No. 18-556

IN THE

Supreme Court of the United States

STATE OF KANSAS,

Petitioner,

v.

CHARLES GLOVER,

Respondent.

On Writ of Certiorari
to the Supreme Court of Kansas

BRIEF FOR RESPONDENT

Elbridge Griffy IV
Joshua D. Seiden
901 Kentucky St.
Suite 107
Lawrence, KS 66044

Sarah E. Harrington
Counsel of Record
Charles H. Davis
Erica Oleszczuk Evans
Daniel Woofter
GOLDSTEIN & RUSSELL. P.C.
7475 Wisconsin Ave., Suite 850
Bethesda, MD 20814
(202) 362-0636
sh@goldsteinrussell.com

QUESTION PRESENTED

Whether the Fourth Amendment, U.S. Const. amend. IV, always permits a police officer to seize a motorist when the only thing the officer knows is that the motorist is driving a vehicle registered to someone whose license has been revoked.

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INTRODUCTION

Right now, millions of people in the United States have a suspended or revoked driver's license. A large proportion of those people—indeed, a large majority in some States—lose their license for reasons totally unrelated to traffic safety. When a driver loses his license, he and his family must rely on other drivers (a spouse, a driving-age child, a child-care provider, a neighbor) to meet the family's basic needs. Under Kansas's proposed rule, when the unlicensed driver is the only registered owner of the family's car or cars, any of those other drivers can be pulled to the side of the road at any moment merely for driving a lawfully registered and insured car in a completely lawful manner. Those law-abiding drivers would have no way of avoiding a traffic stop (or many traffic stops) merely because a *different* driver had his license suspended or revoked. The Fourth Amendment does not permit that sort of unjustified intrusion on personal privacy.

Kansas asks this Court to adopt a bright-line constitutional rule that a seizure is always reasonable under the Fourth Amendment when a law-enforcement officer knows only that a car on the road is owned by an unlicensed driver. This Court has never permitted officers to rely on that type of one-size-fits-all rule in assessing the reasonableness of a seizure. To the contrary, whether an officer has reasonable suspicion must always be assessed with reference to the totality of circumstances and inferences the officer drew in light of his experience and training. Kansas would have the Court throw out that framework in a case where Kansas chose to rely on one fact and one fact alone—and where Kansas opted not to argue that the seizing officer's inference was based on his experience

and training. When the reasonableness of a stop is challenged, the State must satisfy its burden with evidence; it cannot simply stipulate to reasonableness. The Court should not excuse Kansas's failure to meet its burden in this case.

STATEMENT

1. On April 28, 2016, Douglas County Sheriff's Deputy Mark Mehrer was on routine patrol when he observed a 1995 Chevrolet pickup truck. Pet. App. 3, 22. Although Deputy Mehrer did not observe any traffic violations, he ran the truck's license plate through the Kansas Department of Revenue's file service, which revealed that the truck was registered to respondent Charles Glover and that Glover had a revoked Kansas driver's license. *Id.* at 3-4, 23. Although Deputy Mehrer had not seen the driver and made no attempt to identify the driver, he initiated a traffic stop based solely on his assumption that the owner of the truck would be the driver. *Id.* at 3-5, 23. After confirming that Glover was in fact driving the truck, Deputy Mehrer issued a traffic citation to Glover and then allowed him to drive away. *Id.* at 39-40.

2. Petitioner Kansas charged Glover with driving as a habitual violator. Pet. App. 4. Glover filed a motion to suppress the evidence obtained at the traffic stop, arguing that Deputy Mehrer lacked reasonable suspicion of criminal activity when he seized Glover in the traffic stop. *Ibid.* The district court decided the suppression motion based solely on the party's stipulated facts. *Ibid.* The stipulation included seven entries: (1) "Deputy Mark Mehrer is a certified law enforcement officer employed by the Douglas County

Kansas Sheriff's Office"; (2) "[o]n April 28, 2016, Deputy Mehrer was on routine patrol in Douglas County when he observed a 1995 Chevrolet 1500 pickup truck with Kansas plate 295ATJ"; (3) Deputy Mehrer ran Kansas plate 295ATJ through the Kansas Department of Revenue's file service," and "[t]he registration came back to a 1995 Chevrolet 1500 pickup truck"; (4) "Kansas Department of Revenue files indicated the truck was registered to Charles Glover Jr.," and "[t]he files also indicated that Mr. Glover had a revoked driver's license in the State of Kansas"; (5) "Deputy Mehrer assumed the registered owner of the truck was also the driver, Charles Glover Jr."; (6) "Deputy Mehrer did not observe any traffic infractions, and did not attempt to identify the driver [of] the truck," but "[b]ased solely on the information that the registered owner of the truck was revoked, Deputy Mehrer initiated a traffic stop"; and (7) "[t]he driver of the truck was identified as the defendant, Charles Glover Jr." *Id.* at 60-61.

Because Deputy Mehrer chose not to testify at the suppression hearing, *see* Pet. App. 35-43, the facts contained in the stipulation constitute the entirety of the record relevant to the suppression motion. The record thus contains no evidence about Deputy Mehrer's training or experience as a law-enforcement officer, including his previous experience with unlicensed drivers. The record contains no information about what motivated Deputy Mehrer to run a plate check, requiring us to assume that Glover did nothing suspicious. The record contains no information about whether the Kansas Department of Revenue's database returned additional information, such as the reason Glover's license was suspended or whether Glover had previously been cited for driving without a valid license.

The stipulation also contains no information about the location at which the Deputy seized Glover, including whether it was in an urban area or was on a highway, and whether Glover was driving on a single-lane road or a multi-lane avenue. The stipulation also contains no information about the time of day or the weather conditions at the time of the seizure. *Id.* at 60-61.[1]

After considering the parties' written submissions on the suppression motion, Pet. App. 38; *see id.* at 47-57 (motion to suppress and response), the state trial judge granted the motion, *id.* at 39. Kansas had argued that the Deputy had reasonable suspicion sufficient to justify the seizure of Glover under the Fourth Amendment "[b]ased solely on the fact that Glover was the registered owner of the truck and had a revoked driver's license." *Id.* at 51. Although Kansas urged that "the determinative issue before th[e] Court [wa]s whether the inference of a registered owner of a vehicle being the driver of the vehicle is reasonable," *id.* at 53-54, Kansas offered no statistical, factual, or testimonial evidence—indeed, no evidence of any kind—to explain or justify that inference, *see id.* at 50-57.

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[1] The Notice to Appear (Pet. App. 44-46) that Kansas issued to Glover includes some additional details that were not included in the stipulation upon which the district court exclusively relied. In particular, the Notice to Appear states that Glover was traveling westbound at the intersection of 23rd Street and Iowa Street in Lawrence, Kansas, when he was stopped. *Id.* at 45. A cursory examination of that intersection on Google Maps reveals it to be in a well-developed commercial area with regular stoplights and multiple lanes of traffic in each direction. The Notice to Appear also reveals that Glover was stopped at 7:40 a.m., well after the start of daylight. *Id.* at 44; *see* n.14, *infra*.

The trial judge acknowledged that other courts have permitted a traffic stop based on the inference that the owner of a car is likely to be its driver, but noted that those cases generally involved "factors present that were not present in this case." Pet. App. 38. The trial judge held that an officer does not have reasonable suspicion under the Fourth Amendment to initiate a traffic stop based only on the knowledge that the owner of a car on the road has a suspended license. Assessing the reasonableness of Deputy Mehrer's inference based on her own experience and observations, the judge explained that, although she had three cars registered in her own name, she drove only one of them while her husband and daughter drove the other two. *Ibid.* "And," she elaborated," "that's true for a lot of families that if there are multiple family members and multiple vehicles, that somebody other than the registered owner often is driving that vehicle." *Id.* at 38-39.

3. Kansas appealed, and the Kansas Court of Appeals reversed. Pet. App. 21-34. The court held that an officer always has reasonable suspicion to seize a driver to investigate whether the driver is unlicensed "if, when viewed in conjunction with all of the other information available to the officer at the time of the stop, the officer knows the registered owner of the vehicle has a suspended license" and when "the officer is unaware of any other evidence or circumstances from which an inference could be drawn that the registered owner is not the driver of the vehicle." *Id.* at 33. The court reversed the trial court's suppression order. *Id.* at 34.

4. The Kansas Supreme Court reversed. Pet. App. 1-19. The court analyzed whether, on the "limited facts" of the stipulation, "spotting a vehicle owned by an unlicensed driver provides reasonable suspicion that an unlicensed motorist is driving the car." *Id.* at 9. Emphasizing that reasonable suspicion must be determined "on a case-by-case basis under a totality-of-the-circumstances analysis," *id.* at 19, the court concluded that the State must provide "*some* more evidence" beyond the bare fact of a registered owner's license revocation to show that an officer had reasonable suspicion for a particular stop, *id.* at 18. The court noted that the parties' "stipulation provides no additional facts supporting an inference that Glover was driving" and explained that "a person with a revoked driver's license commits no crime by simply owning and registering a vehicle" or "by allowing another licensed driver to use the registered vehicle." *Id.* at 8-9.

The Kansas Supreme Court rejected the State's proposed "bright-line, owner-is-the-driver presumption," Pet. App. 18, in part because recognizing such a presumption in this case would require the court to credit inferences with literally no evidentiary support in the record, *id.* at 9-12. The court explained that the inference that a car's owner is likely its driver is contrary to "common experience in Kansas communities [that] suggests families may have several drivers sharing vehicles legally registered in the names of only one or two family members." *Id.* at 11. In addition, the court explained, the officer had to assume "that the owner will likely disregard the suspension or revocation order and continue to drive," which impermissibly "presumes a broad and general criminal inclination on the part of suspended drivers." *Id.* at 12.

