No. 09-11556

IN THE

Supreme Court of the United States

JOSE TOLENTINO,

Petitioner,

v.

STATE OF NEW YORK,

Respondent.

On Writ Of Certiorari
To The Court Of Appeals Of New York

BRIEF OF THE NEW YORK STATE ASSOCIATION OF CHIEFS OF POLICE, INC. AND THE NEW YORK STATE SHERIFFS' ASSOCIATION INSTITUTE, INC. AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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Amici curiae respectfully submit this brief in support of Respondent pursuant to Supreme Court Rule 37.3.[1] *Amici* urge the Court to affirm the judgment of the New York Court of Appeals.

STATEMENT OF INTEREST OF *AMICI CURIAE*

The New York State Association of Chiefs of Police is a not-for-profit organization made up of the most experienced and respected law enforcement officials in the State of New York, including Police Chiefs, Commissioners, Superintendents, Executives, Administrators, and Agents-in-Charge. The Association advances the general welfare of the police profession through the education of its members, and its ultimate goal is to develop a more efficient and effective law enforcement and criminal justice system.

The New York State Sheriffs' Association Institute, Inc. is a not-for-profit corporation, comprising all elected and appointed Sheriffs of New York State. The Institute's goals include the education and training of Sheriffs and their staffs, so that the public is well served by the Sheriffs of New York State.

Amici have a strong interest in the outcome of this case, as they seek to ensure that law enforcement is not unnecessarily handicapped by the

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[1] Pursuant to Supreme Court Rule 37.6, *Amici* state that no counsel for a party authored this brief in whole or in part, and no person or entity other than *Amici* has made a monetary contribution to the preparation or submission of this brief. All parties have consented to the filing of this brief *amici curiae*, and their consent letters are being filed with the Clerk's Office.

suppression of evidence in circumstances where the purposes of the exclusionary rule would not be served. Based on *Amici*'s familiarity with the training of officers and officers' purposes in making traffic stops, there would be no practical benefit in excluding evidence of documents previously in the government's possession.

SUMMARY OF THE ARGUMENT

Petitioner seeks to dramatically expand the exclusionary rule, to cover not only evidence acquired as a result of a Fourth Amendment violation, but also evidence already in the government's hands—*i.e.*, public records establishing that Petitioner's license was suspended. Law enforcement is properly barred from using ill-gotten evidence from unlawful stops or searches, but that principle does not extend to depriving the government of evidence already lawfully in its possession.

Extending the exclusionary rule to evidence already in the government's possession will accomplish nothing in deterring Fourth Amendment violations, but will come with substantial costs. Any purported benefits are illusory because there is no reason to believe that officers are stopping people, without cause, for the purpose of comparing their identity against databases in hopes of finding some violation. To the contrary, officers are trained to stop vehicles only in compliance with Fourth Amendment requirements, and there is no incentive for them to do otherwise. Indeed, the potential loss of evidence from an unlawful stop dwarfs any potential gain from simply learning someone's identity.

In contrast, the cost of excluding evidence, particularly evidence already in the government's possession, is substantial. There is, of course, the usual cost of exclusion, *i.e.*, potentially important evidence is suppressed even though it could help the jury determine the truth. Here, though, there is an additional harm because exclusion of government records essentially leads to immunity from prosecution, in that those records may be essential—as they are here—to prove the case. This kind of immunity is not the proper function of the exclusionary rule, and certainly cannot be justified given the lack of any benefit in applying the rule here.

Furthermore, Petitioner's proposed expansion of the exclusionary rule departs from established exclusionary rule principles. The doctrine by its terms prevents use of fruit of the poisonous tree; this does not mean that the government also must throw out fruit that is already, so to speak, in its refrigerator. Indeed, this Court has made clear that the rule does not apply to evidence already in the government's possession, and Petitioner does not directly contest this point. Petitioner argues that the government did not possess the DMV record here in a "meaningful sense," but this "meaningful sense" test is both unjustified and dangerously open-ended.

