports a reasonable, articulable suspicion that the statute was being violated. It is the latter inquiry that is the focus of a constitutionality determination, not the former.

Heien, 737 S.E.2d at 357; *accord State v. Armstrong*, 477 S.E.2d 635, 638 (Ga. Ct. App. 1996).

The line between reasonable and unreasonable mistakes of law must necessarily be drawn on a case-by-case basis. However, guidance on how to draw this line may be acquired from a review of published cases considering the reasonableness of mistakes of law. The case law belies Heien's prediction that sanctioning traffic stops based on reasonable legal error will lead to random, arbitrary, and unprincipled policing.

The present case provides an excellent example of an objectively reasonable mistake of law. Deputy Darisse noticed that the "right rear brake light [of Heien's car] failed to illuminate," but minutes later "flickered on." 737 S.E.2d at 352. Darisse stopped the car for this "non-functioning brake light." *Id.* The trial court denied Heien's motion to suppress. It concluded that his car did not comply with the set of statutes requiring motor vehicles to "'have all originally equipped rear lamps or the equivalent in

good working order,'" to "'be equipped with a stop lamp on the rear of the vehicle[, which] may be incorporated into a unit with one or more other rear lamps,'" and to have rear brake lights with "'red lenses.'" *Id.* at 353 (citations omitted).

The court of appeals interpreted those statutes differently. After "a long statutory analysis," it concluded that the statutes require only a single brake light, and that, because a "brake light" is not the same as a "stop lamp," it need not be maintained in "'good working order.'" *Id.* at 353-54 (citations omitted); *accord State v. Brown*, 2014 WI 69, ¶¶2, 3, 7, ___ N.W.2d ___ (tail lamps are in "good working order" even where middle bulb in driver-side tail lamp does not light).[1]

The Supreme Court accepted the court of appeals' interpretation, but found that Deputy Darisse's alternative reading was objectively reasonable

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[1]In *Brown*, the Wisconsin Supreme Court held that a traffic stop based on a mistake of law is unlawful. *See id.* at ¶¶42-43. The State had conceded this point on the basis of existing Wisconsin precedent. *Id.*, ¶22 (citing *State v. Longcore*, 594 N.W.2d 412, 416 (Wis. Ct. App. 1999), *aff'd by evenly divided court*, 629 N.W.2d 785 (Wis. 2001)). One month after the State made its concession, certiorari was granted in this case. Subsequently, the Wisconsin Court of Appeals noted that an affirmance in this case "could well throw [*Longcore*] in doubt. We suppose the State can petition the Wisconsin Supreme Court for review and then ask that the petition be held in abeyance pending the outcome in *Heien*." *State v. Houghton*, 2014 WI App 71, n.3, 2014 WL 1797665, ___ N.W.2d ___ (table). The State took the court of appeals' advice. Its Petition for Review in *Houghton* is pending before the Wisconsin Supreme Court.

nevertheless. His understanding was consistent with federal regulations and a reference in one North Carolina statute to "the lenses of multiple 'brake *lights*.'" *Id.* (citation omitted). Moreover, prior to the *Heien* litigation, no appellate decision "had ever interpreted our motor vehicle laws to require only one functioning brake light." *Id.* at 359; *see also United States v. Sanders*, 196 F.3d 910, 913 (8th Cir. 1999) (where applicable statute imposed one set of taillight rules for trailers manufactured *before* 1973, and a second set of rules for those manufactured *after* 1973, "this Court should not expect state highway patrolmen to interpret the traffic laws with the subtlety and expertise of a criminal defense attorney").

This case is consistent with other cases holding that an incorrect legal interpretation may be objectively reasonable if it depends on the interplay between multiple statutes or statutory elements. In *United States v. Martin*, 411 F.3d 998, 1000 (8th Cir. 2005), for example, an Oglala Sioux tribal officer stopped a car with one non-functioning rear brake light. He believed the vehicle violated the Tribe's Motor Vehicle Code provision requiring: "'STOP LIGHTS: All motor vehicles shall be equipped with a stop light in good working order at all times. Such stop lights to be automatically controlled by brake adjustment.'" *Id.* at 1000-01 (citation omitted).

