No. 12-9490

In the Supreme Court of the United States

LORENZO PRADO NAVARETTE AND
JOSE PRADO NAVARETTE, PETITIONERS

v.

STATE OF CALIFORNIA

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

BRIEF FOR THE UNITED STATES AS
AMICUS CURIAE SUPPORTING RESPONDENT

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QUESTION PRESENTED

Whether the Fourth Amendment requires an officer who receives an anonymous tip regarding a drunken or reckless driver to corroborate dangerous driving before stopping the vehicle.

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INTEREST OF THE UNITED STATES

This case presents the question whether police officers may conduct a traffic stop based on an anonymous tip reporting drunken or reckless driving without corroborating that tip by observing dangerous driving themselves. Because that question arises in prosecutions brought by the United States, and because federal officials respond to reports of drunken and reckless driving in national parks and on other federal land, the United States has a substantial interest in the resolution of this case.

STATEMENT

Following the denial of their motion to suppress evidence, petitioners pleaded guilty to transportation of marijuana in violation of Cal. Health & Safety Code

§ 11360(a) (West 2007). They were sentenced to 90 days of imprisonment and three years of probation. Pet. App. 7. The California Court of Appeal affirmed, *id.* at 1-25, and the California Supreme Court denied review, *id.* at 38.

1. On the afternoon of August 23, 2008, a California Highway Patrol dispatcher in Humboldt County, California, received a 911 call from a caller who reported that a silver Ford F-150 pick-up truck had run her vehicle off the road. Pet. App. 3-4, 27-28, 32. The caller provided the truck's license plate number (8D94925), as well as information concerning its location (near mile marker 88 on Highway 1), and its direction of travel (southbound). *Id.* at 4, 27-28.

The dispatcher in Humboldt County relayed the report to dispatchers in a 911 call center for Mendocino County, directly to the south. See J.A. 43a-44a. Matia Moore and Sharon Odbert were working as a dispatch team in the Mendocino County call center that afternoon, with Moore taking incoming emergency reports from 911 callers and from dispatchers in other areas and then relaying them via computer to Odbert, who would broadcast bulletins to officers in the field. Pet. App. 3; J.A. 21a-23a. Upon receiving a call from the Humboldt County dispatcher at about 3:47 p.m., Moore keyed into her system "[s]howing southbound Highway 1 at mile marker 88. Silver Ford 150 pickup. Plate of 8-David-94925. Ran the reporting party off the roadways and was last seen approximately five [minutes] ago." J.A. 36a; see also Pet. App. 3.

Odbert immediately broadcast that information to California Highway Patrol officers working along the coast. Pet. App. 4, 21-22 n.8; J.A. 36a-37a. Two offic-

ers, Sergeant Francis and Officer Williams, each responded that they were en route. Pet. App. 4; J.A. 37a-38a. Then, at 4 p.m., Sergeant Francis reported that he had just passed the pick-up truck near mile marker 69. Pet. App. 4. He made a U-turn to follow the car. See *id.* at 24. Shortly thereafter, Officer Williams reported that the pick-up truck and Sergeant Francis's patrol car had passed him. *Id.* at 4. Officer Williams made a U-turn to follow them as they headed south on the undivided two-lane highway. *Ibid.; id.* at 24.

At about 4:05 p.m., at the entrance to MacKerricher State Park, Sergeant Francis pulled over the pick-up truck that the 911 caller had described and Officer Williams pulled up behind both cars. Pet. App. 4. Lorenzo Prado Navarette was the truck's driver and Jose Prado Navarette was the sole passenger. *Id.* at 4-5; J.A. 51a. The officers approached the passenger side of the truck and asked petitioners for identification. Pet. App. 4-5. After realizing that Lorenzo Prado Navarette had provided only a photocopy of his identification card, the officers returned to the driver's side of the truck to request additional identification. *Id.* at 5. The officers smelled marijuana from that location. *Ibid.* The officers told petitioners to get out of the truck. *Ibid.* They searched the vehicle, whereupon they found four large bags of marijuana in the truck bed, along with fertilizer, hand clippers, and oven bags. *Ibid.*

2. Petitioners were charged with transportation of marijuana in violation of Cal. Health & Safety Code § 11360(a) (West 2007) and possession of marijuana for sale in violation of Cal. Health & Safety Code § 11359 (West 2007). Pet. App. 3. They moved to

suppress the evidence seized from their truck, arguing that the traffic stop that led to discovery of the marijuana was not supported by reasonable suspicion of criminal activity. *Id.* at 2.

A magistrate judge held an evidentiary hearing on the suppression motion, at which Officer Williams and dispatchers Moore and Odbert testified. See J.A. 17a-68a. The recorded 911 call was not offered into evidence at the suppression hearing, and no testimony or other evidence was introduced concerning identifying information provided by the 911 caller. Pet. App. 28-29; J.A. 64a-65a. Accordingly, although a prosecutor represented during a court proceeding that the caller gave her name during the recorded 911 call, see J.A. 18a-19a; Pet. App. 12 n.5, the parties and the courts have treated the call as anonymous.

After the evidentiary hearing, the magistrate judge denied the suppression motion, finding reasonable suspicion for a traffic stop in the 911 caller's report of being driven off the road by petitioners' vehicle, coupled with the officers' corroboration of details in the caller's report such as the truck's license plate, color, location, and direction of travel. J.A. 73a-74a. The California Superior Court upheld the magistrate's ruling and denied petitioners' request for reconsideration. Pet. App. 26-37. Petitioners subsequently pleaded guilty to transportation of marijuana. They were each sentenced to 90 days of imprisonment and three years of probation. *Id.* at 7.