ARGUMENT

I. PETITIONER'S PROPOSED EXPANSION OF THE EXCLUSIONARY RULE IS NOT JUSTIFIED BY THE DETERRENT PURPOSES OF THE RULE AND WOULD IMPOSE SUBSTANTIAL COSTS.

Based on the serious costs of excluding potentially crucial evidence, this Court has narrowly confined the exclusionary rule to circumstances in which its benefit in deterring unlawful police behavior outweighs the substantial societal costs of exclusion. For this reason, the Court has consistently refused expansions of the exclusionary rule in a variety of contexts. *See, e.g.*, *Hudson v. Michigan*, 547 U.S. 586, 591 (2006) (knock-and-announce violations); *Pa. Bd. of Probation & Parole v. Scott*, 524 U.S. 357 (1998) (parole hearings); *United States v. Leon*, 468 U.S. 897 (1984) (good-faith search based on warrant); *Nix v. Williams*, 467 U.S. 431 (1984) (evidence that would have been inevitably discovered); *United States v. Calandra*, 414 U.S. 338 (1974) (grand jury proceedings); *Stone v. Powell*, 428 U.S. 465, 493 (1976) (habeas corpus proceedings). Likewise, here, any expansion of the exclusionary rule to evidence already in the government's possession fails under any plausible cost-benefit analysis.

This Court has long made clear that "suppression is not an automatic consequence of a Fourth Amendment violation." *Herring v. United States*, 129 S. Ct. 695, 698 (2009). Indeed, suppression "has always been" this Court's "last resort, not [its] first impulse." *Hudson*, 547 U.S. at 591. As this Court has "consistently recognized," the "unbending

application" of the exclusionary rule "would impede unacceptably the truth-finding function[]" of our criminal justice system. *Leon*, 468 U.S. at 907 (quoting *United States v. Payner*, 447 U.S. 727, 734 (1980)).

Thus, a Fourth Amendment violation justifies applying the exclusionary rule only "where its deterrence benefits outweigh its substantial social costs." *Hudson*, 547 U.S. at 591 (internal quotation marks omitted). This follows from the purpose of the exclusionary rule, which "is *not* to redress the injury to the privacy of the search victim," but rather "is to deter future unlawful police conduct." *Calandra*, 414 U.S. at 347 (emphasis added). Accordingly, only when the rule's deterrent value can overcome the "substantial cost on the societal interest in law enforcement" is its application warranted. *United States v. Janis*, 428 U.S. 433, 448 (1976). There is, as a result, "no way to avoid making an empirical judgment" when deciding whether a particular Fourth Amendment violation should trigger the exclusionary rule. *Leon*, 468 U.S. at 927 (Blackmun, J., concurring). And here, that empirical judgment weighs firmly against the rule's application.

A. Extending the Exclusionary Rule to Public Records Already in the Government's Possession Would Have No Deterrence Benefits.

There would be no deterrence benefit in expanding the exclusionary rule to cover evidence already in the government's possession. Petitioner direly warns of police officers intentionally stopping citizens without cause to check their identities

against databases, but this possibility has no grounding in reality or common sense. Even though courts have long refused to exclude evidence from databases already in the government's possession,[2] there is no evidence of the specter raised by Petitioner. To the contrary, the practice in New York State, with which *Amici* are well acquainted, is to do everything reasonably possible to prevent unlawful stops from occurring.

