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WHEN THE POLICE GET THE LAW WRONG: HOW *HEIEN V. NORTH CAROLINA* FURTHER ERODES THE FOURTH AMENDMENT

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I. INTRODUCTION

In the midst of nationwide anger and distrust in law enforcement following violent police confrontations around the country, the Supreme Court handed down a ruling in *Heien v. North Carolina*[1] that increases the potential for police overreaching and abuse.[2] In the spring of 2009, two Hispanic males in North Carolina were pulled over by the police for driving with a broken taillight.[3] North Carolina state law, however, required only a single working taillight, which the car in question had.[4] After Nicholas Heien, the owner of the car, consented to a search of his car, Officer Matt Darisse found a sandwich bag containing cocaine.[5] Charged with attempted drug trafficking, Heien moved to suppress the evidence seized from his car, asserting that the initial stop and search violated the Fourth Amendment of the United States Constitution.[6]

By the time the case reached the Supreme Court, a significant constitutional question had surfaced: can a police officer's reasonable mistake of law give rise to the reasonable suspicion

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1. 135 S. Ct. 530 (2014).

2. Dahlia Lithwick, *The Supreme Court Ignores the Lessons of Ferguson*, SLATE (Dec. 16, 2014, 2:51 PM), http://www.slate.com/articles/news_and_politics/jurisprudence/2014/12/heien_v_north_carolina_as_the_rest_of_the_country_worries_about_police_overreach.html.

3. *Heien*, 135 S. Ct. at 534–35.

4. *Id.* at 534.

5. *Id.*

6. *Id.* at 535.

necessary to uphold a seizure under the Fourth Amendment?[7] The Court, in an 8-1 decision, answered in the affirmative.[8]

The conclusion reached by the Court is of particular meaning and importance to police officers as well as minority communities who have lost confidence in government and law enforcement. The Fourth Amendment protects individuals against unreasonable searches and seizures by government officials.[9] However, in assessing Fourth Amendment cases, the Court has struggled to strike a balance between an individual's interest in maintaining his or her privacy and the government's interest in law enforcement.[10] It is this conflict that confronted the Court in *Heien*.

Part II of this Comment presents the historical background of Fourth Amendment protections and, more notably, the cases that have weakened those protections. Part III discusses the factual background of *Heien*, while Part IV sets forth the reasoning the Court adopted in holding that a police officer can stop a car based on a mistaken understanding of the law without violating the Fourth Amendment. Part V examines the Court's reasoning and includes a discussion on the opinion's legal and practical significance. Part VI concludes that the Court's approach should be abandoned because an officer's mistake of law, no matter how reasonable, cannot justify a seizure under the Fourth Amendment.

II. HISTORICAL FRAMEWORK

The Fourth Amendment provides that "the right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated."[11] As such, it protects citizens by barring law enforcement from conducting unreasonable searches and seizures and by suppressing evidence that is illegally obtained.[12] Although probable cause was the initial standard necessary to conduct Fourth Amendment searches and seizures, the landmark decision in *Terry v. Ohio*[13] established the objective reasonable suspicion standard, which allows a police

7. *Id.* at 534.
8. *Id.* at 535–36.
9. U.S. CONST. amend. IV; *Heien*, 135 S. Ct. at 535–36.
10. *See Heien*, 135 S. Ct. at 544–45 (Sotomayor, J., dissenting).
11. U.S. CONST. amend. IV.
12. *Heien*, 135 S. Ct. at 535.
13. 392 U.S. 1 (1968).

officer to objectively assess each situation based on the totality of the circumstances.[14] By replacing the original probable cause standard with reasonable suspicion, the *Terry* decision significantly diminished the scope of protection afforded to individuals under the Fourth Amendment.[15] In a dissenting opinion in *Terry*, Justice William Douglas warned that "to give the police greater power than a magistrate is to take a long step down the totalitarian path."[16]

The Court should have heeded the warning by Justice Douglas; instead, the decision in *Heien* solidifies the Court's trend of eviscerating our Fourth Amendment rights.[17] For example, in *Devenpeck v. Alford*,[18] the Court held that a warrantless arrest is permissible under the Fourth Amendment as long as probable cause exists for any offense at the time of the arrest.[19] In *Maryland v. Pringle*,[20] the Court held that when drugs are found in a car, all occupants may be arrested even without particularized evidence connecting them to the drug.[21] In *Illinois v. Wardlow*,[22] the Court found that an individual who suddenly and without provocation flees from identifiable police officers patrolling a high crime area creates reasonable suspicion for the police to stop him or her.[23]

More recently, in *Navarette v. California*,[24] the Court held that a police stop based on an anonymous tip does not amount to an unreasonable search or seizure, even if the arresting officer did not observe the vehicle speeding or swerving on the highway.[25] Justice Clarence Thomas, writing for the majority in *Navarette*, explained that under the totality of the circumstances, the indicia of reliability from a 911 call is sufficient to provide an officer with the reasonable suspicion needed under the Fourth Amendment.[26] Instead of heeding the warning by Justice Douglas, the Court handed police officers

