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 OF *AMICI CURIAE* – PROFESSORS CHARLES E. MACLEAN & ADAM LAMPARELLO IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*

Amici Charles E. MacLean and Adam Lamparello[1] are assistant professors at Indiana Tech Law School in Fort Wayne, Indiana. They teach and write in the areas of criminal law, criminal procedure, and constitutional law, and have an interest in the sound development of the law in this area. *Amici* believe that mistakes of law do not—and cannot—provide a basis upon which to support a showing of reasonable suspicion.

Together or separately, *Amici* have written a number of articles in the Fourth Amendment context.[2] In addition, *Amici* recently filed with this

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1 All parties have consented to the filing of this amicus brief. No counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the amici curiae, their law school, or their counsel made a monetary contribution to its preparation or submission.

2 Adam Lamparello & Charles E. MacLean, *Back to the Future: Returning to Reasonableness and Particularity under the Fourth Amendment*, 99 IOWA L. REV. BULL. 101 (2014); Charles E. MacLean & Adam Lamparello, *Abidor v. Napolitano: Suspicionless Cell Phone and Laptop "Strip" Searches at the Border Compromise the Fourth and First Amendments*, 108 NW. U. L. REV. COLLOQUY 280 (2014); Charles E. MacLean, *Katz on a Hot Tin Roof: The Reasonable Expectation of Privacy Doctrine is Rudderless in the Digital Age Unless Congress Continually Resets the Privacy Bar*, 24 ALB. L.J. SCI. & TECH. 47 (2014); Charles E. MacLean, *But Your Honor, A Cell Phone is Not a Cigarette Pack: An Immodest Call for a Return to the Chimel Justifications for Searches of Cell Phone Memories Incident to Lawful Arrest*, 6 FED. CTS. L. REV. 37 (2012).

Court an amicus brief[3] that involved the constitutionality of searches of an arrestee's cell phone incident to arrest.

3 *Riley v. California* & *United States v. Wurie*, Brief of *Amici Curiae* Professors Charles E. MacLean & Adam Lamparello, Nos. 13-132, 13-212, 2014 WL 985093 (U.S. Mar. 10, 2014).

SUMMARY OF ARGUMENT

Reasonable suspicion of unlawful activity cannot be predicated on conduct that does not violate the law. Put differently, if reasonableness—or reasonable suspicion—is to mean anything, it means that apparent violations of the law must be based on actual violations of the law. The North Carolina Supreme Court's decision sends a message to drivers throughout the country that they cannot be wrong about what the law requires, even where law enforcement is wrong—dead wrong—about what the law proscribes.

Of course, innocent conduct may appear to be suspicious on some level but if the conduct giving rise to the suspicion is not prohibited by law, then reasonable suspicion of *unlawful* activity is not present. Indeed, if the reasonable suspicion standard is to meaningfully deter unlawful police conduct—and protect motorists from arbitrary deprivations of liberty—it should require that those responsible for enforcing the law must themselves comply with the law. That means knowing the difference between what the law prohibits and permits, particularly where that distinction is the foundation upon which an unsuspecting motorist can be seized, searched, and possibly arrested.

In North Carolina, for example, an officer should know that the law requires drivers to have one, not two, functioning rear stop lamps.[4] Where, as here, an

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[4] N.C. GEN. STAT. § 20-129(g) (emphasis added).

officer erroneously believed that two stop lamps were required, relied solely on that mistaken belief to stop, search, and ultimately arrest a motorist, the officer acted unreasonably because reasonable suspicion of *unlawful* conduct never existed. In holding that no Fourth Amendment violation occurred, the North Carolina Supreme Court's decision allows an officer's mistake of law—and purely innocent conduct—to establish objectively reasonable suspicion of unlawful conduct.

The court reached the wrong result. Law enforcement officers should be held to the same standard as ordinary citizens and not be permitted to benefit from a defense—ignorance of the law—that no criminal defendant may invoke, that tips the balance too far in law enforcement's favor, and that excuses an officer's mistake at the expense of an individual's Fourth Amendment rights. After all, our justice system should be characterized by fairness and equality, not arbitrariness and subjectivity.

Thus, reasonable *legal* justifications, not merely reasonable beliefs, should be required before a motorist is deprived of liberty. This is certainly not too much to ask of law enforcement, as the protection of public safety, the public's confidence in law enforcement, and the efficient administration of the law depends on officers knowing the difference between right and wrong.