Petitioner fundamentally misunderstands both the incentives of law enforcement and the considerable safeguards against the suspicionless stops of which Petitioner warns. The police's primary objective in law enforcement is preventing crimes from occurring, stopping crimes in progress, and gathering evidence of crimes; it is not to check individuals' names against public records. When assessing whether applying the exclusionary rule would have the requisite "significant effect in deterring" Fourth Amendment violations, *Herring*, 129 S. Ct. at 701, this Court has always recognized that there is little deterrence benefit when the evidence at issue is outside the police officers' primary objective. Specifically, if "the imposition of the exclusionary rule" in a new fashion "falls outside the offending officer's zone of primary interest," then such an expansion "is unlikely to provide significant,

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[2] *See, e.g.*, *United States v. Farias-Gonzalez*, 556 F.3d 1181, 1189 (11th Cir. 2009); *United States v. Bowley*, 435 F.3d 426, 430-31 (3d Cir. 2006); *United States v. Roque-Villanueva*, 175 F.3d 345, 346 (5th Cir. 1999); *Hoonsilapa v. INS*, 575 F.2d 735, 737 (9th Cir. 1978).

much less substantial, additional deterrence." *Janis*, 428 U.S. at 458.

For example, when declining to apply the exclusionary rule to parole proceedings, this Court emphasized that a police "officer's focus is not upon ensuring compliance with parole conditions or obtaining evidence for introduction at administrative proceedings, but upon obtaining convictions of those who commit crimes." *Scott*, 524 U.S. at 368. Accordingly, "even when the officer knows that the subject of his search is a parolee, the officer will be deterred from violating Fourth Amendment rights by the application of the exclusionary rule to criminal trials." *Id.* Expanding the exclusionary rule into parole proceedings was unlikely to increase deterrence, for such proceedings "fall[] outside" officers' "zone of primary interest." *Id.* (quoting *Janis*, 428 U.S. at 458); *see also INS v. Lopez-Mendoza*, 468 U.S. 1032, 1043 (1984) (noting potential deterrent value of exclusionary rule in civil deportation proceedings, because "arresting officer[s'] primary objective, in practice, will be to use evidence" in such proceedings).

Likewise, here, the DMV records are outside the police officers' "zone of primary interest." The primary objective of officers, as this Court has recognized, is "searching for evidence of criminal conduct with an eye toward the introduction of the evidence at a criminal trial." *Scott*, 524 U.S. at 367. Their main purpose is *not* to compare individuals' names to DMV and other public records. As a result, when the police learn from public records that, for example, an individual happens to have a suspended driver's license, it is a purely incidental discovery,

and not the reason for the stop. Whether those records might later be suppressible is therefore unlikely "to alter the behavior of law enforcement officers." *Illinois v. Krull*, 480 U.S. 340, 348 (1987).

Moreover, as in *Scott*, there is substantial deterrence regardless of the exclusion at issue. Specifically, the officers' actions are already shaped by the risk that any evidence they collect might be suppressed in a criminal trial. Thus, regardless of whether public records are suppressible, an officer "would be foolish" to engage in suspicion-free searches, for "[b]y doing so, he would risk suppression of all evidence" found during the search. *Murray v. United States*, 487 U.S. 533, 540 (1988). Petitioner and *amici* have given no reason "to assume that any specific disincentive already created by the risk of exclusion of evidence" collected during the search would be meaningfully "enhanced if there were the further risk" that public records consulted during the search might also be excluded. *Stone*, 428 U.S. at 493. Rather, just as "[a]ny incremental deterrent effect which might be achieved by extending the rule to grand jury proceedings is uncertain at best," *Calandra*, 414 U.S. at 351, the same is true for the use of evidence already in the government's possession.

In addition to the exclusionary rule's existing impact on all evidence obtained based on an unlawful stop, suspicion-free stops are deterred by the risk of civil suits. *Hudson*, 547 U.S. at 596-98. Individuals whose Fourth Amendment rights are violated by state or federal officers can sue those officers for damages. *See* 42 U.S.C. § 1983; *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*,

403 U.S. 388 (1971). And certainly any policy of unlawful stops would raise a real risk of civil liability. When declining to extend the exclusionary rule to violations of the Fourth Amendment's knock-and-announce requirement, this Court assumed that the threat of "civil liability [was] an effective deterrent" of such infractions already. *Hudson*, 547 U.S. at 598 (noting risk of both civil damages and attorneys' fees). Petitioner offers no reason why this assumption should not apply with equal force here.

