No. 16-805

IN THE

Supreme Court of the United States

DAX K. LEWIS AND RICHARD JIMERSON,

Petitioners,

v.

PETER L. VASQUEZ,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF OF *AMICI CURIAE* NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, KANSAS PEACE OFFICERS ASSOCIATION, KANSAS ASSOCIATION OF CHIEFS OF POLICE, AND KANSAS SHERIFFS' ASSOCIATION IN SUPPORT OF PETITIONERS

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IDENTITY AND INTEREST OF *AMICI CURIAE*

The National Association of Police Organizations ("NAPO") is a coalition of police units and associations from across the United States.[1] It was organized for the purpose of advancing the interests of America's law enforcement officers. Founded in 1978, NAPO is the strongest unified voice supporting law enforcement in the country. NAPO represents over 1,000 police units and associations, over 241,000 sworn law enforcement officers, and over 100,000 citizens who share a common dedication to fair and effective law enforcement. NAPO often appears as *amicus curiae* in cases of special importance.

The Kansas Peace Officers Association ("KPOA") was founded in 1916 and serves to promote personal acquaintance among peace officers of Kansas. In addition, KPOA seeks to advance the science pertaining to the prevention and detection of crime and the apprehension of criminals, to promote the improvement of police service and the advancement of the law enforcement profession, and to raise the standard of law enforcement institutions and officials.

The Kansas Association of Chiefs of Police ("KACP") was formed in 1965 by a group of police chiefs for the purpose and mission of ensuring professionalism in and effectiveness of law enforcement in Kansas. Today,

1. Pursuant to this Court's Rule 37.6, counsel for *amici curiae* certifies that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than *amici curiae* or their counsel has made a monetary contribution to the preparation or submission of this brief. Both parties have consented to the filing of this brief.

KACP has more than 500 members, including chiefs of police, sheriffs, and command law enforcement officers. KACP strives toward identifying and implementing more effective and reliable approaches to fighting new and growing crime challenges. Above all, KACP seeks to provide community safety and protection while doing so with the highest level of professionalism.

The Kansas Sheriffs' Association ("KSA") is comprised of sheriffs from across the State who proudly serve and protect the citizens of Kansas. KSA was incorporated in 1957 for the purpose of uniting the 105 county sheriffs of Kansas as well as to educate fellow officers and the public regarding law enforcement issues. KSA supports efforts to improve death benefits of sheriffs, enact legislation that assists law enforcement, provide scholarships to law enforcement students, and educate and train sheriffs' offices.

Collectively, *amici* have a strong interest in this case because the Tenth Circuit's opinion eliminates critical qualified-immunity protections upon which *amici*'s members rely. Police officers, sheriffs, and other law enforcement officers all depend on the courts to protect them from the burdens of personal-liability lawsuits. If this Court allows the decision below to stand—under which officers are denied qualified immunity when they detain an individual due to numerous factors suggesting that criminal activity is afoot—law enforcement will hesitate before intervening to prevent crimes. This would be detrimental to officers, the general public, and, especially, those vulnerable members of society who are hurt by illegal drug trafficking. *Amici* thus submit this brief in order to urge the Court to grant certiorari and reverse the decision below.

INTRODUCTION

Qualified immunity provides essential protection to law enforcement and, in turn, the public they are sworn to protect. By giving police officers "breathing room to make reasonable but mistaken judgments," qualified immunity ensures that only those officers who "knowingly violate the law" or act in a way that is "plainly incompetent" will face the enormous burden of civil litigation. *Stanton v. Sims*, 134 S. Ct. 3, 5 (2013).

The Tenth Circuit ignored these requirements in denying qualified immunity to Petitioners. The court held that the officers violated Respondent's rights under the Fourth Amendment because they lacked "reasonable suspicion" to briefly detain him until a drug dog could arrive. But the officers had ample reason to believe that criminal activity was afoot. Respondent was driving alone, across the country, in the middle of the night; he was acting nervously and providing the officers evasive, inconsistent, and dubious answers; and he was driving a recently purchased, high-mileage car with tinted windows and covered items in the backseat. Taken together, these circumstances provided the officers with reasonable suspicion to briefly detain Respondent.