14. *Id.* at 21–22.
15. *See id.* at 38–39 (Douglas, J., dissenting).
16. *Id.* at 38.
17. *See Heien*, 135 S. Ct. at 543 (Sotomayor, J., dissenting).
18. 543 U.S. 146 (2004).
19. *Id.* at 147.
20. 540 U.S. 366 (2003).
21. *Id.* at 366.
22. 528 U.S. 119 (2000).
23. *Id.* at 125.
24. 134 S. Ct. 1683 (2014).
25. *Id.* at 1686.
26. *Id.*

overwhelming police power by serving up "a freedom-destroying cocktail."[27] The foregoing cases demonstrate a trend in favor of empowering law enforcement while undermining personal liberty.[28]

As a result of these cases, the reasonable suspicion standard allows police officers to stop cars or detain people based on a lesser showing of a minimal level of objective justification.[29] Under this standard, the Fourth Amendment gives law enforcement officers the flexibility to enforce the law to protect their communities.[30] Accordingly, the Court has held that searches and seizures based on a police officer's reasonable misunderstanding of the facts are permissible under the Fourth Amendment.[31] However, until *Heien*, Fourth Amendment jurisprudence contained "scarcely a peep" about a police officer's reasonable mistake of law.[32] By adding an officer's understanding of the law to the reasonableness inquiry of the Fourth Amendment, the majority in *Heien* adds "yet another layer of ambiguity about the boundaries" on police authority that tips in favor of the government.[33]

III. STATEMENT OF THE CASE

On the morning of April 29, 2009, Nicholas Heien and Maynor Javier Vasquez were driving down an interstate in Surry County, North Carolina.[34] Officer Matt Darisse of the Surry County Sherriff's Department was observing traffic on that interstate in order to "look for criminal indicators" of drivers and passengers.[35] He observed Heien's car and began to follow it on the interstate.[36] According to Officer Darisse, Vasquez's "criminal indicators" were that he looked very "stiff and nervous" since he was "gripping the steering wheel at a 10 and 2 position, looking straight ahead."[37] After noticing that the car only had one working taillight, Officer Darisse pulled the car

27. *Id.* at 1697 (Scalia, J., dissenting).
28. *See* Heien v. North Carolina, 135 S. Ct. 530, 544–45 (2014) (Sotomayor, J., dissenting).
29. Brittanee Friedman, *Evidence Seized Based on Reasonable Police Mistake of Law Held Admissible in North Carolina Court*, 47 SUFFOLK U. L. REV. 249, 251 (2014).
30. *Heien*, 135 S. Ct. at 536.
31. *See, e.g.*, Illinois v. Rodriguez, 497 U.S. 177, 183–86 (1990).
32. *Heien*, 135 S. Ct. at 543 (Sotomayor, J., dissenting).
33. Lithwick, *supra* note 2.
34. *Heien*, 135 S. Ct. at 534 (Sotomayor, J., dissenting).
35. Brief for Petitioner at 2, Heien v. North Carolina, 135 S. Ct. 530 (2014) (No. 13-604).
36. *Id.*
37. *Id.*

over, mistakenly believing that state law required two working taillights.[38] The relevant provision of the North Carolina vehicle code provides that a car must be:

> [E]quipped with a stop lamp on the rear of the vehicle. The stop lamp shall display a red or amber light visible from a distance of not less than 100 feet to the rear in normal sunlight, and shall be actuated upon application of the service (foot) brake. The stop lamp may be incorporated into a unit with one or more other rear lamps.[39]

Officer Darisse gave the driver a warning ticket for the broken light but then became suspicious during the course of the stop because "Vasquez appeared nervous, Heien remained lying down the entire time, and the two gave inconsistent answers about their destination."[40] Officer Darisse asked whether he could search the car, and Heien, who had been asleep in the backseat while Vasquez drove, consented to the search.[41] After the police officer found a sandwich bag containing cocaine, he arrested both men, and Heien was charged with attempted trafficking of cocaine.[42]

Thereafter, Heien moved to suppress the evidence seized from the car, arguing that the stop and search violated the Fourth Amendment.[43] The trial court denied his motion, finding that the faulty taillight had given Officer Darisse "reasonable suspicion to initiate the stop" and the subsequent search was valid.[44] On appeal, the North Carolina Court of Appeals reversed, holding that the initial stop was invalid since driving with one working taillight was not a violation of North Carolina law.[45] Thus, the stop violated the Fourth Amendment because the justification for the stop was "objectively unreasonable."[46] After the state appealed, the North Carolina Supreme Court reversed, finding that the stop was valid since the officer's mistaken understanding of the vehicle code was

38. *Heien*, 135 S. Ct. at 534.
39. N.C. GEN. STAT. § 20-129(g) (2007).
40. *Heien*, 135 S. Ct. at 534.
41. *Id.*
42. *Id.* at 534–35.
43. *Id.* at 535.
44. *Id.*
45. *Id.*
46. *Id.*

reasonable.[47] The Court agreed to hear the case after Heien petitioned for a writ of certiorari.[48]