Furthermore, there are extensive police training and discipline programs designed to prevent Fourth Amendment violations, including unlawful vehicle stops. In New York, for example, nearly every government officer with police powers is legally required to complete a training program that teaches individuals' Fourth Amendment rights in detail. *See* N.Y. Gen. Mun. Law § 209-q; N.Y. Exec. Law § 846-h.[3] Supervisors are required to undergo additional training that includes monitoring subordinate officers to ensure that they do not violate Fourth Amendment rights. *See* N.Y. Gen. Mun. Law § 209-q(1)(a). There is simply no practice in New York State to allow, let alone encourage, unlawful stops for the purpose of learning a driver's identity and examining DMV records. Petitioner presents no facts to the contrary.

More generally, there is no evidence to suggest that officers throughout the country are engaging in stops with an eye toward using identity evidence

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[3] The few exceptions are largely individuals, such as certain Attorney General investigators, with police powers by law but no uniformed presence.

even if the stop is deemed unlawful. Indeed, this Court has repeatedly noted strong evidence that police do respect Fourth Amendment rights, and relied on this evidence as an important factor in denying the need for exclusion. This Court has praised "the increasing professionalism of police forces, including a new emphasis on internal police discipline," with "increasing evidence that police forces across the United States take the constitutional rights of citizens seriously." *Hudson*, 547 U.S. at 598-99; *see also id.* at 603 (Kennedy, J., concurring) (noting "procedures for training police offices and imposing discipline for failures to act competently and lawfully"); *Krull*, 480 U.S at 352 n.8 (refusing "to assume" government actors' "indifference to the constitutionality" of their actions). This focus on Fourth Amendment rights is unsurprising, for the "[f]ailure to teach and enforce constitutional requirements exposes municipalities to financial liability." *Hudson*, 547 U.S. at 599 (citing *Canton v. Harris*, 489 U.S. 378, 388 (1989)). And while this "attention to Fourth Amendment interests cannot guarantee that constitutional violations will not occur, . . . it does reduce the likely deterrent value of the exclusionary rule." *Lopez-Mendoza*, 468 U.S. at 1045.

In short, expanding the exclusionary rule to cover public records is unlikely to have any deterrent effect on Fourth Amendment violations. Any such violations are already substantially deterred by the existing exclusionary rule, the threat of civil liability, and internal training and discipline programs.

B. Extending the Exclusionary Rule to Public Records Already in the Government's Possession Would Carry Substantial Costs.

As against the minimal benefits of exclusion here, the costs are particularly large. Petitioner's proposed expansion of the exclusionary rule would preclude the police from using public-records evidence already in their possession, not only impeding the truth-seeking function of our criminal justice system, but also—because such records are the only way to prove crimes such as Petitioner's—guaranteeing that certain guilty individuals go free. Petitioner's expansion would also generate increased litigation costs by introducing the exclusionary rule into an entirely new class of cases, where the police collect no new evidence but instead simply consult relevant public records to determine whether an individual has committed a crime. None of these costs is justified by the insignificant deterrence gains that Petitioner's expansion might achieve.

This Court has always made clear that any benefits of the exclusionary rule come at a steep cost. "Because the exclusionary rule precludes consideration of reliable, probative evidence," the rule "undeniably detracts from the truthfinding process and allows many who would otherwise be [convicted] to escape the consequences of their actions." *Scott*, 524 U.S. at 364; *see also Stone*, 428 U.S. at 490 ("Application of the rule thus deflects the truthfinding process and often frees the guilty."). Indeed, "often this evidence alone establishes beyond virtually any shadow of a doubt that the defendant is guilty." *Stone*, 428 U.S. at 490 (internal quotation marks omitted).

The cost of deeming such evidence off limits is particularly striking here, where the public records at issue are already in the government's possession and are genuinely essential to prove the crime. Unlike other crimes that might be provable in many ways, it is impossible to establish beyond a reasonable doubt that an individual has driven with a suspended driver's license without relying upon the public record of the suspended license. Not only does "this evidence alone establish[]" the defendant's guilt, *id.*, but it is *only* this evidence that can do so.