The Kansas Supreme Court also explained that accepting the State's proposed bright-line rule would have the effect of "reliev[ing] the State of its burden by eliminating the officer's need to develop specific and articulable facts . . . on the determinative issue of whether the registered owner is driving the vehicle, not whether the vehicle is being driven." Pet. App. 14. And the court expressed concern that the State's proposed rule would lead to gamesmanship, "motivat[ing] officers to avoid confirming the identity of the driver because learning facts that suggest the registered owner is not driving undermines reasonable suspicion." *Ibid.*

The court stressed that its holding was narrow, limited to the (absence of) facts in this particular case: it "recognize[d] that in other cases, the State, by presenting some more evidence, may meet its burden." Pet. App. 19. The court "decline[d] to delineate the type of corroborating evidence that will satisfy the State's burden" because it could not "imagine all the ways the gap could be filled." *Ibid*. The court reiterated that "the State did not present any such evidence here." *Ibid.*

SUMMARY OF ARGUMENT

I. A State bears the burden of establishing that every seizure is reasonable under the Fourth Amendment. Whether a particular stop is reasonable can be assessed only with reference to the totality of circumstances that led to the seizure. In this case, there is only one circumstance: the officer observed a moving car that was owned by an unlicensed driver. That is it. Based on that fact alone, Kansas would have this Court hold as a constitutional matter that it is always reasonable for an officer to infer that a car is being

driven by its unlicensed owner—and therefore always reasonable to stop a car owned by an unlicensed driver when that is the only thing the officer knows about the car.

This Court has never accepted a probabilistic approach to determining reasonable suspicion. Although reliable probabilities and statistics might be a relevant factor in assessing the reasonableness of a stop, the Court has repeatedly rejected officers' exclusive reliance on probabilities and statistics to establish reasonable suspicion. That is for good reason: statistics and probabilities are easy to manipulate and are rarely (if ever) particularized to the person who is seized. This case is not a good candidate for departing from that longstanding approach. Although Kansas and its amici attempt to justify their proposed one-size-fits-all inference with statistical data, the evidence they would rely on is misplaced and misleading—and it certainly does not support an inference that a car is likely being driven by its unlicensed owner.

To be sure, an officer need not support an assertion of reasonable suspicion with statistical proof, but may rely on inferences that are reasonable in light of his experience and training as a law-enforcement officer. But in this case, Kansas offered neither evidence nor assertion that Deputy Mehrer's inference was grounded in his experience and training. The Court should not excuse Kansas's failure to establish reasonable suspicion by accepting a post hoc rationalization that lacks a foundation in relevant data.

II. In assessing whether a police practice or a particular seizure is reasonable under the Fourth Amendment, courts must balance the government's

law-enforcement interests against individuals' privacy interests. Here, the balance is not even close.

Although Kansas asserts a safety interest in keeping unlicensed drivers off the road, it fails to mention that in many places, a large proportion of license suspensions have nothing to do with traffic safety. All States, including Kansas, suspend licenses for non-driving reasons. And the inference Kansas seeks to constitutionalize would be relevant only when an officer has no independent reason to stop the driver because the driver is complying with every applicable traffic law—a feat that this Court has recognized is quite difficult. In those circumstances, Kansas's purported interest in keeping unsafe drivers off the road is tenuous at best and certainly insufficient to justify the intrusion on privacy that a traffic stop imposes.

Kansas and its amici seek to trivialize the degree of intrusion inherent in a traffic stop; but they do not tell the whole story. This Court has recognized that traffic stops cause fear and anxiety in drivers and their passengers. That would be particularly true when a driver's only "offense" is using a car registered to an unlicensed driver while abiding by all applicable traffic laws. A teenaged driver will rarely be the registered owner of a car, but if her registered-owner parent has a license suspension, she will be subject to traffic stops at any time for no reason other than the fact that she is driving the family car. Once a traffic stop is validly initiated, moreover, officers may engage in a range of intrusive practices without exceeding the permissible bounds of the stop. Such an invasion of personal privacy should not be permitted based only on an unsupported inference about the probability that an unlicensed driver will continue to drive—and here,

based on no actual evidence of the circumstances of the stop or the officer's reasons for making the inference.

ARGUMENT

KANSAS FAILED TO ESTABLISH THAT DEPUTY MEHRER HAD REASONABLE SUSPICION TO SEIZE GLOVER

A State cannot justify a seizure under the Fourth Amendment by simply stipulating that it was reasonable. And this Court has never found reasonable suspicion based on statistical probabilities alone. The Court should reject Kansas's proposed bright-line rule that an officer always has reasonable suspicion to stop a car when he knows only that it is owned by an unlicensed driver. Such a rule is not justified by law-enforcement needs and would pose a significant threat to the privacy interests of millions of law-abiding drivers.

I. The Isolated Fact That A Car On The Road Is Owned By An Unlicensed Driver Does Not Establish Reasonable Suspicion That The Driver Is Engaged In Illegal Activity.

The Fourth Amendment ensures that individuals have the right to be free from "unreasonable searches and seizures." U.S. Const. amend. IV. "As the text makes clear, 'the ultimate touchstone of the Fourth Amendment is "reasonableness."'" *Riley v. California*, 573 U.S. 373, 381 (2014) (quoting *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006)). Although ordinarily a search or seizure must be based on a warrant supported by probable cause, this Court has long permitted brief "investigative stops"—including traffic stops—when an officer can articulate a "reasonable suspicion" of criminal activity. *Navarette v. California*, 572 U.S. 393, 396-397 (2014); *Terry v. Ohio*, 392

U.S. 1, 19-30 (1968). The reasonable-suspicion standard is intended to balance the government's general interest in enforcing the law against the public's interest in being free from unwarranted governmental intrusion, and whether a search or seizure is reasonable depends on the context in which it is undertaken. *United States v. Brignoni-Ponce*, 422 U.S. 873, 880-883 (1975); *Terry*, 392 U.S. at 20-21.

A State bears the burden of establishing that an officer had a reasonable suspicion of illegal activity at the time of a seizure by creating a record that would support such a conclusion. *Ornelas v. United States*, 517 U.S. 690, 699-700 (1996); *Brown v. Texas*, 443 U.S. 47, 52 (1979); *Delaware v. Prouse*, 440 U.S. 648, 659 (1979); *see Illinois v. Wardlow*, 528 U.S. 119, 140 (2000) (Stevens, J., concurring in part and dissenting in part) ("It is the State's burden to articulate facts sufficient to support reasonable suspicion."). Kansas did not come close to meeting its burden in this case. Although it may be relatively easy in many cases for a police officer to establish reasonable suspicion that a driver is violating a traffic-related law, an officer must do so in *every case* in which such a stop is challenged. The Fourth Amendment requires a State to actually do the work required to establish reasonable suspicion when a seizure is challenged. The Fourth Amendment does not incorporate vague demographic averages; it requires that an officer demonstrate "a particularized suspicion" that "the particular person stopped" was engaged in criminal activity. *United States v. Cortez*, 449 U.S. 411, 417-418 (1981). Kansas failed to satisfy its burden in this case.

A. Reasonable Suspicion Must Be Assessed in Light of the Totality of Circumstances.

The Court has explained that "the concept of reasonable suspicion is somewhat abstract," *United States v. Arvizu*, 534 U.S. 266, 274 (2002), and that "[a]rticulating precisely what 'reasonable suspicion' . . . mean[s] is not possible," *Ornelas*, 517 U.S. at 695. The Court has therefore "deliberately avoided reducing it to a neat set of legal rules," *Arvizu*, 534 U.S. at 274 (internal quotation marks omitted), explaining instead that "[o]ne simple rule will not cover every situation" when assessing whether a particular type of evidence can support reasonable suspicion, *Adams v. Williams*, 407 U.S. 143, 147 (1972).

1. Out of that lack of clarity emerges at least one clear rule: whether an officer has reasonable suspicion at the time of a seizure can be determined only in context, with reference to the totality of the relevant circumstances and understood in light of the experience and training of the officer who makes the stop. *E.g.*, *Navarette*, 572 U.S. at 397. That type of assessment is impossible in this case because Kansas presented no evidence about the circumstances of the stop or about Deputy Mehrer's experience and training. Indeed, Kansas disclaimed the need to rely on any such evidence by drafting a stipulation that expressly relies on one fact and only one fact: that the owner of the truck had a revoked license. Pet. App. 61.

Kansas belatedly attempts (Pet. Br. 19) to manufacture a "totality of circumstances" out of the single circumstance relevant here, but its efforts are belied by its own stipulation in the trial court. Kansas stipulated below that Deputy Mehrer seized Glover "[b]ased *solely* on the information that the registered

owner of the truck was revoked." Pet. App. 61 (emphasis added). That is literally the *only* historical fact Kansas offered to establish reasonable suspicion. Kansas tries to stretch that single fact into a "totality of the circumstances" by contending that Deputy Mehrer "knew that Glover was the registered owner of the vehicle, that Glover's license was revoked, and that it was unlawful to operate a vehicle in Kansas without a valid driver's license." Pet. Br. 19; *see also* U.S. Br. 9. The Deputy also knew that he was in Kansas, that he was a law-enforcement officer, and that it was April—but the totality-of-circumstances standard does not simply stack up everything an officer happened to know at the time of the stop and then find reasonable suspicion if the stack is high enough. By his own admission, the *only* fact that Deputy Mehrer thought relevant to determining reasonable suspicion was "that the registered owner of the truck was revoked." Pet. App. 61. That single fact was insufficient *standing alone* to establish reasonable suspicion.