At a minimum, there was no "clearly established law" prohibiting Petitioners' conduct. The Tenth Circuit found the law to be clearly established based on *United States v. Wood*, 106 F.3d 942 (10th Cir. 1997), a twenty-year-old case that denied qualified immunity to officers by dismissing individual factors as innocuous in isolation rather than considering all the factors collectively. But this Court has since discredited this "divide and conquer" approach as

it fails to allow officers to "draw on their own experience and specialized training to make inferences … that might well elude an untrained person." *United States v. Arvizu*, 534 U.S. 266, 273 (2002). But even if *Wood* were still good law, the facts are easily distinguishable; indeed, the Tenth Circuit has distinguished *Wood* on multiple occasions.

If allowed to stand, the Tenth Circuit's ruling will harm police officers, the general public, and our most vulnerable citizens. When officers are sued for actions taken in the line of duty, they suffer personally and professionally. They are unable to work because they must deal with the burdens of litigation, and the threat of personal liability puts enormous strain on their emotional and financial wellbeing. Worse still, the threat of personal-liability lawsuits endangers police officers and innocent bystanders because officers may "be induced to act with an excess of caution." *Forrester v. White*, 484 U.S. 219, 223 (1988).

That concern is especially strong here. Our nation's fight against illegal drug trafficking depends on officers who assertively search for and seize contraband when suspicious circumstances demand such action. If officers fear the courts will not protect them from liability when their actions are reasonable (but perhaps mistaken), they will err on the side of caution. Letting suspicious behavior go unchecked because of police trepidation serves no one's interests. The Tenth Circuit's opinion should not be allowed to stand.

ARGUMENT

I. The Decision Below Flagrantly Disregards Controlling Qualified-Immunity Precedent.

The doctrine of qualified immunity protects government officials from liability for money damages unless the plaintiff can make two showings. First, the plaintiff must show that "the official violated a statutory or constitutional right." *Lane v. Franks*, 134 S. Ct. 2369, 2381 (2014) (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011)). Second, the plaintiff must show that "the right was 'clearly established' at the time of the challenged conduct." *Id.* Respondent cannot make either showing.

First, Respondent cannot show that Petitioners violated his Fourth Amendment rights. For the kind of brief, investigatory vehicle stop at issue here, the Fourth Amendment only requires the officer to have "reasonable suspicion to believe that criminal activity 'may be afoot.'" *Id.* (quoting *United States v. Sokolow*, 490 U.S. 1, 7 (1989)). "Reasonable suspicion" exists when "the totality of the circumstances" shows that the detaining officer had a "particularized and objective basis for suspecting the particular person stopped of criminal activity." *Navarette v. California*, 134 S. Ct. 1683, 1687 (2014) (quoting *United States v. Cortez*, 449 U.S. 411, 417-18 (1981)). To justify a stop, the Fourth Amendment thus "requires 'considerably less than proof of wrongdoing by preponderance of the evidence,' and 'obviously less' than is necessary for probable cause." *Navarette*, 134 S. Ct. at 1687 (quoting *Sokolow*, 490 U.S. at 7).

In assessing the totality of the circumstances, moreover, courts may not employ a "divide-and-conquer" approach by reviewing each observation of an officer "in isolation." *Arvizu*, 534 U.S. at 274. Although each factor may be "perhaps innocent in itself," taken together, they may "warrant[] further investigation." *Id.* (quoting *Terry v. Ohio*, 392 U.S. 1, 22 (1968)). Courts must permit officers to "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).