Applying the exclusionary rule here would therefore amount to a grant of criminal immunity, far more than is normally the case with the exclusionary rule. As this Court has explained, such immunity is not a legitimate function of the exclusionary rule. Specifically, when a defendant "challenges his own presence at trial, he cannot claim immunity from prosecution simply because his appearance in court was precipitated by an unlawful arrest." *United States v. Crews*, 445 U.S. 463, 474 (1980) (plurality opinion). The reason is that a defendant "is not himself a suppressible 'fruit,' and the illegality of his detention cannot deprive the Government of the opportunity to prove his guilt through the introduction of evidence wholly untainted by the police misconduct." *Id.* Thus, the already "grave" costs of the exclusionary rule are particularly troubling with respect to Petitioner's proposed expansion, which would essentially grant immunity for certain crimes whenever an unlawful stop identifies the defendant.

Moreover, Petitioner's proposed expansion would affect a significant number of cases. It would include

every situation in which the police, in light of their existing records and knowledge, connect someone to a crime solely by learning that person's identity. This applies not only to the instant case, but also to cases where the police discover that an individual is a felon, and thus prohibited from possessing a firearm, or a past sex offender, and thus required to register with local authorities. *See, e.g.*, 18 U.S.C. § 922(g); 42 U.S.C. § 16911 *et seq.* Excluding public records in these circumstances could effectively grant immunity for crimes far more severe than driving with a suspended license.

Moreover, expanding the exclusionary rule in such a sweeping fashion would substantially burden the courts. "[T]he exclusionary rule frequently requires extensive litigation to determine whether particular evidence must be excluded." *Hudson*, 547 U.S. at 595 (quoting *Scott*, 524 U.S. at 366). Such issues have, to date, been wholly foreign to cases in which the police simply consult existing public records in order to enforce crimes. On Petitioner's view, though, the exclusionary rule would take on sudden importance in such cases, by becoming a new means through which defendants can exclude public and conclusive evidence of their guilt. This would likely create "a constant flood" of alleged Fourth Amendment violations in a new class of cases—a "considerable" cost to the courts that must be justified. *Id.*

In contrast, the limits of the current exclusionary rule are easy to enforce. The rule applies to all evidence obtained during or as a result of a Fourth Amendment violation (subject to certain exceptions), but not to any evidence already in the government's

possession at the time of the violation. Administering this bright-line boundary is "not . . . difficult" and does not require "a substantial expenditure of judicial time." *Leon*, 468 U.S. at 924.

In sum, Petitioner has not provided any reason for this Court to take the drastic step of expanding the exclusionary rule, with all its attending costs, without any plausible gains in deterrence.

II. BECAUSE THE DMV RECORD WAS NOT OBTAINED AS A RESULT OF THE SUPPOSEDLY UNLAWFUL STOP, IT IS NOT SUBJECT TO THE EXCLUSIONARY RULE

For nearly a century since this Court adopted the exclusionary rule in *Weeks v. United States*, 232 U.S. 383 (1914), the rule has applied only to evidence obtained as a result of a constitutional violation. "The exclusionary rule has traditionally barred from trial physical, tangible materials obtained either during or as a direct result of an unlawful invasion. . . . Similarly, testimony as to matters observed during an unlawful invasion has been excluded in order to enforce the basic constitutional policies." *Wong Sun v. United States*, 371 U.S. 471, 485 (1963).[4]

The exclusionary rule has never been applied to evidence already in the government's possession at

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[4] *See also, e.g.*, *Weeks*, 232 U.S. at 393 ("The case in the aspect in which we are dealing with it involves the right of the court in a criminal prosecution to retain for the purposes of evidence the letters and correspondence of the accused, seized in his house in his absence and without his authority, by a United States marshal holding no warrant for his arrest and none for the search of his premises.").

