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 FOR THE 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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STATEMENT

This case involves the Fourth Amendment implications of a police stop of a motor vehicle when there is reasonable suspicion that a law has been violated. The Supreme Court of North Carolina held that the officer's reasonable mistake of law, like a reasonable mistake of fact, can provide reasonable suspicion.

1. Early one morning in 2009, Sergeant Matt Darisse of the Surry County Sheriff's Department was observing traffic on Interstate 77 as part of a criminal interdiction operation. (J.A. 13) When he observed a Ford Escort pass by, he pulled out behind the vehicle. (J.A. 15) He noticed that when the Escort approached a slower moving vehicle and applied its brakes, the right-side brake light was out. (J.A. 15) Sergeant Darisse then put on his blue lights. (J.A. 15) A review of the patrol car video confirmed that the Escort's "right brake light was not functioning at the time of the instigation of the stop." (J.A. 4, 16, 28)

Sergeant Darisse had noticed when he put his blue lights on that a passenger — who turned out to be petitioner — "popped his head up" and then went right back down out of sight. (J.A. 16) When Sergeant Darisse approached the vehicle and informed the driver, Maynor Javier Vasquez, that he had been stopped for a non-functioning brake light (J.A. 5), he saw petitioner lying in the back seat. (J.A. 16-17) Petitioner remained in the back seat lying down for much of the stop. The check of the vehicle's registration revealed that the car belonged to petitioner. (J.A. 24)

Sergeant Darisse issued Vasquez a warning ticket for the brake light and explained it to him. (J.A. 22-23) He then asked for and received permission from Vasquez to ask him some more questions, and ultimately asked him if he could search the vehicle for illegal weapons and drugs. (J.A. 24-25) Vasquez indicated that while he did not mind, it was not his car and that Sergeant Darisse would have to ask petitioner. (J.A. 25) Petitioner gave verbal consent to search the vehicle. (J.A. 25, 37)

The search of the vehicle revealed "a cellophane wrapper with a white powder residue" in the door panel on the driver's side and "burnt marijuana seeds in the ashtray." (Pet. App. 3a) The search of a duffel bag located in the "back hatch" area of the Escort revealed approximately two ounces of cocaine. (Pet. App. 3a; J.A. 37-38) Both petitioner and Vasquez were charged with trafficking in cocaine. (Pet. App. 3a)

2. Petitioner filed both a motion to suppress and a later-amended motion to suppress the evidence obtained during the search of his vehicle. (J.A. 3) The trial court denied these motions, concluding in relevant part that Sergeant Darisse "had a reasonable and articulable suspicion that the subject vehicle and the driver were violating the laws of this State by operating a motor vehicle without a properly functioning brake light." (J.A. 8-9)

Petitioner pleaded guilty to two counts of attempted trafficking in cocaine while reserving his right to appeal from the denial of his motion to suppress. (Pet. App. 31a)

3. The North Carolina Court of Appeals reversed the denial of petitioner's motion to suppress, declaring "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)

The opinion analyzed various statutory provisions relevant to the question whether both brake lights on a motor vehicle must be operable, holding that "the malfunction of a single brake light, where a vehicle has at least one functioning brake light, is not a violation of N.C.G.S. § 20-129(g), N.C.G.S. § 20-129(d), or N.C.G.S. § 20-183.3." (Pet. App. 33a) The text of each of these statutes is set out in the Appendix to this brief.

The court of appeals noted the provision in § 20-129(g) that the lawful operation of a motor vehicle "after December 31, 1955" requires a specific type of "stop lamp," and ruled that "[t]he use of the articles 'a' and 'the' before the singular 'stop lamp' throughout N.C.G.S. § 20-129(g) clearly conveys that, under the statute, only *one* stop lamp is required on the rear of the vehicle." (Pet. App. 34a) The court further ruled that language in § 20-129(d) that all "rear lamps" on a vehicle be in good working order did not mean that "all originally equipped *stop*

lamps be in good working order." (Pet. App. 38a) The court then stated that the language in N.C.G.S. § 20-183.3, the State's vehicle safety inspection statute, specifying functioning "[l]ights, as required by" N.C.G.S. § 20-129.1, "does not alter the requirement of N.C.G.S. § 20-129(g) that a vehicle be equipped with *one* brake light." (Pet. App. 38a, 39a)

Even while noting that the statute was "enacted several decades ago" and "retains an antiquated definition of a stop lamp, not reflecting actual vehicle equipment now included in most automobiles," the court of appeals held that "the justification for the stop was objectively unreasonable" and violated petitioner's Fourth Amendment rights because there was no statutory requirement that both brake lights on a motor vehicle be operating properly. (Pet. App. 39a)

4. The Supreme Court of North Carolina granted discretionary review and reversed, declaring that, "[a]fter considering the totality of the circumstances, we hold that Sergeant Darisse's mistake of law was objectively reasonable and that he had reasonable suspicion to stop the vehicle in which defendant was a passenger." (Pet. App. 20a)

The court assumed for purposes of its decision the correctness of the lower court's conclusion that North Carolina's statutes require a motor vehicle to have only one brake light because that "novel issue of statutory interpretation" was not the basis of review sought by the State. (Pet. App. 5a) Instead, the

question presented was whether a vehicular stop is "permissible when an officer witnesses what he reasonably, though mistakenly, believes to be a traffic violation." (Pet. App. 9a) The court characterized the court of appeals' rationale as essentially holding that "a police officer's mistaken belief about the requirements of the substantive traffic law is per se objectively unreasonable." (Pet. App. 6a-7a)

After analyzing decisions from other jurisdictions, the court found the reasoning of the Eighth Circuit to be "compelling" and consistent with the primary command of the Fourth Amendment – that law enforcement agents act reasonably." (Pet. App. 13a) The court held that "[a]n officer may make a mistake, including a mistake of law, yet still act reasonably under the circumstances," and that "requiring an officer to be more than reasonable, mandating that he be perfect, would impose a greater burden than that required under the Fourth Amendment." (Pet. App. 13a) The court further observed that it is "[p]rudent to endorse the reasonable interpretation of our traffic safety laws," particularly when "judged against society's . . . interest in keeping its roads safe" (Pet. App. 14a), and described as "unwise and unwarranted" a requirement that officers "be omniscient" so as to accurately forecast how a reviewing court will interpret a statute. (Pet. App. 16a)

The court noted that not differentiating between the analysis of mistakes of law from mistakes of fact "allows reviewing courts to treat all police mistakes the same," by requiring "not that they always be correct, but that they always be reasonable." (Pet. App. 18a (quoting *Illinois v. Rodriguez*, 497 U.S. 177, 185-86 (1990)). The court found "no constitutional requirement to distinguish between mistakes of fact and mistakes of law in this context" (Pet. App. 18a), and concluded that, based on the totality of the circumstances, "there was reasonable, articulable suspicion to conduct the traffic stop" in this case. (Pet. App. 19a) The court therefore reversed and remanded the case for additional proceedings.

Three justices dissented, asserting that "[t]here is no room for reasonable mistakes of law" under this Court's decision in *Ornelas v. United States*, 517 U.S. 690 (1996) – "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) The dissent acknowledged that there is "no doubt" that the stop of petitioner's vehicle resulted from "a reasonable belief that defendant violated the law by operating a vehicle with one malfunctioning brake light," and characterized the decision by the North Carolina Court of Appeals as "surprising." (Pet. App. 20a) However, the dissent argued that a bright-line rule invalidating stops based on mistakes of law merely asks "that our police be diligent in studying the law" (Pet. App. 26a), declaring that "[p]roper enforcement of the law requires accurate knowledge of the law" (Pet. App. 27a-28a)

5. On remand, the North Carolina Court of Appeals held petitioner's consent to search was valid and affirmed the denial of his motion to suppress. (Pet. App. 42a-61a) The Supreme Court of North Carolina affirmed. (Pet. App. 41a)

SUMMARY OF ARGUMENT

The investigatory stop of petitioner's vehicle complied with the Fourth Amendment because there was reasonable suspicion that the driver was violating a traffic law.