Here, there can be no doubt that Petitioners acted reasonably in briefly detaining Respondent. Petitioners' actions are supported by numerous cases in which courts have found reasonable suspicion by relying on the same factors at issue here. To wit:

- Respondent was extremely nervous and "looked scared to death." Pet. for Writ of Cert. ("Pet.") 3-4; *see Illinois v. Wardlow*, 528 U.S. 119, 124 (2000) ("nervous, evasive behavior is a pertinent factor in determining reasonable suspicion"); *United States v. Pack*, 612 F.3d 341, 361-62 (5th Cir. 2010) ("extreme nervousness" can help form reasonable suspicion); *United States v. Ivery*, 427 F.3d 69, 73 (1st Cir. 2005) ("nervousness" is "relevant to determining reasonable suspicion").

- Respondent was driving cross-country, alone, and at an unusual time. Pet. 2; *see United States v. Diaz-Juarez*, 299 F.3d 1138, 1142 (9th Cir. 2002) (finding reasonable suspicion where the defendant

was "on [the] road at a very unusual time"); *United States v. Villalobos*, 161 F.3d 285, 289 (5th Cir. 1998) ("Although traveling at an unusual time of day may not by itself give rise to reasonable suspicion, it is a permissible consideration.").

- Respondent had covered items in the backseat with a blanket and had tinted windows, which indicated that he was trying to hide the items from view. Pet. 2; *see United States v. Compton*, 830 F.3d 55, 65 (2d Cir. 2016) (holding that "a blanket that appeared to be concealing some objects in the back of the car" contributed to officer's reasonable suspicion); *United States v. Guzman-Padilla*, 573 F.3d 865, 882 (9th Cir. 2009) (finding reasonable suspicion where the defendant had "cover[ed] the rear interior compartment of the vehicle by a black tarp even though the rear windows already were 'blacked out'"); *United States v. Aldaco*, 168 F.3d 148, 149 (5th Cir. 1999) (discussing the suspicious nature of "bulky objects covered with blankets in the back of the vehicle").

- Respondent drove an older, recently purchased vehicle, a practice drug traffickers often employ. Pet. 4; *see United States v. Moore*, 795 F.3d 1224, 1231 (10th Cir. 2015) ("recent registration of a vehicle can contribute to reasonable suspicion"); *United States v. Bowman*, 660 F.3d 338, 345 (8th Cir. 2011) ("the fact that the vehicle was newly registered" contributed to reasonable suspicion); *United States. v. Berrelleza*, 90 F. App'x 361, 364 (10th Cir. 2004) (accepting "the troopers' testimony that it is common for drug cartels to

supply a courier with a high mileage vehicle that has only recently been registered and insured").

- Respondent claimed he was driving a 20-year-old car cross-country (despite owning a much newer car) because he had bought the older car for his girlfriend who resided in Maryland. Pet. 4-5; *see United States v. Contreras*, 506 F.3d 1031, 1036 (10th Cir. 2007) ("We have noted numerous times that implausible travel plans can form a basis for reasonable suspicion."); *United States v. Hill*, 195 F.3d 258, 272 (6th Cir. 1999) (finding reasonable suspicion based on "an implausible explanation for their trip").

- Respondent dubiously claimed he was moving to Maryland even though he claimed to own a store in Colorado and the officers observed few belongings in the vehicle. Pet. 5; *see United States v. Calvetti*, 836 F.3d 654, 667 (6th Cir. 2016) (finding reasonable suspicion where defendants "had almost no luggage, despite claiming that they were relocating from one state to another"); *White*, 484 F.3d at 951 (10th Cir. 2009) (noting that "bizarre" travel plans was a factor in finding reasonable suspicion); *United States v. Brugal*, 209 F.3d 353, 360 (4th Cir. 2000) (finding reasonable suspicion where defendants had "insufficient luggage for three persons, two males and one female, traveling from Miami to Virginia Beach").

- Respondent gave inconsistent explanations for his travel, implying to one officer he was visiting his daughter and telling the other he was moving

there to live with his girlfriend. Pet. 2-5; *see United States v. De Jesus-Viera*, 655 F.3d 52, 58 (1st Cir. 2011) (providing "inconsistent answers to the … officers when cross-interviewed" contributed to reasonable suspicion); *United States v. Edmisten*, 208 F.3d 693, 694 (8th Cir. 2000) (finding reasonable suspicion where "[t]he passengers, when questioned, gave the officer information that conflicted with [the defendant's] suspicious statements").