3. The California Court of Appeal affirmed. Pet. App. 1-25. The court found that the traffic stop had been supported by reasonable suspicion. *Id.* at 14-25. Applying a multi-factor analysis derived from *People* v. *Wells*, 136 P.3d 810 (Cal. 2006), cert denied, 550

U.S. 937 (2007), the court reasoned that while anonymous tips concerning drunken or reckless driving crimes must display particular indicia of reliability to justify a vehicle stop, that test was satisfied. *Ibid.* First, the court explained, "[t]he contents of the tip supported an inference that it came from the victim of the reported reckless driving," and thus enhanced its reliability. Pet. App. 18. Second, officers had promptly corroborated "significant innocent details of the tip—the detailed description of the vehicle including its license plate number and the accurate description of its location and traveling direction." *Ibid.*

The court of appeal also considered the danger of the reported conduct in determining whether a stop was justified. It reasoned that "the report that the vehicle had run someone off the road sufficiently demonstrated an ongoing danger to other motorists to justify the stop without direct corroboration of the vehicle's illegal activity." Pet. App. 18. "The reported illegal driving [of] running another car off the roadway," the court noted, "carried an unusually high risk of collision and injury." *Id.* at 24. And that risk was further enhanced because petitioners were traveling on "an undivided two-lane road, thus raising the risk of a collision with oncoming traffic." *Ibid.*

Finally, the court of appeal rejected petitioners' argument that any reasonable suspicion was dispelled because officers stopped the truck "only after they had followed it for five minutes without observing any erratic driving." Pet. App. 23. The court emphasized that the five-minute interval resulted because both officers "needed to make U-turns [to] catch up to the vehicle before they could pull it over." *Id.* at 24. The court concluded that, under all the circumstances, the

evidence of the tip's reliability and the danger of the reported conduct justified "a prompt investigative stop despite [the officers'] brief observation of the vehicle without incident." *Ibid.* The California Supreme Court denied review. *Id.* at 38.

SUMMARY OF ARGUMENT

When a 911 caller anonymously reports that a particular vehicle is engaged in specific acts of reckless or drunken driving, officers who locate the vehicle and corroborate the non-criminal details contained in the caller's report may reasonably stop the vehicle briefly to investigate—instead of awaiting further dangerous driving that could place lives at risk.

A. The central inquiry in Fourth Amendment analysis is reasonableness. The reasonableness of a search or seizure turns on balancing the governmental interests furthered by the action against the extent to which the search or seizure intrudes on privacy or liberty interests. As a general matter, that balancing permits police officers to make brief investigative stops based on reasonable suspicion of criminal activity—a standard that requires considerably less than proof of wrongdoing by a preponderance of the evidence, and is less demanding than probable cause.

This Court has routinely held that an anonymous tip of illegal activity can meet this relatively low standard so long as there is evidence of the tipster's veracity and basis of knowledge. Thus, reliance on a tip has been deemed justified when officers corroborated aspects of an informant's report that suggested the informant had a valid basis of knowledge and that the informant had been truthful, see *Illinois* v. *Gates*, 462 U.S. 213, 239 (1983); *Alabama* v. *White,* 496 U.S. 325, 328 (1990), but unjustified when there has been

no corroboration suggesting basis of knowledge or veracity, see *Florida* v. *J. L.*, 529 U.S. 266, 274 (2000). That standard is met in reckless and drunken driving cases when officers promptly corroborate a 911 caller's description of a particular vehicle and its location, because corroboration of those facts provides evidence that the caller was an eyewitness to the driving of the reported vehicle and also provides evidence of the caller's truthfulness. *J. L.*, on which petitioners rely, is not to the contrary. That case, involving a concealed possession offense, simply established that it is not ordinarily reasonable for officers to act on a bare report of a crime in the absence of any evidence that the informant had a basis of knowledge concerning the crime described in the tip.

The reasonableness of reliance on 911 calls that are corroborated as to informants' basis of knowledge and veracity has only been enhanced in recent years. Technological advances make it easier to locate unnamed callers and hold them accountable for reports, as anonymous callers are likely aware.

B. A balancing of the government's interest in removing drunken drivers from the road against the intrusion of a vehicle stop also establishes that it is reasonable for officers to briefly stop drivers based on reports of reckless or drunken driving. Waiting for officers to observe dangerous driving for themselves could put lives at risk. Because the Fourth Amendment calculus is one of reasonableness under all the circumstances, comparatively less evidence may justify a seizure when the seizure is supported by particularly significant governmental interests, or when the intrusion's impact on privacy is slight. Both these circumstances are present here.

Brief stops of vehicles reported to be engaged in reckless or drunken driving serve vital interests that cannot be adequately served through other means. Reckless and drunken driving poses an immediate threat to life, limb, and property, as this Court has recognized. And citizen reporting is critical to detecting and stopping such drivers. The federal government has thus encouraged States to adopt citizen-reporting programs focused on drunken driving, and many States have done so.

On the other side of the balance, traffic stops are brief and limited intrusions into an area in which citizens have diminished expectations of privacy. Because vehicles are subject to pervasive governmental controls and are principally used for transportation, individuals have diminished expectations of privacy in their vehicles. Traffic stops, moreover, are brief and typically non-invasive intrusions into these areas. Accordingly, the strong governmental interest in removing drunken drivers from the road before they endanger others outweighs the minimal intrusion of a brief stop.

C. Petitioners' arguments for a contrary approach are not consistent with this Court's precedents. Petitioners' high degree of skepticism about anonymous tips runs counter to this Court's recognition that anonymous tips often contain truthful reports that are critical to solving crimes. Petitioners' approach would also be hard to square with the totality-of-the-circumstances analysis this Court has adopted for reasonable suspicion, because it would treat a single factor—whether an informant possessed inside information—as the sole determinant of an anonymous

informant's reliability without consideration of the other circumstances that may be present.

D. The California Court of Appeal correctly held that officers had reasonable suspicion to stop petitioners' truck based on the 911 call in this case. The 911 call indicated that the caller was an eyewitness to particular acts of reckless driving, and officers' confirmation of the caller's description of petitioners' vehicle, its location, and its direction of travel gave them reason to believe that the caller was trustworthy and had an eyewitness basis of knowledge concerning the truck's movements. The reported reckless driving was conduct that posed a significant hazard. And the officers' failure to see additional reckless driving in the few minutes before the stop did not dispel the reasonable suspicion from the tip. Accordingly, the decision of the California Court of Appeal should be affirmed.