The court concluded that the law required only one working brake light. Nevertheless, it found the officer's mistake of law reasonable because the code was "counterintuitive and confusing." *Id.* at 1001.

> [T]his tribal code provision, with its odd reference to "*a* stop light" in working order, is entitled "STOP *LIGHTS*," and further provides that "[s]uch stop *lights* to be automatically controlled by brake adjustment." We recognize that a close textual analysis might explain the use of the plural in the heading and second sentence, while still making sense of a singular requirement in the first sentence, but we think the level of clarity falls short of that required to declare [the officer's] belief and actions objectively unreasonable under the circumstances.

Id. at 100-02; *accord Brown*, 2014 WI 69, ¶¶108-09 (Roggensack, J., dissenting) (reasonable to interpret "'good working order'" requirement to mandate that "every panel in a tail lamp . . . be lit" given that "individual panels of a tail lamp generally function together as a unitary device" and "an unlit panel might impair the function of the lamp").

In *United States v. Southerland*, 486 F.3d 1355 (D.C. Cir. 2007), Washington, D.C. police officers stopped a Maryland driver because his front license plate was positioned on the dashboard instead of the front bumper. 486 F.3d at 1357-58. Maryland law required vehicles to have license plates "'on the front,'" "'[i]n a horizontal position,'" "'securely fastened,'" and "'clearly visible.'" *Id.* at 1359 (citations omitted). Adding these requirements together, the officers concluded that Maryland law required the front plate to be attached to the front bumper. *Id.* at 1357-58. Although the D.C. Circuit disagreed with their interpretation, it upheld the

stop because the mistake of law was "objectively reasonable" in light of the Maryland statute's complex of discrete requirements for the proper display of front license plates. *Id.* at 1359.

In contrast to *Heien*, *Martin*, and *Southerland*, courts have found some law enforcement interpretations of statutes to be both erroneous *and objectively unreasonable*. An officer's mistake of law may be unreasonable if it is inconsistent with prior court decisions, is plainly unsupported by the language of the statute, or is based solely on the officer's belief of what the law should be, rather than what it actually is. These cases reiterate that an officer's mistake must be *objectively reasonable* to justify a stop.

In *United States v. Lopez-Valdez*, 178 F.3d 282, 284-85 (5th Cir. 1999), a state trooper's understanding of the law was directly contrary to an earlier court decision. He stopped a car because its "right taillight had a hole in its lens cover and that the taillight emitted both red and white light," which he believed was an infraction. However, ten years earlier, the Texas Criminal Court of Appeals had held that "a broken lens causing a taillight to emit both red and white light does not constitute an offense and as such could not serve as the basis for a traffic stop." *Id.* at 285 (summarizing *Vicknair v. State*, 751 S.W.2d 180 (Tex. Crim. Ct. App. 1986)). The Fifth Circuit easily found that the trooper's mistake of law was not reasonable. "Ten years after *Vicknair*, no well-trained Texas police officer could reasonably believe that white light appearing with red light through a cracked red taillight lens

constituted a violation of traffic law." *Id.* at 289. *Cf. Brown*, 2014 WI 69, ¶110 (Roggensack, J., dissenting) (mistake of law reasonable where supported by unpublished appellate decision).

Even absent court precedent, an officer's interpretation may be unreasonable when it is unsupported by plain statutory language. In *United States v. Cole*, 948 F.Supp.2d 1251 (W.D. Wash. 2013), for example, a National Park Service Ranger stopped a truck driving through Olympic National Park with its left turn signal on for one quarter of a mile (ten to fifteen seconds of driving time) without turning left. The ranger cited the driver for "Improper Use of a Turn Signal," and justified the stop on that improper use. *Id.* at 1254. The court found that the stop was based on an unreasonable mistake of law because "the alleged infraction, having a turn signal on without turning, was simply not a violation of [Washington's negligent driving] law." *Id.* at 1255; *accord United States v. Miller*, 146 F.3d 274, 278 (5th Cir. 1998) (unreasonable to infer from statutory provisions requiring vehicles to be equipped with working lights that leaving left turn signal on without turning left or changing lanes is a traffic violation).