Accordingly, *Amici* respectfully suggest that the Court adopt the following bright-line rule: Mistakes of law are unreasonable under the Fourth Amendment and cannot support a finding of reasonable suspicion for a vehicle stop unless there is

an adequate and independent legal basis to justify the stop.

As discussed below, a case-by-case approach in the absence of a bright line rule would fail to guide law enforcement or adequately protect citizens from unlawful police conduct. It would force lower courts to analyze factors such as the seriousness of an officer's mistake, whether an existing law is susceptible to different interpretations, and the likelihood that innocent conduct can reasonably be perceived as violating the law. This would result in an unworkable jurisprudence that fails to shield innocent conduct from the watchful eyes of law enforcement officers and fails to protect motorists from arbitrary deprivations of liberty.

For these reasons, the North Carolina Supreme Court's decision should be reversed.[5] If citizens are presumed to know and required to obey the law, those responsible for ensuring their safety should not be held to a lower standard. Ignorance of the law is no excuse. Mistakes of law are *ipso facto* unreasonable.[6]

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5 *See State v. Heien*, 737 S.E.2d 351 (N.C. 2013).

6 *See Barlow v. United States*, 32 U.S. (7 Pet.) 404, 411 (1833) (Justice Story noting in his opinion for the Court the "common maxim, familiar to all minds, that ignorance of the law will not excuse any person, either civilly or criminally"); *see also Bryan v. United States*, 524 U.S. 184, 196 (1998) ("traditional rule that ignorance of the law is no excuse"); *Cheek v. United States*, 498 U.S. 192, 199 (1991) ("The general rule that . . . a mistake of law is no defense to criminal prosecution is deeply rooted in the American legal system"); *United States v. Hodson*, 77 U.S. (10

ARGUMENT

I. MISTAKES OF LAW ARE NEITHER REASONABLE NOR CONSTITUTIONALLY-PERMISSIBLE BASES FOR REASONABLE SUSPICION.

The "[t]emporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a 'seizure' of 'persons' within the meaning of [the Fourth Amendment]." *Whren v. United States*, 517 U.S. 806, 809-10 (1996) (brackets added).

As such, law enforcement officers must have reasonable suspicion of unlawful activity before initiating a traffic stop. *See United States v. Valentine,* 232 F.3d 350, 353 (3d Cir. 2000) ("an officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot") (quoting *Illinois v. Wardlow,* 528 U.S. 119, 123 (2000)); *see also Terry v. Ohio*, 392 U.S. 1, 21 (1968) ("the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion"); *United States v. Cortez,* 449 U.S. 411, 417–18 (1981) (law enforcement "must have a particularized and

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Wall.) 395, 409 (1870) ("Everyone is presumed to know the law").

objective basis for suspecting the particular person stopped of criminal activity"); *United States v. Thomas,* 211 F.3d 1186, 1189 (9th Cir. 2000) (reasonable suspicion requires "a particularized and objective basis for suspecting the particular person stopped of criminal activity").[7]

The law recognizes three types of mistakes: (1) pure mistakes of law; (2) mistaken interpretations of law; and (3) mistakes of fact. Of those three, a defendant may only invoke mistake of fact as a defense to a criminal charge. Law enforcement officers may also rely on reasonable mistakes of fact to justify a traffic stop.

No defendant, however, may rely on mistake or ignorance of the law as a defense. Law enforcement officers should not be afforded this luxury either, because the principles that permit traffic stops despite mistakes of fact do not exist in the context of pure mistakes, or mistaken interpretations, of the law.

A. Pure Mistakes of Law Are *Per Se* Unreasonable.

A pure mistake of law exists where law enforcement bases suspicion on conduct that the law does not proscribe. For example, if a State changes

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[7] The Court has also held that "the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." *Whren*, 517 U.S. at 810. Under either formulation, the officer's conduct in this case was unreasonable.

the speed limit from 55 to 65 miles per hour, stopping a driver for going 61 miles per hour would be a pure mistake of law. Reasonable suspicion that "criminal activity is afoot" does not exist because the stop was not predicated on the violation of any law, particularly the law that the officer relied on to stop the vehicle. *Wardlow*, 528 U.S.at123; *see also United States v. McDonald*, 453 F.3d 958, 960-62 (7th Cir. 2006) ("[a]n officer cannot have a reasonable belief that a violation of the law occurred when the acts to which an officer points as supporting probable cause are not prohibited by law"); *United States v. Tibbetts*, 396 F.3d 1132, 1138 (10th Cir. 2005) ("[f]ailure to understand the law by the very person charged with enforcing it is not objectively reasonable"); *United States v. Mariscal*, 285 F.3d 1127, 1130 (9th Cir. 2002) ("[i]f an officer simply does not know the law, and makes a stop based upon objective facts that cannot constitute a violation, his suspicions cannot be reasonable").