- Respondent was travelling from a known drug source (near Denver, Colorado), along a known drug corridor (I-70), to a known drug market (near Baltimore, Maryland). Pet. 15; *see Pack*, 612 F.3d at 361 ("traveling along a drug trafficking corridor" contributed to reasonable suspicion); *United States v. Foreman*, 369 F.3d 776, 785 (4th Cir. 2004) (officer's knowledge that "Route 13 had become a frequented corridor for illegal narcotics" contributed to reasonable suspicion).

- Respondent asked the officers to repeat their questions several times—an evasive, delaying tactic designed to obtain more time to answer a question. Pet. 15; *see United States v. Gonzalez*, 328 F.3d 755, 758 (5th Cir. 2003) (reasonable suspicion where defendant "was hesitant in answering the most basic questions about his travel plans").

- Respondent had a pillow and blanket in his backseat, indicating that he planned to sleep in the car, a common practice of drug traffickers. Pet. 2; *see United States v. Hernandez*, 418

> F.3d 1206, 1210 (11th Cir. 2005) (explaining that "the presence of food containers [is] a factor that may raise reasonable suspicion in a traffic stop situation" because "people transporting contraband often drive long distances without leaving their vehicles, because they fear leaving the contraband unattended").

In sum, the officers were dealing with an individual who was driving alone cross-country in the middle of the night, acting nervously, giving them evasive, inconsistent and dubious answers, and driving a recently purchased, high-mileage car with tinted windows and covered items in the backseat. Taken together, these circumstances show that Petitioners acted reasonably and consistent with the Fourth Amendment when they briefly detained Respondent.

In finding otherwise, the Tenth Circuit focused on each factor individually and, in so doing, ignored this Court's admonition against a "divide and conquer" form of analysis. *Arvizu*, 534 U.S. at 274. For example, an individual's presence in a high-crime area by itself may not be suspicious, *see Brown v. Texas*, 443 U.S. 47, 52 (1979), but when combined with other seemingly innocent factors (such as nervous, evasive behavior), it *can* create a reasonable suspicion, *see Wardlow*, 528 U.S. at 124. Otherwise innocent behavior will frequently provide the basis for reasonable suspicion when considered in the aggregate. *See Sokolow*, 490 U.S. at 9-10. By focusing on each factor in isolation, the Tenth Circuit lost sight of the fundamental question in assessing whether officers are entitled to qualified immunity: were the officers' actions *reasonable* under the Fourth Amendment? Given the totality of the circumstances, the answer here is "yes."

But even if Respondent could satisfy the first prong of the qualified-immunity analysis, he still cannot show that Petitioners violated a "clearly established" Fourth Amendment right. A clearly established right is one that is "sufficiently clear [so] that every reasonable official would have understood [that] what he is doing violates the right." *Reichle v. Howards*, 132 S. Ct. 2088, 2093 (2012) (internal quotation marks and alterations omitted). The precedent must be so established that the constitutional question is "beyond debate." *al-Kidd*, 563 U.S. at 741. The precedent available to Petitioners at the time is barely in agreement, let alone "beyond debate."

In finding the law clearly established, the Tenth Circuit relied entirely on a twenty-year old decision: *United States v. Wood*, 106 F.3d 942 (10th Cir. 1997). In *Wood*, the Tenth Circuit reviewed whether the district court improperly denied the defendant's motion to suppress narcotics found in the trunk of his car. The Tenth Circuit first discarded three factors on which the officer relied, determining: (1) the driver's travel plans were not suspicious, because there was "nothing criminal about traveling by car to view scenery"; (2) the driver's inconsistent answer about where he rented his car was innocuous; and (3) the presence of fast-food wrappers and open maps was "consistent with innocent travel." *Id.* at 944-48. After "stripping away the[se] factors which must be disregarded because they are innocuous," the court was "left with Mr. Wood's nervousness and his prior narcotics history." *Id.* Taken together, the court found these two factors to be of "only limited significance in determining whether reasonable suspicion existed." *Id.* The court thus found no reasonable suspicion to conduct the search. *Id.*

