S238627

IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE,
Plaintiff and Appellant,

v.

MARIA ELENA LOPEZ,
Defendant and Respondent,

AFTER A DECISION BY THE COURT OF APPEAL, THIRD APPELLATE DISTRICT
CASE NO. C078537

APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF; AMICI CURIAE BRIEF OF EMILY A. REHM, MICHAEL M. EPSTEIN, AND RACHEL E. VANLANDINGHAM IN SUPPORT OF DEFENDANT AND RESPONDENT MARIA ELENA LOPEZ

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AMICI CURIAE

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APPLICATION TO FILE AMICI CURIAE BRIEF

Pursuant to California Rules of Court, rule 8.520(f), Emily A. Rehm, Michael M. Epstein, and Rachel E. VanLandingham respectfully request permission to file the attached amicus curiae brief in support of defendant and respondent Maria Elena Lopez.[1]

Emily A. Rehm is recent graduate of Southwestern Law School with extensive academic interest in Constitutional Law and Criminal Procedure; this brief was prepared in association with the Amicus Project during her final semester as an upper-division J.D. candidate. Michael M. Epstein is a professor of law and the director of the pro bono Amicus Project at Southwestern Law School. Rachel E. VanLandingham is an associate professor of law at Southwestern Law School. She teaches Constitutional Criminal Procedure, Criminal Law, and National Security Law.

The Amicus Project at Southwestern Law School is a professional outreach program that enables law students to gain

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[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. Southwestern Law School provides financial support for activities related to faculty members' research and scholarship, which helped defray the costs of preparing this brief. (The school is not a signatory to the brief, and the views expressed here are those of the amici curiae.) Otherwise, no person or entity other than the amici curiae or its counsel has made a monetary contribution intended to fund the preparation or submission of this brief. (See Cal. Rules of Court, rule 8.520(f)(4).)

practical experience by preparing amicus briefs on a pro bono basis. The Amicus Project provides students with the opportunity to work individually on an amicus brief under the supervision of a law professor or practicing attorney.

The accompanying amici curiae brief examines the justifications behind the exceptions to the Fourth Amendment's search protections. It argues that, in light of the United States Supreme Court's precedent for narrow, limited exceptions, the search in this case does not follow the rationale that supports valid, related search exceptions. Accordingly, amici respectfully request that this Court accept and file the attached amici curiae brief.[2]

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[2] Amici's first submission of this application and brief on June 7, 2017, was determined to be submitted too early. This brief also corrects a filing irregularity regarding signatures that was present in a submission dated October 3, 2017. Except for the signatures, this footnote, and subsequent page number updates due to additional signatures and this footnote, this brief is otherwise identical to the earlier versions.

October 17, 2017 By: _____

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AMICI CURIAE BRIEF

INTRODUCTION

The Fourth Amendment generally prohibits warrantless searches, subject only to limited, narrow exceptions. In this case, the Court of Appeal upheld a warrantless search of a container within an automobile, not conducted incident to an arrest of the driver nor accompanied by probable cause. After the driver admitted to not having a license, a police officer conducted a search of her purse, which was still inside the vehicle, for alternative identification. During this search, the officer discovered methamphetamine, which he had no probable cause to search for prior to its unexpected discovery. The Court of Appeal reversed the trial court's suppression of the evidence and its dismissal of the case. In doing so, the court incorrectly expanded the exceptions to the Fourth Amendment beyond the permissible scope of the narrow exceptions that the United States Supreme Court has carefully dictated.

The United States Supreme Court has permitted full searches of an arrestee and the area within his reach at the time of arrest in the interests of officer safety and the preservation of evidence. It has permitted limited "patdown" searches—not conducted incident to arrest—for officer safety. It has permitted searches of automobiles with a showing of probable cause. And it has permitted searches of the passenger compartment of automobiles when a passenger is under arrest, consistent with the rationale behind non-automobile arrests.

But none of these exceptions, individually or together, can justify the warrantless search for mere identification during a brief investigatory stop. That search is not supported by the rationale behind the automobile exception. Identification other than a driver's license is not part of the automobile regulatory scheme. And even in the case of an arrest for driving without a license, a license or identification (or the lack thereof) it not itself evidence that could be expected to disappear in an inherently mobile vehicle or otherwise be destroyed.

Prohibiting the type of search that occurred in this case will not hinder law enforcement or prohibit the acquisition of identification or other non-evidence through the application of existing exceptions.

This Court should reverse the decision below and allow the trial court's dismissal to be reinstated. To the extent that the Court of Appeal applied California precedent to uphold this search, such precedent should be overruled.

LEGAL ARGUMENT

I. EXCEPTIONS TO THE FOURTH AMENDMENT'S PROHIBITION AGAINST WARRANTLESS SEARCHES ARE NARROW AND CAREFULLY DEFINED.

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated" (U.S. Const., 4th Amend.); consequently, "[w]arrantless searches are per se unreasonable, "subject only to a few specifically established and well-delineated exceptions" (*Katz v. United States* (1967) 389 U.S. 347, 357 [88 S.Ct. 507, 19 L.Ed.2d 576], footnote omitted). During an arrest, the infringement of a person's privacy interest in the items around them is justified by safety and evidentiary concerns. (See *New York v. Belton* (1981) 453 U.S. 454, 460-461 [101 S.Ct. 2860, 2864, 69 L.Ed.2d 768] (*Belton*); *Chimel v. California* (1969) 395 U.S. 752, 763 [89 S.Ct. 2034, 2040, 23 L.Ed.2d 685] (*Chimel*).) During a brief investigatory detention that falls short of an arrest, the scope of a permissive Fourth Amendment intrusion is necessarily narrowed by the nature of the encounter. (See *Terry v. Ohio* (1968) 392 U.S. 1, 24-26 [88 S.Ct. 1868, 1881-1882, 20 L.Ed.2d 889] (*Terry*).) When faced with the special concerns raised by the inherent characteristics of an automobile, additional search exceptions are necessary. (See *New York v. Class* (1986) 475 U.S. 106, 113 [106 S.Ct. 960, 965, 89 L.Ed.2d 81] (*Class*); *Carroll v. U.S.* (1925) 267 U.S. 132, 153 [45 S.Ct. 280, 285, 69 L.Ed. 543] (*Carroll*).)