The majority of circuit courts agree, holding that such conduct violates the Fourth Amendment. *See, e.g., United States v. Coplin*, 463 F.3d 96, 101 (1st Cir. 2006), *cert. denied*, 549 U.S. 1237 (2007) ("[s]tops premised on a mistake of law . . . are generally held to be unconstitutional"); *United States v. Mosley*, 454 F.3d 249, 260 n.16 (3d Cir. 2006) ("[u]nlike a reasonable mistake of fact, a mistake of law negates reasonable suspicion and renders the stop illegal"); *United States v. Miller*, 146 F.3d 274, 277-79 (5th Cir. 1998) ("*Whren* provides … officers broad leeway to conduct searches and seizures … regardless of whether their subjective intent

corresponds to the legal justifications for their actions. But the flip side of that leeway is that the legal justification must be objectively grounded") (citing *Whren*, 517 U.S. at 813); *United States v. Twilley*, 222 F.3d 1092, 1096 (9th Cir. 2000) ("[i]f an officer makes a traffic stop based on a mistake of law, the stop violates the Fourth Amendment"); *United States v. King*, 244 F.3d 736, 737-38 (9th Cir. 2001) ("[a] vehicle stop is unreasonable and unconstitutional when premised on the officer's mistaken belief that a placard hanging from the rearview mirror was illegal").[8]

Indeed, allowing officers' mistakes of law to justify vehicle stops "would remove the incentive for police to make certain that they properly understand the law that they are entrusted to enforce and obey." *United States v. Lopez-Soto*, 205 F.3d 1101, 1106-07 (9th Cir. 2000). Consequently, where the government, due to a mistake of law, cannot establish that a traffic law has been violated, "as a matter of law there [is] no objective basis justifying the traffic stop." *United States v. Raney*, 633 F.3d 385, 393-94 (5th Cir. 2011) (brackets added); *United States v. Nicholson*, 721 F.3d 1236, 1245 n.9 (10th Cir. 2013) ("courts make probable cause determinations by assessing the facts against the correct interpretation of the law").

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[8] The only Circuit to hold to the contrary to date has been the Eighth Circuit, which held that a mistake of law does not render a vehicle stop unconstitutional if the officer's mistake was "objectively reasonable." *United States v. Washington*, 455 F.3d 824, 827 (8th Cir. 2006).

Here, the law in North Carolina required drivers of motor vehicles to have "a stop lamp on the rear of the vehicle . . . [that] may be incorporated into a unit with one or more other rear lamps."[9] Petitioner had a working stop lamp on the rear of his vehicle. He complied with the law.

But the officer did not know the law, and testified that he believed the statute required two working stop lamps.[10] This belief was not based on precedent from the North Carolina courts and was contrary to any reasonable reading of the statute's plain language. *See Twilley,* 222 F.3d at 1092 (stopping a motorist for not displaying two license plates was unreasonable when the law only required one). And the Petitioner's wholly innocent conduct was the sole basis upon which the Petitioner was stopped, searched, and arrested.

In other words, had the officer known that the law required only one rear stop lamp, yet stopped the vehicle anyway, the officer's conduct would have been unlawful. The result should not change and, in fact, applies with more force when the officer lacks such knowledge. After all, if a law enforcement

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9 N.C. GEN. STAT. § 20-129(g) (brackets added).

10 *Amici* submit that a plain reading of the statute demonstrates that the officer's belief was not objectively reasonable. Even though the North Carolina Supreme Court had not previously decided whether the statute requires one or two stoplights, the language *"a* stop lamp on the rear of the vehicle" cannot reasonably be construed as requiring more than a single stop lamp.

officer's subjective beliefs about whether conduct is unlawful can justify the seizure, search, or possible arrest of a person, then the reasonable suspicion standard no longer requires suspicion of unlawful conduct.

That lets law enforcement off the hook for violating the law and allows law-abiding motorists to suffer unreasonable deprivations of liberty—and privacy—based on innocent conduct. *See United States v. Lopez–Valdez*, 178 F.3d 282, 289 (5th Cir. 1999) ("if officers are allowed to stop vehicles based upon their subjective belief that traffic laws have been violated even where no such violation has, in fact, occurred, the potential for abuse of traffic infractions as pretext for effecting stops seems boundless and the costs to privacy rights excessive").