An officer's mere belief about what a statute *should* but does not say is an unreasonable basis for a stop. In *United States v. Washington*, 455 F.3d 824 (8th Cir. 2006), an officer stopped a vehicle with a long horizontal crack across the windshield at eyelevel. He believed the crack violated Nebraska's vision obstruction statute, which prohibits hanging objects inside a vehicle that obstruct the driver's

vision. *Id.* at 826. The crack did not violate the obstruction provision or any other Nebraska law. The trial court found that the officer's mistake was reasonable, observing that it was reasonable for him to believe that such a crack "'*would* be a violation of the traffic laws'" even if it was not. *Id.* at 826 (emphasis added).

The Eighth Circuit held that the officer's mistake of law was unreasonable because the statute "*clearly* does not prohibit the conduct Officer Antoniak thought it did." *Id.* at 827 (emphasis added); *accord J.D.I. v. State*, 77 So.3d 610, 621 (Ala. Crim. App. 2011). The appeals court was especially critical of the lower court's comment that, even if the cracked windshield was not a legal violation, it should be. "The concept of an objectively reasonable mistake of law cannot be so unmoored from actual legal authority." *Washington*, 455 F.3d at 828. In the absence of statutory ambiguity, "officers cannot act upon misunderstandings of clear statutes or, worse yet, their own notions of what the law ought to be." *Id.*

Amici ask this Court to affirm the North Carolina Supreme Court. Its decision that an objectively reasonable mistake of law may be considered among the totality of the circumstances in a reasonable-suspicion analysis is consistent with this Court's Fourth Amendment jurisprudence. The case law in this area demonstrates that courts do not have a problem applying a "reasonable mistake of law" standard in a fair, logical, and consistent manner.

II. THE "IGNORANCE OF THE LAW IS NO DEFENSE" DOCTRINE AND THE RULE OF LENITY ARE INAPPOSITE.

With minimal analysis, Heien recruits two ancient legal doctrines to support his core contention that mistakes of law by police officers are per se unreasonable under the Fourth Amendment. Those doctrines are the maxim that "ignorance of the law is no excuse" and the rule of lenity. Heien's arguments have a surface appeal, but no more than that. Heien does not go beyond the bare recitation of these rules to explain why they should be transplanted into the reasonable-suspicion analysis. The policies animating these rules have little parallel in the traffic stop context, and employing them here will not achieve their underlying goals.

The common law doctrine that "ignorance of the law is no excuse" is universally admitted to be a legal "fiction, because no man can know all the law." *Hale v. Morgan*, 584 P.2d 512, 517 (Cal. 1978). It was originally premised "on the fact that most common law crimes were *malum in se*. Seen as 'inherently and essentially evil' . . . ignorance of the prohibition of such crimes was simply untenable." *Miller v. Commonwealth*, 492 S.E.2d 482, 485 (Va. Ct. App. 1997) (quoting *Black's Law Dictionary* 959 (6th ed. 1990)). The doctrine applies less comfortably to *malum prohibitum* crimes, *i.e.*, "acts that are 'wrong because prohibited,' not by virtue of their inherent character." *Id.* (quoting *Black's* at 960). Regardless, the doctrine is assumed to promote

the citizenry's knowledge of both categories of crime. *Id.*

In modern times, the fiction is maintained "largely for pragmatic purposes." *Id.* "'If ignorance of the law were an excuse, laws would be applied willy-nilly depending upon the individual's legal knowledge; the result would be legal chaos and there would be no rule of law at all.'" *Wiard v. Liberty Northwest Ins. Corp.*, 79 P.3d 281, 287 (Mont. 2003) (citation omitted); *accord State v. Western Union Tel. Co.*, 97 A.2d 480, 494 (N.J. 1953).