1. The reasonable-suspicion standard looks to the objective reasonableness of an officer's actions, consistent with the essential purpose of the Fourth Amendment to "impose a standard of 'reasonableness' upon the exercise of discretion by government officials." *Delaware v. Prouse*, 440 U.S. 648, 653-54 (1979). In addressing this standard, the Court has "consistently eschewed bright-line rules," *Ohio v. Robinette*, 519 U.S. 33, 39 (1996), and instead has emphasized that the standard "takes into account 'the totality of the circumstances – the whole picture.'" *Naverette v. California*, 134 S. Ct. 1683, 1687 (2014) (quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981)).

As to factual determinations made by officers, the reasonableness standard requires "not that they always be correct, but that they always be reasonable." *Illinois v. Rodriguez*, 497 U.S. 177, 185 (1990). This justification for tolerating reasonable

mistakes of fact applies equally to reasonable mistakes of law made when an officer in the field enforces a counterintuitive and confusing statute, only later to have a court for the first time interpret the statute differently.

Under the common law, "[a] doubt as to the true construction of the law is as reasonable a cause for seizure as doubt respecting the fact." *United States v. Riddle*, 9 U.S. 311, 313 (1809). In *Michigan v. DeFillippo*, 443 U.S. 31, 40 (1979), a subsequent ruling that an ordinance was unconstitutional did not "undermine the validity of the arrest made for violation of that ordinance." There is no analytical justification to treat differently the conduct upheld in *DeFillippo* and an investigatory stop based upon an officer's mistaken, but reasonable, understanding of a traffic law.

2. The reasonableness of mistakes of fact sometimes determines whether a Fourth Amendment right has been violated, and sometimes determines whether the exclusionary rule or qualified immunity applies. The reasonableness of mistakes of law can likewise bear on both issues.

Petitioner's assertion that mistakes of law are relevant only to the issue of remedy is undermined by a fair reading of this Court's prior decisions applying the good-faith exception which have never held that a mistake of law is off-limits at the rights stage. Qualified immunity decisions likewise do not support this contention. The inquiries concerning the

objective reasonableness of an officer's conduct for qualified immunity and for the Fourth Amendment are distinct and not duplicative, *Saucier v. Katz*, 533 U.S. 194 (2001), because assessing whether the Fourth Amendment has been violated is a more particularized inquiry than the question of whether a right is clearly established for purposes of qualified immunity. *Brousseau v. Haugen*, 543 U.S. 194, 199-200 (2004).

3. Petitioner's proposed bright-line rule that mistakes of law, no matter how reasonable, can never support reasonable suspicion would inject unwarranted uncertainty into the daily actions of law enforcement officials. As such, it would be inconsistent with the basic tenets of official conduct, for "[t]he Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape." *Adams v. Williams*, 407 U.S. 143, 145 (1972). "[B]alancing the need to search [or seize] against the invasion which the search [or seizure] entails," *Terry v. Ohio*, 392 U.S. 1, 21 (1968) (citations omitted), is accomplished by the reasonable-suspicion rule. Allowing objectively reasonable mistakes of law to support a finding of reasonable suspicion for an investigatory stop is wholly consistent with the policies and interests that underlie *Terry*.

This case illustrates the appropriateness of finding reasonable suspicion based on an objectively

reasonable, but mistaken, understanding of substantive law. No one disagrees that the officer stopped petitioner's vehicle based upon a reasonable belief of a violation. That reasonable belief was dispelled only by a "surprising" appellate court ruling that for the first time construed a traffic law on the books for more than fifty years to require only one functioning brake light. The Supreme Court of North Carolina correctly ruled that reasonable mistakes of law, like this one, can support reasonable suspicion.

ARGUMENT

I. AN OBJECTIVELY REASONABLE MISTAKE OF LAW CAN SUPPORT REASONABLE SUSPICION FOR AN INVESTIGATORY STOP.

"In *Terry v. Ohio*, 392 U.S. 1, 30 (1968), [this Court] held that the police can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity 'may be afoot,' even if the officer lacks probable cause." *United States v. Sokolow*, 490 U.S. 1, 7 (1989). The Court later confirmed that police officers may conduct an investigatory stop of an automobile if they have "an articulable and reasonable suspicion that [the person stopped was] subject to seizure for violation of law." *Delaware v. Prouse*, 440 U.S. 648, 663 (1979).

The reasonable-suspicion standard looks not at subjective motivations but at whether, under the totality of the circumstances, the officer had "a particularized and *objective* basis for suspecting the particular person stopped of criminal activity." *United States v. Cortez*, 449 U.S. 411, 417-18 (1981) (emphasis added). An officer's actions can be objectively reasonable even if it turns out that he inaccurately assessed the facts and the suspect was not engaging in any criminal activity. So, too, can an officer act with reasonable suspicion when he stops a suspect based on an objectively reasonable mistake of law.

A. The reasonable-suspicion standard looks to the objective reasonableness of an officer's actions.

The reasonable-suspicion standard reflects that "[t]he touchstone of the Fourth Amendment is reasonableness[.]" *United States v. Knights*, 534 U.S. 112, 118 (2001). Indeed, "[t]he essential purpose of the proscriptions in the Fourth Amendment is to impose a standard of 'reasonableness' upon the exercise of discretion by government officials, including law enforcement agents[.]" *Prouse*, 440 U.S. at 653-54.

Reasonable suspicion for an investigatory stop is a "commonsense, nontechnical conception[] that deal[s] with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Ornelas v. United*

States, 517 U.S. 690, 696 (1996) (internal quotation marks omitted). Although reasonable suspicion demands more than "an inchoate and unparticularized suspicion or hunch," *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000) (internal quotation marks omitted), "some minimal level of objective justification" is all that is required. *Sokolow*, 490 U.S. at 7.

This objective standard of reasonableness "takes into account 'the totality of the circumstances – the whole picture.'" *Naverette v. California*, 134 S. Ct. 1683, 1687 (2014) (quoting *Cortez*, 449 U.S. at 417). As a result, this Court has avoided turning the "abstract" concept of reasonable suspicion into "'a neat set of legal rules,'" *United States v. Arvizu*, 534 U.S. 266, 274 (2002) (quoting *Ornelas*, 517 U.S. at 695-96), and has "consistently eschewed bright-line rules." *Ohio v. Robinette*, 519 U.S. 33, 39 (1996).

B. Objectively reasonable mistakes of fact can support reasonable suspicion.

Reasonableness has never been viewed through the prism of certainty or hindsight. To the contrary, reviewing courts should assess police judgments "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Ryburn v. Huff*, 132 S. Ct. 987, 992 (2012) (per curiam); *see also* 2 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* § 3.2(d), at 47 (4th ed. 2004) ("It is axiomatic that hindsight may not be employed in

determining whether a prior arrest or search was made upon probable cause."). Therefore, the question is "would the facts available to the officer at the moment of the seizure . . . warrant a man of reasonable caution in the belief that the action was appropriate?" *Terry*, 392 U.S. at 21-22 (internal quotation marks omitted).

By *not* reviewing officers' *Terry* and traffic stops with the benefit of hindsight, courts accept that such stops can be reasonable even if we later learn that the officers' suspicions were mistaken. "[I]n order to satisfy the 'reasonableness' requirement of the Fourth Amendment, what is generally demanded of the many factual determinations that must be made by agents of the government . . . is not that they always be correct, but that they always be reasonable." *Illinois v. Rodriguez*, 497 U.S. 177, 185 (1990).

