No. 12-9490

In The Supreme Court of the United States

LORENZO PRADO NAVARETTE and
JOSE PRADO NAVARETTE,

Petitioners,

v.

CALIFORNIA,

Respondent.

ON WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, FIRST APPELLATE DISTRICT

RESPONDENT'S BRIEF ON THE MERITS

KAMALA D. HARRIS
Attorney General of California
DANE R. GILLETTE
Chief Assistant Attorney General
GERALD A. ENGLER
Senior Assistant Attorney General
DONALD E. DE NICOLA
Deputy State Solicitor General
SETH K. SCHALIT
Supervising Deputy Attorney General
JEFFREY M. LAURENCE
Supervising Deputy Attorney General
Counsel of Record
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5897
Fax: (415) 703-1234
E-mail: Jeff.Laurence@doj.ca.gov
Counsel for Respondent

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

QUESTION PRESENTED

Does the Fourth Amendment require an officer who receives an anonymous tip regarding a drunken or reckless driver to corroborate dangerous driving before stopping the vehicle?

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

STATEMENT OF THE CASE

1. Matia Moore and Sharon Odbert worked as a dispatch team in the California Highway Patrol (CHP) 911 call center in Mendocino County. J.A. 20a-22a, 34a-35a.

On August 23, 2008, at 3:47 p.m., Ms. Moore received a call on an internal "allied" CHP dispatch phone line from a CHP 911 dispatcher in Humboldt County. J.A. 20a, 25a-28a, 35a, 42a. The Humboldt 911 dispatcher explained to Ms. Moore that she had received a 911 call from a citizen who reported being run off the road by a reckless driver. According to the Humboldt dispatcher, the 911 caller described the perpetrator's vehicle as a silver Ford F-150 pickup truck, with license plate number 8D94925. J.A. 25a-30a. The incident happened on Highway 1 near mile marker 88, and the truck was traveling south. J.A. 25a, 36a-37a. The Humboldt dispatcher did not relate the identity of the caller. J.A. 25a-27a, 32a, 45a.[1]

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[1] It appears that the 911 call to the Humboldt dispatcher was recorded and may have included the name of the caller. J.A. 18a-19a. However, because the prosecutor did not realize prior to the suppression hearing that the call initially went to the Humboldt County call center before being reported to the Mendocino County dispatcher, she failed to subpoena the Humboldt dispatcher and could not offer the recorded 911 call at the hearing. J.A. 18a-19a, 64a-65a. Consequently, the magistrate and parties properly treated the call as anonymous, J.A. 65a-74a, as did the superior court, Pet. a26-a34, and the appellate court, Pet. a1-a25. See, *e.g.*, *United States* v. *Holloway*, 290 F.3d 1331, 1339 n.5 (11th Cir. 2002).

As Ms. Moore received the report, she typed the information into her computer, which simultaneously displayed the information on her partner's computer and recorded it in a dispatch log. The entry stated: "Showing southbound Highway 1 at mile marker 88. Silver Ford 150 pickup. Plate of 8-David-94925. Ran the reporting party off the roadway and was last seen approximately five ago [sic]." J.A. 36a; see also J.A. 24a-26a.

Ms. Odbert promptly broadcast to coastal CHP units to be on the lookout for a California Vehicle Code section 23103 reckless driver who had run the reporting party off the roadway. The broadcast included the truck's description, license plate number, location, and direction of travel. J.A. 35a-37a; Pet. a20-a23.

Two CHP units responded to the broadcast and reported that they were en route from the nearby city of Fort Bragg, heading north. J.A. 37a-38a, 48a-49a. At 4:00 p.m., Sergeant Francis reported that he had passed the truck near mile marker 69. J.A. 39a, 42a, 46a. Officer Williams, who had been trailing Sergeant Francis, spotted the truck near mile marker 66 and saw Sergeant Francis following it. Officer Williams let them pass, made a U-turn, and then followed them. J.A. 49a-51a. Around 4:05 p.m., Sergeant Francis pulled the vehicle over and, soon thereafter, Officer Williams pulled up behind them. J.A. 46a, 51a.

The officers approached the truck on the passenger side and asked the occupants (petitioners) for identification; they then returned to Sergeant Francis's patrol car to run identification checks. J.A. 51a-52a. The driver, Lorenzo Navarette, initially provided only a photocopy of identification, and the officers returned to the driver's side of the vehicle to request additional identification. J.A. 52a-53a, 62a-63a. From this location, they noticed the distinct odor of marijuana emanating from the truck and ordered petitioners to exit the vehicle. J.A. 53a-54a, 64a. A search of the truck disclosed four large bags containing over thirty pounds of marijuana in the enclosed truck bed, along with fertilizer, pruning shears, and oven bags for packaging. J.A. 55a; Pet. a5.

2. The Mendocino County District Attorney filed an information charging petitioners with transportation of marijuana and possession of marijuana for sale. Cal. Health & Safety Code §§ 11359, 11360(a); J.A. 14a-16a.

At the preliminary hearing, petitioners moved to suppress evidence seized following the stop and search of the truck, contending the anonymous report was not sufficiently reliable to provide reasonable suspicion for the stop. The magistrate denied the motion, finding that the stop was justified because the details of the report were sufficiently corroborated and the potential threat to public safety was substantial. J.A. 68a-74a. Petitioners moved to set aside the charges in superior court, arguing that the magistrate had erred. J.A. 2a-4a, 6a-7a. The superior court

agreed with the magistrate's ruling and denied the motion. Pet. a26-a37.

Petitioners then pleaded guilty to transportation of marijuana, Cal. Health & Safety Code § 11360(a). J.A. 4a, 7a. They were placed on probation for three years and ordered to serve 90 days in county jail. *Id.*; Pet. a7.

3. On appeal, petitioners renewed their challenge to the denial of the suppression motion. See Cal. Penal Code § 1538.5(m). The First District Court of Appeal rejected their claim and affirmed the judgment. Pet. a1-a25. The court explained that the contents of the tip "supported an inference that it came from the victim of the reported reckless driving," "the officers' prompt corroboration of significant innocent details of the tip . . . sufficiently established the reliability of the tip to support reasonable suspicion," and "the report that the vehicle had run someone off the road sufficiently demonstrated an ongoing danger to other motorists" justifying the stop without direct corroboration of illegal activity. Pet. a18. The court denied a petition for rehearing. Pet. a39.

The California Supreme Court denied review. Pet. a38.

SUMMARY OF ARGUMENT

Because of the heightened governmental interest in protecting public safety, the Fourth Amendment

permits an officer to stop a driver based on a 911 call from an unidentified citizen informant reporting personal observation of drunk or reckless driving and providing a detailed description of the vehicle, its location, and its direction of travel, even though officers corroborate only the innocent details of the tip.

1. The proper approach for evaluating reasonable suspicion based on an anonymous tip is no different than that used in any other context—courts must consider the totality of the circumstances. *Alabama* v. *White*, 496 U.S. 325, 328-32 (1990). The three main factors relevant to whether an anonymous tip supplies reasonable suspicion are veracity, reliability, and basis of knowledge, with no single factor determinative. *Id*.

The nature of the anonymous tip, however, is not the only consideration in the balance. *Terry* v. *Ohio*, 392 U.S. 1, 20-21 (1968), explained that the first step in evaluating reasonable suspicion is balancing the strength of the governmental interest against the degree of the intrusion of the stop. Thus, the totality of the circumstances necessarily includes not only the quality of the information in an anonymous tip and its reliability, but also the nature and immediacy of the threat to public safety flowing from the described illegal activity.

