APL 2025-00014
New York County Clerk's Indictment No. 570018/17
Appellate Division–First Department Case No. 2016NY038317

# Court of Appeals

*of the*

# State of New York

THE PEOPLE OF THE STATE OF NEW YORK,

*Respondent,*

– against –

DAVID EHINMIAKHENA,

*Appellant.*

## MOTION FOR LEAVE TO FILE PROPOSED BRIEF OF *AMICI CURIAE* NAACP LEGAL DEFENSE & EDUCATION FUND, INC. AND THE CENTER ON RACE, INEQUALITY, AND THE LAW AT NEW YORK UNIVERSITY SCHOOL OF LAW IN SUPPORT OF APPELLANT

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OCTOBER 31, 2025

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**COURT OF APPEALS**

**STATE OF NEW YORK**

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**THE PEOPLE OF THE STATE OF NEW YORK,**

*Respondent,*

*vs.*

**DAVID EHINMIAKHENA,**

*Appellant.*

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# NOTICE OF MOTION FOR LEAVE TO FILE PROPOSED BRIEF OF *AMICI CURIAE* NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC. AND THE CENTER ON RACE, INEQUALITY, AND THE LAW IN SUPPORT OF APPELLANT

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PLEASE TAKE NOTICE, that upon the annexed Affirmation of Ashley Burrell and the proposed *amici curiae* brief, dated October 31, 2025, the NAACP Legal Defense and Educational Fund and The Center on Race, Inequality, and the Law at New York University School of Law will move this Court at 20 Eagle Street, Albany, New York, 12207, on November 10, 2025, for an order granting this motion for leave, pursuant to this Court's Rule of Practice § 500.23(a)(1), to appear as *amici curiae* in the above captioned case, to file the proposed brief of *amici curiae* in support of the Petitioner-Appellant.

Dated: October 31, 2025

Respectfully Submitted,

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**ATTORNEY AFFIRMATION IN SUPPORT OF MOTION FOR LEAVE TO FILE PROPOSED BRIEF AS *AMICI CURIAE***

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Ashley Burrell, an attorney duly admitted to practice in New York State, affirms the following to be true under penalty of perjury:

1. I am a member of the bar of the State of New York and am a Senior Counsel at the NAACP Legal Defense and Educational Fund, Inc. ("LDF") and counsel for the proposed *amici curiae* in this matter.

2. I am not a party to this action and am in good standing in the Courts of the State of New York. No party or party's counsel participated in or contributed any money intended for the preparation of this brief in any manner. No other person or entity, apart from counsel for *amici curiae*, contributed money intended for the preparation or submission of this brief.

3. Pursuant to this Court's Practice Rule § 500.23(a)(1), LDF and the Center on Race, Inequality, and the Law ("CRIL") request permission to appear as *amici curiae* in the above-captioned case.

4. I am fully familiar with the facts set forth in this affirmation.

5. Annexed as Exhibit A is the proposed Brief of *Amici Curiae* in Support of Respondent.

Procedural History

6. David Ehinmiakhena alleges that on June 19, 2016, New York Police Department (NYPD) officers unlawfully stopped him while driving in New York County. Appendix for Appellant at A004.

7. After the arrest, Mr. Ehinmiakhena moved to suppress the officers' observations as fruits of the unlawful stop. A006.

8. The trial court denied Mr. Ehinmiakhena's suppression motion, without a hearing. A014. The court ruled that irrespective of the legality of the police stop, Mr. Ehinmiakhena's identity, the Department of Motor Vehicle records, and the

officers' observations of Mr. Ehinmiakhena were not suppressible fruits of unlawful police conduct. A015.

9. On December 2016, Mr. Ehinmiakhena pled guilty to facilitating aggravated unlicensed operation of a motor vehicle in the third degree. A018–19. He was sentenced to a monetary fine and mandatory court surcharges. A020.

10. On appeal to the Appellate Term, First Department, Mr. Ehinmiakhena challenged the court's summary denial of his motion to suppress the police officers' post-stop observations. A026–49. The Appellate Term, First Department affirmed the judgement. A002–3.

11. Mr. Ehinmiakhena then applied for leave to appeal to the Court of Appeals, and the application was granted. A001.

12. Mr. Ehinmiakhena filed a comprehensive brief and reply brief asking this Court to vacate his guilty plea and summarily grant his motion to suppress because police officers' observations following an illegal traffic stop are quintessential fruits of an unlawful seizure and thus, suppressible.

Summary of Arguments in Proposed Brief

13. The Proposed Brief of *Amici Curiae* offers additional reasons for this Court to vacate Mr. Ehinmiakhena's plea, summarily grant his motion to suppress, and dismiss the case.

14. *Amici* are organizations that confront and challenge laws, policies, and practices that violate the rights of Black people and other marginalized communities. Relying on this experience, we demonstrate how the First Department's ruling is contrary to the tenets of the Fourth Amendment and Article I, § 12 of the New York Constitution.

15. New York State law enforcement has long subjected Black and Latine New Yorkers to targeted and disparate policing, including disparate policing during routine traffic stops. *Amici* argue that withholding application of the exclusionary rule on these facts not only violates Mr. Ehinmiakhena's constitutional rights but also may encourage unchecked law enforcement and disparate policing in New York.

Statement of Interest of Proposed *Amici Curiae*

16. The NAACP Legal Defense & Educational Fund, Inc., ("LDF"), founded in 1940 by Justice Thurgood Marshall, is the nation's first and foremost civil rights law organization. Through litigation, advocacy, public education, and outreach, LDF strives to secure equal justice under the law for all and to break down barriers that prevent Black people from realizing their basic civil and human rights.

17. LDF has long been concerned about protecting the rights of individuals in the face of unlawful government intrusions. LDF has a history of serving as counsel of record and *amicus curiae* challenging laws, policies, and practices that violate the rights of Black people and other communities under the Fourth

Amendment. *See, e.g.*, *Terry v. Ohio*, 392 U.S. 1 (1968) (finding that "stop and frisks" comply with the Fourth Amendment if the police have reasonable suspicion that an individual is armed); *Tennessee v. Garner*, 471 U.S. 1 (1985) (holding the Fourth Amendment's prohibition on unreasonable seizures is violated by use of deadly force unless necessary to prevent escape or there is probable cause to believe there is significant threat of death or serious physical injury); *Torres v. Madrid*, 592 U.S. 306 (2021) (the application of physical force to the body of a person with intent to restrain is a seizure under the Fourth Amendment); *People v. Hill*, 33 N.Y.3d 990 (2019) (granting motion to suppress when police lacked requisite reasonable suspicion to seize an individual after he provided objectively credible reason for his whereabouts).