In discussing the probable cause standard, the Court explained why that must be so. The standard "seek[s] to give fair leeway for enforcing the law in the community's protection. Because 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." *Brinegar v. United States*, 338 U.S. 160, 176 (1949). The same is necessarily true with respect to the reasonable-suspicion standard.

That does not mean, of course, that any mistake by an officer will be excused. "[T]he mistakes must

be those of reasonable men, acting on facts leading sensibly to their conclusions . . . . Requiring more would unduly hamper law enforcement. To allow less would be to leave law-abiding citizens at the mercy of the officers' whim or caprice." *Id.*

C. Objectively reasonable mistakes of law can likewise support reasonable suspicion.

That reasoning applies equally to mistakes of law because the crucial question is whether it was *objectively reasonable* for an officer to make an investigatory stop. An objectively reasonable mistake of law, like an objectively reasonable mistake of fact, can justify an investigatory stop.

1. The justification for tolerating reasonable mistakes applies equally to mistakes of law.

The reason why reasonable mistakes can support reasonable suspicion (and probable cause) applies fully to mistakes of law. As noted, "room must be allowed for some mistakes on [officers'] part" "[b]ecause many situations which confront officers in the course of executing their duties are more or less ambiguous." *Brinegar*, 338 U.S. at 176. Usually that uncertainty relates to the facts: is the suspect actually engaging in conduct that is criminal? Sometimes, however, that uncertainty is in the law itself.

An officer in the field may have great difficulty in interpreting complex state laws. *See Virginia v. Moore*, 553 U.S. 164, 175 (2008) (noting that "state law can be complicated indeed"). With new and often-changing laws, officers in the field should not be expected to be "legal technicians," *Ornelas*, 517 U.S. at 695; or expected "to interpret the traffic laws with the subtlety and expertise of a criminal defense attorney." *United States v. Sanders*, 196 F.3d 910, 913 (8th Cir. 1999).

Any suggestion that an officer always can clarify his understanding of a law while in the field is not realistic. Officers often do not have the time to call an attorney or other "legal technician" whenever they believe they have observed a traffic violation. For example, given that even petitioner's trial counsel, the trial prosecutor, and the trial judge failed to challenge Sergeant Darisse's interpretation of the statutory provisions that were later found — after full briefing in an appellate court — to require only one working brake light, it is difficult to imagine that any assistance given to the officer in the field (or even before he was in the field) would have made any difference.

Just as an officer need not conduct further inquiry into the facts once he reasonably believes they suggest that criminal activity is afoot, an officer needs not conduct further legal inquiry once he reasonably interprets the law in the course of his duties.

2. The law has long recognized that mistakes of law can be objectively reasonable.

The notion of an objectively reasonable mistake of law is a familiar one. Most obviously, this Court has recognized in the context of qualified immunity that mistakes of law can be "objectively legally reasonable." *See Lane v. Franks*, 189 L. Ed. 2d 312, 326 (June 19, 2014) ("Qualified immunity gives government officials breathing room to make reasonable but mistaken judgments about open legal questions.") (internal quotation marks omitted); *Anderson v. Creighton*, 483 U.S. 635, 641 (1987) (considering the objective question whether a reasonable officer could have considered a warrantless search to be lawful).

The question whether a mistake of law is objectively reasonable does not take into account an officer's subjective beliefs or motivation. Instead, it takes into consideration such factors as whether the controlling law is "counterintuitive and confusing" and whether a mistaken interpretation of law is "common knowledge." *United States v. Martin*, 411 F.3d 998, 1001 (8th Cir. 2005). "[I]n the absence of such evidence, officers cannot act upon misunderstandings of clear statutes or, worse yet, their own notions of what the law ought to be" because "an objectively reasonable mistake of law cannot be so unmoored from actual legal authority." *United States v. Washington*, 455 F.3d 824, 828 (8th Cir. 2006).

Applying this approach, courts have held that officers' mistakes of law are not objectively reasonable when the observed conduct did not meet the plain language and obvious interpretation of a statute or where case law had addressed the matter at hand. *See, e.g., United States v. Washington*, 455 F.3d 824, 827-28 (8th Cir. 2006); *United States v. Tibbetts*, 396 F.3d 1132, 1138 (10th Cir. 2005). In short, because "*subjective* good faith is not sufficient to justify [a] stop" and because "officers have an obligation to understand the laws that they are trusted with enforcing, at least to a level that is objectively reasonable[,] . . . [a]ny mistake of law that results in a . . . seizure . . . must be *objectively* reasonable to avoid running afoul of the Fourth Amendment." *Martin*, 411 F.3d at 1001.

This is not to say that objectively reasonable mistakes of law will be anything more than exceedingly rare. Most traffic laws, for instance, are not "counterintuitive and confusing." But where there is a "counterintuitive and confusing" law and a misunderstanding of that law was objectively reasonable, there is no reason why a mistake of law should be treated differently from an objectively reasonable mistake of fact.

3. This Court has upheld officer actions based on mistakes of law.

As early as 1809, this Court recognized under the common law that "[a] doubt as to the true construction of the law is as reasonable a cause for

seizure as doubt respecting the fact." *United States v. Riddle*, 9 U.S. 311, 313 (1809). And this Court later made clear that "it is settled that [probable cause] imports circumstances which warrant suspicion, and that a doubt respecting the true construction of the law is as reasonable a cause of seizure as a doubt respecting a fact." *Averill v. Smith*, 84 U.S. 82, 92 (1873).

More recently, this Court has upheld a seizure based on the suspected violation of an invalid law. In *Michigan v. DeFillippo*, 443 U.S. 31 (1979), this Court addressed whether an officer validly arrested respondent when the officer had probable cause to believe respondent violated a local ordinance later ruled unconstitutionally vague. This Court held that the invalidity of the ordinance "does not undermine the validity of the arrest made for violation of that ordinance." *Id*. at 40.

The Court explained that "[t]he ordinance is relevant to the validity of the search only as it pertains to the 'facts and circumstances' [that] constituted probable cause for arrest." *Id*. The question was whether, given the law as the officer reasonably understood it, the suspect's acts indicated that he was committing (or about to commit) an offense. Just as the officer "should not have been required to anticipate that a court would later hold the ordinance unconstitutional," *id*. at 38, an officer should not be required to anticipate that his objectively reasonable understanding of the law will turn out to be mistaken.

Petitioner strains to read *DeFillippo* as an exclusionary rule case (Pet. Br. 27-29), but that is wishful thinking. The only issue was whether the arrest was "lawful" and thus supported the search incident to arrest. 443 U.S. at 35. The issue was one of probable cause, not suppression. Lest there be any doubt, the decision expressly concluded that the ordinance's unconstitutionality "does not undermine *the validity of the arrest* made for violation of that ordinance." *Id.* at 40 (emphasis added); *see also id.* at 45 (Brennan, J., dissenting) (stating that "the Court holds that arrests and searches pursuant to the ordinance prior to its invalidation by the Michigan Court of Appeals are constitutionally valid").

The decision in *DeFillippo* has since been referred to as one regarding the legality of the arrest and search — *i.e.*, of the violation itself — not simply of suppression or appropriate remedy for a violation. *See Maryland v. King*, 133 S. Ct. 1958, 1971 (2013) (citing *DeFillippo* as addressing the lawfulness of the arrest); *Virginia v. Moore*, 553 U.S. 164, 173 (2008) (same); *Illinois v. Gates*, 462 U.S. 213, 256 n.12 (1983) (same); *Illinois v. Krull*, 480 U.S. 340, 346 (1987) (same).

4. Mistakes of fact and mistakes of law are often difficult to distinguish.

Another reason why different rules should not apply to mistakes of fact and mistakes of law is that there is often little conceptual difference between the two. It is therefore often difficult for courts to distinguish between them. And it is even more difficult for an officer in the field to make a split-second decision as to whether his uncertainty pertains to the law or a fact.