When presented with an immediate threat to public safety, officers and courts may properly find reasonable suspicion from an anonymous tip without corroborating criminal conduct. Here, the California

Court of Appeal recognized that the grave threat to public safety posed by a drunk or reckless driver must be considered in the balancing calculus. In so doing, the court was not creating a new exception to the Fourth Amendment, as posited by petitioners. To the contrary, the court properly applied the traditional balancing-of-interests approach required by *Terry*, but which is notably absent from petitioners' analysis. Given the importance of the governmental interest, the state court correctly concluded that the anonymous 911 call—reporting that petitioners' truck had run the caller off the highway and providing substantial detailed information, including a vehicle description, license plate number, time of the incident, location, and direction of travel—provided officers with reasonable suspicion for a detention, without requiring corroboration of more than the innocent details.

2. Petitioners misread *Florida* v. *J.L.*, 529 U.S. 266 (2000), as establishing an inflexible reliability test for anonymous tips, under which officers must corroborate the tip's "assertion of illegality" before an officer may rely on the tip as providing reasonable suspicion for a stop. In *J.L.*, however, the Court held only that an anonymous tip reporting that a particular individual at a bus stop was in possession of a gun, but that otherwise lacked indicia of reliability or any reported basis of knowledge, was not sufficient to support reasonable suspicion absent corroboration of illegality. In reaching this conclusion, the Court recognized that the balancing would likely be different if

the reported offense implicated the stronger governmental interest of protecting public safety, for example if the reported crime were of someone carrying a bomb. *Id*. at 273-74.

Petitioners acknowledge the passage in *J.L.* limiting its holding to the circumstances of an anonymous report of possession of a gun and declining to consider how a case would be resolved if the anonymously reported threat to public safety were greater. Petitioners, however, posit that the Court's statement refers only to some "potentially cataclysmic event such as a terrorist attack or similar activity," like "the Boston Marathon bombing," in which case the "dire circumstances" might allow for a relaxing of the strictures of the Fourth Amendment. Pet'rs Br. 26-27. Thus, petitioners would require that officers, when confronted with an anonymous report of a drunk driver on the roadway, trail the reported drunk driver and wait to observe evidence of intoxication, such as swerving (potentially into oncoming traffic), before acting on the tip. In practical effect, petitioners would discount any consideration of the strength of the governmental interest except in the most extraordinary situations.

Petitioners' contention that a mandatory corroboration-of-illegality test applies to all anonymous tips is flawed in two key respects. First, it ignores that the importance of the governmental interest has always been an integral component of the balancing for reasonable suspicion under *Terry*. Second, it envisions an anachronistic return to a

categorical approach for analyzing anonymous tips that was expressly rejected by the Court in *Illinois* v. *Gates*, 462 U.S. 213 (1983).

Contrary to petitioners' claim, the proper method for evaluating reasonable suspicion based on an anonymous tip is the same as for evaluating reasonable suspicion in any other context. Courts must consider the totality of the circumstances, which necessarily includes the strength of the governmental interest in protecting public safety, to determine whether the balance of competing interests favors the action taken.

The alternative propounded by petitioners, requiring officers to trail a suspected drunk driver and wait to personally observe evidence of intoxication, poses too great a risk to public safety. The state court correctly rejected petitioners' suggested approach as contrary to the very purpose of the type of investigative detention authorized by *Terry*—permitting the minor inconvenience of a traffic stop to resolve ambiguity before potentially fatal consequences are realized.

Petitioners' categorical approach should be rejected and the decision of the California Court of Appeal should be affirmed.

ARGUMENT

AN ANONYMOUS 911 CALL REPORTING PERSONAL OBSERVATION OF DRUNK OR RECKLESS DRIVING AND GIVING A DETAILED DESCRIPTION OF THE VEHICLE, ITS LOCATION, AND ITS DIRECTION OF TRAVEL PROVIDES REASONABLE SUSPICION FOR AN INVESTIGATIVE DETENTION, EVEN THOUGH OFFICERS CORROBORATE ONLY INNOCENT DETAILS OF THE TIP

Petitioners contend that the California appellate court's decision, finding reasonable suspicion to stop their vehicle based on a detailed anonymous tip reporting reckless driving, violated a fixed rule set out in *J.L.*, 529 U.S. 266. Petitioners read *J.L.* as propounding a mandatory requirement of corroboration of illegality for all anonymous tips, regardless of the threat to public safety. Pet'rs Br. 20. Such a bright-line rule would run contrary to the balancing approach the Court has consistently applied in gauging reasonable suspicion since *Terry* first articulated the doctrine. Critically, petitioners' approach fails to acknowledge that the importance of the governmental interest is an integral part of the balancing for evaluating reasonable suspicion under *Terry*.

The state court correctly declined petitioners' categorical approach and looked instead to the totality of the circumstances in conducting its reasonableness balancing. The court weighed the quantity and quality of the information contained in the tip, the degree of corroboration of the details, the reported basis of knowledge of the 911 caller, and the heightened need

to protect the public from a possible drunk driver on the road, and properly concluded reasonable suspicion supported the investigatory detention.

A. The Importance of the Governmental Interest Is an Indispensable Component of Reasonableness Balancing

An officer may detain a motorist on reasonable suspicion that the driver has violated the law. *Ornelas* v. *United States*, 517 U.S. 690, 693 (1996). Reasonable suspicion requires "a particularized and objective basis for suspecting the person stopped of criminal activity." *United States* v. *Cortez*, 449 U.S. 411, 417-18 (1981). While this standard does not permit a detention based on an officer's inchoate suspicion or subjective hunch, *United States* v. *Sokolow*, 490 U.S. 1, 7 (1989), all that is required is "some minimal level of objective justification to validate the detention or seizure," *INS* v. *Delgado*, 466 U.S. 210, 217 (1984).

The reasonable-suspicion standard originated with *Terry*, in which the Court stated that an officer may conduct an investigative detention without probable cause when the objective circumstances lead the officer "reasonably to conclude in light of [the officer's] experience that criminal activity may be afoot." *Terry*, 392 U.S. at 30. The Court noted that this standard derived naturally from the "central inquiry under the Fourth Amendment—the reasonableness in all the circumstances of the particular

governmental invasion of a citizen's personal security." *Id*. at 19.

The Court explained that, in assessing the constitutionality of the officer's conduct,

> it is necessary "first to focus upon the governmental interest which allegedly justifies official intrusion upon the constitutionally protected interests of the private citizen," for there is "no ready test for determining reasonableness other than by balancing the need to search [or seize] against the invasion which the search [or seizure] entails."

Id. at 20-21 (alterations added by *Terry*) (quoting *Camara* v. *Municipal Court*, 387 U.S. 523, 534-35, 536-37 (1967)).

The Court in *Terry* identified two important governmental interests that weighed in favor of the dual intrusion of a stop followed by a frisk. It pointed first to the general governmental interest in "effective crime prevention and detection," which warranted an investigative detention. *Id.* at 22. Second "is the more immediate interest of the police officer in taking steps to assure himself that the person with whom he is dealing is not armed with a weapon that could unexpectedly and fatally be used against him." *Id*. at 23. The greater importance of this second governmental interest of officer safety weighed in favor of the incrementally more intrusive step of frisking the suspect for weapons. *Id*. at 23. Thus, from its very inception, the Court's reasonable-suspicion jurisprudence has

factored the importance of the governmental interest into the calculus of the reasonableness balancing.