It is undisputed that Deputy Mehrer did not observe Glover commit any traffic infraction or engage in any other suspicious behavior before he initiated the traffic stop. Pet. App. 60-61. It is also undisputed that Deputy Mehrer made no "attempt to identify the driver." *Id.* at 61. The only information he had pertained to the truck, not the driver: he knew that the truck's owner had a revoked license. But there is nothing illegal about driving a truck owned by an unlicensed driver—as long as there is a validly licensed driver behind the wheel. The *only* thing that would distinguish between legal and illegal activity in this context is the identity of the driver. And Deputy Mehrer, by his own admission, knew nothing about

that and made no attempt to learn anything about it. *Ibid.*

Of course, an officer need not actually observe illegal activity in order to initiate a traffic stop. Where an officer does witness illegal activity, he has probable cause to initiate the stop. Reasonable suspicion is a lower standard that permits an officer to infer the possibility of illegal activity based on the totality of facts he encounters, coupled with reasonable inferences he may draw in light of his experience and training as a police officer. *Brignoni-Ponce*, 422 U.S. at 884-887; *Terry*, 392 U.S. at 20-30. It is well settled that reasonable suspicion may arise from a series of acts, each of which is innocent standing alone. *United States v. Sokolow*, 490 U.S. 1, 9 (1989). But the "essence" of the reasonable-suspicion analysis is that "the totality of the circumstances—the whole picture—must be taken into account" and that "assessment of the whole picture must yield a particularized suspicion . . . that the *particular individual* being stopped is engaged in wrongdoing." *Cortez*, 449 U.S. at 417-418. Here, the whole picture comprises one fact—a fact that has nothing to do with the particular individual being stopped.

2. This Court has repeatedly declined to accept bright-line rules that a single fact is per se sufficient to establish reasonable cause in all cases. It should adhere to that approach here.

In *Brignoni-Ponce*, for example, the Court considered whether border-patrol officers had reasonable suspicion to stop a car near the Mexican border to investigate whether the occupants were aliens. 422 U.S. at 874-876. "[T]he officers relied on a single factor to justify stopping [the defendant's] car: the apparent Mexican ancestry of the occupants." *Id.* at 885-886.

The government argued that the officers' specialized training enabled them to "recognize the characteristic appearance of persons who live in Mexico, relying on such factors as the mode of dress and haircut." *Id.* at 885. The Court acknowledged that "[t]he likelihood that any given person of Mexican ancestry is an alien is high enough to make Mexican appearance a relevant factor," but held that "standing alone it does not justify stopping all Mexican-Americans to ask if they are aliens." *Id.* at 886-887.

The Court reached a similar conclusion in *Brown v. Texas*, *supra*, when it held that a defendant's presence "in a neighborhood frequented by drug users, standing alone, is not a basis for concluding that [the defendant] himself was engaged in criminal conduct." 443 U.S. at 52. The Court in *Brown* explained that a finding of reasonable suspicion must be based on "objective facts" "in the record." *Id.* at 51, 52. And the Court emphasized that, although inferences an officer may draw based on his training and experience can form the basis of reasonable suspicion, an officer's assertion that an individual "looked suspicious" is not entitled to deference in the reasonable-suspicion analysis. *Id.* at 49, 52 n.2.

The same result is required in this case. Although a person who appears to be of Mexican descent may have a higher likelihood of being an alien than a person who does not, *see Brignoni-Ponce*, 422 U.S. at 886 n.12, and a person who is present in a high-crime area may have a higher likelihood of being engaged in criminal activity than a person in a low-crime area, that type of statistical likelihood has never been found sufficient on its own to establish reasonable suspicion. So too here. Even if it is true that a truck owned by an

unlicensed driver is more likely to be driven by an unlicensed driver than a car with a licensed owner is, that fact alone is insufficient to establish reasonable suspicion when the actual "activity" of the driver is "no different from the activity of other [drivers]." *Brown*, 443 U.S. at 52.

There is no precedent in this Court's cases for adopting such a bright-line rule. To the contrary, even when the Court has found reasonable suspicion based on the totality of circumstances, the Court has cautioned that such a finding in one case may or may not suggest that a seizure was reasonable in a case with similar facts. *Arvizu*, 534 U.S. at 275 ("[I]n many instances the factual 'mosaic' analyzed for a reasonable-suspicion determination would preclude one case from squarely controlling another."); *Terry*, 392 U.S. at 30 ("Each case of this sort will, of course, have to be decided on its own facts.").

3. This case stands in stark contrast to cases in which the Court has found reasonable suspicion based on the totality of circumstances. In *Arvizu*, for example, the Court found reasonable suspicion based on a "mosaic" of factors. 534 U.S. at 275. In a hearing on the defendant's suppression motion, the officer testified about the circumstances leading up to the stop (sensors along dirt roads commonly used by smugglers were tripped during a shift-change of border-patrol agents; the defendant was in a type of car the officer knew was commonly used by smugglers; the car slowed dramatically when the officer approached; the driver and occupants behaved suspiciously; and the car took a route that appeared calculated to avoid a check point) and about his "own experience and spe-

cialized training" from which he deduced that the occupants of the car might be breaking the law. *Id.* at 268-274. The Court noted that, although "each of the[] factors alone [wa]s susceptible of innocent explanation," "[t]aken together," and assessed "in light of" the officer's "specialized training and familiarity with the customs of the area's inhabitants," "they sufficed to form a particularized and objective basis for [the officer's] stopping the vehicle, making the stop reasonable within the meaning of the Fourth Amendment." *Id.* at 276-278; *accord United States v. Sharpe*, 470 U.S. 675, 682 n.3 (1985) (reciting record evidence and explaining that, although "[p]erhaps none of these facts, standing alone, would give rise to a reasonable suspicion," "taken together as appraised by an experienced law enforcement officer, they provided clear justification to stop the vehicles and pursue a limited investigation").

The situation in *United States v. Cortez*, *supra*, was similar. There, the officers testified that they had studied physical evidence of the movement patterns of an individual who ferried undocumented aliens on foot into the United States from Mexico and that the defendant's movements fit that pattern. 449 U.S. at 413-415. In holding that the officers had reasonable suspicion that the defendant was engaged in illegal activity, *id.* at 417-422, the Court emphasized that the assessment of whether the stop was reasonable "must be based upon all of the circumstances" and must examine whether those circumstances are such that "a trained officer [may] draw[] inferences and make deductions" that would support reasonable suspicion that "the particular individual being stopped is engaged in wrongdoing." *Id.* at 418.

And in *Ornelas v. United States*, *supra*, the Court found that officers had reasonable suspicion of drug smuggling based on the age and model of car the defendants used, the State in which the car was registered, the defendants' late-night and reservation-less arrival at a motel, and information returned from a government database of known and suspected drug traffickers. 517 U.S. at 691-692. In upholding the officers' seizure of the defendants (and in finding probable cause for the subsequent search based on additional observed facts), the Court emphasized that one officer was "a 20-year veteran of the Milwaukee County Sheriff's Department with 2 years specializing in drug enforcement" and the other was "a detective with approximately 25 years of law enforcement experience" who had been "assigned for the past 6 years to the drug enforcement unit." *Ibid.*

4. Kansas and its amici attempt to soften the scope of the bright-line rule they seek by emphasizing that an officer cannot stop a car based on this lone fact if the officer actually has evidence that the driver is not the owner. But that is no safeguard at all. Of course an officer cannot initiate a traffic stop to investigate whether a car's unlicensed owner is driving the car when the officer already knows that he is not. The question here is whether he can initiate such a stop when he knows nothing about the driver and when the only fact that would make the observed behavior illegal is the identity of the driver. Kansas's concession that identifying facts about the driver may be readily available to an officer only underscores that this is a context in which the ordinary totality-of-circumstances analysis should apply rather than a bright-line rule.

Kansas's proposed safeguard is deficient for an additional reason: Kansas and its amici fail to explain how it would apply in practical terms. The burden is on the government to establish reasonable suspicion—and it would be impossible in almost all cases for a defendant to establish that an officer in fact had reason to believe that the driver of a car was not the registered owner. But Kansas and its amici stop short of suggesting that officers would have an affirmative duty to disclose suspicion-negating information in their possession. Notably, Kansas did not even attempt to establish *in this case* that Deputy Mehrer lacked information that might negate the inference he relied on.

B. Kansas Did Not Establish That It Is Reasonable to Infer That an Unlicensed Driver Is Driving His Car.

Kansas readily concedes that the only basis for Deputy Mehrer's stop was his assumption that a car on the road is probably being driven by its registered owner, even when the owner lacks a valid license. Pet. App. 61. And because the record contains no information about Glover's driving history or about Deputy Mehrer's experience with unlicensed drivers, Kansas's only option is to argue for a one-size-fits-all holding that a police officer is *always* entitled to infer that a car is being driven by its owner. The Court should reject Kansas's invitation to constitutionalize that bright-line rule, or even to adopt it in this case. The Court has never found that that type of probability *standing alone* is sufficient to create reasonable suspicion. *Brown*, 443 U.S. at 52 (a defendant's presence in "a neighborhood frequented by drug users, standing alone, is not a basis for concluding that [the defendant]

himself was engaged in criminal conduct"); *Brignoni-Ponce*, 422 U.S. at 886-887 ("The likelihood that any given person of Mexican ancestry is an alien is high enough to make Mexican appearance a relevant factor, but standing alone it does not justify stopping all Mexican-Americans to ask if they are aliens."). The Court has good reason for its reluctance to permit reliance on probabilities or statistics alone to establish reasonable suspicion. Statistics are easy to manipulate to purport to demonstrate whatever their proponents wish to demonstrate. And, as illustrated by this case, it is easy to misapply statistics from one data set to a distinct data set without consideration or explanation of whether such application is appropriate. The Court should reject Kansas's attempt to constitutionalize its inference that a car is likely driven by its unlicensed owner because the inference is statistically unsupported and because Kansas did not even attempt to establish that Deputy Mehrer's inference is entitled to deference based on his experience or training as a police officer.

First, the purported statistical "evidence" offered by Kansas, the amici States, and the United States does not clearly support an inference that a car is sufficiently likely to be driven by its unlicensed owner at any given moment. Far from it.