> The rule rests on public necessity; the welfare of society and the safety of the state depend upon its enforcement. If a person accused of a crime could shield himself behind the defense that he was ignorant of the law which he violated, immunity from punishment would in most cases result. No system of criminal justice could be sustained with such an element in it to obstruct the course of its administration.

People v. Noori, 39 Cal. Rptr. 3d 153, 163 (Cal. Ct. App. 2006); *accord Burggraff v. Baum*, 720 A.2d 1167 (Me. 1998) ("'Ignorance of the law is no excuse in any country. If it were, the laws would lose their effect, because it can always be pretended.'") (quoting Letter from Thomas Jefferson to Andre Limozin, December 22, 1787, *reprinted in Papers of Thomas Jefferson* 451 (Julian P. Boyd ed. 1955)).

Heien argues that this maxim should apply, by analogy, to mistakes of law by police officers making traffic stops (Pet'r's Br. at 17). Although superficially plausible, the argument fails because it ignores the reason for the ignorance-of-the-law doctrine. In its modern form, the fiction is a bulwark against legal chaos. Without it, each citizen would be subject only to the unique set of laws she knows apply to her, and "criminal statutes would be in suspense on any point not authoritatively settled." *United States v. Barker*, 546 F.2d 940, 965 (D.C. Cir. 1976). Arguably, that alternative system would be fairer to the individual. But we have rejected that alternative. Our system "preserv[es] a community balance," which, as Justice Holmes explained, recognizes "that 'justice to the individual is rightly outweighed by the larger interests on the other side of the scales.'" *Id.* at 964 (quoting Oliver Wendell Holmes, *The Common Law* 48 (1881)). In this balance, the burden of ignorance is placed on the individual defendant.

When the ignorance-of-the-law doctrine is considered and recognized as a legal fiction that strikes an uncomfortable but necessary balance between absolute fairness to the individual and the general needs of society, it becomes clear that it cannot be easily called from its own circumscribed habitat to answer legal questions in unrelated settings. The concerns underlying the doctrine have little place in the circumstances leading to and surrounding a traffic stop.

First, and most obviously, extending the doctrine to traffic stops does not further the pragmatic

concerns underlying the doctrine. The doctrine relieves the prosecution of having to prove, beyond a reasonable doubt, a criminal defendant's actual personal knowledge of the law she is accused of violating. It is essentially a trial tool that eliminates what could be an insurmountable obstacle to proving the defendant's criminal liability. Criminal liability is not at issue during a traffic stop. A street or highway is not a court of law in which the guilt of the driver (or, for that matter, the officer) is to be proved. The question is simply whether an officer has an articulable basis, grounded in reasonable suspicion, for stopping a moving vehicle.

Second, extending the doctrine to traffic stops is unnecessary to promote officers' knowledge of the law. As set forth in the first section of this brief, courts upholding traffic stops premised on mistakes of law have done so only where the underlying statute was "counterintuitive and confusing." *Martin*, 411 F.3d at 1001. The officers in those cases were not ignorant of the law. They were aware of the statutes they purported to enforce, and believed they were enforcing them correctly. The problem was that the statutes were obscure in some way and misinterpreted by the officers. *See*, *e.g.*, *id.* It is safe to assume that, after each of these incidents, the court's statutory clarification was incorporated into the jurisdiction's police training programs. Any subsequent repetition of an adjudicated mistake of law could not, of course, be deemed "reasonable." *See Lopez-Valdez*, 178 F.3d at 289.

Third, just as the ignorance-of-the-law doctrine places the burden of legal knowledge on the defendant,[2] the burden of legal knowledge is on the government when traffic stops are litigated. The State is not required to prove that a defendant had actual knowledge that her actions constituted a crime. However, the State is required to prove that its traffic stops are reasonable, and that the grounds for those stops are either a correct interpretation of the law or an objectively reasonable (if mistaken) interpretation of the law. *See United States v. Delfin-Colina*, 464 F.3d 392, 400 (3d Cir. 2006). This proof typically requires the officer who made the stop to testify in court and articulate his reasons for stopping the defendant. *See id.* at 394. An arresting officer knows he will be required to testify if the defendant challenges the stop or any ensuing searches or seizures. The necessity of appearing in court to justify his actions and identify the legal basis for the stop is a significant protection against police carelessness, lawlessness, or deliberate ignorance.