ARGUMENT

OFFICERS MAY BRIEFLY STOP A VEHICLE BASED ON AN ANONYMOUS 911 CALL REPORTING RECKLESS OR DRUNKEN DRIVING WHEN THEY CORROBORATE INNOCENT DETAILS OF THE REPORT

Because the Fourth Amendment protects "against unreasonable searches and seizures," U.S. Const. Amend. IV, the "central inquiry" is "the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security," *Terry* v. *Ohio*, 392 U.S. 1, 19 (1968). In assessing reasonableness, the Court balances the extent to which a search or seizure is needed to promote legitimate governmental interests against the degree to which the search or seizure intrudes on a person's privacy interests. See, *e.g.*, *id.* at 20-21; *United States*

v. *Knights*, 534 U.S. 112, 118-119 (2001); *United States* v. *Martinez-Fuerte*, 428 U.S. 543, 555 (1976). This case concerns the reasonableness of a brief stop of a vehicle based on an anonymous 911 report of reckless or drunken driving, when the anonymous report is confirmed as to both the vehicle's description and its whereabouts. As most state and federal courts to consider this issue have held, given the nature of eyewitness tips, the serious and immediate harms threatened to the public by reckless and drunken driving, and the diminished privacy expectations of motorists on public roads, officers who confirm innocent details of a tip may reasonably perform such a stop rather than awaiting additional dangerous driving that could place lives at risk.

A. An Anonymous 911 Call Establishes Reasonable Suspicion When Corroboration Indicates That The Caller Had A Basis Of Knowledge And Was Truthful

1. Investigatory detentions may, as a general matter, be based on "reasonable suspicion" of criminal activity that is "supported by articulable facts." *United States* v. *Sokolow*, 490 U.S. 1, 7 (1989); see also *Terry*, 392 U.S. at 30. This requires more than a "hunch," but "considerably less than proof of wrongdoing by a preponderance of the evidence," *Sokolow*, 490 U.S. at 7, and less than a showing of probable cause, *United States* v. *Arvizu*, 534 U.S. 266, 274 (2002). Instead, all that is required is "'a particularized and objective basis' for suspecting the person stopped of criminal activity." *Ornelas* v. *United States*, 517 U.S. 690, 696 (1996) (quoting *United States* v. *Cortez*, 449 U.S. 411, 417-418 (1981)). As petitioners concede (Br. 13-15), a showing of reasonable suspicion is categorically sufficient to support a brief stop of a

vehicle, because "[m]ost traffic stops * * * resemble, in duration and atmosphere, the kind of brief detention authorized in *Terry*," *Arizona* v. *Johnson*, 555 U.S. 323, 330 (2009) (quoting *Berkemer* v. *McCarty*, 468 U.S. 420, 439 n.29 (1984)); see also *United States* v. *Brignoni-Ponce*, 422 U.S. 873, 884 (1975); cf. *Delaware* v. *Prouse*, 440 U.S. 648, 663 (1979) (finding vehicle stops unjustified to check licenses and registrations "except in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered").

Citizen tips—whether anonymous or attributed—are often a valuable and reliable source of information justifying police action. See, *e.g.*, *Illinois* v. *Gates*, 462 U.S. 213, 237-238 (1983); *Adams* v. *Williams*, 407 U.S. 143, 147 (1972). Whether a tip is reliable enough to warrant a particular Fourth Amendment intrusion turns on a "flexible, common-sense" totality of the circumstances analysis, with no one consideration dispositive. *Gates*, 462 U.S. at 239. In that calculus, however, the Court has treated as "highly relevant" any evidence that an informant had a reliable basis of knowledge and was being truthful. *Id.* at 230.

This Court has examined different types of anonymous tips in three recent cases. In *Gates*, the Court held that an anonymous tip established probable cause, and in *Alabama* v. *White*, 496 U.S. 325 (1990), reasonable suspicion, when the tips in those cases predicted suspects' future actions, thus suggesting a basis of knowledge, and officers corroborated those predictions, thus suggesting the veracity of the anonymous informants.

In *Florida* v. *J. L.*, 529 U.S. 266 (2000), in contrast, the Court held that an anonymous tip that a young black man, in a plaid shirt, was carrying a gun at a bus stop insufficiently showed the informant's basis of knowledge or veracity to supply reasonable suspicion. *Id.* at 270-271. While *J. L.* noted that the call did not "suppl[y] any basis for believing [the caller] had inside information," *id.* at 271, the Court did not suggest that inside information was the only permissible evidence of an informant's basis of knowledge or veracity. Rather, it held that reliance on the tip of gun possession was unwarranted under the circumstances of the case, where nothing at all in the report "explained how [the informant] knew about the gun" or otherwise signaled the informant's reliability. *Ibid.*

2. Under these principles, police who receive an anonymous 911 call reporting reckless or drunken driving may have reasonable suspicion for a brief stop when they corroborate the location and description of the vehicle that are set out in the call, even without observing additional reckless or drunken driving.

A caller's description of the details of a reckless or drunken driving episode—such as the appearance of the car involved, the swerving, speeding, or abrupt lane-changing that the caller witnessed, and the car's location and direction of travel—supports an inference that the caller's basis of knowledge is eyewitness observation. Details about the location and movement of a vehicle on a particular road are most naturally acquired by a person driving a car that is also on that road, suggesting that the caller has recently seen the vehicle in its travels.

And when responding officers readily verify the caller's description of a vehicle's color, make, license

plate, location, route, or other significant details, the tip is corroborated in the respects that justify reliance. That corroboration provides evidence of the caller's basis of knowledge, as a caller who accurately relays the description, location, and direction of a particular car is likely to have actually seen the car on the road. The corroboration also provides evidence of the caller's veracity, "'[b]ecause [when] an informant is right about some things, he is more probably right about other facts,' * * * including the claim regarding the [suspects'] illegal activity." *Gates*, 462 U.S. at 244 (internal citation omitted); see also *White*, 496 U.S. at 331 (same).