18. The Center on Race, Inequality, and the Law ("CRIL") at New York University School of Law was created to confront the laws, policies, and practices that lead to the oppression and marginalization of people of color. CRIL focuses, in part, on the intersection of race, bias, and the criminal legal system, including the exercise of discretion by actors in that system. CRIL uses public education, research, advocacy, and litigation to highlight and dismantle structures and institutions that have been infected by racial bias and plagued by inequality. CRIL does not, in this brief or otherwise, represent the official views of New York University or New York University School of Law.

19. LDF submits this brief on behalf of itself and CRIL, as *Amici Curiae*, in support of the Petitioner-Respondent in this case.

Disclosure Statement

20. Pursuant to this Court's Rule of Practice 500.1(f), LDF and CRIL disclose that they are non-profit 501(c)(3) organizations and do not have subsidiaries or affiliates.

Requested Relief

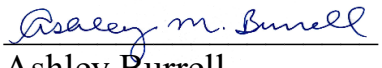
21. LDF and CRIL respectfully request to file the proposed Brief of *Amici Curiae*, a true and correct copy of which is annexed hereto as **Exhibit A**.

22. LDF and CRIL seek to submit this proposed brief because the arguments contained therein are not fully addressed by any of the parties' briefs, and *Amici*'s perspective on these issues will assist the Court.

WHEREFORE, I respectfully request that this Court enter an order (i) granting *Amici Curiae* leave to submit their Proposed *Amici Curiae* Brief; (ii) accepting the brief that has been filed and served along with this motion; and (iii) granting such other and further relief as this Court deems just and proper.

Dated: October 31, 2025

Respectfully Submitted,



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## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Page(s)**

**Cases**

**Statutes**



**Other Authorities**

## DISCLOSURE STATEMENT

Pursuant to 22 N.Y.C.R.R Part 500.1(f), The NAACP Legal Defense & Educational Fund, Inc., and The Center on Race, Inequality, and the Law at New York University School of Law disclose that they are non-profit organizations with no parent, subsidiaries, or affiliates.

## STATEMENT OF INTEREST

The NAACP Legal Defense & Educational Fund, Inc., ("LDF"), founded in 1940 by Justice Thurgood Marshall, is the nation's first and foremost civil rights law organization. Through litigation, advocacy, public education, and outreach, LDF strives to secure equal justice under the law for all and to break down barriers that prevent Black people from realizing their basic civil and human rights.

LDF has long been concerned about protecting the rights of individuals in the face of unlawful government intrusions. LDF has a history of serving as counsel of record and *amicus curiae* challenging laws, policies, and practices that violate the rights of Black people and other communities under the Fourth Amendment. *See, e.g.*, *Terry v. Ohio*, 392 U.S. 1 (1968) (finding that "stop and frisks" comply with the Fourth Amendment if the police have reasonable suspicion that an individual is armed); *Tennessee v. Garner*, 471 U.S. 1 (1985) (holding the Fourth Amendment's prohibition on unreasonable seizures is violated by use of deadly force unless

necessary to prevent escape or there is probable cause to believe there is significant threat of death or serious physical injury); *Torres v. Madrid*, 592 U.S. 306 (2021) (the application of physical force to the body of a person with intent to restrain is a seizure under the Fourth Amendment); *People v. Hill*, 33 N.Y.3d 990 (2019) (granting motion to suppress when police lacked requisite reasonable suspicion to seize an individual after he provided objectively credible reason for his whereabouts).

The Center on Race, Inequality, and the Law ("CRIL") at New York University School of Law was created to confront the laws, policies, and practices that lead to the oppression and marginalization of people of color. CRIL focuses, in part, on the intersection of race, bias, and the criminal legal system, including the exercise of discretion by actors in that system. CRIL uses public education, research, advocacy, and litigation to highlight and dismantle structures and institutions that have been infected by racial bias and plagued by inequality. CRIL does not, in this brief or otherwise, represent the official views of New York University or New York University School of Law. LDF submits this brief on behalf of itself and NYU-CRIL, as *amici curiae*, in support of the Petitioner-Respondent in this case.

## PRELIMINARY STATEMENT

The Fourth Amendment of the United States Constitution and Article I, § 12 of the New York Constitution prohibit unreasonable searches and seizures. To protect against law enforcement overreach and to ensure that these protections are not reduced to "a form of words," the exclusionary rule mandates that evidence acquired in violation of these amendments is inadmissible. *Silverthorne Lumber Co. v United States*, 251 U.S. 385, 392 (1920). The First Department failed to heed this mandate when it summarily denied David Ehinmiakhena's suppression motion based on the erroneous conclusion that the police officers' observations following an illegal traffic stop did not constitute suppressible fruits of the illegal seizure. U.S. Const., Amend. IV; N.Y. Const., Art. I, § 12. This Court should reverse.

Failing to correct the First Department's error may have significant consequences. New York State law enforcement has long subjected Black and Latine New Yorkers to targeted and disparate policing.[1] Across the state, traffic stops are a primary site for constitutional violations: Black and Latine drivers are more likely

[1] *See, e.g.*, Joseph Goldstein and Ashley Southall, *I Got Tired of Hunting People*, N.Y. Times, (Dec. 6, 2019, updated June 17, 2020), https://www.nytimes.com/2019/12/06/nyregion/nyc-police-subway-racial-profiling.html; James Kelly et al., *Exposing the Past: How Illegal Police Searches Fuel Racial Discrimination, Excessive Force*, USA Today Network (June 6, 2025), https://www.ithacajournal.com/story/news/local/new-york/2025/06/06/new-york-police-officers-face-limited-discipline-for-illegal-searches/84055509007/

to be targeted, stopped, and searched than white drivers.[2] By withholding application of the exclusionary rule, the First Department's ruling undercuts the constitutional protections under the Fourth Amendment and Article § 12, and incentivizes racially discriminatory policing. As a result, the issue before the Court is not solely about suppression of illegally obtained police observations in this case. It implicates the risk of unchecked law enforcement actions and the future of constitutional protections for all New Yorkers, and particularly New Yorkers of color and immigrant New Yorkers. *Amici* urge this Court to reverse.

## ARGUMENT

### I. SUPPRESSION OF ILLEGALLY OBTAINED EVIDENCE IS A FUNDAMENTAL CONSTITUTIONAL PROTECTION THAT LIMITS LAW ENFORCEMENT OVERREACH.