"[T]he proper characterization of a question as one of fact or law is sometimes slippery." *Thompson v. Keohane*, 516 U.S. 99, 110-11 (1995). Given that "the appropriate methodology for distinguishing questions of fact from questions of law has been, to say the least, elusive," *Miller v. Fenton*, 474 U.S. 104, 113 (1985), it should be no surprise that the line between mistakes of fact and mistakes of law is frequently blurred.

The difficulty of determining whether a mistake is one of law or one of fact is illustrated by another North Carolina case. In *State v. McLamb*, 649 S.E.2d 902 (N.C. Ct. App. 2007), an officer mistakenly believed the defendant was committing a speeding violation. Nothing in the case indicates that the officer was mistaken about the law prohibiting speeding above the posted limit; instead, the record shows he made a factual mistake about the speed limit at that particular location. Nevertheless, the North Carolina Court of Appeals found the mistake

to be a mistake of law that could never be objectively reasonable. *Id.* at 904.

Further illustrating the difficulty are two similar cases decided by different appellate courts. In each case, the courts considered whether there was reasonable suspicion for an investigatory stop when officers mistakenly believed a vehicle did not have a valid license plate. The Tenth Circuit viewed the mistake as one of law — whether the officer understood dealer tag regulations. *United States v. Pena-Montes*, 589 F.3d 1048 (10th Cir. 2009). In the other case, the Supreme Court of Idaho held a similar mistake to be one of fact. *State v. Horton*, 246 P.3d 673 (Idaho Ct. App. 2010) (noting that the line between mistakes of law and mistakes of fact "is not always easy to draw" and that "[t]he two types of mistakes [may be] inextricably connected").

The difficulty in distinguishing between mistakes of law and mistakes of fact also has arisen in qualified immunity cases. The Third Circuit held that officers made a mistake of fact — not a mistake of law — when they made arrests after watching what they believed to be obscene films and those films were later determined by a court as a matter of law not to be obscene. *Cambist Films, Inc. v. Duggan*, 475 F.2d 887, 889 (3d Cir. 1973). Despite its determination that the error was one of fact, the court stated:

> [I]t goes without question that the facts and circumstances available to the officers at

> the time of the seizure were such as to provide an ordinary person with a reasonable belief that an offense was being committed. . . . Police officers are not expected to have a complete knowledge of the intricacies of case law.

Id. at 889.

Given the often-thin line between mistakes of fact and mistakes of law, and the difficulty courts often have in distinguishing the two, the categorization of a mistake should not be outcome-determinative.

D. Petitioner's arguments to the contrary are without merit.

Petitioner posits several reasons why he believes objectively reasonable mistakes of law cannot support investigatory stops. None is persuasive.

1. Petitioner complains (Pet. Br. 39) that stops based on mistakes of law infringe on the liberty of "law-abiding citizens." But, of course, the same is true for stops based on mistakes of fact. Like a person stopped under a mistaken view of the law, a person stopped under a mistaken view of the facts also was acting innocently.

We tolerate seizures based on mistakes because, as discussed, objective reasonableness is the test and officers must be given some leeway if they are to do their jobs effectively. If the officer acted reasonably,

then the citizen "suffers one of the inconveniences we all expose ourselves to as the cost of living in a safe society; he does not suffer a violation of the Fourth Amendment." *Rodriguez*, 497 U.S. at 184.

2. Relying on a court of appeals' gloss on *Whren v. United States*, 517 U.S. 806 (1996), petitioner argues that if officers' subjective motivations cannot render a traffic stop invalid, "'the flip side'" is that officers must correctly interpret the law. Pet. Br. 16-17 (quoting *United States v. Miller*, 146 F.3d 274, 279 (5th Cir. 1998)). That *ipse dixit* finds no support in *Whren* itself, which held nothing of the sort.

It also rests on the erroneous premise that allowing reasonable mistakes of law to justify traffic stops will allow officers to stop motorists at will. As discussed in §I(C)(2), *supra*, a mistake of law can support an investigatory stop only if the mistake is objectively reasonable — a showing that can rarely be made.

3. Petitioner further contends (Pet. Br. 17-18) that it is only fair that law enforcement officers be held to the same standard as that for citizens: ignorance of the law is no excuse. As an initial matter, petitioner overstates the breadth of the doctrine. As applied to criminal defendants, it is "subject to numerous exceptions and qualifications." 1 Wayne R. LaFave, *Substantive Criminal Law* § 5.6(a) (2d ed. 2003); *see also* Mark D. Yochum, *The Death of a Maxim: Ignorance of the Law is no Excuse (Killed by Money, Guns and a Little Sex)*, 13

Journal of Civil Rights and Economic Development 635, 673 (1999) ("As an interpretive device, [the maxim] has been reduced to a starting point, at best, a faint predilection, almost to remind us of how criminal laws used to be.").

More fundamentally, petitioner's argument confuses the crime that prompted the initial stop and the crime of arrest. The officer's mistake of law in this case did not and could not have resulted in petitioner's being charged with the crime of having insufficient brake lights. Just as a citizen's incorrect belief that he is not violating a law generally does not absolve him of culpability for breaking that law, an officer's incorrect belief that a citizen *is* violating a law cannot result in a defendant's culpability for violating that non-existent law.

What matters here, however, is not whether petitioner actually broke the law for which he was stopped. What matters is whether Sergeant Darisse was objectively reasonable in believing the law was being broken. *See Arvizu*, 534 U.S. at 277 ("A determination that reasonable suspicion exists . . . need not rule out the possibility of innocent conduct."). Petitioner has not contested in this Court that he was.

4. For much the same reason, the rule of lenity and similar precepts have "no effect here." *But see* Pet. Br. 18-19. Here and elsewhere, the "prosecution is not actually brought under the law about which an officer is mistaken." Wayne A. Logan, *Police*

Mistakes of Law, 61 Emory L. J. 69, 96 (2011). The rule of lenity and related canons could have affected how the North Carolina courts interpreted the state's brake light provision. But that was not the offense for which petitioner was held criminally liable.

5. Towards the end of his brief, petitioner argues that reasonable mistakes of law may not support an investigatory stop because such a rule would not be justified under the test for determining whether unlawfully obtained evidence should be suppressed. Pet. Br. 35-37. As discussed in §II(D), *infra*, this appears to be a backdoor way for petitioner to argue an issue he chose not to present to the Court: whether, if investigatory stops may not be based on reasonable mistakes of law, the good-faith exception to the exclusionary rule would apply. We explain there that the good-faith exception *would* apply.

What matters for present purposes is that petitioner is far off the mark in suggesting that the answer to the question presented — whether reasonable suspicion can be based on a reasonable mistake of law — depends in any way on the answer to the exclusionary-rule issue. They are distinct inquiries.

The exclusionary rule "is a 'prudential' doctrine" whose "sole purpose . . . is to deter future Fourth Amendment violations." *Davis v. United States*, 131 S. Ct. 2419, 2426 (2011). The Court has therefore "limited the rule's operation to situations in which

this purpose is thought most efficaciously served" — namely, where "the deterrence benefits of suppression . . . outweigh its heavy costs." *Id.* at 2426-27 (internal quotation marks omitted). That is not, of course, how the Court decides whether there was an underlying Fourth Amendment violation in the first place. Not surprisingly, therefore, this Court has never applied its exclusionary rule doctrine to decide the predicate question whether the Fourth Amendment was violated. The issue here is how the reasonable-suspicion totality-of-the-circumstances test applies. The answer depends on the proper interpretation and application of *Terry* and later investigatory-stop cases. For the reasons discussed above, that inquiry shows that reasonable mistakes of law *can* justify an investigatory stop.