IV. REASONING OF THE COURT

On review before the Court, Heien argued that the traffic stop of his car, based solely on the police officer's misinterpretation of local traffic law, violated the Fourth Amendment.[49] He claimed that the objective inquiry of the Fourth Amendment "can be performed only by measuring the facts against the correct interpretation of the law."[50] One of the cases upon which Heien relied was *Hill v. California*,[51] which held that an arrest based on mistake of fact was valid because the officers' actions were "a reasonable response to the situation facing them at the time."[52] Based on *Hill*, Heien asserted that while the Fourth Amendment affords officers flexibility when it comes to factual determinations, there is no basis under the Fourth Amendment for treating mistakes of law the same as mistakes of fact.[53]

The Supreme Court, in an 8-1 decision, disagreed with Heien and held that a traffic stop based on a police officer's mistaken understanding of the law did not violate the Fourth Amendment because the mistake was reasonable.[54] Chief Justice John Roberts, writing for the majority, explained that searches and seizures based on a police officer's reasonable misunderstanding of the facts had long been permissible under the Fourth Amendment and therefore, mistakes of law should be afforded the same treatment.[55] To illustrate this concept, he described a situation in which a motorist is pulled over for "traveling alone in a high-occupancy vehicle lane, only to discover upon approaching the car that two children are slumped over asleep in the back seat."[56] According to the Chief

47. *Id.*
48. *Id.*
49. Brief for Petitioner, *supra* note 35, at 8.
50. *Id.*
51. 401 U.S. 797 (1971).
52. *Id.* at 804–05.
53. Brief for Petitioner, *supra* note 35, at 20.
54. Heien v. North Carolina, 135 S. Ct. 530, 540 (2014).
55. *Id.* at 536.
56. *Id.* at 534.

Justice, the driver in that scenario had not violated the law and the officer had not violated the Fourth Amendment.[57]

The Court applied this line of reasoning to reach the conclusion in *Heien*, explaining that there was "no reason, under the text of the Fourth Amendment or our precedents, why this same result should be acceptable when reached by way of a reasonable mistake of fact, but not reached by way of a similarly reasonable mistake of law."[58] In support of its argument, the Court first looked to its decision in *United States v. Riddle*.[59] In *Riddle*, a customs officer seized goods on the ground that the shipper had violated the customs laws by preparing an invoice that undervalued the merchandise, even though the American consignee declared the true value to the customs collector.[60] The *Riddle* Court found no violation of the customs law because the consignee had not actually attempted to defraud the government.[61]

Although the Court in *Riddle* was not interpreting the Fourth Amendment, Chief Justice Roberts explained that the concept of probable cause "has a fixed and well-known meaning."[62] In other words, *Riddle* illustrates the idea that probable cause encompasses suspicion based on reasonable mistakes of both fact and law.[63]

Next, the Court looked to *Michigan v. DeFillippo*,[64] where it held that an officer had probable cause to support an arrest even though the ordinance that had allegedly been violated was later held to be unconstitutional.[65] The Chief Justice argued that probable cause involved suspicion based on reasonable mistakes of both fact and law because "the contrary conclusion would be hard to reconcile" with *DeFillippo*.[66]

Moreover, the Court found "little difficulty concluding that the officer's error of law was reasonable" after determining that the North Carolina statute governing "stop lamps" or brake lights

57. *Id.*
58. *Id.* at 536.
59. 9 U.S. (5 Cranch) 311 (1809).
60. *Id.* at 311–12.
61. *Heien*, 135 S. Ct. at 537.
62. *Id.*
63. *Id.*
64. 443 U.S. 31 (1979).
65. *Heien*, 135 S. Ct. at 538 (quoting *DeFillippo*, 443 U.S. at 37–38).
66. *Id.* at 538.

contemplated many different types of arrangements.[67] The statute at issue referred to "a stop lamp" in the singular, but also provided that a "stop lamp may be incorporated into a unit with one or more other rear lamps."[68] Relying on the ambiguously worded statute, the Court concluded that it was "objectively reasonable" for the officer to believe that one malfunctioning brake lamp on a suspicious vehicle violated the statute.[69] Consequently, the Court held that there was reasonable suspicion justifying the stop and affirmed the judgment of the Supreme Court of North Carolina.[70]

V. ANALYSIS

In sum, *Heien* holds that a police officer's reasonable mistake of law can give rise to the reasonable suspicion necessary to justify a stop under the Fourth Amendment.[71] Such a holding in *Heien* represents more than a mere application of facts to judicial precedent. Rather, it solidifies the Court's trend of eroding our Fourth Amendment protections and giving more power to law enforcement by allowing police officers to change the terms of the law.[72] Accordingly, the Court's approach represents a misapplication of the reasonableness doctrine and undercuts the principles set forth by the Fourth Amendment.