#### a. The exclusionary rule effectuates constitutional protections against unreasonable searches and seizures.

Federal and New York State jurisprudence recognize that "the proscription against unreasonable searches and seizures is designed to prevent random, unjustified interference [by law enforcement] with private citizens." *People v. Cantor*, 36 N.Y.2d 106, 112 (1975); *see also Delaware v. Prouse*, 440 U.S. 648, 653-54 (1979) ("The essential purpose of the proscriptions in the Fourth Amendment

[2] *Id.*; *see also* Sandhya Kajeepeta, *Safe Roads for All: A Community-Centered Public Health Approach to Traffic Safety*, Thurgood Marshall Inst. (Oct. 2024) https://tminstituteldf.org/safe-roads-for-all/

is to impose a standard of 'reasonableness' upon the exercise of discretion by . . . law enforcement agents, in order 'to safeguard the privacy and security of individuals against arbitrary invasions.'") (citation omitted) Because law enforcement wields vast powers, this Court has stressed the importance of confining those powers within constitutional limits: "[t]o tolerate an abuse of the power to seize or arrest would be to abandon the law-abiding citizen to the police officer's whim or caprice–and this we must not do." *Cantor*, 36 N.Y.2d at 112.

The exclusionary rule makes the protections against unreasonable searches and seizures inherent in the Fourth Amendment of the U.S. Constitution and Article I, § 12 of the New York Constitution meaningful. Subject to limited exceptions, if law enforcement steps outside its constitutional bounds, then any evidence obtained against an individual is inadmissible in a criminal proceeding. The exclusionary rule's purpose is to compel the government to act with propriety, and safeguard people's constitutional rights. *People v Payton*, 51 N.Y.2d 169, 175 (1980) ("[T]he exclusionary rule serves to insure that the State itself, and not just its police officers, respect the constitutional rights of the accused"). The rule is necessary to curb government abuse, discretion, and overreach. *People v Chennault*, 20 N.Y.2d 518, 521 (1967) ("The fruit of the poisonous tree rule was designed to discipline law-enforcement officers rather than because of any bearing which it has on the guilt or innocence of a defendant"). Indeed, without the exclusionary rule, the Fourth

Amendment "might as well be stricken from the Constitution." *Mapp v. Ohio*, 367 U.S. 643, 670 (1961) (quoting *Weeks v. United States*, 232 U.S. 383, 393 (1914)).

b. **This Court's case law makes clear that the exclusionary rule applies to the officers' post-stop observations of Mr. Ehinmiakhena.**

In June 2016, New York Police Department (NYPD) officers unlawfully stopped David Ehinmiakhena while driving in New York County. The officers relied on observational evidence of Mr. Ehinmiakhena's conduct obtained after the stop—that he was "sitting behind the wheel, key in the ignition, engine running" [3] and the "officer's testimony that she saw defendant handing over his driver's license"[4]—to charge him with aggravated unlicensed operation of a vehicle in the third degree.

When officers stopped Mr. Ehinmiakhena, they possessed neither probable cause nor reasonable suspicion to believe that he had committed a traffic violation or any other criminal offense.[5] Mr. Ehinmiakhena asserts there was no legitimate basis for the warrantless stop: he was not driving in a dangerous, erratic, or suspicious manner; he was not disobeying traffic rules; and there was nothing "apparently unlawful" about the condition of the vehicle.[6] Thus, any evidence obtained was the result of the unlawful stop, including the officers' post stop observations. The prosecution does not contend that the officers acted in good faith

[3] Brief for Appellant at 5–6.
[4] Reply Brief for Appellant at 3.
[5] Brief for Appellant at 5–6.
[6] *Id*.

and no other exception applies; the exclusionary rule should govern. *See People v. Millan*, 69 N.Y.2d 514, 521 (1987) (citing *Wong Sun v. United States,* 371 U.S. 471, 488 (1963)).

Mr. Ehinmiakhena moved to suppress the officers' observations as fruits of the unlawful stop, but the trial court and First Department rejected his motion. Both courts adopted the framing advanced by the prosecution. The trial court characterized Mr. Ehinmiakhena's suppression motion as a motion "seeking suppression of [his] *identity* as the operator of the vehicle,"[7] (emphasis added) while the First Department stated Mr. Ehinmiakhena wanted to suppress his "identity."[8] That framing was incorrect. Mr. Ehinmiakhena did not move to suppress his identity; he moved to suppress the officers' illegally obtained post-stop observations–including testimony that pertains to the officer getting Mr. Ehinmiakhena's license–which the prosecution offered as evidence to prove that he was driving without a suspended license.[9] And as detailed below, post-stop observations are quintessential fruits of unlawful police action. Both the state and federal constitution require the application of the exclusionary rule on these facts.

[7] Appendix for Appellant at A015.
[8] Appendix for Appellant at A002–A003; *People v. Ehinmiakhena*, 82 Misc. 3d 132(A), 209 N.Y.S.3d 704 (N.Y. App. Term. 2024), *leave to appeal granted*, 42 N.Y.3d 1079 (2025).
[9] Reply Brief for Appellant at 10; Brief for Appellant at 6.

This Court recently confirmed that evidence must be suppressed if law enforcement officers only observed the evidence because of an unconstitutional search or seizure. *See People v. Messano*, 41 N.Y.3d 228 (2024). In *Messano*, police detained the defendant and then scanned his car, even though they did not have reasonable suspicion that the defendant engaged in criminal activity. *Id.* While scanning the car, an officer observed potential contraband, searched the automobile, and uncovered a firearm. *Id.* This Court granted the defendant's motion to suppress the firearm and reversed the Appellate Court, stressing that "when an officer gains the vantage point from which they view incriminating evidence by violating a constitutional prohibition against unreasonable searches and seizures," the exclusionary rule applies. *Id.* at 233.

The rationale is no different for illegally obtained police observations: here, the police "gain[ed] the vantage point from which they view[ed] incriminating evidence" as to whether Mr. Ehinmiakhena was operating a vehicle without a license, via the illegal traffic stop. Whether Mr. Ehinmiakhena was sitting behind the wheel, a necessary element of the crime, "would not have been easily (if it all) discernible without the stop."[10] Just like in *Messano,* suppression is the appropriate remedy for the officers' unconstitutional conduct.

[10] Brief for Appellant at 17.