B. The Cases Evaluating the Sufficiency of Anonymous Tips Have Consistently Looked to the Totality of the Circumstances Confronting the Officer, Which, as *J.L.* Reaffirmed, Includes the Nature of the Reported Offense and the Importance of the Governmental Interest

The Court's anonymous-tip jurisprudence developed through a series of cases involving the ordinary governmental interest of preventing and detecting possession of guns or drugs. In evaluating the sufficiency of an anonymous tip under the totality of the circumstances in those cases, the Court considered the degree to which the tip demonstrated the informant's veracity, reliability, and basis of knowledge. When the tip provided little or no information about one or two of these factors, the Court required a greater showing as to the remaining factor or factors. Thus, if the tip did not reveal a basis of knowledge or demonstrate veracity, the Court looked to either the tip's predictive information or corroboration of the reported illegality. The one factor the cases were not called upon to evaluate was the effect of a heightened governmental interest on the *Terry* balancing. In *J.L.*, however, the Court recognized that a stronger governmental interest would alter the balance and require a less demanding showing of the reliability of an anonymous tip to supply reasonable suspicion.

1. The Court first recognized that an informant's tip may supply an officer with reasonable suspicion, even when the officer does not personally observe any possible wrongdoing, in *Adams* v. *Williams*, 407 U.S. 143, 147 (1972). *Adams* held that an officer had reasonable suspicion to conduct a *Terry* stop and frisk when a person known to the officer approached and reported that a man sitting in a nearby car was carrying narcotics and a gun. *Id.* at 144-47. The Court rejected the suggestion that a stop and frisk must be based on an officer's personal observations alone. *Id*. at 147.

Although *Adams* involved a known informant, and was thus a "stronger case" than one involving an anonymous tip, *id*. at 146, the Court observed that "[o]ne simple rule will not cover every situation," *id*. at 147. *Adams* recognized that "[i]nformants' tips, like all other clues and evidence coming to a policeman on the scene, may vary greatly in their value and reliability," and each must be evaluated under the totality of the attendant circumstances. *Id*.

> Some tips, completely lacking in indicia of reliability, would either warrant no police response or require further investigation before a forcible stop of a suspect would be authorized. But in some situations—for example, when the victim of a street crime seeks immediate police aid and gives a description of his assailant, or when a credible informant warns of a specific impending crime—the subtleties of the hearsay rule

> should not thwart an appropriate police response.

Id.

2. In *Illinois* v. *Gates*, 462 U.S. 213 (1983), the Court considered how anonymous tips are to be evaluated when offered as the foundation for finding probable cause for a warrant. The Court rejected application of a rigid, two-pronged test, derived from *Aguilar* v. *Texas*, 378 U.S. 108 (1964), and *Spinelli* v. *United States*, 393 U.S. 410 (1969), which would have required independent evaluations of the anonymous informant's basis of knowledge and his reliability and veracity. *Gates*, 462 U.S. at 230. Instead, the Court reaffirmed that an anonymous informant's tip is properly evaluated under a "totality-of-the-circumstances approach." *Id*. Reliability, veracity, and basis of knowledge are "understood as relevant considerations in the totality-of-the-circumstances analysis," but no single factor is determinative. *Id*. at 233.

Applying this standard, *Gates* found sufficient probable cause to support a warrant based on an anonymous letter to the police. The letter implicated a husband and wife in narcotics trafficking and predicted a travel itinerary involving a short round trip from Illinois to Florida, which turned out largely to be accurate. Even though the police were able to corroborate only innocent activity, *id*. at 243 n.13, the Court held that the totality of the circumstances established probable cause to support the warrant.

3. *Alabama* v. *White*, 496 U.S. 325 (1990), applied the reasoning of *Gates* to an anonymous tip in the reasonable suspicion context. The Court noted that the factors identified in *Gates*—the informant's veracity, reliability, and basis of knowledge—"are also relevant in the reasonable-suspicion context, although allowance must be made in applying them for the lesser showing required to meet that standard." *Id*. at 328-29.

White observed that an anonymous tip will seldom demonstrate the informant's "basis of knowledge" because "ordinary citizens generally do not provide extensive recitations of the basis of their everyday observations." *Id*. at 329. Moreover, the veracity of an anonymous informant is "'by hypothesis largely unknown, and unknowable.'" *Id*. (quoting *Gates*, 462 U.S. at 237). In the absence of information regarding these two factors, the Court looked to the degree that corroboration of predictive details of the tip demonstrated its reliability, while emphasizing that a lesser showing was necessary to support reasonable suspicion.

> Reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause. *Adams* v. *Williams*, *supra*, demonstrates as much.

> We there assumed that the unverified tip from the known informant might not have been reliable enough to establish probable cause, but nevertheless found it sufficiently reliable to justify a *Terry* stop.

Id. at 330.

In *White*, officers received an anonymous phone call reporting that Vanessa White would be leaving 235-C Lynwood Terrace Apartments at a particular time in a brown Plymouth station wagon with a broken right taillight lens, that she would be going to Dobey's Motel, and that she would be in possession of about an ounce of cocaine inside a brown attaché case. *Id*. at 327. Officers went to the apartment complex and observed a woman leave the 235 building empty-handed, get into a vehicle matching the description given, and drive along a direct route leading to Dobey's Motel. Officers followed and stopped her just shy of the motel. During a consensual search of the vehicle, officers located a brown attaché case filled with marijuana, and later found three milligrams of cocaine in White's purse. *Id*.

White found the anonymous call sufficient to support reasonable suspicion. As with the tip in *Gates*, the caller did not identify his or her basis of knowledge and the caller's veracity was unknown. *Id*. at 329. Consequently, *White* focused on whether the amount of detail and degree of corroboration of the tip were sufficient to establish its reliability. The Court acknowledged that several details were not

corroborated prior to the stop, including the woman's name, the actual apartment she left from, and her precise destination. *Id*. at 331-32. Officers also did not confirm the presence of the attaché case in the vehicle until after the stop. *Id*. at 327. However, the Court observed that officers were able to confirm some information predictive of future action—the time of the woman's departure and likely destination—allowing the officers to infer that the caller was not only honest, but had a basis of knowledge demonstrating "inside information." Under the totality of circumstances, the officers had reasonable suspicion of wrongdoing. *Id*. at 332.

4. The Court again considered the sufficiency of an anonymous tip in *J.L.*, 529 U.S. 266, this time finding the tip insufficient to support reasonable suspicion. The police in *J.L.* received an anonymous tip that a young Black male, standing at a particular bus stop and wearing a plaid shirt, was carrying a gun. *Id.* at 268. Officers went to the location and spotted J.L., who matched the physical description given. Acting solely on the tip, the officers detained and frisked J.L. and found a gun in his pocket. *Id*.

The Court deemed the tip inadequate to establish reasonable suspicion under the totality of the circumstances. *J.L.* concluded that the "bare report," made by "an unknown, unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing he had inside information about [the suspect]," lacked even the "moderate indicia of reliability present in *White*," and did not

provide reasonable suspicion justifying a *Terry* stop. *Id*. at 271. *J.L.* rejected the state's argument that firearms were sufficiently dangerous in and of themselves to justify dispensing with the requirement of reliability shown through corroboration of illegality. *Id.* at 272-73.