All three briefs rely on the statistic that "as many as 75% of suspended drivers continue to drive." Pet. Br. 14 (citation omitted); U.S. Br. 14; *see also* Okla. Br. 15. Even if that statistic is accurate, it says nothing about how likely it is that a suspended driver is driving his car at any particular moment. Consider the following stylized (but realistic) example. Suppose a

woman's license was suspended for six months. During that time, her husband drove her car twice each day—to and from work on weekdays and to and from the grocery store and religious services on weekends. If the woman drove her car twice in that period (say, to take her husband to the doctor and home again), then 100 percent of the suspended drivers in that household drove the car registered to her in spite of her suspension—and, if asked, she would report that she "continued to drive" in spite of her suspension. *But* during the six-month period of suspension, the suspended driver was the driver only .56 percent of the times the car was driven. Even if she drove the car twice per month, she was the driver only 3 percent of the times the car was driven. The fact that "as many as 75% of suspended drivers" may "continue[] to drive" does not establish—as a matter of statistics or common sense—that suspended drivers as a group continue to drive approximately 75 percent as much as they did before their suspensions. Such a statistic also fails to take account of variations in driving patterns in and among different jurisdictions—a missing fact that an experienced law-enforcement officer might be able to fill in if the State were willing to offer his testimony.

Kansas leans heavily on amicus Oklahoma to make the statistical arguments here—but Oklahoma's submissions are incomplete and inaccurate. Oklahoma's primary statistical argument asserts that the owner of a vehicle is its driver most of the time. To make that case, Oklahoma relies on data maintained by one of its agencies about crashes in Oklahoma. After cherry-picking the data it prefers to rely on in various ways, *see* Okla. Br. 7-9, Oklahoma reveals that in the subset

of crashes it deems relevant, a car was driven by its owner 71 percent of the time, *id.* at 10. Glaringly absent from Oklahoma's analysis is any indication of how often the driver of a car was *unlicensed*. Upon request, Oklahoma generously shared its data set with counsel for Glover—and confirmed that the data it used does not track whether a driver in a crash had a valid license. That is a critical omission from Oklahoma's statistical analysis. The relevant data for assessing the reasonableness of Kansas's assumption that an unlicensed car owner is driving his car is not how often *all* car owners drive their own car, but how often *unlicensed* owners do so. Although some unlicensed drivers continue to drive some of the time, the fact of a suspended or revoked license is surely a deterrent to most drivers most of the time. *See Prouse*, 440 U.S. at 660 (noting that, "absent something more than mere assertion to the contrary," it is natural to think that "the unlicensed driver" would "be deterred by the possibility of being involved in a traffic violation or having some other experience calling for proof of his entitlement to drive"). Oklahoma fails to account for that deterrent effect, and the data it relies on therefore do not address whether it is reasonable to infer that a car is being driven by its *unlicensed* owner.

The United States is correct (U.S. Br. 8-9) that an officer need not assume that all citizens are following the law when he has reason to suspect otherwise. But when an officer purports to rely *only* on a probability-based inference, we should not allow him to assume that all relevant citizens are breaking the law. Nothing about this context counsels otherwise: as discussed at pp. 39-43, *infra*, many license suspensions are based on a driver's inability to pay a fine, not on

any pattern of violating traffic laws. The fact that a car owner has a suspended or revoked license should be taken into account when assessing how likely it is that *he* will be the driver of his car—at least when the only crime under suspicion is that he is driving without a license. None of the statistics that Kansas and its amici rely do that.

Oklahoma's other statistics fare no better. Its repeated assertion (at 12, 14), for example, that "unlicensed drivers are only 2.6% of all motorists on the road" is utterly unsupported. The authority Oklahoma cites states that 2.6 percent of drivers involved in fatal crashes had an *unknown* license status and that only 7.8 percent of drivers in the fatal crashes they studied had a license that had been suspended, revoked, cancelled, denied, or expired. AAA Found. for Traffic Safety, *Unlicensed to Kill* 2 (Nov. 2011). The study offers no information about what percentage of "all motorists on the road" are unlicensed—either as a national statistic or broken down by State or community. Nor does the study explain whether data on fatal crashes can be extrapolated to infer behavior patterns by drivers more broadly.

Oklahoma further errs in asserting that Kansas "has the fifth highest rate of drivers with suspended licenses." Okla. Br. 14-15 & n.6. The study it relies on does not purport to show the percentage of drivers in Kansas with suspended or revoked licenses at any particular moment. Instead, it reports the number of individuals who shopped for a particular brand of car insurance and self-reported that their license had been suspended or revoked in the previous three years. The article admits that it calculated the "percentage of *shoppers* in each state with a *history* of" suspensions

or violations, *not* the proportion of drivers in each State with a currently suspended or revoked license at any point.[2] For all we know, not a single person who responded to that survey lacked a valid license at the time of the survey, let alone continued to drive without a valid license.

Kansas and Oklahoma's misleading or mistaken use of incomplete statistics illustrates why a State should have to present its evidence to a judge in the context of a suppression hearing, rather than simply asserting ill-founded conclusions after the fact. If the statistics the governments rely on in this case had been presented to the trial court, their reliability and relevance could have been examined. They were not. For the reasons explained, those statistics are neither reliable nor relevant—or at least not self-evidently so—but it should not be left to this Court to make that determination in the first instance. This is a court of review, not a statistics class. Kansas had the burden of justifying the reasonableness of Deputy Mehrer's inference when Glover filed a motion to suppress. The trial court and Kansas Supreme Court correctly held that it failed to do so.

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[2] *The 10 States with the Most Suspended/Revoked Licenses*, Insurify (June 4, 2018), https://insurify.com/insights/the-10-states-with-the-most-suspended-revoked-licenses/ (emphasis added). Glover relied on that study in his brief in opposition—but not to show the proportion of suspended or revoked drivers in Kansas. The study separately reports the number of licensed drivers and registered cars per State; those data come from reliable Federal Highway Administration statistics, not from a nonrandom sample of insurance shoppers. *Ibid.* Of course, even those numbers do not tell us anything about how often an unlicensed car owner drives his car.

Second, although a court may find reasonable suspicion in the absence of statistical support based on the experience and training of a law-enforcement officer, the record contains literally *no evidence* to support the reasonableness of Deputy Mehrer's inference that a car on the road is being driven by its unlicensed owner.

Kansas submitted no evidence about the extent to which drivers continue to drive after their license has been revoked or suspended. Kansas submitted no evidence about whether Glover himself had previously driven without a valid license. Kansas submitted no evidence about Deputy Mehrer's experience enforcing Kansas's traffic-safety laws. Kansas submitted no evidence about Deputy Mehrer's training on enforcing Kansas's laws prohibiting unlicensed drivers from driving. Perhaps the officer had found that the owner of a car is its driver in 90 percent of traffic stops; perhaps he had found that the owner of a car is its driver in 1 percent of traffic stops; perhaps he had been trained that nearly all unlicensed drivers continue to drive; perhaps he had been trained that almost no unlicensed drivers continue to drive on a regular basis. We have no idea because Kansas chose not to rely on Deputy Mehrer's experience and training as a law-enforcement officer to justify his inference that Glover was likely to be driving his car in spite of his license revocation. We also have no idea how accurate and up-to-date the Kansas Department of Revenue files are, in Deputy Mehrer's experience. If he had relied on similar data 100 times to initiate a traffic stop and in 95 of those cases, the owner's license had already been reinstated, that would inform a court's assessment of the reasonableness of his suspicion. All—or even

any—of those gaps might have been filled in by testimony from Deputy Mehrer about his training or experience. Kanas offered none. That stands in stark contrast to many of the cases Kansas relies on, including *United States v. Cortez-Galaviz*, where the officer testified about his "typical response" upon learning that a car is not registered as insured, 495 F.3d 1203, 1205 (10th Cir. 2007) (Gorsuch, J.), and about how often in his experience the database returned incorrect information, U.S. Br. 6-8, *Cortez-Galaviz*, 2007 WL 760094 (Feb. 8, 2007).

An officer is entitled to rely on reasonable inferences he may draw from the totality of the circumstances he observes—but those inferences must be reasonable "in light of his experience." *Terry*, 392 U.S. at 27. This Court has made clear that "officers [may] draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person.'" *Arvizu*, 534 U.S. at 273 (quoting *Cortez*, 449 U.S. at 418); *see Brignoni-Ponce*, 422 U.S. at 885. But a court need not defer to an officer's inference when nothing in the record suggests that it is grounded in his experience and training as an officer. In *Brown*, for example, the Court explained that an officer's unsupported assertion that a defendant "looked suspicious" was "to be distinguished from the observations of a trained, experienced police officer who is able to perceive *and articulate* meaning in given conduct which would be wholly innocent to the untrained observer." 443 U.S. at 52 & n.2 (emphasis added).

Kansas acknowledges (Pet. Br. 19) that courts should credit reasonable inferences "draw[n]" from officers' "own experience and specialized training" when assessing whether an officer had reasonable suspicion that would justify a seizure. Notably, Kansas does *not* argue that the record in this case supports a conclusion that Deputy Mehrer's inference was based on his experience and training. Amicus National District Attorneys Association simply asserts (at 7) that "[t]he inferences here were based on the officer's experience." That evidentiary assertion has no basis in the record. Kansas would have this Court excuse the dearth of evidence in the record by instead adopting a bright-line constitutional rule that every law-enforcement officer in every community in the country is entitled to assume (absent evidence to the contrary) that the owner of a car is driving the car. The Court should decline that invitation.