Federal and state law further support the application of this principle to the post-stop observations at issue here. The Supreme Court has made clear that observations, like other forms of evidence, are suppressible if they are obtained as the result of an unconstitutional stop. In *United States v. Crews*, the Court held that "the exclusionary sanction applies to any 'fruits' of a constitutional violation," including what an officer has "observed." 445 U.S. 463, 470 (1980). The Court concluded that testimony regarding an officer's identifying observations were suppressible if "the unlawful police behavior bore a causal relationship to the acquisition of the challenged testimony." *Id.* at 469.

Similarly, this Court has consistently found that observations obtained as the direct result of an unconstitutional seizure may be suppressed as evidence. *See, e.g.*, *People v. Dodt*, 61 N.Y.2d 408, 417 (1984) ("Inasmuch as the lineup identification followed directly from the illegal arrest and detention of defendant, it was error to admit evidence of that identification at trial.") (citations omitted); *People v. Rossi*, 80 N.Y.2d 952, 954 (1992) ("[T]he arresting officer's testimony concerning defendant's conduct . . . . should have been suppressed as it resulted . . . from defendant's wrongful arrest."); *People v. Gethers*, 86 N.Y.2d 159, 162 (1995) ("[T]he [on the scene observations that led to the confirmatory] identification of defendant . . . was a product of the illegality and, therefore, should have been suppressed.").

The First Department's order cannot be reconciled with this precedent or with the basic tenets of the Fourth Amendment and Article I, § 12 of the New York State Constitution and should be reversed.

### c. The lower court erred in relying on *Tolentino*'s exemption of an individual's identity from the exclusionary rule.

As explained above, the law is clear that post-stop observations, including observations that establish the individual behind the wheel, are evidence that is subject to the exclusionary rule. Separately, this Court has upheld a distinct legal principle that the exclusionary rule cannot be invoked to suppress a person's *body* (their "identity"). *People v. Tolentino*, 14 N.Y.3d 382 (2010). The Appellate Term of the First Department denied Mr. Ehinmiakhena's suppression motion because it relied on a misinterpretation of this Court's decision in *Tolentino* and conflated these two distinct principles.

*Tolentino* itself relies on the U.S. Supreme Court's ruling in *INS v. Lopez-Mendoza*, 468 U.S. 1032 (1984), a case where petitioners challenged civil deportation after an illegal arrest. *Tolentino*, 14 N.Y.3d at 384–86. *Lopez-Mendoza* stands for the noncontentious proposition that an individual cannot escape a court's jurisdiction by attempting to "suppress" their body or identity because their arrest was unlawful. 468 U.S. at 1039–40.

In *Lopez*-Mendoza, there were two respondents who advanced two distinct arguments. *Id.* at 1034–35. The first respondent, Lopez-Mendoza, objected to being called into court after an unconstitutional arrest, while the second, Sandoval-Sanchez, objected to the introduction of *evidence* obtained through his unconstitutional arrest. *Id.* at 1039–40. With respect to Lopez-Mendoza, the Court stated that "[t]he 'body' or identity of a defendant or respondent in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful arrest," *id.* at 1039*,* and ruled against him, noting that Lopez-Mendoza "objected only to the fact that he had been summoned to a deportation hearing following an unlawful arrest [and made] no objection to the evidence offered against him." *Id.* at 1040. In contrast, the Court reasoned that the second respondent, Sandoval-Sanchez, "ha[d] a more substantial claim" because "[h]e objected to evidence offered at [the deportation] proceeding." *Id*.

Thus, the *Lopez-Mendoza* Court drew a clear distinction between exclusion of Lopez-Mendoza's body or his "identity" and the exclusion of the unconstitutionally obtained evidence challenged by Sandoval-Sanchez. 468 U.S. at 1039. In doing so, the Court also underscored the principle underlying the exclusionary rule: "The *general rule in a criminal proceeding* is that statements and other evidence obtained as a result of an unlawful, warrantless arrest are suppressible." *Id.* at 1040-41. (emphasis added).

*Lopez-Mendoza* is consistent with the Court's prior holding in *United States v. Crews*, 445 U.S. 463, 474 (1980), that a respondent cannot "claim immunity from prosecution simply because his appearance in court was precipitated by an unlawful arrest," but *evidence* derived from that arrest is suppressible. *Id.* at 477. Likewise, several federal circuits have held that *Lopez-Mendoza*'s holding that an individual's body or identity is not suppressible does not apply to evidentiary challenges. *See, e.g.*, *United States v. Farias-Gonzalez*, 556 F.3d 1181 (11th Cir. 2009); *United States. v. Oscar-Torres*, 507 F.3d 224 (4th Cir. 2007); *Pretzantzin v. Holder*, 736 F.3d 641 (2d Cir. 2013); *United States v. Olivares-Rangel*, 458 F.3d 1104 (10th Cir. 2006); *United States v. Guevara-Martinez*, 262 F.3d 751 (8th Cir. 2001).

This Court relied on *Lopez-Mendoza* to reach a similar conclusion in *Tolentino*. In *Tolentino*, the police unlawfully stopped a car for playing music too loudly. 14 N.Y.3d at 383. After the officers stopped Mr. Tolentino, they obtained his name and ran a computer check of the Department of Motor Vehicle (DMV) records. *Id*. The computer check revealed that his license was suspended. *Id*. Mr. Tolentino was subsequently arrested and charged with aggravated unlicensed operation of a motor vehicle. *Id*. Mr. Tolentino sought suppression of the DMV records; the trial court denied his motion. *Id.* at 384. This Court affirmed the trial court's ruling and held that that the exclusionary rule did not apply because "the 'body' or identity of a defendant in a criminal . . . proceeding is never itself suppressible as a fruit of an

unlawful arrest." *Id.* at 384–85. *Tolentino* did *not* address a scenario, like the one here, where an individual moves to suppress post-stop observations that were obtained as a direct result of an illegal stop, thus triggering the exclusionary rule.

In holding that the defendant's DMV records were not suppressible, the *Tolentino* Court made three key findings, all of which are not applicable here. First, the suppression of Mr. Tolentino's DMV records raised jurisdictional concerns for this Court similar to those in *Lopez-Mendoza*. Suppression of DMV records "would undermine the administration of the criminal justice system and essentially allow suppression of the court's jurisdiction." 14 N.Y.3d at 387. Second, the DMV records established who the defendant was – the defendant's identity – but did not prove an element of the charge against him. The Court distinguished fingerprint evidence that "established defendants' 'identities' as the perpetrators", which was not suppressible, from evidence that would establish an element of the crime defendants were charged with, which was suppressible. *Id.* at 387 (noting that in *Davis v. Mississippi,* 394 U.S. 721, 724 (1969) and *Hayes v. Florida,* 470 U.S. 811, 815 (1985), the fingerprint evidence did not establish defendants' 'identities' in the [evidentiary] sense relevant here."). Third*, Tolentino* barred suppression of "identity-related evidence," like DMV records, because it is "not unique evidence that, once suppressed, cannot be obtained by other means," and they "were obtained by the police from a source independent of the claimed illegal stop." *Id.* at 386–87 (citation omitted). Indeed,

*Tolentino* affirms that evidence obtained from an illegal stop made *for the purpose of obtaining such evidence* to connect the individuals to a crime is suppressible because such evidence "was not preexisting." *Id*. at 387.