The Tenth Circuit's reliance on *Wood* to deny qualified immunity here was wrong. As an initial matter, the continued validity of *Wood* is questionable given this Court's decision in *Arvizu*, which barred the practice of dividing and disregarding certain factors when assessing reasonable suspicion. *See* Pet. 11. As Chief Judge Tymkovich recognized, the majority essentially "conclude[d] that 0 + 0 + 0 cannot = reasonable suspicion." *Vasquez*, 834 F.3d at 1140 (citing *Arvizu*, 534 U.S. at 274). That is not the law after *Arvizu*. *Id.*; *see also United States v. $49,000.00 in U.S. Currency More or Less*, 208 F. App'x 651, 655-56 (10th Cir. 2006) (recognizing that *Arvizu* was issued "subsequent to Wood"). Because *Arvizu*, at a minimum, "injected uncertainty" into the continued validity of *Wood*, the law was not clearly established. *See Reichle*, 132 S. Ct. at 2095-97.

Even if *Wood* is still good law, however, it is easily distinguishable. The "dispositive question is whether the violative nature of *particular* conduct is clearly established … in light of the specific context of the case." *Mullenix v. Luna*, 136 S. Ct. 305, 308 (2015) (quotations omitted). "Such specificity is especially important in the Fourth Amendment context, where the Court has recognized that it is sometimes difficult for an officer to determine how the relevant legal doctrine … will apply to the factual situation the officer confronts." *Id.* (quotations omitted). Unlike in *Wood*, Respondent was driving in the middle of the night; there were covered items in the backseat; the driver had recently purchased an older vehicle despite owning a newer vehicle; and the driver gave inconsistent travel explanations. As Chief Judge Tymkovich recognized, *see Vasquez*, 834 F.3d at 1140, the Tenth Circuit has repeatedly distinguished *Wood*

in similar cases, *see, e.g., $49,000.00 in U.S. Currency More or Less*, 208 F. App'x at 655-56; *United States v. Williams*, 271 F.3d 1262, 1268-69 (10th Cir. 2001); *United States v. Toledo*, 139 F.3d 913, 1998 WL 58117, at *3 (10th Cir. 1998). The "contours of the right" simply were not so "sufficiently clear" that Petitioners would know they were violating the Fourth Amendment. *Anderson v. Creighton*, 483 U.S. 635, 640 (1987).[2]

Thus, even if reasonable suspicion were lacking, which it was not, *supra* at 5-10, the legality of Petitioners' actions was not "beyond debate." *Mullenix*, 136 S. Ct. at 312; *see also Vasquez*, 834 F.3d at 1140 (Tymkovich, C.J., dissenting) ("[T]he essence of qualified immunity is to give government officials protection in resolving close calls"). Indeed, this Court has recognized that the law governing reasonable suspicion is an "abstract" idea and not a "finely-tuned standard." *Arvizu*, 534 U.S. at 274. Petitioners should not be punished simply because they were forced to make time-sensitive decisions about this "elusive concept." *Cortez*, 449 U.S. at 417. This is precisely the situation where qualified immunity is needed.

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2. The Tenth Circuit implied that because one of the Petitioners (Officer Jimerson) was involved in *Wood,* the law was clearly established to him personally. *See Vasquez*, 834 F.3d at 1138-40. That is not the law. *See al-Kidd*, 563 U.S. at 741-42 (rejecting proposition that the Attorney General's personal knowledge of the law was "for him" and "for him only" clearly established).

II. If Left Uncorrected, the Tenth Circuit's Opinion Will Deter Officers from Acting Decisively to Combat Drug Trafficking.

Certiorari is warranted not just because the Tenth Circuit's decision is wrong; it is warranted because the opinion will undermine law-enforcement efforts to combat nationwide drug trafficking by weakening the protections given to the officers who investigate these crimes.