A. The Reasonable Mistake of Law Doctrine Undermines the Principles of the Fourth Amendment

The objective of the Fourth Amendment is to protect citizens from unreasonable searches and seizures.[73] Due to the strong interest of protecting individual privacy, police officers must have at least articulable and reasonable suspicion when stopping an automobile and detaining the driver.[74] In *Whren v. United States*,[75] the Court unanimously reaffirmed the objective nature of the reasonable suspicion standard, holding that an officer's subjective motivations

67. *Id.* at 540.
68. N.C. GEN. STAT. § 20-129(g) (2007).
69. *Heien*, 135 S. Ct. at 540.
70. *Id.*
71. *Id.* at 532.
72. *See id.* at 544–45 (Sotomayor, J., dissenting).
73. U.S. CONST. amend. IV; *Heien*, 135 S. Ct. at 535–36.
74. Ornelas v. United States, 517 U.S. 690, 696 (1996).
75. 517 U.S. 806 (1996).

for conducting a traffic stop are irrelevant to its legality.[76] Thus, the reasonable suspicion standard involves a two-part inquiry: "the first part of the analysis involves only a determination of historical facts."[77] The next step is "whether the rule of law as applied to the established facts is or is not violated."[78]

The first step of the analysis in *Heien* reveals that Officer Darisse pulled Heien and his passenger over for driving a car with one broken taillight, mistakenly believing that state law required two working taillights.[79] The second step of the analysis reveals that the rule of law, the North Carolina law governing vehicle codes, as applied to the established facts, was not violated.[80] But the analysis did not stop there for the Court in *Heien*. Instead, the Court added to the inquiry by asking whether a reasonable police officer might have made the same mistake of law that Officer Darisse did.[81] By answering this question in the affirmative, the Court measured the facts of individualized suspicion against a police officer's reasonable but mistaken interpretation of the law.[82]

1. Important Distinctions Between Mistakes of Fact and Mistakes of Law

With this policy in mind, the Court's opinion undermines the principles that the Fourth Amendment sets forth and ignores the cases that frame the reasonableness inquiry around factual determinations.[83] Instead, the Court relied on founding-era customs statutes and cases interpreting those statutes but conceded that the cases "are not directly on point" because they say nothing about the scope of the Fourth Amendment.[84]

Next, relying on *DeFillippo*, the Court concluded that reasonable suspicion involves reasonable mistakes of both fact and law.[85] However, the Court's reliance on *DeFillippo* is misplaced

76. *Id.* at 813.
77. Brief for Petitioner, *supra* note 35, at 13 (quoting *Ornelas*, 517 U.S. at 696).
78. *Id.* (quoting Pullman-Standard v. Swint, 456 U.S. 273, 289 n.19 (1983)).
79. *Heien*, 135 S. Ct. at 534–35.
80. *Id.*
81. *Id.* at 536–37.
82. *Id.*
83. *E.g.*, Hill v. California, 401 U.S. 797, 804 (1971) (holding that an arrest based on a police officer's mistake of fact was valid under the Fourth Amendment).
84. *Heien*, 135 S. Ct. at 537.
85. *Id.* at 539.

because *DeFillippo* involved neither a police officer's mistake of fact nor law.[86] Instead, it involved a police officer correctly applying a then-existing law that was later found to be unconstitutional.[87] By contrast, in *Heien*, no law ever actually criminalized Heien's conduct, meaning the police officer stopped Heien on suspicion of committing a crime that never actually existed.[88] Accordingly, the Court ignored well-established precedent indicating that reasonable suspicion requires courts to measure the facts against the correct interpretation of the law.

In its reply brief, North Carolina argued that the justification for tolerating reasonable mistakes applies equally to mistakes of law because officers should not be expected to be "legal technicians."[89] According to the state, officers in the field may have great difficulty interpreting complex state laws and should be afforded the flexibility to make those determinations.[90] Moreover, the Chief Justice claimed that a police officer's mistake of law should not be treated any differently under the Fourth Amendment because searches and seizures based on an officer's reasonable misunderstanding of the facts had long been permissible.[91]

The Chief Justice's position overlooks the important doctrinal and practical differences between mistakes of law and fact. Although it is true that police officers are afforded broad leeway under the Fourth Amendment to make factual assessments, the reasons for condoning mistakes of fact under the reasonable suspicion standard do not apply to mistakes of law. Police officers are afforded leeway in making factual determinations because "police officers operating in the field have to make quick decisions" and have the expertise to "draw inferences and make deductions . . . that might well elude an untrained person."[92] Thus, they are presumed to be experts in formulating such judgments.[93] But when it comes to the legal determinations, "it is courts, not officers, that are in the best position

86. *Id.* at 546 (Sotomayor, J., dissenting).

87. *Id.*

88. *Id.*

89. Brief for the Respondent at 14–15, Heien v. North Carolina, 135 S. Ct. 530 (2014) (No. 13-604).

90. *Id.* at 15.

91. *Heien*, 135 S. Ct. at 539.