3. Petitioners suggest (Br. 21) that even if a caller proves accurate in saying that the caller just saw a particular vehicle on the road, an anonymous tip concerning a driving offense by that vehicle in public view cannot justify a traffic stop unless the tip contains "predictive or inside information, such as where the truck would be turning off or its final destination." But *Gates* and *White* did not treat an informant's possession of "predictive or inside information" as relevant for its own sake. Rather, those decisions treated inside information as relevant because it signaled that the informants in those cases had a basis of knowledge concerning the offenses they reported, even though the tipsters were reporting possession of items concealed from public view. See *Gates*, 462 U.S. at 244 (noting inside knowledge meant tipster might have "access to reliable information of the [suspects'] illegal activity"); *White*, 496 U.S. at 332 (deeming caller's correct predictions relevant because they provided "reason to believe not only that the caller was honest but also that he was well informed, at least well

enough to justify the stop"); cf. *J. L.*, 529 U.S. at 272 (finding tip deficient where it did "not show that the tipster ha[d] knowledge of concealed criminal activity"). It is an informant's possession of a basis of knowledge, not his possession of insider information as such, that this Court has treated as centrally important since its earliest cases concerning informant tips. See *Gates*, 462 U.S. at 230; *White*, 496 U.S. at 328; *Aguilar* v. *Texas*, 378 U.S. 108, 113-114 (1964), abrogated by *Illinois* v. *Gates*, 462 U.S. 213 (1983); *Spinelli* v. *United States*, 393 U.S. 410, 416-417 (1969), abrogated by *Illinois* v. *Gates*, 462 U.S. 213 (1983).

Inside information is of little relevance to the informant's basis of knowledge when a tipster is reporting a crime committed in public view. For a crime committed in public, "[n]o intimate or confidential relationship [i]s required to support the accuracy of the observation." *State* v. *Boyea*, 765 A.2d 862, 875 (Vt. 2000) (Skoglund, J., concurring), cert. denied, 533 U.S. 917 (2001). Rather, when the report itself indicates that the informant saw the events that the informant is describing, it establishes "the informant's basis of knowledge" as "eyewitness observations," such that "there is no need to verify that he possesses inside information." *United States* v. *Wheat*, 278 F.3d 722, 734 (8th Cir. 2001), cert. denied, 537 U.S. 850 (2002). In other words, status as an eyewitness signals the tipster's "access to reliable information about that individual's illegal activities," *White*, 496 U.S. at 332, and this establishes the same grounds for reliance—a tipster's basis of knowledge—that inside information established in *Gates* and *White*.

Petitioners' focus on inside information as the *sine qua non* of reliability would conflict with this Court's

precedents in other ways. First, an inflexible focus on whether an informant appeared to have information from one particular source cannot be reconciled with the principle that courts should not impose "[r]igid legal rules" for tips that "doubtless come in many shapes and sizes from many different types of persons," but should rather consider all the circumstances with an eye toward "the commonsense, practical question" of whether the tip, as corroborated, is reliable enough to support the intrusion at hand. *Gates*, 462 U.S. at 230, 232.

Second, privileging "inside information" over facts learned through eyewitness observation would be inconsistent with a long legal tradition that has treated eyewitness observation as a reliable basis for an informant's report. See, *e.g.*, *Williams*, 407 U.S. at 147 (contrasting tips "completely lacking in indicia of reliability" with case in which "the victim of a street crime seeks immediate police aid and gives a description of his assailant"); *Gates*, 462 U.S. at 234 ("[E]ven if we entertain some doubt as to an informant's motives, his explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed firsthand, entitles his tip to greater weight than might otherwise be the case."); *Spinelli*, 393 U.S. at 416 (suggesting that sufficient basis of informant's knowledge would have been established if "informant personally observed [suspect] at work" in gambling operation).

Indeed, eyewitness accounts of a contemporaneous or near-contemporaneous nature are often treated as particularly reliable evidence. Thus, rules of evidence in the federal courts and elsewhere provide that contemporaneous or near-contemporaneous eyewitness

statements may sometimes be admitted into evidence notwithstanding hearsay rules because such statements are regarded as particularly reliable. See David F. Binder, *Hearsay Handbook* § 8.1, at 253, 257 (4th ed. 2013-2014) (noting federal rule is premised on enhanced trustworthiness of such statements and further observing that "[p]retty clearly 911 emergency calls can fit the exception for present sense impressions"); see also 4 Christopher B. Mueller & Laird C. Kirkpatrick, *Federal Evidence* § 8.67, at 559, 568 (3d ed. 2007) (same). In sum, when officers corroborate a tip in a manner that signals that an informant has a basis of knowledge concerning the events he describes and has been truthful in some respects, the tip establishes reasonable suspicion for officers to conduct a brief investigative stop.

4. Technological developments have provided additional reasons to believe that anonymous 911 tips may well be reliable when the caller's words evidence an eyewitness basis of knowledge. Because the central concern surrounding anonymous informants is that callers may lie if they cannot be held to account for their statements, "the ability of the police to trace the identity of anonymous telephone informants may be a factor which lends reliability to what, years earlier, might have been considered unreliable anonymous tips." *J. L.*, 529 U.S. at 276 (Kennedy, J., concurring).

Many such technologies are now widely employed. Beginning in 2001, the Federal Communications Commission phased in requirements that cellular carriers transmit data concerning a caller's geographic location to 911 dispatchers at the time of a 911 call, see 47 C.F.R. 20.18(f)-(g), adding to existing identification requirements that carriers transmit a caller's

phone number to 911 operators, 47 C.F.R. 20.18(d)(1). And subscriber names and addresses, as well as the current and past whereabouts of a phone used to make a false report, can be obtained through judicial process. See 18 U.S.C. 2703(c)-(d).

Identification of callers is also possible through the recording of 911 calls, because while "it may be difficult for the authorities to locate a 911 caller solely by voice, the victim of a hoax" may well be able "to recognize the harassing caller's voice"—and will have every incentive to do so—"thus creating a reasonable possibility of prosecution for a false report" through such recordings. *People* v. *Dolly*, 150 P.3d 693, 699 (Cal.), cert. denied, 552 U.S. 828 (2007). Taken together, these technologies mean that even when 911 callers do not provide their names to dispatchers, they face the risk of exposure and possible prosecution for false reports, which are criminal in every State.[1]