II. THE OBJECTIVE REASONABLENESS OF A MISTAKE OF LAW IS NOT RELEVANT ONLY TO THE ISSUE OF REMEDY.

Petitioner maintains (Pet. Br. 23) that "the reasonableness of a police officer's mistake of law is relevant to the remedy for a Fourth Amendment violation," and that "its relevance is strictly limited to that inquiry." The first proposition is correct; the second is not. The reasonableness of mistaken *facts* sometimes determines whether the Fourth Amendment was violated *and* sometimes determines whether the exclusionary rule or qualified immunity applies. The reasonableness of mistakes of law can likewise bear on both issues.

A. This Court's exclusionary rule cases do not support petitioner.

1. The exclusionary rule was first recognized in *Weeks v. United States*, 232 U.S. 383 (1914), and was applied to the states in *Mapp v. Ohio*, 367 U.S. 643 (1961). Recognizing that the Fourth Amendment "says nothing about suppressing evidence obtained in violation of [its] command," this Court created the rule to "compel respect for the constitutional guaranty." *Davis v. United States*, 131 S. Ct. 2419, 2426 (2011) (citation and internal quotation marks omitted).

In a line of cases beginning with and following *United States v. Leon*, 468 U.S. 897 (1984), this Court created the good-faith exception to the exclusionary rule.[1] Because the exclusionary rule is "not a personal constitutional right" and its "sole purpose . . . is to deter future Fourth Amendment violations," *Davis*, 131 S. Ct. at 2426 (citations and internal quotation marks omitted), the good-faith exception considers "the culpability of the law

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[1] The issue of whether a good-faith exception would apply in this case was not addressed below. The Supreme Court of North Carolina has held that under the state constitution there is no good-faith exception. *State v. Carter*, 370 S.E.2d 553, 562 (N.C. 1988). Although the North Carolina General Assembly has requested "that the North Carolina Supreme Court reconsider, and overrule, its holding in *State v. Carter*," *see* Act of March 18, 2011, ch. 6, sec. 2, 2011 N.C. Sess. Laws 11, the court has not reconsidered its ruling.

enforcement conduct"; whether it is law enforcement conduct at all; whether the conduct is "deliberate," "reckless," or "grossly negligent"; or whether isolated negligence is all that is involved. *Id.* at 2427.

2. This line of exclusionary rule cases does not show that "[t]his Court has repeatedly held that the reasonableness of a mistake of law . . . is relevant only to the issue of remedy." Pet. Br. 24. That violations have been assumed in some cases where the good-faith exception has been applied does not mean they were found.

In *Davis*, for instance, this Court simply held that given the officer's objectively reasonable "good faith" reliance on judicial precedent — an issue different from the issue here — the defendant was not entitled to the remedy of exclusion. *Davis*, 131 S. Ct. at 2428. *Davis* did not create a new, different test for mistakes of law. Nor did it implicitly hold that the reasonableness of a mistake of law could never be considered as part of the Fourth Amendment reasonableness inquiry.

Indeed, in *Herring v. United States*, 555 U.S. 135 (2009), the Court opened its analysis by observing that "[w]hen a probable-cause determination was based on reasonable but mistaken assumptions, the person subjected to a search or seizure has not necessarily been the victim of a constitutional violation." *Id.* at 139. "For purposes of deciding [that] case, however," the Court "accept[ed] the parties' assumption that there was a Fourth Amendment

violation" and turned to "whether the exclusionary rule should be applied." *Id*. *Herring* did not so much as hint that the "mistaken assumptions" to which it referred were limited to assumption about facts, and not law. More generally, it stands as a caution against assuming that the Court, when deciding a case under the exclusionary rule, has implicitly concluded that the Fourth Amendment was violated in the first place.

Herring undermines petitioner's argument in still another way. The mistake in that case was a mistake of fact: the arresting officer thought there was an outstanding warrant for Herring's arrest, but that warrant had been rescinded. *Id*. at 137-38. Under petitioner's reasoning (Pet. Br. 25), the Court's application of the good-faith exception to a mistake of fact demonstrates that the reasonableness of a mistake of fact cannot render a search or seizure lawful. But, as discussed, even petitioner recognizes that an officer's mistaken assessment of the facts can justify an investigatory stop.

Nor is petitioner aided by *Illinois v. Krull*, 480 U.S. 340 (1987), which held that the exclusionary rule did not require suppression of evidence obtained in reliance on a state law that allowed for a search on less than probable cause. We are not contending that an officer's mistaken understanding of the Fourth Amendment itself can support a seizure if that understanding was reasonable. Here, Sergeant Darisse was interpreting a counterintuitive and

confusing *substantive* statute that described prohibited conduct. *See Michigan v. DeFillippo*, 443 U.S. 31, 39 (1979) (distinguishing arrest based on substantive statute that was later struck down from "evidence obtained in searches carried out pursuant to statutes, not previously declared unconstitutional, which purported to authorize the searches in question without probable cause and without a valid warrant").

In sum, no decision concerning the good-faith exception has considered whether there was a Fourth Amendment violation in the first place, let alone restricted an objectively reasonable mistake of law only to the issue of remedy. And reading the "good faith" cases that way cannot be reconciled with the Court's recognition that the good-faith exception can be based on a reasonable mistake of fact.

B. This Court's qualified immunity cases do not support petitioner.

Petitioner contends that qualified immunity jurisprudence reinforces his contention that the reasonableness of a mistake of law matters only at the remedy stage. Pet. Br. 25. It does not.

Petitioner appears to reason as follows. This Court has granted officers qualified immunity where "a reasonable officer could have believed" that the search or seizure was lawful. Pet. Br. 26 (quoting *Saucier v. Katz*, 533 U.S. 194, 206 (2001)). And the Court has even done so after holding that the officer

violated the Fourth Amendment. *Id*. (citing *Wilson v. Layne*, 526 U.S. 603 (1999)). This must mean (the reasoning goes) that the reasonableness of an officer's actions does not matter when assessing whether there was an underlying Fourth Amendment violation; it only matters when deciding whether the office can be subjected to suit. For multiple reasons, it means nothing of the sort.

First, petitioner is once again relying on cases where the officers mistakenly interpreted the Fourth Amendment itself. *See, e.g., Wilson*, 526 U.S. at 614; *Anderson v. Creighton*, 483 U.S. 635, 640-41 (1987). As discussed earlier, we have not suggested that a search or seizure is lawful if based on a mistaken, but reasonable, misunderstanding of the Fourth Amendment. This case, however, involves a reasonable misinterpretation of substantive law, which forms a critical part of the totality-of-the circumstances reasonable-suspicion inquiry.[2]

Second, what is objectively reasonable for Fourth Amendment purposes is not the same as what is objectively reasonable for qualified immunity purposes. In *Saucier v. Katz*, 533 U.S. 194 (2001), the Court reversed a lower court which had held that "qualified immunity is merely duplicative in" a

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[2] That explains this Court's statement in *Saucier v. Katz*, 533 U.S. 194, 206 (2001), that "*Anderson* still operates to grant officers immunity for reasonable mistakes as to the legality of their actions." The "reasonable mistake as to the legality" referred to mistakes about what the Fourth Amendment permits, not mistakes about substantive law.

Fourth Amendment "excessive force case" because both issues "concern the objective reasonableness of the officer's conduct." *Id.* at 200, 203. To the contrary, this Court held, "[t]he inquiries for qualified immunity and [the Fourth Amendment] remain distinct[.]"). *Id.* at 204. *See also Brosseau v. Haugen*, 543 U.S. 194, 199-200 (2004) (stating that assessing whether the Fourth Amendment was violated is a "more 'particularized'" inquiry than assessing whether that right is "'clearly established'" and deciding only the latter). A court's holding that an officer is entitled to qualified immunity from a lawsuit alleging a Fourth Amendment violation therefore tells us nothing about whether a reasonable mistake of law can support an investigatory stop.