Kansas should not be permitted to rely on post-hoc rationalizations to circumvent its burden of establishing that the seizure of Glover was reasonable based on what the officer knew at the time. Having passed up the chance to submit evidence below, Kansas *now* purports to rely on statistical data and the allegedly "known" "fact" that drivers with suspended licenses have a tendency toward recidivism. Pet. Br. 14. Even if Kansas's statistics and assertions about recidivism were relevant and reliable (they are not, *see* pp. 20-25, *supra*), Kansas could not retroactively satisfy its burden of establishing what Deputy Mehrer knew then with general assertions now of what people generally ought to know. None of the arguments Kansas now relies on to support the reasonableness of Deputy Mehrer's inference was presented to the trial court. In

Brignoni-Ponce, this Court rejected a similar attempt by the United States to rely for the first time on appeal on information that the seizing officer did not purport to rely on below. In that case, the United States argued that the location of the stop provided the context for assessing whether the officers were justified in stopping a car based on the occupants' ethnic appearance alone. 422 U.S. at 886 n.11. The Court rejected the United States' attempt to rely on "an after-the-fact justification" on appeal, *ibid.*, and it should do the same here.

Third, Kansas and its amici err in arguing that "common sense" establishes the reasonableness of the inference that a car is being driven by its owner. As explained, the type of common sense this Court has relied on in finding inference-based reasonable suspicion is common sense grounded in the training and experience of law-enforcement officers. *See Cortez*, 449 U.S. at 418 (explaining that the evidence of an officer's "commonsense conclusions about human behavior" "must be seen and weighed" "as understood by those versed in the field of law enforcement"). In the absence of any evidence or indication that Deputy Mehrer's inference had such a foundation, the mere assertion that it is "common sense" cannot satisfy the Fourth Amendment. *Cf. Navarette*, 572 U.S. at 410 (Scalia, J., dissenting) ("What proportion of the hundreds of thousands—perhaps millions—of careless, reckless, or intentional traffic violations committed each day is attributable to drunken drivers? I say 0.1 percent. I have no basis for that except my own guesswork.").

Significantly, the trial judge—who is just as likely to be familiar with patterns of traffic violations in

Lawrence, Kansas as Deputy Mehrer is—found that common sense did *not* support the Deputy's inference. This Court has explained that a court reviewing a trial court's assessment of whether an officer had reasonable suspicion "should take care . . . to give due weight to inferences drawn from" the established "facts by resident judges and local law enforcement officers." *Ornelas*, 517 U.S. at 699. Here, no deference is due to Deputy Mehrer's inference because Kansas declined to present any evidence about its factual or experience-based foundation. The trial judge, in contrast, drew the opposite inference—and explained that her inference was based on her observations and experience. Pet. App. 38-39. Because "[a] trial judge views the facts of a particular case in light of the distinctive features and events of the community," her inferences on that basis "deserve deference." *Ornelas*, 517 U.S. at 699.

More fundamentally, it is *not* common sense to think that the likelihood that a car is being driven by its owner will be the same in every community across the country. In some (and possibly all) States, teenagers are significantly more likely to drive (at all and with greater frequency) when they live in suburban or rural areas than when they live in urban areas. Katherine E. Heck & Keith C. Nathaniel, *Driving Among Urban, Suburban and Rural Youth in California* 13 tbl.2 (2011); *see* Fed. Highway Admin., U.S. Dep't of Transp., *Summary of Travel Trends: 2017 National Household Travel Survey* 96-97 tbl.33 (July 2018). That is true in Kansas where between 79 and 100 percent of fatal crashes among teenagers occurred in rural, rather than urban, areas. Kan. Dep't of Transp.,

Teen Driving Statewide Statistics.[3] Because a teenager is rarely the registered owner of a car, common sense dictates that the owner of a car is less likely to be driving the car in suburban and rural neighborhoods than in urban areas. How much less likely is a question that should be explored by a trial judge in a hearing on a motion to suppress. Common sense also tells us that assumptions about who is driving a car are likely to change over time. Millions of people are already taking advantage of an ever-growing network of peer-to-peer carshare networks—a trend that is sure to grow.[4] It makes little sense to constitutionalize Kansas's frozen assumption that takes no account of differences among communities and would not adapt to changing times.

Fourth, the United States argues (at 12) that "[t]he inference that a person may be driving his own car has also played a role in rapidly developing criminal investigations focused on a particular suspect." The United States offers two such examples: (1) FBI agents' apprehension of the so-called "Beltway Snipers" based on a tip that the car registered to suspect John Allen Muhammed had been spotted at a rest stop, and (2) officers' reliance on license-plate and registered-owner information when issuing AMBER alerts to recover abducted children. The United States' argument is a non

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[3] http://www.ksdot.org/burtrafficsaf/teen/pdf/teenstats.pdf (last visited Aug. 23, 2019).

[4] *See* Peter Holley, *Airbnb for Cars Is Here. And the Rental Car Giants Are Not Happy*, Wash. Post (Mar. 30, 2018), https://www.washingtonpost.com/news/innovations/wp/2018/03/30/airbnb-for-cars-is-here-and-the-rental-car-giants-are-not-happy/?utm_term=.67407489cf9f.

sequitur for two reasons. First, the United States relies on examples where reasonable suspicion is not required because a *different* exception to the probable-cause requirement applies. Second, the United States' examples are premised on the inference that the owner of a car is *present* in his car, not that the unlicensed owner of a car is driving his car.

In each of the situations the United States relies on, an officer would be justified in conducting a traffic stop *without* reasonable suspicion that the stopped car is being driven by its owner because the Fourth Amendment's exigent-circumstances exception would apply. This Court has made clear that law-enforcement practices such as traffic stops or checkpoints that would not be justified for "ordinary crime control purposes" are sometimes permissible in exigent circumstances. *City of Indianapolis v. Edmond*, 531 U.S. 32, 44 (2000). Whereas officers generally cannot conduct random or checkpoint stops "to see if there just happens to be a felon leaving the jurisdiction," for example, they can set up a checkpoint if they have reason to believe that a dangerous criminal is likely to flee by a particular route. *Ibid.*; *accord Illinois v. Lidster*, 540 U.S. 419, 428 (2004) (checkpoint seeking information about a hit-and-run accident justified).

In the case of the Beltway Snipers, the exigent-circumstances exception plainly applied. By the time of the traffic stop, Muhammed's crime spree had resulted in "ten deaths, three grievous woundings, and a metropolitan area of approximately four million people who had been subjected to three weeks of inexpressible terror"—with no end in sight. *Muhammad v. State*, 934 A.2d 1059, 1072 (Md. Ct. Spec. App. 2007). That standing alone would be sufficient to justify a

stop of Muhammed's car absent reasonable suspicion that he was driving it once he was suspected as the shooter. In fact, the officers did have reason to believe he was driving it because he had been stopped and issued a warning a few weeks earlier while driving the car. *Id.* at 1070. They also had reason to believe that the car itself had been used to facilitate the crime spree—an independent and sufficient justification to stop it. The exigent-circumstances exception would be equally applicable in the United States' AMBER-alert example. This Court recently held as much, explaining that it need not recognize a Fourth Amendment exception for cell phone searches because "the availability of the exigent circumstances exception" allows officers "to address some of the more extreme hypotheticals that have been suggested," including "a child abductor who may have information about the child's location on his cell phone." *Riley*, 573 U.S. at 402. If a child abduction situation authorizes an officer to search a cell phone where a warrant would otherwise be required, it surely authorizes an officer to stop the abductor's car in an attempt to locate the child, the abductor, or information about either one.

At bottom, the United States' point is simply that we can understand why an officer would think that the owner of a car might be in it. It is hard to argue with that—but that does not mean that it is reasonable as a Fourth Amendment matter to seize a person based on the assumption that the unlicensed owner of a car is driving it. When the officers in *Brown* observed the defendant in an alley in an area known for drug trafficking, it may well have been reasonable for them to think that he might have been committing a crime. *See* 443 U.S. at 48-49. But the reasonable-suspicion

exception requires more than an understanding of why an officer's interest was piqued.

The United States' examples are inapposite for the additional reason that they address the probability that the owner of a car is *present* in the car, not driving it. The same is true where an officer stops a car based on the fact that there is a warrant out for the arrest of its owner. *See* U.S. Br. 11. The probability that a car's owner is present in his car is surely higher than the probability that the *unlicensed* owner of a car is driving the car. Whatever one may believe the relative probabilities are, they cannot be lumped together, particularly on a record devoid of evidence. This Court should therefore reject the attempt of amici Oklahoma (at 1, 5, 8, 13) and the National Fraternal Order of Police (at 9-12) to treat this case as implicating arrest warrants.[5]

Fifth, Kansas's reliance on a so-called "rebuttable presumption in civil actions that the registered owner of a vehicle is the driver," Pet. Br. 12-13, is misleading at best. Most of those cases rely on a civil presumption that the owner of a car was the driver of the car when the evidence shows that *the owner was present in the car*. *See*, *e.g.*, *Brayman v. Nat'l State Bank of Boulder*, 505 P.2d 11, 13 (Colo. 1973) (en banc) (applying "rebuttable presumption in law that the owner of a motor vehicle *being present in the vehicle*—but outside when found—was driving his own car) (emphasis added); *Privette v. Faulkner*, 550 P.2d 404, 406 (Nev. 1976)

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[5] Similarly, an officer may have reasonable suspicion to stop a car upon learning that the car is uninsured—if the State in which the officer works makes it illegal for anyone to drive an uninsured car.

(applying presumption "the owner of a vehicle *if present in the vehicle* is likely to be its driver") (emphasis added); *see also* 61 C.J.S. *Motor Vehicles* § 1228 (explaining that, although a "defendant's mere presence in [a] vehicle does not warrant a presumption that he or she was driving the vehicle at the time of [an] accident," a presumption that the defendant controlled the vehicle "may be presumed where he or she was operating the vehicle, where he or she was its owner *and was present* in the vehicle at the time of the accident, or where the driver was the one regularly employed by the owner to drive") (emphasis added) (footnotes omitted). Even if a civil presumption were relevant in this criminal context, the presumption Kansas relies on would not apply here—because by his own admission, Deputy Mehrer had no idea whether Glover was present in the car when he initiated the stop.