The Court, however, carefully limited *J.L.*'s holding to the specific circumstances, namely an anonymous report of a possessory gun offense. It held only "that an anonymous tip lacking indicia of reliability of the kind contemplated in *Adams* and *White* does not justify a stop and frisk whenever and however it alleges the illegal possession of a firearm." *Id.* at 274. The Court added,

> The facts of this case do not require us to speculate about the circumstances under which the danger alleged in an anonymous tip might be so great as to justify a search even without a showing of reliability. We do not say, for example, that a report of a person carrying a bomb need bear the indicia of reliability we demand for a report of a person carrying a firearm before the police can constitutionally conduct a frisk.

Id. at 273-74.

Although *J.L.* rejected the sufficiency of the tip in the context of routine crime prevention, it recognized that a heightened governmental interest, arising from an imminent threat to public safety, is an important factor in evaluating the totality of circumstances, which, in turn, affects the overall balancing

of reasonableness. Thus, the stronger the governmental interest, the less demanding a showing of reliability is required for an anonymous tip to provide reasonable suspicion.

C. The Heightened Governmental Interest of Protecting the Public from the Threat of Imminent Harm from Drunk or Reckless Drivers Weighs Heavily in the Reasonableness Balance and Tips the Scale in Support of Finding Reasonable Suspicion Based on a Detailed Anonymous Report Without Corroboration of Illegality

Following *J.L.*, California, like many jurisdictions, recognized the qualitative difference between possessory offenses and those offenses posing an immediate grave risk to public safety, such as drunk driving, in evaluating the degree of corroboration required to justify a detention.[2] For the latter class of offenses,

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[2] *United States* v. *Wheat*, 278 F.3d 722, 730-37 (8th Cir. 2001); *Bloomingdale* v. *State*, 842 A.2d 1212, 1217-22 (Del. 2004); *State* v. *Prendergast*, 83 P.3d 714, 721-24 (Haw. 2004); *State* v. *Walshire*, 634 N.W.2d 625, 626-30 (Iowa 2001); *State* v. *Crawford*, 67 P.3d 115, 119-20 (Kan. 2003); *State* v. *Vaughan*, 974 A.2d 930, 934 (Me. 2009); *State* v. *Sousa*, 855 A.2d 1284, 1288 (N.H. 2004); *State* v. *Golotta*, 837 A.2d 359, 366-73 (N.J. 2003); *State* v. *Scholl*, 684 N.W.2d 83, 89 (S.D. 2004); *State* v. *Hanning*, 296 S.W.3d 44, 49-53 (Tenn. 2009); *State* v. *Boyea*, 765 A.2d 862, 866-68 (Vt. 2000); *State* v. *Rutzinski*, 623 N.W.2d 516, 523-28 (Wis. 2001); see also *Cottrell* v. *State*, 971 So. 2d 735, 745-46 (Ala. Crim. App. 2006); *State* v. *Torelli*, 931 A.2d 337, 343-45 (Conn. App. Ct. 2007); *People* v. *Shafer*, 868 N.E.2d 359, 362-67

(Continued on following page)

the absence of corroboration of the illegal conduct identified by the anonymous tipster may often be outweighed by the inherent danger of the conduct itself.

1. In *People* v. *Wells*, 38 Cal. 4th 1078, 1081, 136 P.3d 810 (2006), for example, the California Supreme Court concluded that an anonymous phone tip reporting a possibly intoxicated driver in a vehicle "weaving all over the roadway" and accurately describing the vehicle and its location was sufficient to justify an investigatory detention, even though officers, upon encountering the vehicle, were able to corroborate only the innocent details of the tip. *Wells* found support in *Wheat*, 278 F.3d 722, as well as numerous cases from other jurisdictions that had reached a similar conclusion. *Wells*, 38 Cal. 4th at 1084-85.

Wells recognized that, because of the importance of the governmental interest, anonymous reports of erratic or drunk driving may provide reasonable suspicion justifying a traffic stop when supported by several considerations that demonstrate reliability and basis of knowledge, even without corroboration of illegal conduct. "First, the tipster must furnish

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(Ill. App. Ct. 2007); *State* v. *Barras*, 20 So. 3d 1100, 1104-05 (La. Ct. App. 2009); *State* v. *Contreras*, 79 P.3d 1111, 1117-18 (N.M. Ct. App. 2003); *People* v. *Jeffery*, 769 N.Y.S.2d 675, 675 (N.Y. App. Div. 2003); cf. *United States* v. *Whitaker*, 546 F.3d 902, 908-11 (7th Cir. 2008) (noting reduced corroboration requirement for stop based on anonymous 911 call reporting an "ongoing emergency," and listing cases); *People* v. *Dolly*, 40 Cal. 4th 458, 465-71, 150 P.3d 693 (2007).

sufficient identifying information regarding the vehicle and its location, so the officer and reviewing courts may be reasonably sure the vehicle stopped is the one identified by the caller." *Id.* at 1086. "Second, the tip should indicate the caller had actually witnessed a contemporaneous traffic violation that compels an immediate stop, rather than merely speculating or surmising unlawful activity." *Id*. "[T]hird, at least the 'innocent details' of the tip must be corroborated by the officers." *Id*.

Wells agreed with *Wheat* that "in the context of reckless and possibly intoxicated driving, the tip's lack of 'predictive information' was not critical to determining its reliability. Such an analysis is more appropriate in cases involving tips of concealed criminal behavior such as possession offenses." *Id.* at 1086 (citation omitted); see also *Wheat*, 278 F.3d at 730.

> "[I]n contrast to the report of an individual in possession of a gun, an anonymous report of an erratic or drunk driver on the highway presents a qualitatively different level of danger, and concomitantly greater urgency for prompt action. In the case of a concealed gun, the possession itself might be legal, and the police could, in any event, surreptitiously observe the individual for a reasonable period of time without running the risk of death or injury with every passing moment. An officer in pursuit of a reportedly drunk driver on a freeway does not enjoy such a luxury. Indeed, a drunk driver is not at all unlike a 'bomb,' and a mobile one at that."

Wells, 38 Cal. 4th at 1086 (quoting *Boyea*, 765 A.2d at 867).

Wells further explained that "doubts regarding the tipster's reliability and sincerity are significantly reduced in the setting of a phoned-in report regarding a contemporaneous event of reckless driving presumably viewed by the caller. Instances of harassment presumably would be quite rare." *Id*. at 1087. Moreover, a relatively precise and accurate description of the vehicle type, color, location, and direction of travel, when promptly confirmed by an investigating officer, enhances the reliability of a tip. *Id.* at 1088. *Wells* added that "[t]he investigating officer's inability to detect any erratic driving on defendant's part is not significant. Motorists who see a patrol car may be able to exercise increased caution." *Id.*

2. *Wells* correctly concluded that, in addition to presenting a weightier governmental interest, an anonymous 911 report of a drunk driver typically differs from an informant's report of a possessory offense with respect to assessing the relevant factors identified in *Gates*. These differences, though subtle, are sufficient to alter the other side of the equation by readjusting the balancing of the *Gates* factors in favor of reasonable suspicion.