Finally, allowing for reasonable mistakes of law strikes a balance comparable to that expressed by Justice Holmes. On one side is the individual and on the other society as a whole. A traffic stop of an individual may lead to a criminal prosecution. If the stop was based on a mistake of law, the individual can challenge the stop in court. If the mistake was objectively reasonable, the stop will be upheld and

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[2]Amici concede that this burden might be better characterized as an "irrebuttable presumption."

the individual may eventually be convicted of a crime he actually committed. Thus, "'justice to the individual is rightly outweighed by the larger interests on the other side of the scales.'" *Barker*, 546 F.2d at 964. The balance ensures accountability from both sides—guilty defendants will be convicted and the State will be limited to constitutionally reasonable practices. To require scholarly perfection from officers, as Heien demands, would upset, not preserve, this balance. *See Powell*, 428 U.S. at 539-40 (White, J., dissenting) (punishing objectively reasonable acts "'can in no way affect [an officer's] future conduct unless it is to make him less willing to do his duty'").

For all these reasons, Heien's ignorance-of-the-law argument should be rejected. Heien's analogy to the rule of lenity fares no better.

The rule of lenity dates back to Early Modern England, when most felonies carried the death penalty. *State v. Hearn*, 797 N.W.2d 577, 585 (Iowa 2011); *City of Seattle v. Winebrenner*, 219 P.3d 686, 694-95 (Wash. 2009) (en banc) (Madsen, J., concurring). The rule was intended to mitigate the harsh effects of the criminal law by limiting the circumstances in which capital punishment could be imposed. *See id.* It was adopted by this Court in *United States v. Wiltberger*, 18 U.S. (5 Wheat.) 76, 95 (1820). Writing for the Court, Chief Justice John Marshall noted that the rule was historically "founded on the tenderness of the law for the rights of individuals." *Id.*

In American practice, the original impetus for the rule of lenity has given way to two distinct but related concerns. First, its application is intended to "ensure that criminal statutes will provide fair warning concerning conduct rendered illegal." *Liparota v. United States*, 471 U.S. 419, 427 (1985). As explained by Justice Holmes:

> Although it is not likely that a criminal will carefully consider the text of the law before he murders or steals, it is reasonable that a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed. To make the warning fair, so far as possible the line should be clear.

McBoyle v. United States, 283 U.S. 25, 27 (1931); *accord United States v. Bass*, 404 U.S. 336, 348 (1971); *United States v. Ashurov*, 726 F.3d 395, 402 (3d Cir. 2013).

The second modern concern underlying the rule of lenity comes from separation of powers. Chief Justice Marshall first noted this function in *Wiltberger*: "[T]he plain principle [is] that the power of punishment is vested in the legislative, not in the judicial department. It is the legislature, not the Court, which is to define a crime, and ordain its punishment." *Wiltberger*, 18 U.S. at 95; *accord Liparota*, 471 U.S. at 427 (rule of lenity "strikes the appropriate balance between the legislature, the prosecutor, and the court in defining criminal liability"); *Bass*, 404 U.S. at 348 ("because criminal

punishment usually represents the moral condemnation of the community, legislatures and not courts should define criminal activity"); *United States v. Manzo*, 636 F.3d 56, 65 n.8 (3d Cir. 2011).

While considering these two goals of the rule, it is also important to remember the context in which the rule is implemented. It is used by judges in criminal prosecutions to interpret ambiguous penal statutes. "More specifically the rule of lenity comes into play after two conditions are met: (1) the penal statute is ambiguous; and (2) we are unable to clarify the intent of the legislature by resort to legislative history." *State v. Cole*, 663 N.W.2d 700, 714-15 (Wis. 2003). Only when it cannot decide whether the harsher or milder construction of a statute is the correct one will the court apply the rule of lenity and interpret the statute in the defendant's favor. *Id.*

The rule of lenity does not clarify the analysis of traffic stops based on reasonable mistakes of law in any useful way.