B. Mistaken Interpretations of Law Are Not Sufficient to Establish Reasonable Suspicion of Unlawful Conduct.

The majority of circuit courts agree that mistaken interpretations of the law cannot support a showing of reasonable suspicion. *See Twilley*, 222 F.3d at 1096 ("in this circuit, a belief based on a mistaken understanding of the law cannot constitute the reasonable suspicion required for a constitutional traffic stop").

Unlike a pure mistake of law, a mistaken interpretation of law relates to conduct that the law *may* prohibit, but involves a misunderstanding of the

specific conduct that is prohibited. For example, a state law may prohibit individuals from carrying explosives across state lines. An officer stops a vehicle after seeing a driver with an out-of-state license plate holding two bottle rockets, even though the state Supreme Court previously held that bottle rockets do not fall within the definition of "explosives." In this situation, the officer knew the law generally, but applied it to conduct that was held to be outside of its proscriptions.

The distinction between pure mistakes of law and mistaken interpretations of law can be summarized this way: assuming that the officer's mistaken understanding of the term "explosives" was correct, would there be a violation of law? Yes. With respect to a pure mistake of law, a correct interpretation is not possible because the conduct at issue is not prohibited.

Here, the officer's mistake constituted a pure mistake of law. No reasonable construction of a law requiring "*a* lamp on the rear of the vehicle," would support an interpretation that two stop lamps were required. The stop violated the Fourth Amendment.

The result should not change where an officer mistakenly interprets a law, even if that law is complex, unsettled, or ambiguous, or if the officer is unaware of case law interpreting one or more of its elements. *See Nicholson*, 721 F.3d at 1241 (nothing in our opinion in *Tibbetts* suggests we actually meant to limit this rule only to the mistaken understanding of "plain and unambiguous laws"). In such a situation, officers should exercise caution and clarify any uncertainties before making judgments

that affect the liberty of unsuspecting motorists. After all, law-abiding citizens should not bear the burden of an officer's mistake.

Indeed, if misinterpretations of the law could establish reasonable suspicion of unlawful conduct, the Fourth Amendment's reasonableness requirement—and individual liberty—would be thrust into mercurial waters. Factors such as the extent to which a particular law could be misinterpreted, the likelihood that similarly-situated officers would make the same error, and the context within which the misinterpretation was made, would lead to an uncertain jurisprudence and fails to adequately guide law enforcement. And law enforcement might be a little more aggressive if they knew that the law applies differently to them than it does the citizens they are responsible for protecting. That reduces a vehicle driver's liberty interest to an afterthought—and a recipe for arbitrariness. Thus, a bright-line rule—not a case-by-case approach—strikes the proper balance between the needs of law enforcement and the protection of every individual's right to be free from ungrounded—and unreasonable—suspicion.

Of course, there could conceivably be a handful of laws in the statutory and common-law galaxy that are susceptible to a reasonable misinterpretation by law enforcement. But the Court should not fashion a rule to accommodate an anomaly, just like it should not accommodate unreasonable conduct by those who have the opportunity and obligation to know the law.

C. Mistakes of Fact May, in Some Circumstances, Support a Finding of Reasonable Suspicion.

Mistakes of fact are not *per se* unreasonable. *See United States v. Miguel,* 368 F.3d 1150, 1153 (9th Cir. 2004) ("[a] mere mistake of fact will not render a stop illegal, if the objective facts known to the officer gave rise to a reasonable suspicion that criminal activity was afoot") (quoting *Mariscal,* 285 F.3d at 1131 (brackets in original)).

The difference between a mistake of fact and law is that the conduct in question would have been unlawful if it was consistent with the officer's belief. For example, a law enforcement officer may observe the passenger in a vehicle being attacked by the driver. The officer stops the vehicle, but discovers that the object being attacked was a wax dummy. In this situation, an officer's mistake of fact will not automatically render the search unreasonable. In those same jurisdictions, however, mistakes of law are unreasonable and violate the Fourth Amendment. *See, e.g., United States v. Harrison*, 689 F.3d 301, 309 (3d Cir. 2012) ("[u]nlike a mistake of fact, a search conducted pursuant to a police officer's mistake as to the governing law, even if reasonable, is not permitted under the Fourth Amendment").

This distinction is a sound one. It is one thing to be wrong about facts of which an officer has no prior knowledge, particularly where the officer must make a split-second decision about whether those facts raise a reasonable suspicion of unlawful conduct. It is

quite another to be unaware of or misunderstand the precise conduct that a particular law prohibits, and to base reasonable suspicion on a belief that the individual violated *that specific law*. At bottom, and as the mistake of fact defense demonstrates, the Fourth Amendment does not require law enforcement officers to be perfect. But it does require them to be prepared—and to know the law.