92. *Id.* at 543 (Sotomayor, J., dissenting) (quoting United States v. Cortez, 449 U.S. 411, 418 (1981)).

93. *Id.*

to interpret the laws."[94] Moreover, the meaning of a criminal statute does not change depending on the facts to which it is applied.[95] While police officers may reasonably draw different inferences in various factual situations, officers must apply the same understanding of the law to the facts they encounter.[96]

2. The Mistake of Law Doctrine Undermines the Balancing Test of the Fourth Amendment

Furthermore, the Court's adoption of the reasonable mistake of law doctrine undermines the balancing test of the Fourth Amendment.[97] Whether a particular type of search is considered "reasonable" under the Fourth Amendment is determined by balancing two important interests: the intrusion on an individual's Fourth Amendment rights and the legitimate government interests such as public safety.[98] Taking these two interests into account, the emphasis placed by the Court on the reasonable mistake of law doctrine undermines the Fourth Amendment's underlying rationale of protecting against unreasonable searches and seizures by the government.

The *Heien* Court failed to consider that, in order to promote the aims of the Fourth Amendment, it benefits both the government and the citizenry to encourage police officers to learn the law they are entrusted to enforce.[99] First, police officers' ability to affect seizures based on a reasonable view of the facts attached to the correct interpretation of the law promotes efficiency and accuracy.[100] Presumably, a police officer is in the best position to make factual determinations necessary to resolve an issue out in the field.[101] However, giving police officers the ability to stop a car and detain the occupants based on a police officer's mistaken interpretation of the law only serves to distort police authority.[102] Assuring that police

94. *Id.*
95. Brief for Petitioner, *supra* note 35, at 17.
96. *Id.*
97. *See* Cynthia Lee, *Reasonableness with Teeth: The Future of Fourth Amendment Reasonableness Analysis*, 81 MISS. L.J. 1133, 1140 (2012).
98. *Id.*
99. *See* Brief for Petitioner, *supra* note 35, at 35.
100. *Id.*
101. *See* Heien v. North Carolina, 135 S. Ct. 530, 543 (2014) (Sotomayor, J., dissenting).
102. *Id.*; *see also* Lithwick, *supra* note 2 (emphasizing the overreaching latitude and discretion afforded to police officers).

officers affect seizures based on a reasonable view of the facts against the correct interpretation of the law promotes efficiency and accuracy among law enforcement agencies.[103]

Second, a police officer's ability to make factual determinations and measure them against the correct interpretation of the law strengthens the public's confidence in law enforcement, particularly now when that confidence is at an all-time low.[104] By adding a police officer's interpretation of the law to the reasonableness inquiry, *Heien* may advance the belief that police officers are not held to the same standard as members of the general public.[105] In a lone dissent, Justice Sonia Sotomayor echoed this sentiment by stating, "[o]ne 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."[106] An officer's ability to attach a reasonable legal misinterpretation that suggests a law has been violated to his or her view of the facts significantly reinforces the public's perception of law enforcement as a corrupt institution.[107]

In response to these concerns, the state asserted that the police officer's mistake of law was not a subjective mistake but rather an objectively reasonable one.[108] Under the totality of the circumstances, an objectively reasonable officer would have considered that same conduct—driving with one broken taillight—as a violation of state law just like Officer Darisse did.[109] Thus, it is not the police officer's interpretation of the law that plays a role in the reasonable suspicion analysis but rather whether a reasonable police officer in that position might have made the same mistake.[110] The Court further justified this position by asserting that the Fourth Amendment allows for some mistakes on behalf of police officers

103. *See* Brief for Petitioner, *supra* note 35, at 35.

104. *See* Seth Morris, *Supreme Court's Police Debacle: How It Quietly Helped Cops Prey on Poor People*, SALON (Jan. 20, 2015, 7:41 AM) http://www.salon.com/2015/01/20/supreme_court_is_clueless_about_cops_how_they_help_police_prey_on_poor_people/.

105. *See id.*

106. *Heien*, 135 S. Ct. at 544 (Sotomayor, J., dissenting).

107. *See id.* at 544–45; *see also* Morris, *supra* note 104 (arguing that because the Supreme Court held that pretextual stops are permissible, and because technical requirements of the vehicle code ensure that police will have a reason to pull people over, poor people can only protect themselves from harassment by complying with the vehicle code).

108. Brief for the Respondent, *supra* note 89, at 16.

109. *See id.* at 11.