First, the rule of lenity is a canon of statutory construction employed by judges to fulfill their constitutional function of declaring what the law is. *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 194 (1978) ("'It is emphatically the province and duty of the judicial department to say what the law is.'") (quoting *Marbury v. Madison*, 1 Cranch 137, 177, 2 L.Ed. 60 (1803)). It is not a tool for police officers and state troopers in the field making quick determinations about whether drivers are violating the traffic laws. These officers should be well-versed

and trained in the laws they are employed to enforce. But they cannot be expected to apply judicial canons of statutory construction to those laws.

Second, the rule of lenity protects a person from criminal liability when, because of a statute's unclear directives, he has not "received fair warning concerning conduct rendered illegal." *Liparota*, 471 U.S. at 427. This protection keeps the person free from prison, fines, and other criminal penalties for committing acts that he could not have reasonably known were against the law. This policy has no parallel in the traffic stop context. If a traffic stop is based on an officer's reasonable mistake in interpreting an unclear statute, the driver is not subject to any criminal liability pursuant to the unclear statute or the officer's misinterpretation of it. Granted, the officer's mistake may be the first in a series of events that end in criminal liability. But that liability will arise from crimes actually committed by the defendant, not from the officer's mistake of law in making the traffic stop. *Cf. New York v. Harris*, 495 U.S. 14, 18-19 (1990) (probable cause arrest following warrantless home entry is lawful, and statements made after arrest admissible despite unconstitutional entry).

Finally, the separation of powers purpose underlying the rule of lenity is not served by forcing this analogy on traffic stops based on objectively reasonable mistakes of law. Emphasizing that it is the function of the legislature, not the judiciary, to create crimes, the rule of lenity ensures that both branches perform their jobs properly. *See Wiltberger*,

18 U.S. at 95. On the one hand, it ensures that the courts will not recognize crimes that do not exist just because they seem like a good idea. *Cf. Washington*, 455 F.3d at 826. On the other hand, it reminds the legislature that criminal statutes must be written with precision and clarity. 3 Norman Singer et al., *Sutherland Statutory Construction*, § 59.4 (7th ed. 2012). The rule of lenity is often expressed as "requir[ing] a court to resolve ambiguities in a defendant's favor." *See*, *e.g.*, *State v. Williams*, 326 P.3d 1070, 1074 (Kan. 2014). The flipside of that is that these ambiguities will be decided *against the legislature*. *See McBoyle*, 283 U.S. at 27; Singer, *supra*, §§ 59:3-4 (rule of lenity puts burden on legislature).

An officer reasonably but erroneously interpreting a confusing or unclear statutory directive may be at the mercy of faulty legislative draftsmanship. Where, as in this case, one trial judge and two layers of appellate court judges cannot agree on the meaning of a statute, it makes no sense to recruit the spirit of the rule of lenity to invalidate the traffic stop. By carefully construing a statute and trying to divine legislative intent, courts do their job of saying what the law is. If, as happened here, the statutory meaning was obscure or irrational, the legislature did not do its job of drafting clear, understandable legislation. The blame should not be placed on the officer who was trying to do his job in a reasonable manner.

Indeed, where the problem is faulty legislative draftsmanship, the spirit and logic of *Krull*, *Davis*,

and *DeFillippo* (*see supra* at 9-11), not the rule of lenity, provide persuasive authority. In *Krull* and *Davis*, this Court concluded that searches and seizures authorized by police reliance on a law later declared unconstitutional or an appellate precedent later overturned are not subject to the exclusionary rule. *See Davis*, 131 S. Ct. at 2429; *Krull*, 480 U.S. at 349-50. In *DeFillippo*, an arrest based on an ordinance later declared unconstitutional did not violate the Fourth Amendment. *DeFillippo*, 443 U.S. at 37-40. Analogously, a traffic stop does not violate the Fourth Amendment where an officer reasonably but erroneously interprets a statute that a court subsequently construes differently.