For example, in *White* and *J.L.*, the anonymous tips provided no information as to two of the three factors *Gates* identified as relevant. In neither case did the anonymous caller tell the authorities the basis for his or her knowledge of the reported offense,

nor could the police point to any external factors that could demonstrate the caller's veracity. Thus, corroboration of the tip had to serve triple duty, as establishing reliability and, by inference, showing veracity and basis of knowledge. Consequently, the Court required more than just corroboration of innocent details. By contrast, anonymous 911 reports of drunk drivers typically will provide direct information about the caller's basis of knowledge. Unlike the secretive tips in *J.L.* and *White*, 911 callers reporting drunk or reckless driving are relating their direct observations to the authorities.

Moreover, in both *White* and *J.L.*, the reported offenses involved "concealed criminal activity," *J.L.*, 529 U.S. at 272. The Court therefore looked to "inside information—a special familiarity with respondent's affairs," *White*, 496 U.S. at 332, as demonstrating the tips' reliability. Such special familiarity would most obviously be demonstrated by predicting future behavior. This consideration, however, does not apply to tips about open criminal behavior committed in front of strangers.

Accordingly, a detailed anonymous 911 call reporting personal observations of a drunk or reckless driver on the highway presents a qualitatively different set of considerations under *Gates* and must be evaluated under its own facts. These differences, when combined with the weightier governmental interest, further add to the balance in favor of finding reasonable suspicion.

3. In sum, *Wells* and similar cases from other states are correct in concluding that an anonymous 911 call reporting the caller's personal observation of drunk or reckless driving and providing a detailed description of the vehicle, its location, and direction of travel, is sufficient to justify an investigatory detention, even though officers, upon encountering the vehicle, are able to corroborate only the innocent details of the tip. These cases properly recognize that reasonable suspicion is evaluated by balancing the totality of the circumstances, including consideration of the importance of the governmental interest, which is markedly stronger when officers are confronted with a drunk or reckless driver on the road. Having received a tip from an anonymous 911 call reporting an ongoing threat to public safety and providing a basis of knowledge, officers may rely on confirmation of the innocent details of the call to provide reasonable suspicion for an investigative detention. They need not wait for further confirmation of illegality, particularly when additional confirmation could come at the price of injury or death to innocent motorists and pedestrians.

4. Petitioners take issue with the *Wells* analysis, repeatedly accusing California and its sister states of adopting an automatic "automobile exception" lacking in constitutional support. Pet'rs Br. 9, 10, 12, 24, 25, 27, 30, 31, 32, 38, 39. Petitioners' attack is directed at a straw man. No court permitting an investigative

detention of a drunk driver has done so by invoking any such automobile exception.[3] To the contrary, California, like other jurisdictions, has consistently undertaken a balancing of all relevant factors, which necessarily includes the heightened governmental interest of protecting the public from a threat of imminent harm.

Petitioners are incorrect in asserting that the Fourth Amendment requires an officer who receives an anonymous tip regarding a drunken or reckless driver to corroborate dangerous driving before stopping the vehicle. Reasonable suspicion is evaluated under the totality of the circumstances, including the importance of the governmental interest at stake. When the threat to public safety is substantial and immediate—as it is with reported drunk or reckless driving—officers may rely on a detailed anonymous tip, corroborated in all other respects, as providing reasonable suspicion to detain, without the need to also corroborate the illegality.

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[3] A lone dissenting opinion is the only evidence petitioners marshal to support the claim that states are relying on an automatic "automobile exception." Pet'rs Br. 12 n.3 (citing *Boyea*, 765 A.2d at 877 (Johnson, J., dissenting)). Notably, the majority and concurring opinions in *Boyea* rejected this characterization and took pains to explain that the decision was based on a balancing of all factors relevant to evaluating the reasonableness of the stop. See *id*. at 405-10 (majority); *id*. at 420-21 (Skoglund, J., concurring).

D. Petitioners' Mandatory Corroboration-of-Illegality Test Misreads the Holding in *J.L.* and Is Contrary to *Terry*

1. The central defect underlying petitioners' entire thesis is their failure to acknowledge that the heightened governmental interest in protecting the public is an integral component of the balancing of interests. Petitioners attempt to minimize *J.L.*'s acknowledgement that the balancing of interests would be different for a report of a bomb by retorting that they are "not aware of any decision that has lowered the requisite indicia of reliability and approved a *Terry* stop and frisk of a person who was reportedly carrying a bomb." Pet'rs Br. 26. They add that, apart from a report of a "potentially cataclysmic event such as a terrorist attack," *J.L.* cannot be read as authorizing a public safety exception "that would completely undermine its holding." *Id*. at 26-27.

Petitioners' attempt to characterize the governmental interest in public safety as an exception to the general rule misses the point entirely. The significance of the governmental interest is baked into the test and cannot be ignored or diminished. Indeed, the importance of the governmental interest has been an essential component of Fourth Amendment balancing since the creation of the reasonable-suspicion doctrine. *Terry*, 392 U.S. at 20-22.

As stated in *United States* v. *Place*, 462 U.S. 696, 703 (1983),

> The exception to the probable-cause requirement for limited seizures of the person recognized in *Terry* and its progeny rests on a balancing of the competing interests to determine the reasonableness of the type of seizure involved within the meaning of "the Fourth Amendment's general proscription against unreasonable searches and seizures." 392 U.S., at 20. We must balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion.

See also *Hiibel* v. *Sixth Judicial Dist. Court of Nev., Humboldt Cty.*, 542 U.S. 177, 187-88 (2004); accord, *Wyoming* v. *Houghton*, 526 U.S. 295, 299-300 (1999) (the court "must evaluate the search or seizure under traditional standards of reasonableness by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests"); *Bell* v. *Wolfish*, 441 U.S. 520, 559 (1979) ("In each case [the reasonableness evaluation] requires a balancing of the need for the particular search against the invasion of personal rights that the search entails."); cf. *Maryland* v. *King*, 133 S. Ct. 1958, 1970 (2013) ("To say that no warrant is required is merely to acknowledge that 'rather than employing a *per se* rule of unreasonableness, we balance the privacy-related and law enforcement-related concerns to determine if the intrusion was reasonable.' ").

Although *Terry* and *Place* involved the government's general interest in routine crime prevention and detection, the Court has also recognized that the heightened interest of protecting the public from imminent risk of harm necessarily influences the reasonableness balancing. See, *e.g.*, *Graham* v. *Connor*, 490 U.S. 386, 396 (1989) ("proper application" of the balancing test "requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight"); *Tennessee* v. *Garner*, 471 U.S. 1, 10-11 (1985) (seizure of fleeing suspect accomplished by use of deadly force is not unreasonable when "suspect poses a threat of serious physical harm, either to the officer or to others"); accord, *Scott* v. *Harris*, 550 U.S. 372, 383 (2007) ("Scott defends his actions by pointing to the paramount governmental interest in ensuring public safety. . . . Thus, in judging whether Scott's actions were reasonable, we must consider the risk of bodily harm that Scott's actions posed to respondent in light of the threat to the public that Scott was trying to eliminate."). Accordingly, in evaluating the sufficiency of an anonymous tip of drunk driving and the necessary steps an officer must take, if any, before acting on the tip, the heightened governmental interest in protecting the public must be considered.