the time of the supposedly unlawful search or seizure. "The exclusionary rule enjoins the Government from benefiting from evidence it has unlawfully obtained; it does not reach backward to taint information that was *in official hands prior to any illegality*." *Crews*, 445 U.S. at 475 (emphasis added).[5] In *Crews*, the police unlawfully stopped, arrested, and took a picture of the defendant. *Id.* at 466-67. The picture was not allowed into evidence, because it was created during the unlawful seizure, but the witness' in-court identification of the defendant was held not to be barred by the exclusionary rule. This Court recognized that "most [exclusionary rule] cases begin with the premise that the challenged evidence is in some sense *the product of illegal governmental activity,*" and the "Court of Appeals' application of that premise to the facts of this case"—disallowing the in-court identification—was "erroneous." *Id.* at 471 (emphasis added). In short, because the in-court identification was not a "product of illegal government activity," it should not be excluded.

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[5] Although this section of the opinion was for a plurality, the other Justices would have gone even further. Two Justices refused to join this section because they would have "reject[ed] explicitly, rather than appear to leave open, the claim that a defendant's face can be a suppressible fruit of an illegal arrest." *Crews*, 445 U.S. at 477 (Powell, J., concurring in part, joined by Blackmun, J.). Likewise, three Justices would have expressly rejected the idea that "a defendant's face can be considered a suppressible fruit of an illegal arrest." *Id.* at 479 (White, J., concurring in the judgment, joined by Burger, C.J., and Rehnquist, J.). In any event, this reasoning was adopted—indeed, quoted in full—by a majority of the Court in *Maryland v. Macon*, 472 U.S. 463, 471 (1985).

Other cases have likewise recognized that the exclusionary rule is inapplicable to evidence already in government possession at the time of the unlawful conduct. In *Maryland v. Macon*, 472 U.S. 463 (1985), the police paid for a supposedly obscene magazine, then arrested the seller and took back their payment. The Court held that even assuming "that the warrantless arrest was an unreasonable seizure in violation of the Fourth Amendment . . . it yielded nothing of evidentiary value that was not already in the lawful possession of the police" because "the magazines were *in police possession before the arrest*, and the $50 bill, the only fruit of the arrest, was not introduced in evidence." *Id.* at 471 (emphasis added).

Similarly, in *Bynum v. United States*, 262 F.2d 465 (D.C. Cir. 1958), approved and discussed in *Crews* and *Davis v. Mississippi*, 394 U.S. 721, 725 (1969), fingerprint evidence in the police's possession was held admissible despite an unlawful arrest. Specifically, the fingerprints taken during the unlawful arrest were "suppressed as 'something of evidentiary value which the public authorities have caused an arrested person to yield to them during illegal detention,'" *Crews*, 445 U.S. at 476 (quoting *Bynum*, 262 F.2d, at 467). However, "Bynum was subsequently reindicted for the same offense, and the Government on retrial introduced an older set of his fingerprints"; the Court of Appeals held that "the fingerprint identification made on the basis of information already in the FBI's possession was not tainted by the subsequent illegality and was therefore admissible." *Id.* (citing *Bynum v. United States*, 274 F.2d 767, 767 (D.C. Cir. 1960) (per

curiam)). Thus, fingerprint evidence already in the government's possession at the time of the unlawful stop could not be suppressed.

Petitioner does not really dispute the principle that the exclusionary rule is inapplicable to evidence already in the government's possession. Indeed, in the fingerprint cases upon which Petitioner relies—*Davis*, 394 U.S. 721, and *Hayes v. Florida*, 470 U.S. 811 (1985)—the police generated the fingerprints during the defendant's unlawful detention. *See Davis*, 394 U.S. at 722-23; *Hayes*, 470 U.S. at 812-13.

Instead of denying that possession is dispositive, Petitioner argues that "the [DMV record] information was not possessed by law enforcement in any meaningful sense until the police unearthed it as a result of their unlawful conduct, and, for that reason, the independent source doctrine does not apply." Pet'r Br. at 30. This argument fails on two separate grounds.