For all these reasons, this Court should decline Heien's invitation to interpret the question presented today through the lens of the rule of lenity. Like the ignorance-of-the-law doctrine, the rule of lenity is simply inapposite to how a police officer in the field determines whether he has the reasonable suspicion necessary to stop a moving vehicle.

III. THIS COURT SHOULD CLARIFY THAT ONLY REASONABLE SUSPICION IS REQUIRED TO JUSTIFY A TRAFFIC STOP.

The North Carolina Supreme Court's mistake-of-law analysis presumes that traffic stops need only be justified by reasonable suspicion. Its core insight is that a bright-line rule precluding consideration of an

officer's objectively reasonable mistake of law is "inconsistent with the rationale underlying the reasonable suspicion doctrine." 737 S.E.2d at 357. "Such a rule would insert rigidity into a fluid concept, which we think inappropriate." *Id.* at 358.

Not all jurisdictions employ the reasonable suspicion standard for every traffic stop. Three jurisdictions use a two-tiered standard of justification, requiring a showing of reasonable suspicion for some stops and a probable cause showing for others. At least two jurisdictions require a showing of probable cause for all traffic stops. Meanwhile, the vast majority of state courts and nearly all federal courts of appeal have adopted a single reasonable suspicion standard for all traffic stops. In the interest of nationwide consistency, and clarity in the judicial treatment of traffic stops based in part on mistakes of law, amici urge this Court to take this opportunity to clarify that reasonable suspicion is a sufficient basis under the Fourth Amendment to justify any traffic stop.

Jurisdictions that employ a two-tiered standard of justification distinguish between traffic stops that require investigation from those that do not. If a law enforcement officer sees a statutory traffic violation (*e.g.*, speeding) committed in his presence, he has no need to investigate to ascertain whether that violation has occurred. In those circumstances, the stop of the speeding driver must be based on probable cause. *See State v. Longcore*, 594 N.W.2d 412, 416 (Wis. Ct. App. 1999), *aff'd by evenly divided court*, 629 N.W.2d 785 (Wis. 2001). In contrast, if an

officer sees suspicious activity suggesting that a traffic violation or crime might be taking place (*e.g.*, a car is weaving between lanes and moving very slowly), further investigation is needed to determine whether the driver is violating the traffic laws or committing a crime. In those circumstances, the stop may be based on reasonable suspicion. *See id.*

The Supreme Court of Pennsylvania adopted the following articulation of the dichotomy:

> If reasonable suspicion exists, but a stop cannot further the purpose behind allowing the stop, the "investigative" goal as it were, it cannot be a valid stop. Put another way, if the officer has a legitimate expectation of investigatory results, the existence of reasonable suspicion will allow the stop—if the officer has no such expectations of learning additional relevant information concerning the suspected criminal activity, the stop cannot be constitutionally permitted on the basis of mere suspicion[, but requires probable cause].

Commonwealth v. Chase, 960 A.2d 108, 115 (Pa. 2008); *accord State v. Tyler*, 830 N.W.2d 288, 293, 297-98 (Iowa 2013).

Some courts go even further than the *Longcore*-type cases, and hold that probable cause is the single uniform standard for all traffic stops. *See Lloyd v. Commonwealth*, 324 S.W.3d 384 (Ky. 2010); *State v.*

Matthews, 884 P.2d 1224, 1225-26 (Or. 1994) (en banc).

The foregoing case law is inconsistent with the overwhelming weight of authority on this question. The contrary conclusion (that reasonable suspicion provides the necessary and sufficient basis for a traffic stop) has been reached by this Court implicitly and the vast majority of federal and state appellate courts explicitly.