Mr. Ehinmiakhena's case is distinguishable from *Tolentino* on each point. *First*, unlike in *Tolentino* and petitioner Lopez-Mendoza in *Lopez-Mendoza*, the suppression of the officers' post-stop observations is an evidentiary matter that does not raise jurisdictional concerns for the trial court.

*Second*, Mr. Ehinmiakhena was charged with Aggravated Unlicensed Operation of a Motor Vehicle in the Second Degree which requires, among other things, proof that the person was operating a motor vehicle on a public highway. *See* Vehicle & Traffic Law § 511(2)(a). The officers' post-stop observations of Mr. Ehinmiakhena were offered as proof of an element of the crime he was charged with, not to establish his identity in court.

Finally, the officers' observations are unique evidence that unlike the DMV records at issue in *Tolentino*, cannot be independently obtained by other means. The post-stop observations in this case fall outside the scope of the identity issues addressed in both *Lopez-Mendoza* and *Tolentino* and should be subject to the exclusionary rule.

d. **Other state supreme courts also explicitly hold that post-stop observations are suppressible under the exclusionary rule.**

Courts in at least five states also recognize that observation evidence–including law enforcement's observations of an individual driving–must be suppressed when that evidence is obtained through an unconstitutional stop.[11]

The Florida Supreme Court applied the exclusionary rule when deciding the exact issue before this Court. *State v. Perkins*, 760 So. 2d 85, 88 (Fla. 2000). In that case, the respondent was stopped by an officer "for the sole purpose of checking the status of his driver's license." *Id*. at 85. After the illegal stop, the officer obtained the driver's license, discovered it was suspended, and arrested the driver for driving with a suspended license. *Id.* The Court held that when "an officer unlawfully stops a defendant solely to determine whether he or she is driving with a suspended license, that officer's post-stop observation of the defendant behind the wheel must be suppressed." *Id.* at 88. The Florida Court also noted that reliance on *Lopez-Mendoza* in this instance was "misplaced," because its reference to the "identity of a defendant

[11] In addition to the examples discussed above from Florida and New Jersey, courts in Virginia, Illinois, and Oregon have also reached the same conclusion. *See Zimmerman v. Commonwealth*, 363 S.E.2d 708, 710 (Va. 1988) (finding that "without the evidence acquired as the result of the illegal stop, there was no evidence to support the conviction" and the evidence was suppressible); *People v. Lopez*, 112 N.E.3d 1069 (Ill. App. Ct. 2018) (same); *State v. Starr*, 754 P.2d 618 (Or. Ct. App. 1988) (same).

as immune from suppression truly referred to identity in a personal jurisdiction sense." *Id.* at 86–87.

Similarly, in *State v. Badessa*, 885 A.2d 430, 432 (N.J. 2005), the only evidence leading the officer to believe the driver was under the influence of alcohol were the officer's observations of the driver, obtained after an unlawful stop. *Id.* The Court suppressed the officer's observations because "it was immediately after the unconstitutional stop that [the Officer] made his observations of defendant's glassy eyes, slurred speech, and unsteady gait; that he smelled an odor of alcohol; and that he learned from defendant that he had been drinking." *Id*. at 436. These observations were "a direct 'fruit' of the constitutional violation" and the officer's testimony was "necessary to prove an essential element" of the charge. *Id.* That court also excluded the evidence, seeing "no reason to make an exception to the exclusionary rule in this case." *Id.* at 438.

This Court should rectify the misapplication of its precedent and similarly hold that illegally obtained post-stop observations offered as evidence of an individual's identity are subject to the exclusionary rule.

## II. AFFIRMING THE FIRST DEPARTMENT'S RULING WOULD EXACERBATE RACIALLY DISPARATE POLICING, INFLICTING ADDITIONAL HARMS ON BLACK AND LATINE COMMUNITIES.

### a. Law enforcement across the country and the state already engage in racially disparate police stops.

Traffic stop data studies from across the United States reveal that police officers stop Black and Latine drivers at higher rates than white drivers.[12] This disparity is documented in jurisdictions ranging from big cities to small towns to rural communities.[13] An analysis of 93 million traffic stops conducted between 2011 to 2017 across twenty-one state patrol agencies (including New York State) and twenty-nine municipal police departments revealed that Black drivers are 20% more likely to get pulled over than white drivers.[14]

These patterns hold true across New York. In 2017, the Stanford Open Policing Project studied traffic stop data in Albany, Broome, Erie, Monroe, Nassau, Onondaga, and Suffolk Counties.[15] In each county, the percentage of Black drivers stopped exceeded the percentage of Black drivers in the county's population.[16]

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[12] *See, e.g.*, Bernard Harcourt & Tracey Meares, *Randomization and the Fourth Amendment*, 78 U. Chi. L. Rev. 809, 854–859 (2010) (citing numerous studies that have demonstrated evidence of racial profiling against Black and Hispanic people); Emma Pierson et al., *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States*, 4 Nature Hum. Behav. 736 (2020), available at https://5harad.com/papers/100M-stops.pdf (concluding Black drivers were less likely to be stopped after sunset, when skin color is more difficult to discern, suggesting bias in stop decisions); Sharon LaFraniere & Andrew Lehren, *The Disproportionate Risks of Driving While Black*, N.Y. Times (October 24, 2015), https://www.nytimes.com/2015/10/25/us/racial-disparity-traffic-stops-driving-black.html; Gabriel Schwartz & Jaquelyn Jahn, *Mapping Fatal Police Violence Across U.S. Metropolitan Areas: Overall Rates and Racial/Ethnic Inequities, 2013-2017*, 15 PLOS ONE 6 (2020), https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0229686 (showing racial disparities in searches and uses of force as well).

[13] See generally, Kajeepeta, *Safe Roads for All, supra* note 2.