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[1] See Ala. Code § 11-98-10 (LexisNexis 2008); Alaska Stat. § 11.56.800 (2012); Ariz. Rev. Stat. Ann. § 13-2907.01 (2010); Ark. Code Ann. § 5-54-122 (2005 & Supp. 2013); Cal. Penal Code §§ 148.3, 148.5 (West 1999); Colo. Rev. Stat. § 18-8-111 (2013); Conn. Gen. Stat. Ann. § 53a-180d (West 2012); Del. Code Ann. tit. 11, § 1245 (2007); D.C. Code § 5-117.05 (LexisNexis 2012); Fla. Stat. Ann. § 817.49 (West 2006); Ga. Code Ann. § 16-11-39.2(b) (2011); Haw. Rev. Stat. Ann. § 710-1014.5 (LexisNexis 2007); Idaho Code Ann. § 18-5413 (2004); 720 Ill. Comp. Stat. Ann. 5/26-1(a)(6) (Supp. 2013); Ind. Code Ann. § 36-8-16.7-46 (LexisNexis 2009); Iowa Code Ann. §§ 694.6 (West 2003), 718.6 (West 2010); Kan. Stat. Ann. § 21-3818 (1995); Ky. Rev. Stat. Ann. § 519.040 (LexisNexis 2008); La. Rev. Stat. Ann. § 14:403.3 (2004 & Supp. 2013); Me. Rev. Stat. Ann. tit 17-A, § 509 (2006); Md. Code Ann., Crim. Law § 9-501 (LexisNexis 2012); Mass. Ann. Laws ch. 269, § 13A (LexisNexis 2010); Mich. Comp. Laws Ann. §§ 750.411a, 750.509 (West 2004 & Supp. 2013); Minn. Stat. Ann. §§ 609.505, 609-5051 (West 2009); Miss. Code Ann. § 97-35-47 (West 2011 & Supp. 2013); Mo. Ann.

These technologies are well known to the public. See, *e.g.*, *United States* v. *Casper*, 536 F.3d 409, 415 n.5 (5th Cir. 2008) ("Instant caller identification is so pervasive today that no one fails to grasp that the police, who have long been able to trace a call, are able to capture the number and initiate a trace."), vacated on other grounds, 556 U.S. 1218 (2009); *State* v. *Golotta*, 837 A.2d 359, 367 (N.J. 2003) ("[I]n an expanding number of cases the 9-1-1 system provides the police with enough information so that users of that system are not truly anonymous even when they fail to identify themselves by name."). Increasing use of these mechanisms and increasing awareness of their availability likely deter false tips. These developments increase the justification for reliance on corroborated tips of reckless or drunken driving that omit a caller's name.

Stat. § 190.308 (West 2011); Mont. Code Ann. § 45-7-205 (2013); Neb. Rev. Stat. Ann. § 28-907 (LexisNexis 2009); Nev. Rev. Stat. Ann. § 207.280 (LexisNexis 2012); N.H. Rev. Stat. Ann. § 106-H:15 (LexisNexis 2012); N.J. Stat. Ann. § 2C:28-4 (West 2005); N.M. Stat. Ann. § 30-39-1 (2004); N.Y. Penal Law §§ 240.50, 240.55, 240.60 (McKinney 2008); N.C. Gen. Stat. § 14-111.4 (2011); N.D. Cent. Code § 12.1-11-03 (2012); Ohio Rev. Code Ann. § 2917.32 (LexisNexis 2010); Okla. Stat. Ann. tit 21, § 589 (West 2002 & Supp. 2013); Or. Rev. Stat. § 162.375 (2011); 18 Pa. Cons. Stat. Ann. § 4906 (West 1983 & Supp. 2013); R.I. Gen. Laws § 11-32-2 (2002); S.C. Code Ann. § 16-17-725 (2003); S.D. Codified Laws § 22-11-9 (2006); Tenn. Code Ann. § 39-16-502 (2011); Tex. Penal Code Ann. § 37.08 (West 2011 & Supp. 2013); Utah Code Ann. §§ 76-9-105, 76-9-202 (LexisNexis 2012); Vt. Stat. Ann. tit 13, § 1754 (2009); Va. Code Ann. § 18.2-429 (2009); Wash Rev. Code Ann. § 9A.84.040 (West 2009); W. Va. Code Ann. § 61-6-20 (LexisNexis 2010); Wis. Stat. Ann. §§ 256.35(10)(a) (West 2010 & Supp. 2013), 946.41 (West 2005 & Supp. 2013); Wyo. Stat. Ann. § 6-5-210 (2013).

B. The Compelling Public Interest In Stopping Drunken Driving, Balanced Against The Minimal Intrusion Of A Car Stop, Makes It Reasonable For Officers To Briefly Stop Cars Based On Corroborated Anonymous Tips

The compelling public interest in stopping drunken drivers currently on the road and the minimally intrusive nature of a brief car stop each weigh in favor of permitting officers to stop cars based on reports of reckless or drunken driving that are corroborated in their non-criminal details, instead of requiring officers to await further dangerous driving that could place lives at risk.

1. Because the "central inquiry under the Fourth Amendment" is "the reasonableness in all the circumstances" of a seizure, *Terry*, 392 U.S. at 19, an intrusion's constitutionality ultimately depends on a balancing of the governmental interests supporting the intrusion against the liberty and privacy interests onto which the seizure intrudes. See, *e.g.*, *Knights*, 534 U.S. at 118-119. Thus, this Court has regularly considered "the seriousness of the offense thought to be involved" in assessing "the substantiality of the law enforcement interest" and the reasonableness of police action. See 4 Wayne R. LaFave, *Search and Seizure*: *A Treatise on the Fourth Amendment* § 9.3(a), at 480 & n.45 (5th ed. 2012). *Graham* v. *Connor*, 490 U.S. 386, 396 (1989), for instance, held that "the severity of the crime at issue" was one factor to be considered in "[d]etermining whether the force used to effect a particular seizure is 'reasonable' under the Fourth Amendment." And *Welsh* v. *Wisconsin*, 466 U.S. 740, 753 (1984), concluded that "the gravity of the underlying offense" is "an important factor

to be considered when determining whether" an exigency that justifies home entry has been established. See also *United States* v. *Hensley*, 469 U.S. 221, 229 (1985) (holding that police may conduct *Terry* stops to investigate completed felonies, but reserving question whether same rule applies to less serious crimes).

This Court has suggested that investigative stops based on tips that do not contain ordinary "indicia of reliability" may be justified when the governmental interest served by the stop is particularly significant, see *J. L.*, 529 U.S. at 273 (stating that stops "without a showing of reliability" might be permitted based on "for example * * * a report of a person carrying a bomb"), or when the stop intrudes only on areas "where the reasonable expectation of privacy is diminished," *id.* at 274 (citing airports and schools as examples). Brief traffic stops based on corroborated reports of reckless or drunken driving present both of these considerations.