Several decisions of this Court support the conclusion that the reasonable suspicion standard enunciated in *Terry v. Ohio*, 392 U.S. 1 (1968), is the standard applicable to traffic stops. In deciding that police questioning during an ordinary traffic stop does not constitute "custodial interrogation,"[3] the Court noted that "the usual traffic stop is more analogous to a so-called 'Terry stop,' than to a formal arrest." *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984); *accord Knowles v. Iowa*, 525 U.S. 113, 117 (1998). In a case challenging the right of the United States Border Patrol to stop cars near the Mexican border in order to question occupants about their immigration status, this Court held that such stops require reasonable suspicion drawn from "specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that the vehicles contain aliens who may be illegally in the country." *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975).

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[3]Within the meaning of *Miranda v. Arizona*, 384 U.S. 436 (1966).

Nearly[4] every federal circuit court to consider the issue has concluded that reasonable suspicion is the minimum applicable standard for traffic stops and that probable cause is not required. *See id.* (collecting cases); *United States v. Fox*, 393 F.3d 52, 59 (1st Cir. 2004), *cert. granted and decision vacated on other grounds*, 545 U.S. 1125 (2005); *Smith v. City of Chicago*, 242 F.3d 737, 742-43 (7th Cir. 2001); *United States v. Hill*, 131 F.3d 1056, 1059 (D.C. Cir. 1997). So have the majority of state courts. *See*, *e.g.*, *People v. James*, 358 N.E.2d 88, 92 (Ill. App. Ct. 1976); *Hutton v. Townsend*, 213 N.W.2d 320, 324 (Mich. App. Ct. 1973); *State v. Barber* 241 N.W.2d 476, 477 (Minn. 1976); Wayne R. LaFave, *Search and Seizure* § 9.3(a) n.20 (5th ed. 2012) (collecting cases).

As these authorities agree, *Terry* forms the most appropriate standard for traffic stops. Amici concede that, in some instances, the "investigatory" function underlying *Terry* may be absent. *See*, *e.g.*, *Longcore*, 594 N.W.2d at 416. However, the two most distinctive characteristics of the typical traffic stop resonate with *Terry*.

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[4]Except the Sixth Circuit, which has taken a unique approach to the question. *See Hoover v. Walsh*, 682 F.3d 481, 493 (6th Cir. 2012) ("We previously have held that a traffic stop is justified when a police officer has reasonable suspicion of an ongoing crime or a completed felony or when he has probable cause to believe that a civil traffic violation has been committed.").

A key purpose of a *Terry* stop is to allow law enforcement "to maintain the status quo momentarily." *Adams v. Williams*, 407 U.S. 143, 146 (1972). The need to maintain the status quo is especially important on the roads and highways. After all, a car is literally a moving target. *See People v. Glick*, 250 Cal. Rptr. 315, 319 (Cal. Ct. App. 1988) (noting "the inherent transient nature of automobiles"). An officer who observes a vehicle moving down the road in a manner indicating or suggesting a traffic violation or crime may forever lose his opportunity to halt or investigate the infraction if he does not stop the vehicle immediately.

Another feature shared by the typical *Terry* stop and the usual traffic stop is their brevity. As this Court wrote in *Berkemer*, "most traffic stops resemble, in duration and atmosphere, the kind of brief detention authorized in *Terry*." *Berkemer*, 468 U.S. at 440 n.29. They are

> presumptively temporary and brief. The vast majority of roadside detentions last only a few minutes. 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 will most likely to be allowed to continue on his way.

Id. at 437.

This Court has observed several times over the years that a typical traffic stop is like a *Terry* encounter, but has never expressly stated that reasonable suspicion provides the legal basis for all traffic stops. Although most jurisdictions have already reached this conclusion, a small minority hold that reasonable suspicion is an insufficient basis for some or all traffic stops, and that the higher standard of probable cause is sometimes or always required by the Fourth Amendment. To ensure that the Court's answer to the question presented in the present case is applied predictably and uniformly in all jurisdictions, amici ask the Court to take this opportunity to clarify definitively that reasonable suspicion is the necessary and sufficient legal basis for all traffic stops.

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Respectfully submitted,

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