110. *Id.*

because "[t]o be reasonable is not to be perfect."[111] Thus, the limit under the Fourth Amendment is that the "mistakes must be those of reasonable men."[112]

However, the reasonable suspicion standard involves only a two-part test: the first element focuses on determining the facts known to the officer, and the second element involves weighing the facts against the pertinent legal standard.[113] Fourth Amendment jurisprudence makes clear that the legal standard against which the facts and circumstances of a case are judged does not depend upon what a police officer knew or what a reasonable police officer would interpret the law to be.[114] By giving police officers the ability to incorrectly interpret the law, the Court weakens the rule of law, which is at the core of our criminal justice system.[115]

Rather than incentivizing and promoting government efficiency and social interest, the majority encourages police ignorance of the law and further erodes public confidence in government and law enforcement.[116] Allowing those entrusted with enforcing the law to restrain an individual's liberty based on incorrect legal assumptions is inconsistent with the principles of the Constitution.[117] As a result of *Heien*, individuals who find themselves in a position akin to Heien will be "made to shoulder the burden of being seized whenever the law may be susceptible to an interpretive question."[118] Thus, a mistaken interpretation of the law, no matter how objectively reasonable, cannot serve as part of the totality of the circumstances justifying reasonable suspicion.[119] In sum, it is this predicament in which a police officer is allowed to change the terms of the law that warrants the abandonment of the reasonable mistake of law doctrine in a Fourth Amendment analysis.

111. *Heien*, 135 S. Ct. at 536.

112. *Id.* (quoting Brinegar v. United States, 338 U.S. 160, 176 (1949)).

113. Brief for the National Ass'n of Criminal Defense Lawyers et al. as Amici Curiae in Support of Petitioner at 7, Heien v. North Carolina, 135 S. Ct. 530 (2014) (No. 13-604).

114. *See* Whren v. United States, 517 U.S. 806, 818 (1996); *see also* Michigan v. DeFillippo, 443 U.S. 31, 36 (1979) ("It is not disputed that the Constitution permits an officer to arrest a suspect without a warrant if there is probable cause to believe that the suspect has committed or is committing an offense.").

115. *Heien*, 135 S. Ct. at 543 (Sotomayor, J., dissenting).

116. *See* Morris, *supra* note 104.

117. *See Heien*, 135 S. Ct. at 543–44 (Sotomayor, J., dissenting).

118. *Id.* at 546.

119. *See id.* at 547.

B. The Mistake of Law Doctrine Is Relevant Only to the Issue of Remedy Under the Fourth Amendment

Fourth Amendment jurisprudence also makes clear that the question of whether there has been a Fourth Amendment violation and the question of whether, if so, the evidence obtained should be suppressed are "separate, analytically distinct issues."[120] The potential outcomes in Heien's case included suppression of the cocaine evidence seized from his car by way of the exclusionary rule and application of the good faith exception where the evidence would be admitted despite the unlawfulness of the stop.[121] The exclusionary rule provides that material obtained in violation of the Constitution cannot be introduced at trial against a criminal defendant.[122] Accordingly, the purpose of the rule is to deter police misconduct and future Fourth Amendment violations.[123]

The Court imposed substantial limits on the application of the exclusionary rule in its decision in *Herring v. United States*.[124] In *Herring*, the Court held that the exclusionary rule does not apply to negligent or good faith violations of the Fourth Amendment.[125] Similarly, in *Davis v. United States*,[126] the Court found that suppression of evidence was inappropriate when officers conducted a search in objectively reasonable reliance on binding, but erroneous, appellate precedent.[127] In *Davis*, the Court concluded that although the officer's stop was reasonable because a reasonable officer would have made the same stop, it was unreasonable under the Fourth Amendment because of a subsequent Court decision that made the search unconstitutional.[128]

Notably in *Heien*, however, the issue before the Court had no bearing on potential remedies for a Fourth Amendment violation.[129] Instead, the Court only had to decide whether the police officer's

120. Brief for Petitioner, *supra* note 35, at 23 (citing Davis v. United States, 131 S. Ct. 2419, 2431 (2011)).

121. *See id.* at 23–25.

122. ERWIN CHEMERINSKY & LAURIE L. LEVENSON, CRIMINAL PROCEDURE 373 (2d ed. 2013).

123. *Id.* at 373–74.

124. 555 U.S. 135 (2009).

125. *Id.* at 137.

126. 131 S. Ct. 2419 (2011).

127. *Id.* at 2423–24.

128. *Id.* at 2434.

129. *See* Heien v. North Carolina, 135 S. Ct. 530, 534 (2014).

stop was unlawful under the Fourth Amendment.[130] Heien argued that the reasonableness of an officer's mistake of law could only bear on whether to suppress evidence at the remedy stage.[131] As such, the good-faith nature of the officer's mistake could not render the search or seizure reasonable under the Fourth Amendment.[132] According to Heien, confining the relevance of an officer's mistake of law to the remedy stage safeguarded respect for the rule of law.[133]

In response, the state argued that the objective reasonableness of a mistake of law is not relevant only to the issue of remedy because the reasonableness of mistaken facts sometimes determines whether the Fourth Amendment was violated.[134] Thus, according to the state, "[t]he reasonableness of mistakes of law can likewise bear on both issues."[135]