Third, petitioner's logic (once again) proves too much because it encompasses mistakes of fact. An officer's objectively reasonable mistake of fact can support an investigatory stop in one case; in another case, it can support a grant of qualified immunity. *See, e.g., Hunter v. Bryant*, 502 U.S. 224, 228-29 (1991) (per curiam) (holding petitioners were entitled to qualified immunity resulting from a reasonable mistake of fact). If mistakes of fact can be considered when assessing Fourth Amendment rights *and* remedy, one is hard pressed to show that reasonable mistakes of law are relevant only to the issue of remedy.

C. Petitioner's prudential arguments for confining the relevance of reasonable mistakes of law to the remedy stage lack merit.

Petitioner sets out three prudential concerns that supposedly make it "[c]rucial" that the reasonableness of mistakes of law be considered only at the remedy stage. Pet. Br. 29-34. These concerns are irrelevant in most cases, are vastly overstated, or beg the question.

1. Petitioner first expresses concern (Pet. Br. 30) that courts will be overburdened by the task of assessing whether an officer's mistake of law was reasonable. For the most part, however, "it appears that the *Terry* rule has been workable and easily applied by officers on the street." *Atwater v. City of Lago Vista*, 532 U.S. 318, 366 (2001) (O'Connor, J., dissenting). That a bright-line rule might sometimes be easier to apply is no reason to "depart from careful case-by-case assessment of [the totality analysis] and adopt [a] categorical rule." *Missouri v. McNeely*, 133 S. Ct. 1552, 1561 (2013).

Nothing indicates that federal courts in the Eighth Circuit have had any difficulty assessing whether an officer's mistake of law is reasonable. Indeed, district courts in that circuit have with seeming ease found mistakes of law unreasonable as well as reasonable. *See, e.g., United States v. Murillo-Figueroa*, 862 F. Supp. 2d 863, 869 (N.D.

Iowa 2012) (finding officer's interpretation was not objectively reasonable).

More fundamentally, under petitioner's proposed rule, courts would still have to "resolve new and difficult questions" about the reasonableness of mistakes of law — for purposes of deciding whether the evidence should be suppressed. The Supreme Court of North Carolina may have disavowed the good-faith exception to the exclusionary rule, but most state courts have not. *See State v. Ward*, 604 N.W.2d 517, 534 n.16 (Wis. 2000) (noting that only twelve states have squarely rejected the good-faith exception under their state constitutions). In most state courts and the federal system, therefore, petitioner's "save the issue for the remedy stage" approach saves no judicial resources and avoids no difficult issues.

Further, as discussed in §I(C)(2), *supra*, this issue most often arises in the context of traffic stops — and there is every reason to believe that most traffic laws are well understood and clearly established. Courts already are tasked with utilizing the totality-of-the-circumstances test. Assessing whether mistakes of law were objectively reasonable would add barely a blip to the courts' workload.

2. Petitioner next argues (Pet. Br. 31) that allowing reasonable suspicion to be based on reasonable mistakes of law will require courts to take into account materials — such as police department policies, customs, and training — "that

are off limits when deciding whether the Fourth Amendment was violated." This argument assumes its conclusion. This Court has never held that such materials are off limits; and if they are, an officer's objective reasonableness would have to be assessed without them.

While these materials "may sometimes provide objective assistance," *Whren v. United States*, 517 U.S. 806, 815 (1996), at least where they include a reasonable interpretation of an uncertain statute, the Supreme Court of North Carolina did not consider any of them. Instead, it considered only that the officer's interpretation of the statutory provisions in question had never been challenged and the counterintuitive and confusing nature of the provisions themselves.[3] Pet. App. 18a-19a.

Nor does our position mean that the Fourth Amendment would "vary from place to place and from time to time." Pet. Br. 33 (internal quotation marks omitted). The reasonable-suspicion and probable-cause standards necessarily require assessing whether a suspect's conduct suggests he is violating (or about to violate) a particular law, whether it be federal, state, or local law. Conduct that would create reasonable suspicion of a crime in one state might not create reasonable suspicion of a

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[3] In considering the reasonableness of the officer's interpretation, the Supreme Court of North Carolina did note that a federal regulation, 49 C.F.R. § 571.108, requires that a passenger vehicle maintain two red brake lights. Pet. App. 19a.

crime in another state. There will therefore always be some "geographic variation according to local dictates." Pet. Br. 33.

Although each state's substantive law is different, the requirements of the Fourth Amendment stay the same: objective reasonableness is required. The Fourth Amendment does not vary from place to place by assessing the reasonableness of an officer's mistake of law any more than it varies from officer to officer when a specific officer's training and experience is considered in the totality-of-the-circumstances test used to determine his reasonableness. *See United States v. Arvizu*, 534 U.S. 266, 273 (2002) (allowing officers "to draw on their own experience and specialized training").

3. Petitioner concludes with a puzzling argument. He acknowledges that his position, if adopted, may not aid most defendants because courts may "ultimately" decline to suppress evidence obtained based on an objectively reasonable mistake of law. Pet. Br. 34. That should not matter, he argues, because adopting his position will "safeguard[] respect for the rule of law." *Id.* While that may rescue this case from utter irrelevance (outside of North Carolina and the few other states that have rejected the good-faith exception), it does not actually provide a reason why his position on the question presented is correct. For the many reasons given above, it is not.

D. If this Court were to hold that investigatory stops may not be based on reasonable mistakes of law, the good-faith exception to the exclusionary rule would apply.

Although petitioner has not directly asked this Court to resolve whether the good-faith exception to the exclusionary rule would apply should the Court answer the question presented in his favor, his brief sets out his argument for why it would not. Pet. Br. 35-37. It does this by collapsing the underlying Fourth Amendment issue and exclusionary-rule issue, and arguing that he should prevail on the former based on exclusionary-rule doctrine. As explained in §I(D), that apples-and-oranges argument is misguided. The underlying Fourth Amendment issue must be resolved by applying *Terry* and other cases that explicate the meaning of the Fourth Amendment, not by applying the "prudential" exclusionary rule doctrine.

That said, petitioner's argument regarding how the good-faith exception to the exclusionary rule applies in this context should not go unanswered. Because the exclusion of evidence "exacts a heavy toll on both the judicial system and society at large," the Court imposes that remedy "only as a last resort." *Davis*, 113 S. Ct. at 2427 (internal quotation marks omitted). For that reason, suppression "tends" to be warranted "[w]hen the police exhibit 'deliberate,' 'reckless,' or 'grossly negligent' disregard for Fourth Amendment rights." *Id*. (quoting *Herring*,

555 U.S. at 143). By contrast, "the harsh sanction of exclusion 'should not be applied to deter objectively reasonable law enforcement activity.'" *Id.* at 2429 (quoting *Leon*, 468 U.S. at 919); s*ee also Krull,* 480 U.S. at 348-49 ("evidence should be suppressed only if it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment") (internal quotation marks omitted).

Under those principles, this is an easy case in which even petitioner acknowledges the officer's mistake of law "was understandable." Pet. 21. The police conduct in question is an investigatory stop based on an objectively reasonable mistake of law. By definition, such conduct is not deliberate, reckless, or grossly negligent — that is, the sort of conduct for which suppression is the proper remedy. Rather, such conduct falls squarely within the rule that "exclusion should not be applied to deter objectively reasonable law enforcement activity."

Petitioner ignores all of this and instead relies on a footnote in *Krull* which stated that "whether the exclusionary rule is applicable in a particular context depends significantly upon the actors who are making the relevant decision that the rule is designed to influence." 480 U.S. at 360 n.17. That general statement provides little to no guidance as to how the rule should apply in any particular case. By contrast, the analysis from *Davis*, *Herring*, and *Leon*

discussed above provide guidance and strongly militate against suppression.