2. a. Given the grave and imminent harm threatened by drunken and reckless drivers, and the absence of reasonable investigative alternatives, the government has a strong interest in conducting a brief stop of a reportedly reckless or drunken driver when officers corroborate the innocent details of an anonymous 911 caller's report. This Court has repeatedly and recently recognized the "terrible toll" that drunken driving "continues to exact * * * on our society." *Missouri* v. *McNeely*, 133 S. Ct. 1552, 1565 (2013) (plurality). Despite "some [recent] progress," more than 9000 people are killed by drunken driving every year. See *ibid.* (citing 2011 data); *Virginia* v. *Harris*, 558 U.S. 978 (Roberts, C.J., dissenting from denial of certiorari) (almost 13,000 deaths, roughly one every 40

minutes, in 2007); *Begay* v. *United States*, 553 U.S. 137, 141 (2008). Hundreds of thousands more are injured in alcohol-related crashes annually. National Highway Traffic Safety Admin. (NHTSA), *Alcohol and Highway Safety: A Review of the State of Knowledge* 35 (Mar. 2011), http://www.nhtsa.gov/staticfiles/nti/pdf/811374.pdf (estimating 512,000 injuries in 2000). Such crashes also cost billions of dollars every year. NHTSA, *The Economic Impact of Motor Vehicle Crashes 2000* 2, 31-42 (May 2002), http://www-nrd.nhtsa.dot.gov/Pubs/809446.pdf (estimating cost of $51 billion in 2000). Given these hazards, this Court has recognized that the governmental interest in detecting and eliminating drunken driving is entitled to significant weight in Fourth Amendment analysis. See *Michigan Dep't of State Police* v. *Sitz*, 496 U.S. 444, 447 (1990) (sanctioning random traffic stops at checkpoints to identify drunk drivers).

b. Both the federal and state governments have treated citizen reporting as critical to combatting these hazards. The National Transportation Safety Board has recommended that States adopt programs to encourage citizens to report impaired driving. See NHTSA, *Citizen Reporting of DUI-Extra Eyes to Identify Impaired Driving* 4-5 (Sept. 2006), http://www.nhtsa.gov/people/injury/alcohol/ExtraEyes/images/3204EEReport.pdf; NHTSA, *Safety Study—Deterrence of Drunk Driving: The Role of Sobriety Checkpoints and Administrative License Revocations* (Apr. 3, 1984). Many States have done so. See NHTSA, *Programs Across the United States That Aid Motorists in the Reporting of Impaired Drivers to Law Enforcement* (Mar. 2007), http://www.nhtsa.gov/links/sid/3674ProgramsAcrossUS/ (Programs That

Aid Motorists).[2] These collective efforts would be undermined by a rule requiring that before an investigatory stop, officers must observe a suspect repeat the dangerous conduct that elicited the citizen's report in the first place. Cf. *Gates*, 462 U.S. at 237-238 (rejecting stringent reliability standards that would render "anonymous tips * * * of greatly diminished value in police work" and "leave[] virtually no place for anonymous citizen informants").

c. Brief investigative stops of drivers reported to be engaged in reckless or drunken driving are particularly reasonable because the harm posed by such drivers is imminent, with the result that delays for further observation could put lives at risk. Since "a drunk driver maneuvering a thousand pounds of steel, glass and chrome down a public road" could cause

[2] Amici curiae in support of petitioners incorrectly suggest that NHTSA's data shows "little cost" to requiring officers to personally witness illegal driving when they receive citizen tips through these reporting programs. NACDL Amicus Br. 16 (discussing Programs That Aid Motorists). NHTSA's data establishes that many States have programs to encourage citizen reporting of potentially impaired drivers, but NHTSA does not appear to have surveyed the rules that States use in conducting traffic stops under these programs. Simple comparison of reported arrest rates does not control for the many different variables that affect how often arrests are made, including but not limited to the quantity of law enforcement resources available to respond to tips and the extent of officers' training. A striking feature of NHTSA's data, however, is that among States collecting data on the relationship between tips and arrests, the most common response was that 26% to 50% of calls reporting impaired driving resulted in *arrests*. See Programs That Aid Motorists 53-62. This suggests that these tips may well demonstrate reliability that comes closer to meeting a probable cause standard than the much lower standard of reasonable suspicion.

mass casualties instantaneously, *Boyea*, 765 A.2d at 875 (Skoglund, J., concurring), many courts have appropriately treated such drivers as posing dangers closer to those of a bomb that could explode at any moment, cf. *J. L.*, 529 U.S. at 273-274, than to those posed by a person merely in possession of dangerous contraband. *Boyea*, 765 A.2d at 867 ("[A] drunk driver is not at all unlike a 'bomb,' and a mobile one at that."); *State* v. *Tischio*, 527 A.2d 388, 396 (N.J. 1987) (likening drunken drivers to "moving time bombs"), appeal dismissed, 434 U.S. 1038 (1988) (citation omitted). The imminent, serious risk makes it reasonable for police to respond quickly.

A prompt stop is all the more reasonable because absent a traffic stop, officers' only readily available method of "corroborating" a report of impaired or reckless driving would be to wait for further dangerous driving. Petitioners acknowledge as much, stating that the only corroboration that could justify a stop would be for an officer to observe a driving offense. See Pet. Br. 38 (contending that Fourth Amendment "requires corroboration of the dangerous driving itself"). But it is not reasonable to demand "corroboration" that would itself put lives at risk. See *Harris*, 558 U.S. at 980 (Roberts, C.J., dissenting from the denial of certiorari) (noting that "with drunk driving, such a wait-and-see approach may prove fatal").

d. Petitioners suggest (Br. 29-32) that the hazards of drunken driving are not appropriately considered here because the hazards of gun possession did not warrant exceptional treatment in *J. L.* But the imminent hazard posed by a drunken or reckless driver on the road contrasts sharply with the harms of possessory offenses like the one in *J. L.*, where "the contra-

band *could* pose a potential public risk," but the danger is not "particularly imminent." *Boyea*, 765 A.2d at 867; see also, *e.g.*, *Wheat*, 278 F.3d at 732 n.8. Furthermore, officers investigating possessory crimes have multiple methods available to seek corroboration without inviting harm. They may "surreptitiously observe the individual for a reasonable period of time," *Boyea*, 765 A.2d at 867, enhancing or dispelling suspicion through an individual's pattern of behavior, and may also choose to initiate a consensual encounter. "An officer in pursuit of a reportedly drunk driver on a freeway," however, "does not enjoy such a luxury," but must instead either stop the vehicle or wait for the driver to commit a further dangerous act. *Id.* at 868. A reasonableness calculus should not require officers to await the "one free swerve" that could be deadly. *Harris*, 558 U.S. at 981 (Roberts, C.J., dissenting from denial of certiorari).