The Court ultimately rejected Heien's argument and by doing so, ignored Fourth Amendment jurisprudence that draws a sharp "'distinct[ion]' between the existence of a Fourth Amendment violation and the remedy for that violation."[136] Instead, the Court blended the issues of rights and remedies by finding that a reasonable mistake of law can bear on both issues.[137] Moreover, the Court's holding in *Heien* is difficult to reconcile with *Davis*, given that the search in *Davis* violated the Fourth Amendment when the law at the time allowed the search.[138] These cases indicate that a mistake of law is relevant only to the issue of remedy. Thus, the Court erred by considering a reasonable mistake of law in addressing the question of whether there was a violation of the Fourth Amendment

C. The Legal and Practical Significance of Heien

The foundation of the American legal system rests on the "notion that the law is definite and knowable."[139] With this policy in

130. *Id.*
131. Brief for Petitioner, *supra* note 35, at 23.
132. *Id.*
133. *Id.* at 34.
134. Brief for the Respondent, *supra* note 89, at 26.
135. *Id.*
136. Heien v. North Carolina, 135 S. Ct. 530, 545 (2014) (Sotomayor, J., dissenting) (quoting Davis v. United States, 131 S. Ct. 2419, 2431 (2011)).
137. *See id.* at 539.
138. *See Davis*, 131 S. Ct. at 2431.
139. *Heien*, 135 S. Ct. at 543 (Sotomayor, J., dissenting) (quoting Cheek v. United States, 498 U.S. 192, 199 (1991)).

mind, a reader can see that the Court's opinion undermines the protections that the Fourth Amendment sets forth.[140] In *Heien*, the Court held that a search based on a misunderstanding of the law is permissible under the Fourth Amendment as long as the police officer's misinterpretation of the law was reasonable.[141] But the Court's holding raises an important question of how much law a reasonable police officer should know.[142] The Court explained that the standard is whether it is "objectively reasonable for an officer in Sergeant Darisse's position to think that" the conduct violated the law.[143] However, this standard is vague and leaves reasonableness undefined.[144] Rather than establishing a clear precedent on reasonable mistakes of law, the Court's decision "only presages the likely difficulty that courts will have applying the Court's decision in this case."[145]

The Court's decision presents further problems because the Court is essentially allowing the government to defend an officer's mistaken legal interpretation on the ground that the officer was unaware of the law or misunderstood it.[146] Justice Elena Kagan tried to minimize the ruling in a concurring opinion by suggesting that it would apply only when a police officer was enforcing a "genuinely ambiguous" statute.[147] As such, only mistakes of law based on "very hard questions of statutory interpretation" should be considered reasonable.[148]

According to Justice Kagan, "such cases will be exceedingly rare," and thus, the *Heien* decision does not encourage police ignorance of the law.[149] However, more than twenty million Americans were stopped by law enforcement officers while driving in 2011.[150] Thus, the potential for police abuse following the Court's decision in *Heien* can hardly be considered "exceedingly rare." Justice Kagan's attempt to narrow the Court's vague objectively

140. *See id.* at 543–45.
141. *Id.* at 534 (majority opinion).
142. *See id.* at 547 (Sotomayor, J., dissenting).
143. *Id.* at 540 (majority opinion).
144. *See id.* at 547 (Sotomayor, J., dissenting).
145. *Id.*
146. *See id.*
147. *Id.* at 541 (Kagan, J., concurring).
148. *Id.*
149. *Id.*
150. Brief for the National Ass'n of Criminal Defense Lawyers et. al, *supra* note 113, at 14.

reasonable standard fails to appreciate its application in the field, where police already have too much power at the hand of a badge and a gun.[151] Moreover, the fact that mistakes of law will be "exceedingly rare" does not make the principle the Court established right.

The Court's decision also undermines the underlying rationale of the Fourth Amendment by encouraging police ignorance and creative interpretations of the law.[152] The Court instead should have emphasized the importance of legal training to further the deterrent goal set forth by the exclusionary rule and the principles set forth by the Fourth Amendment.[153] By condoning an officer's mistake of law, the Court fosters citizen distrust of the police by insisting that the public adhere to the laws it permits the police to misinterpret.[154]

Although an expectation of perfection in police understanding of the law is unrealistic, police officers are capable of understanding the law and adapting to any changes.[155] Moreover, police officers are entrusted with the great responsibility to protect the public and enforce the law.[156] As such, police officers should be held to the same standard as the public, and the government should not be able to impose criminal liability on an individual based on a police officer's mistaken understanding of the law.[157]

The Court's decision in *Heien* presents further implications when applied to the criminal justice system as a whole.[158] As the Court's first and only Hispanic justice,[159] Justice Sotomayor was the only justice to raise the troubling issue of race lurking in the

151. *See* Morris, *supra* note 104.

152. *See Heien*, 135 S. Ct. at 543–44 (Sotomayor, J., dissenting).

153. *See* CHEMERINSKY & LEVENSON, *supra* note 122, at 373–74; *see also* United States v. Calandra, 414 U.S. 338, 348 (1974) (holding that the exclusionary rule is a "judicially created remedy designed to safeguard Fourth Amendment" protections through its deterrence effect).