The instant case is illustrative. The officer's mistake resulted from an interpretation that the statute's plain language does not allow. Importantly, however, it is not enough for the Court to hold that *this* officer's conduct was unreasonable, but that in other contexts, an officer's mistake of law *may* be reasonable. As discussed above, such a rule would confuse, rather than clarify, the responsibilities of law enforcement, and compromise, rather than reinforce an individual's Fourth Amendment protections.

II. THE GENERAL PUBLIC SHOULD NOT BE REQUIRED TO KNOW MORE THAN THOSE WHO ENFORCE THE LAW.

The "ignorance of the law is no excuse" maxim originated based on pragmatic concerns that criminals might avoid a conviction by invoking a defense—ignorance of the law—that a defense that "ordinarily could not be refuted."[11]

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11 WAYNE R. LAFAVE & AUSTIN W. SCOTT, SUBSTANTIVE CRIMINAL LAW § 5.1, at 586 (1986); *United States v. Aguilar*, 883 F.2d 662, 673 (9th Cir. 1989) ("[i]t is axiomatic that

That same reasoning applies even more forcefully when an officer stops a vehicle for allegedly violating a law that does not exist or that does not outlaw the driving conduct the officer observed. First, it is unfair and unreasonable to hold an accused driver to a standard ("ignorance of the law is no excuse") incalculably higher than the standard ("a reasonable mistake of law by an officer is an adequate excuse") to which the North Carolina Supreme Court would have officers adhere.

Second, it would be virtually impossible for an accused to refute an officer's claim of mistake of law, thus allowing officers to stop a vehicle for any conduct, innocent or not, and claim the officers believed statutes precluded that conduct. Officers ought not be able to use such mistakes of law—reasonable or not—as a shield against the Fourth Amendment and as a sword against the general public.

Finally, if the law does not *actually* forbid the observed conduct, any vehicle stop that was based on that conduct could not have been based on probable cause or reasonable suspicion that the vehicle driver had violated any traffic law.

As the First, Third, Fifth, Sixth, Seventh, Ninth, Tenth, and Eleventh Circuits held, an officer's mistake of law renders the vehicle stop unreasonable—and unconstitutional.

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ignorance or mistake of law [on the part of an individual accused] is no defense").

III. WHERE LAW ENFORCEMENT MISTAKENLY INTERPRETS THE LAW, REASONABLE SUSPICION CAN ONLY BE JUSTIFIED IF THERE IS AN ADEQUATE, INDEPENDENT, AND LEGITIMATE BASIS FOR THE STOP.

Mistakes of law are rendered irrelevant only where there is an adequate, articulable, and independent basis for the stop.

In *United States v. Delfin-Colina*, the Third Circuit recognized that reasonable suspicion can exist despite mistakes of law where there are independent and articulable bases for the stop. 464 F.3d 392 (3d Cir. 2006). As the Third Circuit held, "a mistake of law is only unreasonable when the officer does not offer facts that objectively show that the identified law was *actually* broken." *Id.* at 399 (emphasis added). The Third Circuit stated as follows:

> [I]n situations where an objective review of the record evidence establishes reasonable grounds to conclude that the stopped individual *has in fact violated the traffic-code provision cited by the officer*, the stop is constitutional even if the officer is mistaken about the scope of activities actually proscribed by the cited traffic-code provision.

Id. (emphasis added).[12]

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12 The Third Circuit went too far, however, in holding that the mere appearance of a violation—where no violation has

Ultimately, the Fourth Amendment's protections against unreasonable searches and seizures, the fundamental guarantee of liberty, and a constitutional structure that constrains, rather than enables, unlawful state conduct, does not yield to the honorable but mistaken intentions of law enforcement. It is, has always been, and should continue to be the other way around.

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occurred—can, if based on an objectively reasonable belief, support a showing of reasonable suspicion. *See id.* ("an officer's Fourth Amendment burden of production is to (1) identify the ordinance or statute that he believed had been violated, and (2) provide specific, articulable facts that support an objective determination of whether any officer could have possessed reasonable suspicion of the alleged infraction"). This view represents the minority position, and for good reason. It allows reasonable suspicion to be triggered not by a violation of law or a mistake of fact, but by an erroneous and unreasonable belief.

CONCLUSION

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

Respectfully submitted,

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