Qualified immunity provides essential protection for police officers and vindicates critical public policies. By holding liable only those who are "plainly incompetent" or "knowingly violate the law," qualified immunity gives officers the latitude to make a "reasonable but mistaken judgment" in situations that are often time-sensitive and dangerous. *Stanton*, 134 S. Ct. at 5. The importance of qualified immunity to police officers cannot be overstated.

Qualified immunity enables officers to fulfill their role as protectors of the public without the "undue interference" of "potentially disabling threats of liability." *Elder v. Holloway*, 510 U.S. 510, 514 (1994); *see Harlow v. Fitzgerald*, 457 U.S. 800, 814 (1982) (litigation diverts "official energy from pressing public issues"). During litigation, an officer must produce documents, respond to discovery, prepare for depositions, attend and give depositions, develop case strategy, and prepare for and attend trial. Every minute spent complying with this process is a minute that the officer is away from the job he or she was hired to do. *See Siegert v. Gilley*, 500 U.S. 226, 232 (1991) (qualified immunity protects officials from the "demands customarily imposed upon those defending a long drawn out lawsuit").

Qualified immunity also ensures that officers' personal lives will not be ruined merely because they make a reasonable (but perhaps mistaken) judgment in the line of duty. Personal-liability suits impose enormous costs on officers by hindering career advancement and impacting the officers' personal lives. While some officers may be indemnified against litigation costs and judgments, many still face the prospect of personal liability if punitive damages are imposed. This threat of punitive damages can cause real harm. For example, an officer applying for a home or car loan would likely have to disclose the possibility of liability if he were a defendant in a lawsuit, which could prevent him from securing approval. *See, e.g.*, Uniform Residential Loan Application, at 3, § VIII(d), https://goo.gl/9i1Bu2. Officers also might see their personal lives invaded through discovery if they are forced to disclose their finances when assessing the need for punitive damages. *See, e.g.*, *Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 22 (1991). Qualified immunity thus ensures that "able citizens" are not deterred from "accept[ing] public office." *Harlow*, 457 U.S. at 814.

These protections are not mere courtesies; they are essential to protecting police officers and the public. When public officials fear liability, they will "fail to make decisions when they are needed" and thus will "not fully and faithfully perform the duties of their offices." *Scheuer v. Rhodes*, 416 U.S. 232, 241-42 (1974). The doctrine of qualified immunity recognizes that the public interest is "better served by action taken 'with independence and without fear of consequences.'" *Harlow*, 457 U.S. at 819 (quoting *Pierson v. Ray*, 386 U.S. 547, 554 (1967)).

This need for swift, unflinching action is especially important for our nation's effort to combat drug trafficking. "Over the past 10 years, the drug landscape in the United States has shifted, with the tripartite opioid threat (controlled prescription drugs, fentanyl, and heroin) having risen to epidemic levels, impacting significant portions of the United States." *2016 National Drug Treat Assessment Summary*, U.S. Dep't of Justice Drug Enforcement Administration at v (Nov. 2016), https://goo.gl/jrFlQ6. "Drug poisoning deaths are currently at their highest ever recorded level and, every year since 2009, drug poisoning deaths have outnumbered deaths by firearms, motor vehicle crashes, suicide, and homicide." *Id.* In 2014, "approximately 129 people died every day as a result of drug poisoning." *Id.*

The use of drugs "can negatively affect all aspects of a person's life, impact their family, friends and community, and place an enormous burden on American society." *Alcohol, Drugs and Crime*, Nat'l Council on Alcoholism and Drug Dependence, Inc. (June 27, 2015), https://goo.gl/YlYuGY. "Alcohol and drugs are implicated in an estimated 80% of offenses leading to incarceration in the United States such as domestic violence, driving while intoxicated, property offenses, drug offenses, and public-order offenses." *Id.* Drugs inevitably harm the most vulnerable individuals of our society, including those in low-income areas, victims of domestic abuse, and children. *See id.*