2. Moreover, the heightened importance of this governmental interest necessitates a different calculus

than that undertaken in *J.L.* Petitioners read *J.L.* as setting out a strict rule of corroboration for anonymous tips. They extract from *J.L.* the proposition that "[w]here officers are relying on anonymous tips rather than their own observations, they must corroborate not just the tip's innocent details, but also its 'assertion of illegality.'" Pet'rs Br. 20 (quoting *J.L.*, 529 U.S. at 272). *J.L.*, however, was much more circumspect, observing, "The reasonable suspicion *here at issue* requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person." 529 U.S. at 272 (italics added).

Petitioners elide the portion of the statement recognizing that the inquiry into reasonable suspicion—and the concomitant evaluation of the sufficiency of an anonymous tip—is dependent on the circumstances presented and justifications offered. Petitioners instead focus on the "assertion of illegality" language, from which they hope to construct a mandatory test. However, *J.L.* was clear that there is no basis for adopting a *per se* test when conducting the balancing for reasonable suspicion. *Id*. at 272-73. Similarly, the Court carefully noted that it was not stating a firm rule that would govern when the governmental interest was more substantial, such as for a report of a bomb. *Id*. at 273-74.

3. Petitioners' attempt to fashion a rule of general applicability for all anonymous tips that requires officers to corroborate the "assertion of illegality" is not only unsupported by *J.L.*, but threatens to resurrect the compartmentalized approach rejected in

Gates. See, *e.g.*, *Gates*, 462 U.S. at 231 n.6 ("As our language indicates, we intended neither a rigid compartmentalization of the inquiries into an informant's 'veracity,' 'reliability' and 'basis of knowledge,' nor that these inquiries be elaborate exegeses of an informant's tip."); see also *United States* v. *Sokolow*, 490 U.S. 1, 7 (1989) ("The concept of reasonable suspicion, like probable cause, is not 'readily, or even usefully, reduced to a neat set of legal rules.' "). California properly rejected petitioners' attempt to impose a rigid rule of corroboration of illegality as contrary to the traditional balancing approach of *Terry*.

E. Petitioners' Approach Improperly Devalues the Governmental Interest in Public Safety and Runs Contrary to the Totality-of-the-Circumstances Test Reaffirmed in *Gates*

1. Petitioners challenge the state court's finding of reasonable suspicion by downplaying the importance of the governmental interest in stopping drunk or reckless driving. They assert that there is no meaningful distinction between the public safety concerns arising from the possession of a handgun and those arising from drunk driving that would warrant a different application of the balancing test.[4]

[4] For support, petitioners point out that, in 2011, the number of firearm homicides was greater than the number of alcohol-related driving fatalities. Pet'rs Br. 30-31. Petitioners note that preliminary data for 2011 reports 11,101 homicides by firearm, U.S. Dep't of Justice, Bureau of Justice Statistics, *Firearm*

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Petitioners say that "[f]irearm possession can become firearm use in a matter of seconds . . . ." Pet'rs Br. 30. The distinction between possession and use, however, makes all the difference.

While firearms always have the potential to be dangerous, the mere possession of a gun in a pocket or waistband presents, at most, an inchoate risk to public safety. Indeed, the firearm homicide statistics cited by petitioners do not describe people killed due to firearm "possession." Only when a suspect brandishes or fires a gun is the threat to public safety

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Violence 1993-2011, 1 (May 2013), compared to 9,878 deaths in alcohol impaired driving crashes, NHTSA, *Traffic Safety Facts, 2011 Data*, 1-2 (No. 811700, Dec. 2012). Pet'rs Br. 30-31.

For a fuller picture, we add that, in 2006, the last year such statistics were compiled, the NHTSA reported that, in addition to 15,945 alcohol-related driving fatalities nationwide, there were 191,000 alcohol-related crashes causing injury and an additional 355,000 alcohol-related crashes resulting in property damage. NHTSA, *Traffic Safety Facts 2006, A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System*, 56 (No. 810818, 2007), http://www.nhtsa.dot.gov/Pubs/810818.pdf; see also NTSB, *Safety Report, Reaching Zero: Actions to Eliminate Alcohol-Impaired Driving*, 4-5 (No. PB2013-106566, 2013), http://www.ntsb.gov/doclib/reports/2013/SR1301.pdf.

Furthermore, in 2009, California alone reported 208,531 arrests for driving under the influence (DUI), with a 77.2% alcohol-offense conviction rate. Cal. Dep't of Motor Vehicles, *2012 Annual Report Of The California DUI Mgmt. Information System*, 9, 13-15 (2012), http://apps.dmv.ca.gov/about/profile/rd/r_d_report/Section_5/S5-236.pdf.

fully realized, and police are confronted with an immediate and ongoing emergency.[5]

Unlike mere possessory offenses posing an inchoate risk, drunk drivers behind the wheel of one- or two-ton vehicles traveling down the highway present a grave and imminent threat to themselves, their passengers, and all motorists and pedestrians who happen to be on or near the road they are traveling. *Michigan Dep't of State Police* v. *Sitz*, 496 U.S. 444, 451 (1990) ("No one can seriously dispute the magnitude of the drunken driving problem or the States' interest in eradicating it."); *Virginia* v. *Harris*, 130 S. Ct. 10, 11 (2009) (Roberts, C.J., dissenting from denial of certiorari) ("The imminence of the danger posed by drunk drivers exceeds that at issue in other types of cases.").

2. Petitioners also take issue with the conclusion by the court in *Wheat*, which has been embraced by most jurisdictions, that imposing a mandatory rule of corroboration of illegality—i.e., requiring that officers observe dangerous driving to corroborate the tip before initiating a stop—imposes too "'stringent'" a test under the totality of the circumstances. Pet'rs Br. 33 (quoting *Wheat*, 278 F.3d at 733). Petitioners argue that "there is nothing stringent about requiring

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[5] Carrying a bomb, although technically a possessory offense, presents unique risks to public safety. See, *e.g.*, *People* v. *Morse*, 2 Cal. App. 4th 620, 646 (1992) (observing, "Almost uniquely, bombs have an 'inherently dangerous nature'" because "the maker often loses control over the time of its detonation").

corroborating information that is so readily available," because officers need only follow the suspected drunk driver and wait for the driver to weave, or otherwise violate the traffic laws. Pet'rs Br. 33-34. Petitioners conveniently ignore that the first violation of a traffic law observed by the officer may very well be the drunk driver swerving into oncoming traffic, driving off the road into pedestrians, ramming the car stopped in front of him, or running a red light and broadsiding a crossing motorist.

Petitioners' mandatory corroboration-of-illegality requirement is also contrary to the totality-of-circumstances approach reaffirmed in *Gates* because it fails to consider the differences between tips reporting possessory offenses and those reporting observation of drunk driving. The need for corroboration of illegality or a showing of inside knowledge is typically reduced in the context of an anonymous drunk driving tip. *Adams*, *White*, *Gates*, and *J.L.* involved possessory crimes hidden from public view, for which the informant did not provide his basis of knowledge. In the absence of direct information about basis of knowledge, the Court looked to indirect information: proof of inside knowledge via corroboration of predictive information of otherwise unknowable details to establish inferentially a basis of knowledge. See, *e.g.*, *White*, 496 U.S. at 332 ("What was important was the caller's ability to predict respondent's *future behavior*, because it demonstrated inside information—a special familiarity with respondent's affairs.").