[14] New York Law School Racial Justice Project, *Driving While Black and LatinX*, 12-13 (2020), https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=1000&context=rjp_articles_writings.

[15] *Id*. at 9.

[16] *Id*. at 9-10.

Broome County displayed the highest disparity, with Black drivers stopped at a rate 2.81 times higher than the percentage of Black drivers in the county.[17] At the lower end of the measured disparities, Erie County stopped Black drivers at a rate 1.33 times higher than the percentage of Black drivers in the county.[18]

The disparities are even more stark when one compares the rate at which Black and Latine drivers are stopped and searched to the rate at which white drivers are stopped and searched. For example, in New York City, between 2022 and 2024, Black drivers were searched roughly 10 times more frequently than white drivers, and Latine drivers were searched roughly 6 times more frequently.[19] A 2020 report that looked at 130,000 traffic stops made by Suffolk County police found that Black drivers were twice as likely to be searched and more than twice as likely to be subjected to a car search, and Hispanic drivers were more than 16% more likely to be subjected to a search of their person, compared to white drivers[20]

Such racial disparities do not occur by chance. Across New York, there is evidence that law enforcement routinely targets Black and Latine individuals when

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[17] *Id*. at 10.
[18] *Id*.
[19] NYCLU, *NYPD Vehicle Stops Data* (Apr. 18, 2025), https://www.nyclu.org/data/nypd-vehicle-stops-data.
[20] Robert E. Worden, et al., *Traffic Stops by Suffolk County Police*, 48 & tbl. 47, John F. Finn Inst. Pub. Safety, (Sept. 2020), https://suffolkcountyny.gov/Portals/0/formsdocs/police%20reform/Traffic%20Stops%20by%20Suffolk%20County%20Police%2010.19.2020.pdf

conducting traffic stops. For example, a 2020 study by the Racial Justice Project demonstrated that Buffalo Police Department officers concentrated their efforts on low-income communities of color.[21] Forty percent of the checkpoints conducted by the Buffalo Police Department between January 2013 and October 2017 took place in neighborhoods where "the Black or Latinx populations exceeded eighty-six percent."[22] And drivers residing in predominantly Black zip codes in Buffalo were at least eight times more likely to be issued multiple tickets at a single traffic stop or checkpoint than those living in predominantly white zip codes.[23]

In 2013, a federal judge in New York City found that the NYPD had an unwritten policy of racial profiling that resulted "in the disproportionate and discriminatory stopping of [B]lack[] and Hispanic[] [individuals] and violat[ed] the Equal Protection Clause." *Floyd v. City of New York*, 959 F. Supp. 2d 540, 562-64 (S.D.N.Y. 2013). The court declared the policy and its enforcement unconstitutional. *Id*. A decade later, data shows that the NYPD continues to engage in racial profiling when conducting stops. Between 2013 and 2022, the percentage of stops of Black and Hispanic individuals remained "largely the same."[24] In September 2024, the

[21] *Driving While Black and LatinX*, *supra* note 14, at 11.
[22] *Id*.
[23] *Id*. at 16.
[24] Twentieth Report of the Independent Monitor at 1, *Floyd v. City of New York,* 959 F. Supp. 2d 540 (S.D.N.Y. 2013) (No. 08-cv-1034, ECF No. 927-1), https://www.nypdmonitor.org/wp-content/uploads/2024/04/2024.04.11-927-1-Twentieth-Report.pdf.

court tasked with reviewing the NYPD's post-*Floyd* legal compliance found that the Department has not seriously addressed officers who continue to engage in this behavior.[25] Indeed, the NYPD's Court-appointed Independent Monitor recently determined that since 2023, approximately 95% of individuals frisked and searched by the NYPD were Black or Hispanic individuals.[26]

Civilian complaints against the NYPD also corroborate officers' racially disparate approach to policing. A Civilian Complaint Review Board ("CCRB") database indicates that Black and Brown people are "far more likely" to be identified as the injured party in a police misconduct complaint than white people, with Black people six times more likely than white people to be the injured party.[27]

b. **Racially disparate car stops harm Black and Latine communities and do not increase community safety.**

For Black and Latine individuals, police stops hold an ever-present threat of indignity, harassment, and danger. All too often, a police encounter for a minor

[25] Order at 2, *Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013) (No. 08-cv-1034, ECF No. 667), https://storage.courtlistener.com/recap/gov.uscourts.nysd.357782/gov.uscourts.nysd.357782.667.0.pdf; *see* Michael R. Sisak, *The NYPD Often Shows Leniency to Officers Involved in Illegal Stop and Frisks, Report Finds*, Associated Press (Nov. 24, 2024), https://apnews.com/article/nypd-stop-frisk-unconstitutional-policingdiscipline-new-york-4ed177b9ce85dbe5ccd7a048dccd8457.

[26] Twenty-Third Report of the Independent Monitor at 31, *Floyd v. City of New York,* 959 F. Supp. 2d 540 (S.D.N.Y. 2013) (No. 08-cv-1034, ECF No. 952-1), https://www.nypdmonitor.org/wp-content/uploads/2025/02/2025.02.03-Floyd-Dkt.-952-1-Monitors-23rd-Report.pdf.

[27] NYCLU, *Cop Out: Analyzing 20 Years of Records Proving NYPD Impunity*, 4 (Dec. 2021), https://www.nyclu.org/uploads/2021/12/nyclu-2021-ccrbdata-report.pdf.

traffic infraction can turn deadly.[28] Since 2017, more than 800 people have been killed by police during traffic stops.[29] Although Black people made up thirteen percent of the United States population in 2021,[30] they comprised twenty eight percent of population killed by police during traffic stops.[31]

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[28] In 2016, Police fatally shot Philando Castile in during a traffic stop near Minneapolis, Minnesota, when officers pulled him over because he reportedly resembled a robbery suspect due to his "wide-set nose." *Cops May Have Thought Philando Castile Was a Robbery Suspect, Noting 'Wide-Set Nose,' Dispatch Audio Indicates*, ABC News (July 11, 2016), https://abcnews.go.com/US/cops-thought-philando-castile-robbery-suspect-dispatch-audio/story?id=40439957. In 2021, Police fatally shot Daunte Wright in the chest during a pretextual traffic stop for allegedly having air fresheners hanging from the rearview mirror and expired registration tags. The officer used her gun, stating she thought it was her Taser. *What to Know About the Death of Daunte Wright*, N.Y. Times (Feb. 21, 2022), https://www.nytimes.com/article/daunte-wright-death-minnesota.html. In 2022, a police officer in Grand Rapids, Michigan, pulled over Patrick Lyoya for allegedly having an unregistered license plate, but during the stop shot Mr. Lyoya in the back of the head while he was face down on the ground. Jason Breslow, *Patrick Lyoya Fled Congo to Escape War. A Traffic Stop in Michigan Cost Him His Life*, NPR (Apr. 22, 2022), https://www.npr.org/2022/04/22/1094104164/patrick-lyoya-shooting-grand-rapids-michigan. In 2023, five Memphis, Tennessee, police officers beat Tyre Nichols to death after pulling him over for allegedly driving recklessly, though the Memphis Police Chief later reviewed the body camera footage and did not find evidence of probable cause for the traffic stop. Jacob Knutson, *What We Know About The Fatal Police Beating of Tyre Nichols*, Axios (Feb. 17, 2023), https://www.axios.com/2023/01/30/tyre-nichols-memphis-police-beating.