Narcotics trafficking is, unfortunately, a growing industry. According to the United States Department of Treasury, approximately $64 billion of illegal drugs are purchased in the United States every year. *See 2016*

National Drug Treat Assessment Summary, *supra*, at 135. For example, since Colorado legalized marijuana in 2014, drug shipments from the State have skyrocketed. In 2014, officers seized nearly two tons of marijuana from drivers leaving Colorado. *See* Sadie Gurman, *Drug Traffickers Seek Safe Haven Amid Legal Marijuana in Colorado*, Associated Press (Jan. 29, 2016), https://goo.gl/vs3Oc0. This illicit activity hurts the community in countless ways. *See National Drug Treat Assessment Summary*, supra, at 117 ("[In 2015], officials in a suburban county in the Denver area reported to DEA that most of their homicides and assault crimes were in some way linked to marijuana grows.").

Not surprisingly, the most common way to move drugs is through "privately owned and rental vehicles equipped with hidden compartments and natural voids in the vehicles." *Drug Movement Into and Within the United States*, U.S. Dep't of Justice (Feb. 2010), https://goo.gl/NF2GGN. Drug traffickers prefer this mode of transportation because of the ease in which drugs can be hidden and transported. *Id.* "The stash spots can be incredibly difficult to detect. Entire gas tanks can be removed and replaced with a bundle of drugs, or a back bumper can be filled with packages." *Experts Say Drug Mules Are Easy to Find, Hard to Catch*, U.S. News (May 30, 2013), https://goo.gl/hlp97K.

One of the most effective tools for combating this type of drug trafficking is the brief detention of individuals for further investigation when officers reasonably suspect that criminal activity may be afoot. For nearly a century, this Court has endorsed these types of searches. *See Carroll v. United States*, 267 U.S. 132, 153 (1925)

("[C]ontraband goods concealed and illegally transported in an automobile or other vehicle may be searched for without a warrant."). Given the "impracticability of securing a warrant in cases involving the transportation of contraband goods," the Court has "recognized that an immediate intrusion is necessary if police officers are to secure the illicit substance." *United States v. Ross*, 456 U.S. 798, 806-07 (1982).

The Tenth Circuit's rejection of qualified immunity here jeopardizes these efforts. Absent a clear rule, officers must understand the nuances of hundreds of judicial decisions determining which specific factors did or did not give rise to reasonable suspicion—a daunting task even for those possessing a law degree. Facing an unclear legal background and the possibility of untold liability, officers are likely to err on the side of caution; they will hesitate even when the Fourth Amendment would have permitted interdiction. *See* Donald Dripps, *The Fourth Amendment, The Exclusionary Rule, and the Roberts Court: Normative and Empirical Dimensions of the Over-Deterrence Hypothesis*, 85 Chi.-Kent L. Rev. 209, 215 (2010) ("If the regulated actors rationally anticipate the value of violations to be negative, they will refrain from borderline but legal conduct with positive benefits."). This does not serve the public interest.

By denying qualified immunity, the Tenth Circuit left Petitioners' fate to the mercy of the jury—despite the legality of their search being, *at most*, "hazy." *Mullenix*, 136 S. Ct. at 312. This outcome conflicts with controlling precedent. The Court has continually resisted attempts to weaken the doctrine of qualified immunity. *See, e.g.*, *White v. Pauly*, 137 S. Ct. 548 (2017); *Mullenix*, 136 S. Ct.

at 308-09; *Carroll v. Carman*, 135 S. Ct. 348, 352 (2014); *Lane*, 134 S. Ct. at 2381; *Plumhoff v. Rickard*, 134 S. Ct. 2012, 2021-23 (2014); *Wood v. Moss*, 134 S. Ct. 2056, 2070 (2014); *Stanton*, 134 S. Ct. at 7; *Reichle*, 132 S. Ct. at 2093; *Ryburn v. Huff*, 132 S. Ct. 987, 990 (2012); *al-Kidd*, 131 S. Ct. at 2084-85. It should do so again here.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for certiorari.

Respectfully submitted,

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