Petitioner also relies on *United States v. Johnson*, 457 U.S. 537 (1982), which he claims held "that suppression is appropriate when officers make a mistake in the absence of any third-party directive about an 'unsettled' point of law." Pet. Br. 36 (quoting *Johnson*, 457 U.S. at 561). *Johnson* held no such thing. At issue in *Johnson* was whether the rule announced in *Payton v. New York*, 445 U.S. 573 (1980), applies retroactively to cases not yet final when *Payton* was issued. 457 U.S. at 538-39. The Court held that it does under its pre-*Griffith v. Kentucky*, 479 U.S. 314 (1987), retroactivity doctrine.[4]

[4] Petitioner states (Pet. Br. 36) that *Leon* "reaffirm[ed] *Johnson*." *Leon*, in the course of adopting the good-faith exception, turned to "decisions not involving the scope of the [exclusionary] rule itself" and cited *Johnson* for the proposition that "[t]he propriety of retroactive application of a newly announced Fourth Amendment principle . . . has been assessed largely in terms of the contribution retroactivity might make to the deterrence of police misconduct." *Leon*, 468 U.S. at 911-13. That hardly "reaffirm[s]" that *Johnson* adopted the exclusionary rule principle petitioner attributes to it.

III. UPHOLDING STOPS BASED ON REASONABLE MISTAKES OF LAW ADVANCES THE INTERESTS THAT UNDERLIE THE *TERRY* DOCTRINE.

Terry v. Ohio addressed "an entire rubric of police conduct — necessarily swift action predicated upon the on-the-spot observations of the officer on the beat — which historically has not been, and as a practical matter could not be, subjected to the warrant procedure." 392 U.S. 1, 20 (1968). The Court recognized that "[t]he Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape." *Adams v. Williams*, 407 U.S. 143, 145 (1972) (describing *Terry*). But that left the question of when, exactly, an officer may make an investigatory stop.

In answering that question, the Court first confirmed that the underlying test was "reasonableness." *Terry*, 392 U.S. at 20. It then explained that what is reasonable depends on "balancing the need to search [or seize] against the invasion which the search [or seizure] entails." *Id.* at 21 (internal quotation marks omitted). The reasonable-suspicion rule — which allows a temporary seizure if "specific and articulable facts," and "rational inferences from those facts, reasonably warrant [the] intrusion" — emerged from those considerations. *Id.* And those considerations fully

support the rule that reasonable suspicion can be based on a reasonable mistake of law.

1. A police officer can reasonably misinterpret the law for a number of reasons. A court might adopt a construction of a statute that upsets long-held understandings.[5] The officer might have relied on a statute's plain text, but a court later interprets it in an atextual manner.[6] The officer might rely on a regulation that is later found to be inconsistent with the governing statute. And so on.

Is an officer acting unreasonably, and therefore in violation of the Fourth Amendment, when he conducts a *Terry* or traffic stop based on his reasonable conclusion that a person is violating such a law? He is not. We expect police officers to enforce the law as they reasonably understand it, not "shrug [their] shoulders" and stand aside.

Petitioner suggests that officers should not enforce statutes whose scope is unsettled because that would make officers too "aggressive" and that

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[5] *See, e.g., Brogan v. United States*, 522 U.S. 398 (1998) (interpreting a statute to the contrary of what many circuits had held for many years); *see also id.* at 420 (Stevens, J., dissenting) (noting "the virtually uniform understanding of the bench and the bar that persisted for decades with . . . the approval of this Court as well as the Department of Justice").

[6] *See, e.g., Moskal v. United States*, 498 U.S. 103 (1990) (adopting an atextual interpretation of the phrase "falsely made").

courts should give them an "incentive to err on the side of constitutional behavior." Pet. Br. 36, 37. That argument defies common sense.

Traffic statutes play a critical role in ensuring the safety on the roads. *See Brown v. Boren Clay Products Co.*, 168 S.E.2d 452, 455 (N.C. Ct. App. 1969) (noting that North Carolina statute requiring rear lamps "is a safety statute enacted for the protection of persons and property"). They can only play that role if they are enforced by police officers. *See Delaware v. Prouse*, 440 U.S. 648, 659 (1979) (noting that "[t]he foremost method of enforcing traffic and vehicle safety regulations . . . is acting upon observed violations"). Petitioner, however, advocates that officers decline to enforce traffic safety statutes that may be unclear. That could not be what the Fourth Amendment requires.

A professionally trained, effective, law-abiding officer is not necessarily a timid officer. *Terry* recognized that the police must take "swift action predicated upon . . . on-the-spot observations" if there is to be "effective crime prevention and detection." 392 U.S. at 20, 22. The Fourth Amendment simply requires that they do so reasonably. An officer adheres to that standard, and does not act unduly "aggressively," by acting upon his reasonable understanding of substantive law.

Petitioner's "incentive to err on the side of constitutional behavior" approach is irreconcilable with a reasonableness standard, which by its nature

produces false positives. *See Illinois v. Wardlow*, 528 U.S. 119, 126 (2000) (holding that Fourth Amendment accepts the risk that "officers may stop innocent people"). The *Terry* standard gives officers an incentive to act reasonably, which *is* "the side of constitutional behavior."

Petitioner is similarly off-base when he insists (Pet. Br. 38) that penalizing reasonable mistakes of law "encourages officers to take advantage of available tools to become more familiar with the law." Police officers could not do their jobs if they did not know the law intimately. The notion that a police officer would choose to remain ignorant of the law in the hope that a later mistake of the law would fortuitously turn out to be objectively reasonable cannot be taken seriously. Objectively reasonable mistakes of substantive law are rare and have built-in expiration dates. Once a court construes a traffic law contrary to an officer's prior interpretation, the officer must abide by that construction. A mistake of law like the one in this case is, by its very nature, self-limiting. No rational officer would choose ignorance for such a small pay-off. *Cf. Hudson v. Michigan*, 547 U.S. 586, 598 (2006) (noting "the increasing professionalism of police forces" and the "wide-ranging reforms in the education, training, and supervision of police officers") (internal quotation marks omitted).

2. This case perfectly illustrates why a stop based on reasonable suspicion that a person is violating the law as reasonably, but mistakenly,

understood is reasonable within the meaning of the Fourth Amendment. The unsettled question of law here involved the interpretation of a statute that had been on the books for more than fifty years. No one had ever challenged the interpretation that all brake lights were required to be in working order.[7] And petitioner's trial counsel, the trial prosecutor, and the trial judge all accepted the officer's interpretation of the counterintuitive and confusing statutory provisions at issue. *Compare* N.C. Gen. Stat. § 20-129(d) ("Every motor vehicle . . . shall have all originally equipped rear lamps . . . in good working order[.]) (App. 1-2), *with* N.C. Gen. Stat. § 20-129(g) ("No person shall . . . operate on the highways of the State any motor vehicle . . . unless it shall be equipped with a stop lamp on the rear of the vehicle.") (App. 3).

There is no reason to believe that Sergeant Darisse would have been given any different advice had he been able — in the field — to ask for an

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[7] Even the dissenting opinion in the Supreme Court of North Carolina recognized the reasonableness of the officer's misunderstanding of the law in this case, stating: "[T]here is no doubt in my mind that, when he stopped [petitioner's] vehicle, Sergeant Darisse acted upon a reasonable belief that [petitioner] violated the law by operating a vehicle with one malfunctioning brake light." Pet. App. 20a (Hudson, J., dissenting). The dissenting opinion also recognized "that, before the COA's surprising decision below, most citizens of this state believed that a malfunctioning brake light represented legal grounds for a traffic stop and citation." Pet. App. 20a.

interpretation of the law. Absent some clarification of the issue by a court, the officer did what any reasonable officer in his situation would have done — which is all the Fourth Amendment requires.