In other words, for anonymous tips about concealed possessory offenses lacking any articulated basis of knowledge, perhaps the only way to establish the tipster had a basis of knowledge and was reliable is to test the accuracy of predictive information included in the tip, information that would demonstrate inside knowledge of the hidden offense. Such confirmation is not needed when the violation is committed in public view and the tipster reports that his or her basis of knowledge was via direct observation. When, as here, the caller reports the suspect driver ran the caller off the road, the caller has clearly identified his or her basis of knowledge about the offense, satisfying this *Gates* factor directly, without the need for any further inferential inquiry. See *Gates*, 462 U.S. at 234 ("Conversely, even if we entertain some doubt as to an informant's motives, his explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed firsthand, entitles his tip to greater weight than might otherwise be the case.").

Moreover, for reports of traffic violations that take place on the open road, there is little chance the caller will have any "inside" information beyond that apparent to any observer, notably the make and model of the car, the time of the incident, and the direction of travel. To require additional "inside" information that can be corroborated would place an impossible burden on citizen informants reporting observed crimes.

3. Notwithstanding that inside information plays no role in a tip about an openly committed

offense, petitioners insist that officers must still corroborate the illegality itself to satisfy *J.L.*'s mandatory test for anonymous tips. However, that would demand too much of officers (and protect the public too little) under the totality of the circumstances.

As *Wheat* pointed out, requiring officers observe weaving or other traffic violations will effectively impose a probable cause requirement on traffic stops from anonymous tips because, once officers observe a traffic violation, they have probable cause to arrest. 278 F.3d at 733; *Atwater* v. *City of Lago Vista*, 532 U.S. 318, 354 (2001). Moreover, unlike a report of gun possession on a street corner, officers have no opportunity in the drunk driving context to take the less invasive step of a consensual encounter. Thus, there is no less intrusive means available to investigate the tip. *Wheat*, 278 F.3d at 736.

Most importantly, requiring the officer to do nothing and wait for a traffic violation in his presence exacerbates the very threat to public safety that warrants the investigative detention in the first place. When, as here, the suspect is driving on an undivided two-lane highway, the first observable sign of intoxication may very well be the last: a fatal swerve into oncoming traffic. *Id*. at 737. Requiring the officer to wait for observation of illegality is contrary to the very reason investigative detentions are permissible on less than probable cause.

> The 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. On the contrary, *Terry* recognizes that it may be the essence of good police work to adopt an intermediate response. A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time.

Adams, 407 U.S. at 145-46 (citation omitted); cf. *Brigham City* v. *Stuart*, 547 U.S. 398, 406 (2006) ("Nothing in the Fourth Amendment required [officers] to wait until another blow rendered someone 'unconscious' or 'semi-conscious' or worse before entering. The role of a peace officer includes preventing violence and restoring order, not simply rendering first aid to casualties; an officer is not like a boxing (or hockey) referee, poised to stop a bout only if it becomes too one-sided.").

Petitioners' argument ignores that the importance of the governmental interest is an essential element of the reasonableness balancing. The graver the threat to public safety presented by the anonymous tip, the less is needed to satisfy the *Gates* factors before officers are reasonably permitted to act by undertaking a minimally intrusive investigative detention.

4. Petitioners assert that *Wells* and *Wheat* and similar cases from other jurisdictions have argued that "automobile-related tips should be treated

differently from other anonymous tips" because a vehicle stop is less intrusive than a stop and frisk of a suspect on the street. Pet'rs Br. 36. Petitioners are incorrect.

Wells made clear that anonymous tips of drunk drivers are subject to the same totality-of-the-circumstances examination applicable in all Fourth Amendment cases, and that "[t]he guiding principle in determining the propriety of an investigatory detention is 'the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.'" 38 Cal. 4th at 1083 (quoting *Terry*, 392 U.S. at 19); see also *Wheat*, 278 F.3d at 729, 736. And, in conducting this balancing, the courts correctly observed that traffic stops present only a "modest" intrusion. See *United States* v. *Brignoni-Ponce*, 422 U.S. 873, 879-80 (1975).

The courts did not create a categorical rule that tips pertaining to an automobile were subject to a reduced inquiry under the Fourth Amendment. They did not suggest, for example, that an anonymous tip reporting the driver of a car was carrying drugs or a concealed weapon would require less corroboration than the tip in *J.L.* or *White*. Rather, the courts correctly found that the balancing calculus produced a different result under the totality of circumstances in drunk driving cases in light of the heightened governmental interest.

5. Petitioners question why a report of a "reckless" driver is entitled to similar treatment as a

report of a drunk driver. Pet'rs Br. 31. They contend that a "driver who has, perhaps out of necessity, made a single, seemingly reckless maneuver plainly does not pose the same threat to the public as an obviously intoxicated driver unable to control a vehicle . . . ." *Id*. The flaw in this proposed distinction is that drunk drivers generally manifest their intoxicated status to the public by driving recklessly. Consequently, a report of reckless driving is more than sufficient to give rise to reasonable suspicion the driver may be intoxicated. That the report may also be consistent with an isolated incident of recklessness does not undermine the justification for the stop. *United States* v. *Arvizu*, 534 U.S. 266, 277 (2002) ("A determination that reasonable suspicion exists, however, need not rule out the possibility of innocent conduct."). Indeed, the entire point of an investigative detention is to allow officers to assess the situation and determine whether further action is warranted. "*Terry* recognized that the officers could detain the individuals to resolve the ambiguity." *Illinois* v. *Wardlow*, 528 U.S. 119, 125 (2000); cf. *Michigan* v. *Bryant*, 131 S. Ct. 1143, 1158 (2011) ("An assessment of whether an emergency that threatens the police and public is ongoing cannot narrowly focus on whether the threat solely to the first victim has been neutralized because the threat to the first responders and public may continue.").

6. Petitioners raise concerns about the possibility of malicious tipsters anonymously phoning in false reports of drunk driving to harass motorists.

Petitioners argue that without a fixed requirement of corroboration of illegality, innocent drivers may find themselves stopped by the police based on the whims of malicious motorists with cell phones intent on harassing other motorists through anonymous false reports of reckless driving. Pet'rs Br. at 34-35, 39-40.

However, when the governmental interest in protecting public safety is substantial, the mere potential for isolated instances of abuse by malicious individuals intent on mischief is not sufficient to negate a finding of reasonable suspicion or preclude an officer from conducting an investigative detention to assess the situation and neutralize any threat to public safety. See *Terry*, 392 U.S. at 15 (acknowledging potential for misuse of investigative detentions, but nonetheless observing that "a rigid and unthinking application of the exclusionary rule, in futile protest against practices which it can never be used effectively to control, may exact a high toll in human injury and frustration of efforts to prevent crime").

Moreover, the 911 emergency system was created to provide a means of identifying and segregating emergency calls to ensure expedited response. *United States* v. *Holloway*, 290 F.3d 1331, 1339 (11th Cir. 2002) ("Not surprisingly, 911 calls are the predominant means of communicating emergency situations."); *United States* v. *Richardson*, 208 F.3d 626, 630 (7th Cir. 2000) ("A 911 call is one of the most common—and universally recognized—means through which police and other emergency personnel learn that there is someone in a dangerous situation who urgently

needs help."). Given the public's thoroughly ingrained understanding of the system's nature and purpose, officers may reasonably treat a 911 call, even when anonymous, as identifying a possible emergency situation requiring prompt attention. "Such calls are distinctive in that they concern contemporaneous emergency events, not general criminal behavior. Additionally, the exigencies of emergency situations often limit the ability of a caller to convey extraneous details, such as the identifying information." *Holloway*, 290 F.3d at 1339. "If law enforcement could not rely on information conveyed by anonymous 911 callers, their ability to respond effectively to emergency situations would be significantly curtailed." *Id*.