[29] Bernd Debusmann Jr., *Why Do So Many Police Traffic Stops Turn Deadly?* BBC News, (Jan. 31, 2023), https://www.bbc.com/news/world-us-canada-64458041; Mapping Police Violence, Data Derived from Online Database, last updated Oct. 15, 2025, https://mappingpoliceviolence.us/.

[30] *Race and Hispanic Origin: Black or African American Alone, Percent*, U.S. Census Bureau, https://www.census.gov/quickfacts/fact/table/US/RHI225222#RHI225222; Curtis Bunn, *Report: Black people are still killed by police at a higher rate than other groups* NBC News (March 3, 2022), https://www.nbcnews.com/news/nbcblk/report-black-people-are-still-killed-police-higher-rate-groups-rcna17169, last updated December 31, 2024, Data Derived from Online Database, https://www.washingtonpost.com/graphics/investigations/police-shootings-database/

[31] Sam Levin, *US Police Have Killed Nearly 600 People in Traffic Stops Since 2017, Data Shows* The Guardian (Apr. 21, 2022), https://www.theguardian.com/us-news/2022/apr/21/us-police-violence-traffic-stop-data.

The harm from these police stops radiates beyond the stop itself and disproportionately impacts Black and Latine communities. Direct police contact (being stopped by police) and vicarious police contact (witnessing a police stop or knowing someone who was stopped) are associated with adverse mental health effects, including psychotic experiences, psychological distress, depression and depressive symptoms, post-traumatic stress disorder, anxiety, and suicidality.[32] Research shows Black people are especially impacted by these adverse health consequences.[33] In fact, racially disparate policing is so harmful that it has been deemed a public health and health disparities issue.[34]

Disproportionate targeting of Black and Latine drivers also leads to people of color facing a disproportionate number of driving-related fines and fees.[35] In 2018, 80% of the individuals arrested for driving with a suspended license offense were Black or Latine.[36] Traffic-related related fines and fees can take a personal toll, as

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[32] Kristin Turney, *Depressive Symptoms Among Adolescents Exposed to Personal and Vicarious Police Contact*, 11 Soc'y & Mental Health 113 (2021), https://journals.sagepub.com/doi/10.1177/2156869320923095; Valerio Baćak & Kathryn M. Nowotny, *Race and the Association Between Police Stops and Depression Among Young Adults: A Research Note*, 10 Race & Justice. 363 (2020), https://journals.sagepub.com/doi/abs/10.1177/2153368718799813; Melissa N. McLeod et al., *Police Interactions and the Mental Health of Black Americans: A Systematic Review*, 7 J. Racial & Ethnic Health Disparities (2019), https://link.springer.com/article/10.1007/s40615-019-00629-1.

[33] *Id.*

[34] Cato T. Laurencin & Joanne M. Walker, *Racial Profiling Is a Public Health and Health Disparities Issue*, 7 J Racial & Ethnic Health Disparities 393 (2020), https://pmc.ncbi.nlm.nih.gov/articles/PMC7231642/.

[35] *Driving While Black and LatinX*, *supra* note 14, at 15.

[36] *Id*. § Research Findings.

even one traffic ticket can snowball into insurmountable debt, driver's license suspensions, and even incarceration for those unable to afford bail.[37] And disproportionate targeting of Black and Latine drivers traps more Black and Latine people in the criminal legal system, fueling mass incarceration.

Although the harms of discriminatory policing of drivers are well documented, the benefits are less evident. Research suggests that pretextual stops are not associated with reductions in crime rates and that a large majority of stops do not result in the discovery of contraband or weapons.[38] Studies in several jurisdictions, including New York City, have consistently found that non-safety-related traffic stops do not have a significant impact on crime rates, including homicide and violent

[37] *See Driving While Black and LatinX*, *supra* note 14, at 20-28; A survey of Alabama residents found that eighty-three percent of people who owed court debt sacrificed money for rent, food, medical bills, car payments, or child support to pay court fines and fees. *Under Pressure: How Fines and Fees Hurt People, Undermine Public Safety, and Drive Alabama's Racial Wealth Divide*, 31, Ala. Appleseed Ctr. for L. & Just. et al. (Oct. 2018), https://www.alabamaappleseed.org/wp-content/uploads/2018/10/AA1240-FinesandFees-10-10-FINAL.pdf.

[38] For example, a 2023 analysis found that the eight largest police departments in California confiscate firearms in just 0.5% of traffic stop searches on average. Deepak Premkumar et al., *How Often Are Firearms Confiscated During Traffic Stops?,* Pub. Pol'y Inst. of Cal. (Feb. 16, 2023), https://www.ppic.org/blog/how-often-are-firearms-confiscated-during-traffic-stops/. Similarly, just 0.3% of the eleven million traffic stops made by Washington State Patrol from 2009 to 2019 resulted in the discovery of contraband, while the Tacoma Police Department had an even lower rate of 0.1%. *Traffic Safety for All—Equitable Solutions to Rising Traffic Fatalities in Washington (HB 1513)*, ACLU Wash. & Vera Inst. Just. (Jan. 2023), https://vera-advocacy-and-partnerships.s3.amazonaws.com/ACLU%20Washington%20and%20Vera_HB%201513%20Fact%20Sheet_1.24.23.pdf.

crime.[39] Conversely, in communities of color, racially disparate policing erodes trust in law enforcement and often undermines public safety.[40]

### c. A ruling affirming the First Department will exacerbate harms by encouraging more stops and, in turn, more racial profiling.

If post-stop observations are deemed per se admissible, New York State law enforcement will be more incentivized to expand their regime of arbitrary, suspicionless stops. This will only further exacerbate discriminatory policing.