Finally, the implications of the governments' position are breathtaking, even if confined to the traffic-safety context: an officer would be justified in making a traffic stop anytime observed characteristics of a driver indicate that she is statistically likely to be committing a particular traffic offense. In its most recent survey of "traffic safety culture" in the United States—a nationally representative poll of drivers 16 and older—the AAA Foundation for Traffic Safety revealed that 56 percent of drivers between the ages of 19 and 24, and 60 percent of drivers between the ages of 25 and 39, had admitted to reading a text message or email on a mobile phone while driving in the previous 30 days. AAA Found. for Traffic Safety, *2018 Traffic*

Safety Culture Index 20 tbl.11 (June 2019).[6] A similar proportion—52 and 54 percent of the same groups, respectively—admitted to typing or sending a text message or email in the same period. *Ibid.* In other words, more than half of drivers between the ages of 19 and 39 admit to engaging in illegal and unsafe behavior while driving—behavior that is difficult to detect from outside the car. Under Kansas's view of the Fourth Amendment, an officer would always have reasonable suspicion to stop a driver who appeared to be within that age range in order to investigate whether the driver was sending or reading a text message or email while driving—relying only on a probability-based inference that they might be. Obviously, that cannot be right. The Fourth Amendment does not countenance seizures that rest on probabilities alone; it requires that an officer's suspicion be particularized.

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To be clear, in many—probably most—cases, it will not be difficult for an officer to establish a sufficient basis to stop a car in order to investigate whether a driver lacks a valid license. Anytime an officer observes a violation of a traffic law or any other identifiably suspicious behavior by a driver, the officer can stop the car and assess whether the driver has a valid license.[7] When, as here, the seizure takes place in a

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[6] https://aaafoundation.org/wp-content/uploads/2019/06/2018-TSCI-FINAL-061819_updated.pdf.

[7] *See United States v. Pyles*, 904 F.3d 422, 424 (6th Cir. 2018) (suspicious behavior); *Cortez-Galaviz*, 495 F.3d at 1204 (suspicious behavior); *State v. Vance*, 790 N.W.2d 775, 778 (Iowa 2010) (suspicious behavior); *State v. Pike*, 551 N.W.2d 919, 920-

commercial area with regular stop lights and multiple lanes of traffic in each direction, an officer should not have a difficult time observing some physical characteristics of the driver to see whether he may be the owner.[8] When an officer knows that the unlicensed owner of a car has previously driven on a suspended license, that would provide an additional ground for reasonable suspicion.[9] And when an officer can articulate how his training and experience support an inference that the unlicensed owner of a particular car is likely to be its driver, then the officer can testify to that at the suppression hearing. But the fact that it should be relatively easy for a State to satisfy its burden does not excuse the State from actually satisfying that burden. As this Court has emphasized, the "exception to the requirement of probable cause" that *Terry* created is "'narrow [in] scope'" and "this Court 'has been careful to maintain'" its limited nature. *Ybarra v. Illinois*, 444 U.S. 85, 93 (1979) (quoting

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921 (Minn. 1996) (suspicious behavior); *State v. Smith*, 905 N.W.2d 353, 359 (Wis.) (suspicious behavior), *cert. denied*, 139 S. Ct. 79 (2018) (all cited at Pet. Br. 10, 14, 18, 21, 24-26; U.S. Br. 9-13, 18).

[8] *See State v. Tozier*, 905 A.2d 836, 838-839 (Me. 2006) (officer "observe[d] that the driver [was] of the same gender as the registered owner"); *Commonwealth v. Deramo*, 762 N.E.2d 815, 817-818 (Mass. 2002) (officer "testified that he identified the defendant prior to making the stop"); *Pike*, 551 N.W.2d at 921 (officer observed that the driver matched the owner's gender and age); *State v. Donis*, 723 A.2d 35, 37-38 (N.J. 1998) (officer observed that the driver matched the owner's gender and height) (all cited at Pet. Br. 10, 11, 14, 16, 18 and/or U.S. Br. 9-10, 13).

[9] *See Vance*, 790 N.W.2d at 778 (cited at Pet. Br. 10, 24, 26; U.S. Br. 10, 18); *State v. Hamic*, 129 P.3d 114, 118-119 (Kan. Ct. App. 2006) (cited by court of appeals, Pet. App. 26-28).

Dunaway v. New York, 442 U.S. 200, 210 (1979)). A State cannot stipulate that its officer had reasonable suspicion—it must establish reasonable suspicion based on the totality of the circumstances and based on any rational inferences the officer drew from the circumstances in light of his training and experience. Because Kansas failed to do any of that, the Kansas Supreme Court correctly held that it failed to meet its burden of establishing reasonable suspicion.

II. The Balance Of Government And Private Interests Does Not Support Kansas's Proposed Bright-Line Rule.

"The central inquiry under the Fourth Amendment" is whether a search or seizure was "reasonable[] in all the circumstances of the particular governmental invasion of a citizen's personal security." *Terry*, 392 U.S. at 19. In circumstances where a warrant is impracticable and probable cause is lacking, "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 21 (quoting *Camara v. Mun. Court*, 387 U.S. 523, 536-537 (1967)) (brackets in original). The Court uses that type of balancing to determine whether a category of search or seizure must be justified by probable cause, reasonable suspicion, or some other quantum of evidence, *id.* at 20-23—and this Court has made clear that nothing less than reasonable suspicion is required for a traffic stop, *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984). The Court has also balanced law-enforcement and privacy interests when determining whether an officer's suspicion is particularized and reasonable enough to justify a specific seizure. *See*, *e.g.*, *United States v. Montoya de Hernandez*, 473 U.S.

531, 537 (1985); *Brown*, 443 U.S. at 50; *see also* Pet. App. 52 (Kansas's response to motion to suppress). "Consideration of the constitutionality" of "seizures that are less intrusive than a traditional arrest" "involves a weighing of the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty." *Brown*, 443 U.S. at 50-51; *see Whren v. United States*, 517 U.S. 806, 818 (1996); *United States v. Mendenhall*, 446 U.S. 544, 561 (1980) (Powell, J., concurring in part and concurring in the judgment).

Kansas asks for a bright-line constitutional rule—but the balance of law-enforcement and private interests does not support such a rule in this case or in this type of case.

A. The Government's Law-Enforcement Interest in This Category of Seizures Does Not Justify Its Reliance on an Unsupported and Unparticularized Inference.

In assessing the extent to which law-enforcement interests justify a seizure that is not based on probable cause, this Court has considered both the importance of the particular laws an officer seeks to enforce and the difficulty officers may have in enforcing those laws. *Montoya de Hernandez*, 473 U.S. at 538-539; *Brignoni-Ponce*, 422 U.S. at 881; *see Mendenhall*, 446 U.S. at 562 (Powell, J., concurring in part and concurring in the judgment). Neither factor supports the reasonableness of the stop here.

1. Kansas urges the Court to constitutionalize the unsupported inference that an unlicensed driver is likely to be driving his car because, they say, highway

safety demands it. As this Court has explained, a State's broad interest in "general crime control" does not justify the reasonableness of a stop, particularly when the officer's purported suspicion is not based on any acts of the person who is seized. *Edmond*, 531 U.S. at 43. Although "[t]he detection and punishment of almost any criminal offense serves broadly the safety of the community, and our streets would no doubt be safer" if drivers adhered perfectly to all driving-related regulations, an officer's desire to enforce laws related to driving suspensions and revocations is not enough to conjure up reasonable suspicion. *Ibid.* To be sure, in some contexts, officers are entitled to a thumb on the scale when assessing the reasonableness of traffic stops—but "[o]nly with respect to a small[] class of offenses" "is society confronted with the type of immediate, vehicle-bound threat to life and limb that" would justify such an approach. *Ibid.* Kansas has not demonstrated that this context warrants expanding the "narrow scope" of the reasonable-suspicion standard. *Ybarra*, 444 U.S. at 93 (citation omitted).

Kansas asserts (Pet. Br. 22) that it "revoke[s] the driving privileges of those who demonstrate an inability or unwillingness to abide by those restrictions." That is the sum total of Kansas's safety justification for the bright-line constitutional rule it seeks. As was true before the trial court, Kansas offers neither argument nor evidence to support a conclusion that all drivers with suspended or revoked licenses should be presumed to be unsafe. That is probably because they should not be.

In Kansas—and across the country—the State suspends licenses for a wide variety of reasons that have

nothing to do with highway safety, such as failing to comply with child support obligations, Kan. Stat. Ann. § 20-1204a(g), or failing to pay traffic tickets, Kan. Stat. Ann. § 8-2110(b)(1). In many States, the proportion (and raw number) of suspensions or revocations for reasons *unrelated* to traffic safety is staggering. In Florida, for example, approximately 76 percent of license suspensions are unrelated to traffic safety. James Craven & Sal Nuzzo, James Madison Inst., *Changing Course: Driver's License Suspensions in Florida* 1 (2018).[10] "[I]ndividuals in Florida routinely have their licenses suspended for minor offenses that have nothing to do with driving, such as failure to pay court costs on time or forgetting a court date." *Id.* at 2. Florida suspends licenses based on, *inter alia*, failure to appear on a worthless-check charge, failure to pay child support, conviction of a graffiti offense as a minor, illegally possessing a firearm as a minor, and conviction for most drug offenses. *Ibid.* And suspensions on those bases are common. *E.g.*, *id.* at 3 (more than 1.4 million suspensions for failure to appear in fiscal year 2010-2011). When a license is suspended for a reason unrelated to traffic safety, there is *no* reason to assume that the driver is more likely to pose a safety risk than other drivers on the road.