Concerns about isolated acts of abuse are best addressed not by requiring inaction by the police in the face of any and every anonymous report of a threat to public safety, but by legislative action penalizing such abuses. Notably, California makes it a misdemeanor to "telephone[ ] the 911 emergency line with the intent to annoy or harass another person." Cal. Penal Code § 653x(a); see also Cal. Penal Code § 653y (criminalizing use of "the 911 telephone system for any reason other than because of an emergency"). Thus, Californians are on notice of the potential penal consequences of misuse of the 911 system for harassment.[6] These statutes not only serve to deter

[6] The amicus brief supporting petitioners likewise points to anecdotal accounts of celebrities being subject to harassment by false 911 calls resulting in deployment of a SWAT team as

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abuses, they reinforce the reliability of anonymous tips made via the 911 system. See *Adams*, 407 U.S. at 146-47 (criminal liability for false tip increases veracity); *J.L.*, 529 U.S. at 276 (Kennedy, J., concurring) (noting reliability of a 911 call is enhanced by the prevalence of recording and caller identification—features that may make it possible for the police, through additional investigation, to identify the person making the report—and by the threat of criminal sanctions for false reports). Thus, the use of the 911 system itself provides indicia of reliability distinct from anonymous tips offered by letter (*Gates*) or phone call on a general line (*White*).

In sum, the Fourth Amendment does not impose a mandatory rule of corroboration of illegality before an anonymous tip of drunk driving provides

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supporting its contention that officers must corroborate illegality before acting. Brief of the Nat'l Assoc. of Crim. Defense Lawyers and Nat'l Assoc. of Fed. Defenders as Amicus Curiae in Support of Pet'rs 11-12. The logical conclusion of this position is that, because of an unquantified possibility of a false report, the only available responses for police receiving an anonymous 911 call reporting a life-threatening emergency so extreme as to warrant deployment of a SWAT team would be either to ignore the call entirely or to send an officer to knock on the door and inquire if an emergency actually exists before deploying the SWAT team. Such a result makes a mockery of the Fourth Amendment. The proper method of addressing concerns about malicious pranksters is not to impose a fixed rule under the Fourth Amendment tying the hands of police officers, but rather to look to legislatures to address the problem. And, as with harassing 911 calls, California criminalizes false reports of emergencies and "swatting." Cal. Penal Code § 148.3.

reasonable suspicion. See generally *Scott*, 550 U.S. at 383 ("Although respondent's attempt to craft an easy-to-apply legal test in the Fourth Amendment context is admirable, in the end we must still slosh our way through the factbound morass of 'reasonableness.' "); see also *id*. at 386 (Ginsburg, J., concurring) (noting, "The inquiry described by the Court . . . is situation specific. Among relevant considerations: Were the lives and well-being of others (motorists, pedestrians, police officers) at risk?"). Anonymous tips reporting drunk or reckless driving are evaluated under the totality-of-the-circumstances test traditionally applied in the Fourth Amendment context, with recognition that the heightened governmental interest in protecting the public from drunk drivers on the roadways weighs more heavily in the balance than general governmental interest in routine crime prevention and detection.

F. The State Court Correctly Found the Officers Had Reasonable Suspicion To Detain Petitioners Based on the Detailed Anonymous 911 Call and Confirmation of Innocent Details

Considering the totality of the circumstances, the California Court of Appeal correctly held that the officers had reasonable suspicion to detain petitioners. Although the 911 call making the initial report was anonymous, several factors support the officers' reliance on the call as providing reasonable suspicion. First, unlike in *J.L.*, *White*, and *Adams*, by reporting that petitioners' truck had run her off the roadway,

the caller provided the authorities with a personal basis of knowledge. J.A. 25a-26a. Second, the caller gave substantial detailed information about the perpetrator, including a vehicle description (silver Ford F-150 pickup), license plate number (8D94925), time of the incident (five minutes earlier), location (Highway 1, mile marker 88), and direction of travel (southbound). J.A. 25a-26a, 29a, 37a.

CHP officers were dispatched from the nearest location, heading north to intercept the truck. Upon locating the truck, officers were able to visually confirm the tip as to the make, model, and license plate number of the truck as provided by the caller. J.A. 49a-50a, 58a-59a. Moreover, the officers located the truck on Highway 1 approximately 18 minutes after the reported incident and around 19 miles south of the reported incident, as would be expected, further confirming the accuracy of the tip. Compare J.A. 36a, 46a (incident occurred at mile marker 88, approximately five minutes before the 3:47 p.m. broadcast) with *id*. at 42a, 46a (truck spotted at 4:00 p.m. at mile marker 69). Notably, because petitioners were driving on a highway, it is doubtful that anyone other than another driver on Highway 1 could have provided all of those details. The confirmation of these details bolstered the caller's reliability and veracity. See *Gates*, 462 U.S. at 244 (quoting *Spinelli*, 393 U.S. at 427 (White, J., concurring), for the proposition that "'[b]ecause an informant is right about some things, he is more probably right about other facts,'" "including the claim regarding . . . illegal activity").

The caller's use of the 911 emergency system to make the report, J.A. 28a, adds to the caller's veracity and the tip's reliability. As noted, California criminalizes misuse of the 911 system. See *Adams*, 407 U.S. at 146-47; *J.L.*, 529 U.S. at 276 (Kennedy, J., concurring). Moreover, Ms. Moore testified that all calls to the Humboldt and Mendocino 911 dispatch centers are recorded. J.A. 33a. Thus, the police had a record of the caller's voice. In reporting the incident, the caller also gave her mile-marker location on Highway 1. By so doing, she exposed herself to possible sanctions had officers, in addition to pursuing the suspect, gone to her location and determined the call was a hoax. The voice record could have aided in determining the identity of the caller.

Finally, a report of a reckless or drunk driver on a two-lane undivided highway—who had already forced another driver off the road—presented a grave ongoing threat to public safety requiring immediate action. The importance of the governmental interest in this case tipped the balance in favor of finding reasonable suspicion on less information than in *J.L.*

Although *J.L.* found a need for corroboration of illegality in the face of a bare anonymous tip reporting a possessory offense, *J.L.* did not set out a strict corroboration-of-illegality test for finding reasonable suspicion in all situations, as advanced by petitioners. Rather, *J.L.*'s holding was an application of the rule in *Terry*, which requires courts to evaluate reasonable suspicion by balancing the strength of the governmental interest against the degree of the intrusion of

the stop, in view of the totality of the circumstances. Ultimately, "[t]he task of this Court, as of other courts, is to 'hold the balance true'. . . ." *Gates*, 462 U.S. at 241.

By finding the officers had reasonable suspicion to stop petitioners based on its evaluation of the importance of the governmental interest coupled with the quantity and quality of information provided by the anonymous 911 call, the California Court of Appeal held the balance true.

CONCLUSION

The judgment of the California Court of Appeal should be affirmed.

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Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
DANE R. GILLETTE
Chief Assistant Attorney General
GERALD A. ENGLER
Senior Assistant Attorney General
DONALD E. DE NICOLA
Deputy State Solicitor General
SETH K. SCHALIT
Supervising Deputy Attorney General
JEFFREY M. LAURENCE
Supervising Deputy Attorney General
Counsel of Record

Counsel for Respondent