Petitioners' amicus observes that dangerous driving does not uniformly result from alcohol impairment but may also stem from dangerous use of cellular phones and other hazards. See NACDL Amicus Br. 16-18. But brief traffic stops are the method that enables officers to determine whether a driver's recklessness stems from alcohol or drug-related impairment or from some other cause. And in any event, the dangers at issue are similar. This Court's cases recognize that cars driven aggressively pose significant dangers. See *Sykes* v. *United States*, 131 S. Ct. 2267, 2273-2274 (2011); *Scott* v. *Harris*, 550 U.S. 372, 383-386 (2007). Distracted driving poses similar risks. See, *e.g.*, Delthia Ricks, *Study: Texting Whiling Driving Now Leading Cause of Death For Teen Drivers* (May 8, 2013), http://www.newsday.com/news/nation/

study-texting-while-driving-now-leading-cause-of-death-for-teen-drivers-1.5226036 (describing study estimating 3000 teenage deaths and 300,000 injuries per year nationwide from texting while driving).

3. a. On the other side of the balance, the diminished privacy expectations of drivers on public roadways provide additional support for brief investigative stops in this context. *J. L.* itself suggested that an individual's privacy interests in a particular context were relevant to the reasonableness of an investigative stop. The Court singled out "quarters where the reasonable expectation of Fourth Amendment privacy is diminished" as locations at which it declined to rule out "protective searches on the basis of information insufficient to justify searches elsewhere." 529 U.S. at 274; see also *Terry*, 392 U.S. at 21 ("[T]here 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.") (internal quotation marks and citation omitted; second and third set of brackets in original).

b. While *J. L.* specifically listed airports and schools as areas presenting diminished expectations of privacy, *ibid.*, cars on public roadways are analogous. Individuals have "a lesser expectation of privacy in a motor vehicle" both "because its function is transportation and it seldom serves as one's residence or as the repository of personal effects," and because cars "are subject to pervasive and continuing governmental regulation and controls, including periodic inspection and licensing requirements." *New York* v. *Class*, 475 U.S. 106, 112-113 (1986) (citation omitted); see also *California* v. *Carney*, 471 U.S. 386, 392 (1985); *Martinez-Fuerte*, 428 U.S. at 561. Traffic stops intrude

into this area only modestly, because while they interfere with motorists' freedom of movement, see *Prouse*, 440 U.S. at 657, they are brief in duration, see *Johnson*, 555 U.S. at 330, and are "typically less invasive than searches or seizures of individuals on foot," *Harris*, 558 U.S. at 981 (Roberts, C.J., dissenting from denial of certiorari).

The Court has relied on individuals' diminished expectations of privacy in vehicles as a factor relevant to the reasonableness of an intrusion in a variety of Fourth Amendment cases. See, *e.g.*, *Martinez-Fuerte*, 428 U.S. at 558-562; *Carney,* 471 U.S. at 392. Indeed, the Court has relied on this diminished expectation of privacy, coupled with the strength of the government's interest in preventing drunken driving, to hold that absent any individualized suspicion, uniformed officers may conduct vehicle stops at checkpoints designed to identify drunk drivers. *Sitz,* 496 U.S. at 451-453. Just as the strength of the governmental interest and "slight" nature of the intrusion justify brief checkpoint stops to combat drunken driving even absent any individual suspicion, *id.* at 451, so too that balancing of interests supports brief patrol stops to combat drunken driving when officers do have individual suspicion.

C. Petitioners' Arguments For A Contrary Approach Are Not Consistent With This Court's Precedents

1. Petitioners' arguments for a contrary approach (Br. 11, 34) rest to a large extent on concerns that some anonymous tipsters may make false reports to law enforcement officers. But because a tip must provide evidence that the caller just saw the vehicle in question firsthand—by describing the vehicle's location and appearance—a malicious prankster could not

generate a stop at will by calling in a tip regarding a person they dislike. See *J. L.*, 529 U.S. at 272. And since a brief stop of a vehicle for investigation requires only reasonable suspicion of criminal activity—a showing far less than a preponderance of the evidence, and less than probable cause—reasonable suspicion is not eliminated by the possibility that some individuals will make false reports. While this Court's cases recognize the possibility of false anonymous tips, they also recognize that many anonymous reports are truthful. See, *e.g.*, *Gates*, 462 U.S. at 237-238 (noting that anonymous tips, "particularly when supplemented by independent police investigation, frequently contribute to the solution of otherwise 'perfect crimes'"). After all, calls may be anonymous for a variety of innocent reasons. See, *e.g.*, *United States* v. *Madrid*, 713 F.3d 1251, 1260 (10th Cir. 2013) (police dispatcher forgot to ask name); *United States* v. *Torres*, 534 F.3d 207, 212 (3d Cir. 2008) (same); *Commonwealth* v. *Costa*, 862 N.E.2d 371, 377 (Mass. 2007) (noting that some callers "justifiably may be concerned for their own safety if their identity becomes known to the persons subsequently investigated or arrested").

As described above, the Court has traditionally balanced these considerations by permitting the modest intrusion of an investigative stop when a particular tip displays indicia of reliability—such as basis of knowledge and veracity—rather than by treating anonymous tips as categorically unworthy of reliance. Indeed, it has done so over a dissent arguing, just as petitioners do here, that the risk that some anonymous tips would be fabricated counseled against using them to establish reasonable suspicion. See *White*,

496 U.S. at 333 (Stevens, J., dissenting). The Court's approach balances the risks of reliance on false tips against the strong societal interest in acting upon genuine ones.