First, the conclusion of the argument—that the independent source doctrine is inapplicable—has no relevance here. The independent source doctrine provides that where the "acquisition of evidence" was made unlawfully, the evidence can still be allowed if "the Government learned of the evidence from an independent source." *Segura v. United States*, 468 U.S. 796, 805 (1984) (internal quotation marks omitted). Here, though, the point is that the evidence was not acquired unlawfully in the first place. *See Crews*, 445 U.S. at 471 ("most [exclusionary rule] cases begin with the premise that the challenged evidence is in some sense the product of illegal governmental activity"). Thus, regardless of whether

the government's records should be considered an independent source, the exclusionary rule does not bar evidence already in the government's possession.

Second, Petitioner's invention of a "meaningful sense" caveat for possession would create an unjustified and unworkable expansion of the exclusionary rule. Petitioner cites no precedent—indeed, there is none—requiring possession in a "meaningful sense." And for good reason: actual possession is sufficient to make exclusion inapplicable. The rationale for the exclusionary rule is that the government should not be able to introduce evidence that it obtained unlawfully. But this rationale does not apply to evidence the government possessed in the first place.

Petitioner contends that the government learned of the importance of the evidence only due to the supposedly unlawful stop (*see* Pet'r Br. at 35-36), but the same was true for the in-court identification in *Crews* and the fingerprint records in *Bynum*. In *Crews*, the court below had reasoned that "but for respondent's unlawful arrest, the police would not have obtained the photograph that led to his subsequent identification by the complaining witnesses and, ultimately, prosecution of the case." 445 U.S. at 469. Nonetheless, the Court explained that this effect of the unlawful arrest was irrelevant:

> [B]efore they approached respondent, the police had already obtained access to the 'evidence' that implicated him in the robberies, *i.e.*, the mnemonic representations of the criminal retained by the victims and related to the police

> in the form of their agreement upon his description. In short, the Fourth Amendment violation in this case yielded nothing of evidentiary value that the police did not already have in their grasp. Rather, respondent's unlawful arrest served merely to link together two extant ingredients in his identification.

Crews, 445 U.S. at 475. Thus, an unlawful stop that "serve[s] merely to link" evidence already in the government's possession does not give rise to exclusion of that evidence.

Likewise, in *Bynum*, the significance of the fingerprints at the scene of the crime was not established until the unlawful arrest gave the government Bynum's own fingerprints. *See Bynum*, 262 F.2d at 467 ("There is no indication that the arresting officer had information concerning the circumstances of any crime except that a particular car was wanted and had been seized in connection with a robbery. So far as now appears, he did not even know what robbery was involved, much less any of the alleged circumstances, and made no inquiry before arresting the visitor."). In short, the in-court identification in *Crews* and the fingerprint records in *Bynum* were not possessed in any more of a meaningful sense than were the DMV records here.

Furthermore, because the term "meaningful" is far from self-defining, a "meaningful sense" test would be unworkable. Does the evidence need to be in the arresting officer's hands? In the police department's evidence locker? What about evidence held by a neighboring police department? There is no

principled way to distinguish between these different forms of possession.

Petitioner's proposition that the exclusionary rule should cover the government's acquisition of an understanding of the *import* of evidence, rather than the being limited to its acquisition of the evidence itself, would create even more problems. Courts cannot plausibly determine whether and how the prosecution in a given case would have used certain evidence, already in its possession, but for some information it gained from police misconduct. Certainly, the court can stop the ill-gotten information from being presented at trial. But there is no reliable means of discerning how that information might have affected the prosecution's understanding of the crime, and therefore the way it chooses to present other evidence.

Simply put, a "meaningful sense" test is not only out of step with precedent and the purposes of the exclusionary rule; it also provides no rule capable of practical application by the courts.

CONCLUSION

The judgment should be affirmed.

Respectfully submitted,

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