And this particular mistake of law can never again justify an investigative stop. An officer in North Carolina cannot reasonably believe that all brake lights need to be working on an automobile after the North Carolina Court of Appeals decided this issue of first impression otherwise.

3. In the face of this, petitioner sounds alarms that apply to all traffic stops, not just those based on reasonable mistakes of law. First, he expresses concern that traffic stops involve "the loss of our freedom" and can lead to pat-downs and consensual searches. Pet Br. 40 (internal quotation omitted). But settled law permits traffic stops based on reasonable suspicion, which means that innocent individuals will sometimes be stopped.

Next, he notes (Pet. Br. 41-42) that it will not always be clear when a mistake of law is objectively reasonable and that too broad an interpretation of what constitutes a reasonable mistake would give officers too much discretion. That objection can be levied against the entire *Terry* edifice. The Court has recognized that "the concept of reasonable suspicion is somewhat abstract," *Arvizu*, 534 U.S. at 274, and cannot be "'reduced to a neat set of legal rules.'" *Ornelas v. United States*, 517 U.S. 690, 695-96 (1996) (quoting *Illinois v. Gates*, 462 U.S. 213, 232 (1983)).

That does not leave us rudderless, however. *De novo* appellate review enables the doctrine to "acquire content . . . through application," "unif[ies] precedent," and helps create a "set of rules." *Ornelas*, 517 U.S. at 697 (internal quotation marks omitted). Petitioner's effort to insert a bright-line rule inside the fact-bound, context-bound totality-of-the-circumstances reasonable-suspicion test should be rejected. The Supreme Court of North Carolina correctly held that reasonable mistakes of law can support a finding of reasonable suspicion.

CONCLUSION

The judgment of the Supreme Court of North Carolina should be affirmed.

Respectfully submitted,

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INDEX TO APPENDIX

App. 1

N.C. Gen. Stat. § 20-129(d)

CHAPTER 20. MOTOR VEHICLES
ARTICLE 3. MOTOR VEHICLE ACT OF 1937
PART 9. THE SIZE, WEIGHT, CONSTRUCTION AND EQUIPMENT OF VEHICLES

N.C. Gen. Stat. § 20-129(d) (2013)

§ 20-129. Required lighting equipment of vehicles.

. . . .

(d) Rear Lamps. – Every motor vehicle, and every trailer or semitrailer attached to a motor vehicle and every vehicle which is being drawn at the end of a combination of vehicles, shall have all originally equipped rear lamps or the equivalent in good working order, which lamps shall exhibit a red light plainly visible under normal atmospheric conditions from a distance of 500 feet to the rear of such vehicle. One rear lamp or a separate lamp shall be so constructed and placed that the number plate carried on the rear of such vehicle shall under like conditions be illuminated by a white light as to be read from a distance of 50 feet to the rear of such vehicle. Every trailer or semitrailer shall carry at the rear, in addition to the originally equipped lamps, a red reflector of the type which has been approved by the Commissioner and which is so located as to height and is so maintained as to be visible for at least 500 feet when opposed by a motor vehicle displaying lawful undimmed lights at night on an unlighted highway.

App. 2

N.C. Gen. Stat. § 20-129(d)

Notwithstanding the provisions of the first paragraph of this subsection, it shall not be necessary for a trailer weighing less than 4,000 pounds, or a trailer described in G.S. 20-51(6) weighing less than 6,500 pounds, to carry or be equipped with a rear lamp, provided such vehicle is equipped with and carries at the rear two red reflectors of a diameter of not less than three inches, such reflectors to be approved by the Commissioner, and which are so designed and located as to height and are maintained so that each reflector is visible for at least 500 feet when approached by a motor vehicle displaying lawful undimmed headlights at night on an unlighted highway.

The rear lamps of a motorcycle shall be lighted at all times while the motorcycle is in operation on highways or public vehicular areas.

. . . .

HISTORY: 1937, c. 407, s. 92; 1939, c. 275; 1947, c. 526; 1955, c. 1157, ss. 3-5, 8; 1957, c. 1038, s. 1; 1967, cc. 1076, 1213; 1969, c. 389; 1973, c. 531, ss. 1, 2; 1979, c. 175; 1981, c. 549, s. 1; 1985, c. 66; 1987, c. 611; 1989 (Reg. Sess., 1990), c. 822, s. 1; 1991, c. 18, s. 1; 1999-281, s. 1.

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N.C. Gen. Stat. § 20-129(g)

CHAPTER 20. MOTOR VEHICLES
ARTICLE 3. MOTOR VEHICLE ACT OF 1937
PART 9. THE SIZE, WEIGHT, CONSTRUCTION AND EQUIPMENT OF VEHICLES

N.C. Gen. Stat. § 20-129(g) (2013)

§ 20-129. Required lighting equipment of vehicles.

. . . .

(g) 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.

HISTORY: 1937, c. 407, s. 92; 1939, c. 275; 1947, c. 526; 1955, c. 1157, ss. 3-5, 8; 1957, c. 1038, s. 1; 1967, cc. 1076, 1213; 1969, c. 389; 1973, c. 531, ss. 1, 2; 1979, c. 175; 1981, c. 549, s. 1; 1985, c. 66; 1987, c. 611; 1989 (Reg. Sess., 1990), c. 822, s. 1; 1991, c. 18, s. 1; 1999-281, s. 1.

N.C. Gen. Stat. § 20-129.1(9)

CHAPTER 20. MOTOR VEHICLES
ARTICLE 3. MOTOR VEHICLE ACT OF 1937
PART 9. THE SIZE, WEIGHT, CONSTRUCTION AND EQUIPMENT OF VEHICLES

N.C. Gen. Stat. § 20-129.1(9) (2013)

§ 20-129.1. Additional lighting equipment required on certain vehicles.

In addition to other equipment required by this Chapter, the following vehicles shall be equipped as follows:

. . . .

(9) Brake lights (and/or brake reflectors) on the rear of a motor vehicle shall have red lenses so that the light displayed is red. The light illuminating the license plate shall be white. All other lights shall be white, amber, yellow, clear or red.

. . . .

HISTORY: 1955, c. 1157, s. 4; 1969, c. 387; 1983, c. 245; 1987, c. 363, s. 1; 2000-159, s. 10.

N.C. Gen. Stat. § 20-183.3

CHAPTER 20. MOTOR VEHICLES
ARTICLE 3A. SAFETY AND EMISSIONS INSPECTION PROGRAM
PART 2. SAFETY AND EMISSIONS INSPECTIONS OF CERTAIN VEHICLES

N.C. Gen. Stat. § 20-183.3 (2013)

§ 20-183.3. Scope of safety inspection and emissions inspection

(a) Safety. – A safety inspection of a motor vehicle consists of an inspection of the following equipment to determine if the vehicle has the equipment required by Part 9 of Article 3 of this Chapter and if the equipment is in a safe operating condition:

(1) Brakes, as required by G.S. 20-124.

(2) Lights, as required by G.S. 20-129 or G.S. 20-129.1.

. . . .

HISTORY: 1965, c. 734, s. 1; 1969, c. 378, s. 2; 1971, c. 455, s. 2; c. 478, ss. 1, 2; 1979, 2nd Sess., c. 1180, s. 3; 1981 (Reg. Sess., 1982), c. 1261, s. 1; 1989, c. 391, s. 2; 1991, c. 654, s. 2; 1993 (Reg. Sess., 1994), c. 754, s. 1; 1995, c. 473, s. 2; 2000-134, ss. 8, 10, 12; 2001-504, s. 7; 2007-364, s. 1.