Here, a context-specific analysis accounts for the strong public interest in halting criminal activity that poses an imminent risk of loss of life while also weighing citizens' interest in avoiding even brief traffic stops based on false tips. And by analyzing the reliability of identified and anonymous tips case-by-case, this approach also appropriately recognizes that a caller's supplying a name does not guarantee that the caller can be identified, see *United States* v. *Watson*, 558 F.3d 702, 703 (7th Cir. 2009) (noting that names "may be fake"), while a caller's withholding a name does not guarantee that the caller will remain anonymous, see *J. L.*, 529 U.S. at 275-276 (Kennedy, J., concurring).

2. Finally, contrary to petitioners' suggestions (Br. 13, 28, 35), the approach taken by a majority of lower courts does not amount to an "automatic" rule authorizing a traffic stop any time an unnamed caller reports a driving infraction. Those courts' cases instead illustrate a totality-of-the-circumstances approach. See, *e.g.*, Pet. App. 15, 23-24; *Wheat*, 278 F.3d at 732 n.8, 737; *People* v. *Wells*, 136 P.3d 810, 812, 816 (Cal. 2006), cert denied, 550 U.S. 937 (2007). This approach permits courts to weigh factual variations that may bolster or undermine the case for reasonable suspicion in particular instances. For example, courts commonly consider the level of detail supplied by a caller as relevant to whether a report appeared to be a reliable eyewitness account. Compare *Wheat*, 278 F.3d at 737 (upholding stop based on tip containing "extensive

description of a vehicle" and "specific examples of moving violations"), with *State* v. *Kooima*, 833 N.W.2d 202, 210-211 (Iowa 2013) (rejecting stop based on tip of drunken driving when caller did not relay any "personal observation of erratic driving"), petition for cert. pending, No. 13-393 (filed Sept. 24, 2013). Some courts have further suggested that not just any report of a traffic violation will do; whereas "[a]n allegation of erratic driving" or youths "drag racing or [playing] a game of 'chicken'" may suffice, a call reporting slight speeding or a failure to use a turn signal may not. See *Wheat*, 278 F.3d at 732 n.8. Courts have likewise treated the length of time that passed between the citizen's report and the stop of a vehicle, *id.* at 737 n.13, and whether a responding officer saw a moving violation, see *Wells*, 136 P.3d at 816, as relevant considerations. Courts' ability to weigh all these considerations in determining whether a stop was reasonable ensures that not every anonymous report of a traffic violation ends in a car stop.

Petitioners' approach, in contrast, would impose a categorical rule that is hard to square with a totality-of-the-circumstances analysis, by making future predictions the sole acceptable index of reliability in cases where officers do not witness criminal activity themselves. Such an approach would find tips inadequate even when, for example, a caller placed multiple calls to update the police on ongoing developments, see, *e.g.* *United States* v. *Copening*, 506 F.3d 1241, 1246 (10th Cir. 2007), cert. denied, 554 U.S. 905 (2008), described the caller's relationship with the crime victim or offender, see, *e.g.*, *United States* v. *Brown*, 496 F.3d 1070, 1075-1077 (10th Cir. 2007); *United States* v. *Elston*, 479 F.3d 314, 315 (4th Cir.), cert. denied 550

U.S. 927 (2007); *United States* v. *Terry-Crespo*, 356 F.3d 1170, 1174 (9th Cir. 2004), or described learning of the criminal conduct through a particular job, thereby signaling a basis of knowledge and narrowing the class of possible informants, see *Torres*, 534 F.3d at 211. And no matter the danger, officers confronted with facts similar to those in *Elston*—an unnamed woman's phoned-in report that an intoxicated driver had recently left her home after threatening to shoot somebody with the loaded gun in his truck—would presumably be unable to stop a truck matching the description until they observed impaired driving or saw the driver wield his gun. See 479 F.3d at 315-316. The Fourth Amendment, whose "ultimate touchstone" is always "reasonableness," *Brigham City* v. *Stuart*, 547 U.S. 398, 403 (2006), does not require that result.

D. The California Court Of Appeal Correctly Concluded That The Report In This Case Justified A Traffic Stop.

Under a totality-of-the-circumstances approach, the California Court of Appeal correctly determined that the stop of petitioners' truck was supported by reasonable suspicion. The 911 call indicated that the caller was an eyewitness to reckless driving, as the caller reported that she had been run off the road by petitioners' truck. Moreover, the caller provided a detailed description of the vehicle (a silver Ford F-150 pick-up truck with a particular license plate), its location (near mile marker 88) and its direction of travel (southbound on Highway 1). See Pet. App. 4. Once the officers confirmed the presence of a car matching this description near the location described, they could reasonably conclude that the caller had an adequate basis of knowledge as an eyewitness and could assign some weight to the caller's veracity given the

officers' corroboration of reported details. In addition, since the caller did not relay a conclusory assertion of reckless driving but rather described particular dangerous conduct, *ibid.*; J.A. 74a, officers could reasonably conclude that the caller had witnessed the type of serious moving violation that supports a prompt law enforcement response to avert serious danger. See *Wheat*, 278 F.3d at 732 n.8.

As the court below acknowledged, two related considerations weighed somewhat against a finding of reasonable suspicion. The officers did not pull over petitioners' vehicle immediately, and they did not witness additional dangerous driving during their "brief observation of the vehicle." Pet. App. 23. These factors are relevant, but the court of appeal soundly concluded that neither factor dispelled reasonable suspicion under the particular circumstances here. *Id.* at 24. The five-minute period in which the officers observed no additional dangerous driving was not one of uninterrupted observation, but rather one in which the officers were making U-turns and attempting to catch up to petitioners' truck. *Ibid.* Moreover, "[m]otorists who see a patrol car may be able to exercise increased caution." *Wells*, 136 P.3d at 816. Accordingly, given the "several indicia of reliability" contained in the tip, officers acted reasonably in conducting a brief traffic stop rather than permitting petitioners to continue driving along an undivided two-lane highway until the officers observed dangerous conduct themselves. Pet. App. 24.

CONCLUSION

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

Respectfully submitted.

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