Florida is not alone. A study of license suspensions in New Jersey revealed that less than six percent of all suspended drivers are suspended for purely driving-related reasons. Jon A. Carnegie & Alan M. Voor-

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[10] https://www.jamesmadison.org/wp-content/uploads/2018/11/Backgrounder_DriverLicense_9.12.18_v02-1.pdf.

hees, N.J. Dep't of Transp., *Driver's License Suspensions, Impacts and Fairness Study* 2 (Aug. 2007).[11] At any given time, nearly half of the hundreds of thousands of license suspensions in New Jersey are based on failure to appear in court on a parking ticket or failure to pay an insurance surcharge. *Id.* at 22-23, 33. Nationwide, nearly 40 percent of license suspensions are unrelated to traffic safety. Joseph Shapiro, *How Driver's License Suspensions Unfairly Target the Poor*, NPR (Jan. 5, 2015)[12]; *accord* Am. Ass'n of Motor Vehicle Adm'rs, *Best Practices Guide to Reducing Suspended Drivers* 2 (2013)[13] (in national study, 39 percent of all license suspensions were based on "social non-conformance reasons" such as bounced checks and truancy). A study by the National Highway Traffic Safety Administration (NHTSA) indicated that all States and the District of Columbia suspend licenses for non-driving reasons: 47 jurisdictions suspend licenses for failure to pay child support, 38 for a drug- or alcohol-related offense by a minor other than a DUI, 15 for truancy, 13 for delinquent conduct by a minor, and 8 for failure to appear to satisfy a parking ticket. NHTSA, *Reasons for Driver License Suspension, Recidivism, and Crash Involvement Among Drivers with Suspended/Revoked Licenses* v-vi (Jan. 2009).

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[11] https://www.nj.gov/transportation/refdata/research/reports/FHWA-NJ-2007-020-V1.pdf.

[12] https://www.npr.org/2015/01/05/372691918/how-drivers-license-suspensions-unfairly-target-the-poor.

[13] https://www.aamva.org/WorkArea/DownloadAsset.aspx?id=3723.

Contrary to the inference Kansas would have this Court draw, data show that drivers with license suspensions unrelated to traffic safety are *not* statistically likely to be more dangerous on the road than drivers with valid licenses. "[D]rivers suspended for the non-driving-related reason of failing to pay child support," for example, "have [accident] rates that are comparable to drivers with valid licenses." David J. DeYoung & Michael A. Gebers, *An Examination of the Characteristics and Traffic Risks of Drivers Suspended/Revoked for Different Reasons*, 35 J. Safety Res. 287, 290 (2004). More generally, drivers with non-driving-related suspensions "do not pose a significant risk on the highways," *id.* at 294, and in fact have a *lower* crash rate than validly licensed male drivers under the age of 25, *id.* at 290. In its amicus brief, Oklahoma relies (at 14-15) on general statistics about the crash rates of unlicensed drivers. As with Oklahoma's other statistical arguments, the picture Oklahoma paints is incomplete: it fails to account for differences in crash rates based on the reason for a suspension. Because the record in this case contains *no information* about why Glover's license was revoked, Kansas's reliance on a safety justification is particularly weak.

Notably, Kansas's law-enforcement interest in preventing unlicensed drivers from driving is at an ebb in the only circumstances in which Kansas would need to rely on the bright-line rule they propose. When an officer observes a driver violating a traffic law or driving erratically, the officer can stop that driver without relying on a presumption about whether the driver is the owner. The presumption Kansas seeks to constitutionalize is material only

when a driver is complying with every applicable traffic law.

2. In balancing "the public interest and the individual's right to personal security free from arbitrary interference by law officers" in a specific context, this Court has examined the difficulties officers have in enforcing laws in that context. *Brignoni-Ponce*, 422 U.S. at 878. Although an officer need not show that a seizure was the least intrusive means available to him, *Sokolow*, 490 U.S. at 11, this Court has assessed the reasonableness of particular stops in light of whether the targeted illegal activity is "difficult to detect." *Montoya de Hernandez*, 473 U.S. at 538-539 (finding reasonable suspicion of drug smuggling); *see Brignoni-Ponce*, 422 U.S. at 881 (noting "absence of practical alternatives for policing the border," but holding that traffic stop was nonetheless unreasonable).

Law-enforcement officers have no difficulty enforcing traffic-safety laws, including laws related to unlicensed drivers. In fact, the opposite is true. In *Delaware v. Prouse*, *supra*, this Court rejected Delaware's argument that an officer is entitled to conduct a suspicionless traffic stop in order to check whether the driver has a valid license. 440 U.S. at 657-663. In so doing, the Court relied in part on the relative ease officers have in enforcing traffic laws. "The foremost method of enforcing traffic and vehicle safety regulations, it must be recalled, is acting upon observed violations," the Court explained. *Id.* at 659. "Vehicle stops for traffic violations occur countless times each day; and on these occasions, licenses and registration papers are subject to inspection and drivers without them will be ascertained." *Ibid.*; *see Whren*, 517 U.S. at 810, 813 (officer's subjective motivation for traffic

stop irrelevant when officer observes a violation of traffic laws).

These days, traffic safety is so pervasively regulated that it is difficult to drive on a regular basis without violating some law. When an officer observes an infraction—*any* infraction—he can initiate a traffic stop based on probable cause. The same is true when a driver behaves in a way that an officer believes is suspicious. In all of those instances, the officer can stop the car and determine whether the driver has a valid license. Many traffic laws impose a subjective standard that reinforces the ease officers have in detecting traffic violations. In Kansas, for example, it is a violation to follow another car more closely than what is "reasonable and prudent"—a standard that will vary based on weather conditions, time of day, and traffic patterns. Kan. Stat. Ann. § 8-1523. Kansas cannot "make[] a convincing demonstration that the public interest demands" *the additional* leeway that its proposed one-size-fits-all rule would provide to seize drivers who are not violating any traffic law at all merely because they are driving a car owned by an unlicensed driver. *Brignoni-Ponce*, 422 U.S. at 878.

3. In addition to being unnecessary to enforce traffic-safety laws, Kansas's preferred approach would create perverse incentives, discouraging officers from gathering individualized information for fear that any additional evidence could destroy their prerogative to carry out a stop. Although an officer with reasonable suspicion need not continue investigating in order to rule out the possibility that the driver is not the owner, an officer who can easily observe the driver and assess whether he or she appears to be the owner should do

so. Kansas's only response to that commonsense notion is to assert (Pet. Br. 25-26) that seeking such confirmation could be dangerous to officers when, *e.g.*, "the encounter happens at night, in bad weather," "at highway speeds, in heavy traffic, or on a narrow two-lane road." Conspicuously absent from the State's arguments is any discussion of what happened *in this case*. Although no facts about the circumstances of the seizure were included in the stipulated facts, the Notice to Appear that was issued to Glover notes the date, time, and location of the seizure. Pet. App. 44-46. Deputy Mehrer seized Glover at 7:40 a.m. on April 28, 2016, while Glover was traveling westbound near the intersection of 23rd and Iowa Streets in Lawrence, Kansas. *Id.* at 44-45. At that time and on that day, it was full daylight with almost certainly no visual impairment from bad weather.[14] The stop took place in a developed commercial area with regular stop lights and multiple lanes of traffic in each direction. *See* n.1, *supra*. Surely the totality of circumstances a court should consider in determining whether Deputy Mehrer reasonably suspected Glover of driving without a valid license should take into account whether the officer could have pulled alongside Glover at a red light and peered into his window. But Kansas would

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[14] *See* Lawrence, Kansas, USA – Sunrise, Sunset, and Daylength, April 2016, Timeanddate.com, https://www.timeanddate.com/sun/usa/lawrence?month=4&year=2016 (last visited Aug. 23, 2019) (sunrise in Lawrence, KS was at 6:26 a.m. on that date); Weather History for Lawrence, KS, The Old Farmer's Almanac, https://www.almanac.com/weather/history/KS/Lawrence/2016-04-28 (last visited Aug. 23, 2019) (Lawrence, KS Municipal Airport received .04 inches of precipitation on that date).

have this Court hold, as a constitutional matter, that an officer's failure to take that simple action before seizing a driver is *irrelevant* in all cases. None of this Court's Fourth Amendment cases countenances such an approach—and the Court should reject it.[15]

Amicus National Fraternal Order of Police argues (at 13-14) that an officer should not be encouraged to verify whether a driver appears to be the owner when possible because officers *already* have to use their onboard computers to enter a user code and then consult multiple different applications and databases to determine if a car's owner is unlicensed—all "*while they are driving*." That is hardly a convincing argument for not requiring an officer to *look at the person he is seizing* before seizing him: if an officer feels that it is safe enough to engage in such extensive computer use while driving, it will be a rare case when it is unsafe to peer inside the window of an adjacent car.

B. Roving Traffic Stops Impose a Serious Burden on Individuals' Freedom.

Kansas and the United States further err in arguing (Pet. Br. 24-25; U.S. Br. 15-17) that the degree of intrusion inherent in this type of stop is minimal and modest. If this Court adopts Kansas's proposed rule, it will subject many millions of drivers who are indisputably following every traffic law to the risk of being

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[15] Amicus Oklahoma relatedly asserts (at 17) that observing the driver's physical characteristics may not help because an officer who runs a license-plate check may "not be provided a photograph of the registered owner and maybe not even obtain the owner's race." When that is true, that fact will be one tile in the mosaic of facts that makes up the totality of circumstances. But we have no idea if it is true in Kansas.

seized at the side of the road and every ill consequence that comes with that.