As this Court has stressed, "[d]iscriminatory law enforcement has no place in our law." *People v. Robinson*, 97 N.Y.2d 341, 352 (2001). But the First Department's ruling establishes a legal aperture for law enforcement to target drivers, particularly Black and Latine drivers, by failing to limit or penalize officers' discretion to execute unlawful stops via the exclusionary rule. Allowing this ruling to stand would fail to heed "[e]verything we know about policing . . . [that] tells us that when American police have unfettered discretion, they will use it to the detriment of people of color."[41]

The First Department's ruling also risks imperiling New Yorkers to the expanding threat of detention and deportation by the U.S. Immigration and Customs

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[39] John MacDonald et al., *The Effects of Local Police Surges on Crime and Arrests in New York City,* 11 PLoS One 6 (June 16, 2016)], https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4911104/
[40] *See id*.
[41] Erwin Chemerinsky, *Presumed Guilty: How the Supreme Court Empowered the Police and Subverted Civil Rights* 113 (2021).

Enforcement ("ICE"), often facilitated through the exploitation of traffic stops.[42] For example, as of 2021, traffic stops were the main cause of deportation in Nassau, Suffolk, Orange, and Westchester counties.[43]

Research has consistently shown that 287(g) agreements, which give state and local law enforcement officers the authority to carry out certain immigration enforcement duties,[44] encourage local police to engage in discriminatory practices.[45] Police make *more* traffic stops when a 287(g) agreement is active, and those stops are disproportionately Black and Latine drivers.[46] A growing set of localities in New York have authorized the 287(g) program within the state.[47] Prior to 2024, only one locality in the state had a 287(g) agreement.[48] Since January 2025, ICE has entered

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[42] Silvia Foster-Frau, *A Powerful Tool in Trump's Immigration Crackdown: The Routine Traffic Stop*, Wash. Post (June 22, 2025), https://www.washingtonpost.com/immigration/2025/06/22/trump-ice-deportation-arrests-traffic-stops/.

[43] Robert Courtney Smith et al, *Disrupting the Traffic Stop–to-Deportation Pipeline: The New York State Greenlight Law's Intent and Implementation*, 9 J. Migration & Hum. Sec., 94, 97 (June 2021), https://journals.sagepub.com/doi/epub/10.1177/23315024211013752.

[44] Simon McCormack & Ify Chikezie, *What Are 287(g) Agreements and How Do They Fuel Trump's Mass Deportations?*, NYCLU (Apr. 24, 2025), https://www.nyclu.org/commentary/what-are-287g-agreements-and-how-do-they-fuel-trumps-mass-deportations\.

[45] "In 2022, the UN Committee on the Elimination of Racial Discrimination recommended the United States end 287(g) programs because they 'indirectly promote racial profiling.'" Muzaffar Chishti & Kathleen Bush-Joseph, *Beyond Ice: State and Local Authorities Become Central to Trump Administration Deportation Strategy*, Migration Pol'y Inst. (July 30, 2025) https://www.migrationpolicy.org/article/state-local-authorities-ice-immigration-enforcement.

[46] Huyen Pham & Pham Hoang Van, *Sheriffs, State Troopers, and the Spillover Effects of Immigration Policing*, 64 Ariz. L. Rev. 463 (2022), https://scholarship.law.tamu.edu/cgi/viewcontent.cgi?article=2541&context=facscholar.

[47] Simon McCormack & Ify Chikezie, *What Are 287(g) Agreements?, supra* note 44.

[48] *Id*.

into five additional agreements with localities across the state.[49] Dragnet immigration policing not only wrestles Fourth Amendment rights away from noncitizens, it also makes Black and Brown New York *citizens* vulnerable to increased harassment.[50]

## CONCLUSION

This Court has the opportunity to correct an erroneous interpretation of its *Tolentino* ruling and underscore the importance of the exclusionary rule, particularly to guard against racially discriminatory policing. *Amici* respectfully urge this Court to reject the First Department's ruling and affirm the principles under the Fourth Amendment and Article I, § 12 of the New York Constitution and summarily grant Mr. Ehinmiakhena's suppression motion.

For all the aforementioned reasons, the plea should be vacated, the suppression motion should be summarily granted, and the case should be dismissed.

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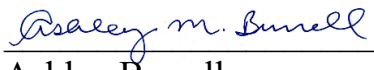
[49] *Id*.

[50] Alisha Ebrahimji, *'We Are Not Safe in America Today:' These American Citizens Say They Were Detained by ICE,* CNN (Jun. 27, 2025), https://www.cnn.com/2025/06/27/us/american-citizens-detained-ice-immigration; Nicole Foy, *We Found That More Than 170 U.S. Citizens Have Been Held by Immigration Agents*, Pro Publica (Oct. 16, 2025), https://www.propublica.org/article/immigration-dhs-american-citizens-arrested-detained-against-will?utm_source=sailthru&utm_medium=email&utm_campaign=majorinvestigations&utm_content=feature.

Respectfully Submitted,



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## CERTIFICATE OF COMPLIANCE

The word count for the body of this brief, including footnotes, is 6,162 words. 22 N.Y.C.R.R. §§ 500.13(c)(1), (3). This brief was prepared on a computer, using Microsoft Word in Times New Roman, a certified, proportionally spaced typeface. The body is printed in fourteen-point type, and the footnotes are printed in twelve-point type. The body is double spaced, except for block quotations, which are single spaced, and the footnotes are single spaced.

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| STATE OF NEW YORK ) | | **AFFIDAVIT OF SERVICE** |
| ) | ss.: | **BY OVERNIGHT FEDERAL** |
| COUNTY OF NEW YORK ) | | **EXPRESS NEXT DAY AIR** |

I, Tyrone Heath, 2179 Washington Avenue, Apt. 19, Bronx, New York 10457, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at the address shown above or at

**On October 31, 2025**

deponent served the within: **MOTION FOR LEAVE TO FILE PROPOSED BRIEF OF *AMICI CURIAE* NAACP LEGAL DEFENSE & EDUCATION FUND, INC. AND THE CENTER ON RACE, INEQUALITY, AND THE LAW AT NEW YORK UNIVERSITY SCHOOL OF LAW IN SUPPORT OF APPELLANT**

**upon:**

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**Sworn to before me on October 31, 2025**

Mariana Braylovskiy

**MARIANA BRAYLOVSKIY**
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No. 01BR6004935
Qualified in Richmond County
Commission Expires March 30, 2026

T. Heath

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