154. *See Heien*, 135 S. Ct. at 543–44 (Sotomayor, J., dissenting); *see also* Morris, *supra* note 104 (suggesting that the Supreme Court seems to still think that the police use the vehicle code solely to keep the roads safe, when in fact it is used as an excuse to pull people over for other reasons).

155. *See* Brief for Petitioner, *supra* note 35, at 38–39.

156. *See id.* at 36–38.

157. *See id.* at 38; *see also* Lithwick, *supra* note 2 (explaining that the Supreme Court's decision creates a double standard for the police since ignorance of the law is never an excuse for lay citizens).

158. *See Heien*, 135 S. Ct. at 544 (Sotomayor, J., dissenting).

159. *Profile: Sonia Sotomayor*, BBC NEWS (Aug. 7, 2009), http://news.bbc.co.uk/2/hi/americas/8068637.stm.

background of the case.[160] Heien and Vasquez, both Hispanic males, were pulled over and extensively searched based on the "criminal indicators" of driving "at a 10 and 2 position, looking straight ahead."[161] Even if the police officers did have a legitimate reason to pull Heien over, the officer's search and the Court's subsequent decision in *Heien* raises very serious Fourth Amendment problems.

Amid a tense climate of racial unrest and minority suspicion of law enforcement following police confrontations in Ferguson[162] and New York,[163] *Heien*'s reasonable mistake of law doctrine will further erode confidence in the criminal justice system.[164] According to Justice Sotomayor, there are "human consequences . . . including those for communities and for their relationships with the police."[165] The Court's added wrinkle in the reasonable suspicion doctrine broadens police discretion to allow race-based traffic stops, which further exacerbates the deep distrust between law enforcement and minorities.[166]

Allowing police officers to have more leeway under the Fourth Amendment encourages police ignorance of the law and weakens the relationship between law enforcement officials and the citizens they are entrusted to protect. Additionally, the lack of a specific test to determine what reasonableness means in the context of a mistake of law leaves this unchartered territory to the discretion of lower courts, which Justice Sotomayor predicts "will prove murky in application."[167] The anticipated possibility of inconsistent applications of the mistake of law doctrine thus warrants the disposal of the doctrine in a Fourth Amendment reasonable suspicion analysis.

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160. *Cf. Heien*, 135 S. Ct. at 544 (Sotomayor, J., dissenting) ("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.").

161. Brief for Petitioner, *supra* note 35, at 2; *see* Lithwick, *supra* note 2.

162. Larry Buchanan et al., *What Happened in Ferguson?*, N.Y. TIMES, http://www.nytimes.com/interactive/2014/08/13/us/ferguson-missouri-town-under-siege-after-police-shooting.html (last updated Aug. 10, 2015).

163. Aaron Blake, *Why Eric Garner Is the Turning Point Ferguson Never Was*, WASH. POST (Dec. 8, 2014), http://www.washingtonpost.com/blogs/the-fix/wp/2014/12/08/why-eric-garner-is-the-turning-point-ferguson-never-was/.

164. *See* Lithwick, *supra* note 2; Morris, *supra* note 104.

165. *Heien*, 135 S. Ct. at 544 (Sotomayor, J., dissenting).

166. *See* Morris, *supra* note 104.

167. *Id.*

VI. CONCLUSION

Before the Fourth Amendment was written, Benjamin Franklin declared, "they who can give up essential liberty to obtain a little temporary safety, deserve neither liberty nor safety."[168] The implication of his statement is that there will always be a balance between liberty and safety under the Fourth Amendment. However, the Court's decision in *Heien* tears at the damaged relationship between law enforcement and minority communities and further diminishes the few Fourth Amendment protections we have left. Understanding this, Justice Sotomayor warned that the Court's ruling in *Heien* "means further eroding the Fourth Amendment's protection of civil liberties in a context where that protection has already been worn down."[169]

Rather than adding an officer's mistake of law into the reasonable suspicion inquiry, the Court could have simply found that an officer's mistake of law, no matter how reasonable, cannot establish the reasonable suspicion necessary to justify a seizure in accordance with the Fourth Amendment. Accordingly, because there is no basis in Fourth Amendment jurisprudence for treating mistake of law the same as mistake of fact, Officer Darisse's reasonable suspicion based on his mistake of North Carolina law suggests his subsequent search and seizure of Heien's car was impermissible. Therefore, the Fourth Amendment did not protect Officer Darisse's actions.

The Court's reliance on the reasonable mistake of law approach not only undermines the principles of the Fourth Amendment but also presents significant implications for future application. For these reasons, the Court should abandon the reasonable mistake of law doctrine in its Fourth Amendment analysis.

168. 1 BENJAMIN FRANKLIN & WILLIAM TEMPLETON FRANKLIN, MEMOIRS OF THE LIFE AND WRITINGS OF BENJAMIN FRANKLIN, LL.D. 270 (London, Henry Colburn 1818).

169. *Heien*, 135 S. Ct. at 543 (Sotomayor, J., dissenting).