1. Neither Kansas nor the United States attempts to grapple with the sheer number of drivers who could be subject to a roadside seizure without violating *any* traffic law. Because of the prevalence of license suspensions for non-driving reasons, many millions of Americans have suspended or revoked licenses at any given time. For example, in 2017, Florida suspended the licenses of 1.7 million drivers—nearly ten percent of its driving population. Craven & Nuzzo, *supra*, at 1. One recent study revealed that 4.2 million people in only *five* States (not including Florida) have lost their licenses because of unpaid court debt alone. Mario Salas & Angela Ciolfi, Legal Aid Justice Ctr., *Driven by Dollars: A State-by-State Analysis of Driver's License Suspension Laws for Failure to Pay Court Debt* 1 (Fall 2017)[16]; *accord* U.S. Gov't Accountability Office, GAO-10-217, *License Suspensions for Nondriving Offenses: Practices in Four States that May Ease the Financial Impact on Low-Income Individuals* 21 (Feb. 2010) (in 2005, approximately 7 million drivers in 31 States and the District of Columbia had license suspensions).

Under the rule Kansas proposes, anyone who drives a car owned by the many millions of drivers with suspended licenses would be subject to seizure at any time for no reason other than the fact of driving the car. It is true, as the United States contends, that "vehicles 'are subject to pervasive and continuing governmental regulation and controls, including periodic

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[16] https://www.justice4all.org/wp-content/uploads/2017/09/Driven-by-Dollars.pdf.

inspection and licensing requirements.'" U.S. Br. 15 (quoting *New York v. Class*, 475 U.S. 106, 113 (1986)). But this Court has held that "[a]n individual operating or traveling in an automobile does not lose all reasonable expectation of privacy simply because the automobile and its use are subject to government regulation." *Prouse*, 440 U.S. at 662. "Automobile travel is a basic, pervasive, and often necessary mode of transportation to and from one's home, workplace, and leisure activities." *Ibid.* When the owner of a car loses his license, it becomes more likely that members of his household or community will drive his car in order to meet the daily requirements of his life or theirs. If the Fourth Amendment were to permit a driver to be "subject to unfettered governmental intrusion every time he" drove a car owned by an unlicensed driver—despite following all traffic laws—"the security guaranteed by the Fourth Amendment would be seriously circumscribed." *Id.* at 662-663.

Increasingly, the potential that an innocent driver will be subject to seizure for the sole reason that she is driving a car owned by an unlicensed driver is not limited by the constraints of an officer's ability to manually run checks on individual license plates. As four Justices noted in *United States v. Jones*, when it comes to all but the highest-priority offenses, officers have traditionally lacked the resources to "secretly monitor and catalogue every single movement of an individual's car for a very long period." 565 U.S. 400, 430 (2012) (Alito, J., concurring in the judgment). But over time, Kansas's preferred rule will sweep in ever more innocent drivers who are increasingly "at the mercy of advancing technology." *Kyllo v. United States*, 533 U.S. 27, 35 (2001).

Already, greater and greater deployment of automated license-plate readers (ALPRs) has vastly increased the likelihood that this category of innocent drivers will be subject to seizure. As one company brags, its cameras "can capture up to 1,800 license plates a minute during day or night, across four lanes of traffic and at speeds of up to 150 miles per hour, alerting officers within milliseconds if a plate is suspect."[17] Given how saturated some cities already are with ALPRs, vehicles owned by unlicensed drivers would be automatically at risk of seizure throughout significant metropolitan areas, including Washington, DC, and Manhattan.[18] ALPRs in such areas are so prevalent that an innocent driver of a borrowed car could trigger an automatic ALPR alert—and the possibility of a warrantless seizure—on half a dozen occasions over the course of any single commute. "One wonders how a citizen seeking to be law-abiding and to structure his or her behavior to avoid these invasive, frightening, and humiliating encounters could do so." *Heien v. North Carolina*, 135 S. Ct. 530, 544 (2014) (Sotomayor, J., dissenting). The risk associated

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[17] Kaveh Waddell, *How License-Plate Readers Have Helped Police and Lenders Target the Poor*, The Atlantic (Apr. 22, 2016) (internal quotation marks omitted), https://www.theatlantic.com/technology/archive/2016/04/how-license-plate-readers-have-helped-police-and-lenders-target-the-poor/479436/.

[18] *See* Allison Klein & Josh White, *License Plate Readers: A Useful Tool for Police Comes with Privacy Concerns*, Wash. Post (Nov. 19, 2011), https://www.washingtonpost.com/local/license-plate-readers-a-useful-tool-for-police-comes-with-privacy-concerns/2011/11/18/gIQAuEApcN_story.html?utm_term=.e902008659b; Cara Buckley, *New York Plans Surveillance Veil for Downtown*, N.Y. Times (July 9, 2007), https://www.nytimes.com/2007/07/09/nyregion/09ring.html.

with unlicensed driving may be "a serious matter, but so is the loss of our freedom to come and go as we please without police interference." *Navarette*, 572 U.S. at 414 (Scalia, J., dissenting).

2. Kansas argues (at 24) that the seizure at issue here is akin to checkpoint stops this Court has held are minimally intrusive. But Kansas ignores this Court's many decisions distinguishing ordinary roadside traffic stops from checkpoint stops on the ground that roadside stops are significantly *more* intrusive than checkpoint stops. The Court has explained, for example, that roadside stops generate "appreciably" more "concern or even fright" than checkpoint stops. *United States v. Martinez-Fuerte*, 428 U.S. 543, 558 (1976). Indeed, an ordinary traffic stop generally involves an "unsettling show of authority" that imposes a "physical and psychological intrusion" upon its occupants by "interfer[ing] with freedom of movement," imposing "inconvenien[ce]," "consum[ing] time," and "creat[ing] substantial anxiety." *Prouse*, 440 U.S. at 657.

The category of cases at issue here is those in which a driver is not violating any traffic laws or otherwise acting in a suspicious manner. Her only offense is that she is driving a car owned by an unlicensed driver. To such a driver—and to her passengers, which may include young children or other vulnerable people—a traffic stop is particularly likely to generate fear and anxiety because it will feel random. That psychological burden must be taken into account in determining whether this type of probability-based seizure is reasonable. Because so many license suspensions are based on a driver's inability to pay a fee, court cost, or support order, this type of stop will fall most heavily

on families and communities with relatively less economic power. When police intrusions fall more heavily on populations that are already disproportionately subject to police scrutiny, we "risk treating members of our communities as second-class citizens." *Utah v. Strieff*, 136 S. Ct. 2056, 2069 (2016) (Sotomayor, J., dissenting). "[T]he degree of community resentment aroused by particular [police] practices is clearly relevant to an assessment of the quality of the intrusion upon reasonable expectations of personal security caused by those practices." *Terry*, 392 U.S. at 17 n.14.

3. Finally, amicus United States significantly undersells the degree of intrusion occasioned by this type of stop, in addition to the fear and anxiety it causes.

The United States contends that, when "an officer learns upon approaching a stopped vehicle that the driver is definitely not the registered owner suspected of driving without a license (say, because the driver and the owner are different genders), then the driver 'must be allowed to go on his way.'" U.S. Br. 16 (quoting *Wardlow*, 528 U.S. at 126). Of course, "few motorists would feel free . . . to leave the scene of a traffic stop without being told they might do so." *McCarty*, 468 U.S. at 436. Thus, even when an officer has reason to know immediately upon exiting his patrol car that his suspicion is no longer reasonable, the encounter will not end at that point. The officer and driver must inevitably interact once the driver has been seized.

And once a traffic stop has been initiated, this Court's decisions allow an officer to engage in a range of intrusive conduct without exceeding the scope of the initial stop. This Court has held, for example, that an officer may "[i]nterrogat[e]" an individual "relating to

[his or her] identity" and "request" "identification" without exceeding the permissible bounds of a "*Terry* stop." *Hiibel v. Sixth Judicial Dist. Court*, 542 U.S. 177, 185 (2004) (internal quotation marks omitted); *see Rodriguez v. United States*, 135 S. Ct. 1609, 1615 (2015). An officer may observe any aspect of the car (inside and out) that is in plain view—and act accordingly if he sees anything that independently produces reasonable suspicion or probable cause. An officer may seek consent to question the driver and/or consent to search the car. The officer may order the driver—and every passenger in the car—to step out of the car without additional cause. *Maryland v. Wilson*, 519 U.S. 408, 414-415 (1997); *Pennsylvania v. Mimms*, 434 U.S. 106, 109-111 (1977) (per curiam). And, when doing so would not prolong the stop (such as when an officer has a partner and a K-9 unit in the car with him), an officer may conduct a dog sniff of the car. *Illinois v. Caballes*, 543 U.S. 405, 408-409 (2005); *Edmond*, 531 U.S. at 40.

Any of those further actions by an officer would likely be viewed as within the scope of the initial stop—and could very well put the driver at risk of being subject to additional intrusions. Even when a traffic stop is not justified by reasonable suspicion, an officer may prolong the stop, conduct a search, or make an arrest if he acquires an independent justification for doing so. In many cases, that is not difficult to do. This Court has "recognized that nervous, evasive behavior is a pertinent factor in determining reasonable suspicion." *Wardlow*, 528 U.S. at 124 (citing *Brignoni-Ponce*, 422 U.S. at 885; *Sokolow*, 490 U.S. at 8-9; *Florida v. Rodriguez*, 469 U.S. 1, 6 (1984) (per curiam)). When a teenaged driver is pulled over because she is

driving her father's car and his license has been suspended, it would be shocking if she did not appear nervous. She should not be subject to the additional intrusions that might flow from her normal reaction to being stopped despite following all traffic laws.

Because the balance of interests so heavily favors personal privacy, the Court should reject Kansas's proposed bright-line rule.

CONCLUSION

For the foregoing reasons, the judgment of the Kansas Supreme Court should be affirmed.

Respectfully submitted,

Elbridge Griffy IV
Joshua D. Seiden
901 Kentucky St.
Suite 107
Lawrence, KS 66044

Sarah E. Harrington
Counsel of Record
Charles H. Davis
Erica Oleszczuk Evans
Daniel Woofter
GOLDSTEIN & RUSSELL. P.C.
7475 Wisconsin Ave., Suite 850
Bethesda, MD 20814
(202) 362-0636
sh@goldsteinrussell.com

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