A. A detention that is less than an arrest necessarily requires less of an intrusion upon the Fourth Amendment.

An arrest, as the initial stage in a criminal prosecution, is "inevitably accompanied by future interference with the individual's freedom of movement." (*Terry*, *supra*, 392 U.S. at p. 26.) A lawful custodial arrest "justifies the infringement of any privacy interest the arrestee may have" in items within his reach at the time of arrest. (*Belton*, *supra*, 453 U.S. at pp. 460-461.) A search incident to a lawful arrest is justified by concerns for officer safety and the preservation of evidence. (*Arizona v. Gant* (2009) 556 U.S. 332, 338 [129 S.Ct. 1710, 1716, 173 L.Ed.2d 485] (*Gant*), citing *United States v. Robinson* (1973) 414 U.S. 218, 230-234 [94 S.Ct. 467, 38 L.Ed.2d 427] (*Robinson*).) A police officer may search an arrestee for weapons—"[o]therwise, the officer's safety might well be endangered"—and for evidence on the arrestee "in order to prevent its concealment or destruction." (*Chimel*, *supra*, 395 U.S. at p. 763.) The search may expand to "the area 'within his immediate control' " from which the arrestee may be able to obtain a weapon or destroy evidence. (*Ibid.*) "[I]n the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a 'reasonable' search under that Amendment." (*Robinson*, at p. 235.)

In the absence of an arrest—and therefore, in the absence of the justifications for the privacy and liberty interferences imposed by an arrest—the permissive scope of Fourth Amendment

intrusions is restricted. "An arrest is a wholly different kind of intrusion upon individual freedom from a limited search for weapons, and the interests each is designed to serve are likewise quite different." (*Terry*, *supra*, 392 U.S. at p. 26.) Even when faced with concerns for officer safety, part of the rationale for the intrusion during an arrest, "the nature and quality of the intrusion on individual rights" is of distinct importance. (*Id.* at p. 24.) A brief outer patdown for weapons—in the interest of officer safety—"constitutes a severe, though brief, intrusion upon cherished personal security" and "must surely be an annoying, frightening, and perhaps humiliating experience." (Id. at pp. 24-25.) Therefore, the Court presented a "*narrowly drawn authority*" to allow a "reasonable search for weapons for the protection of the police officer." (*Id.* at p. 27, emphasis added.)

B. Some characteristics of automobiles led to the creation of additional Fourth Amendment exceptions—but those exceptions are specifically tied to the needs created by those characteristics.

The automobile exception has been justified by the limited privacy interest inherent in an automobile and exigency created by the vehicle's mobility. Nonetheless, the interior of an automobile is indeed subject to Fourth Amendment protection from unreasonable searches, even if those privacy expectations are not as high as expectations within a home. (See *Class*, *supra*, 475 U.S. at pp. 114-115.)

1. The limited privacy interest created by governmental regulation is generally restricted to the objects of that regulation.

One rationale for automobiles' limited privacy interest is their "pervasive regulation by the State" (*Class, supra*, 475 U.S. at p. 113), which extends to "periodic inspection and licensing requirements" and stops when police observe violations such as expired license plates or nonworking safety equipment (*South Dakota v. Opperman* (1976) 428 U.S. 364, 368 [96 S.Ct. 3092, 3096, 49 L.Ed.2d 1000] (*Opperman*)). For example, federal law requires a vehicle identification number (VIN) to be in plain view for an outside observer, pursuant to the government's " 'vital interest' in highway safety." (*Class, supra*, 475 U.S. at pp. 111-112.) In *Class*, the United States Supreme Court found that a driver had no privacy interest in the vehicle's VIN, which is a "significant thread in the web of regulation of the automobile":

> For the Federal Government, the VIN improves the efficacy of recall campaigns, and assists researchers in determining the risks of driving various makes and models of automobiles. In combination with state insurance laws, the VIN reduces the number of those injured in accidents who go uncompensated for lack of insurance. In conjunction with the State's registration requirements and safety inspections, the VIN helps to ensure that automobile operators are driving safe vehicles. By making automobile theft more difficult, the VIN safeguards not only property but also life and limb.

(*Id.* at p. 111.) The Court again "emphasized that efforts to restrict access to an area do not generate a reasonable expectation of privacy where none would otherwise exist" when finding that the viewing of a vehicle's VIN did not constitute a search. (*Id.* at p. 114.)

California courts have also focused on the governmental regulation when defining limits of a warrantless automobile search, permitting a limited search for items that are the subject of the governmental regulatory scheme. In *Jackson v. Superior Court* (1977) 74 Cal.App.3d 361 (*Jackson*), the Court of Appeal, Fifth District held that an officer could enter a vehicle to search for registration information "in limited circumstances," citing to Vehicle Code section 2805's purpose of "enforc[ing] the registration laws" and "check[ing] on stolen vehicles and parts." (*Id.* at p. 367.) Even when permitting a search in those limited circumstances, the court balanced government interests and individual privacy rights to require an inquiry into the location of the registration information inside the vehicle prior to the search. (*Id.* at p. 366.) The Second District, Division Five later noted that drivers are required by law to have drivers' licenses in their possession while operating vehicles. (*Ingle v. Superior Court* (1982) 129 Cal.App.3d 188, 194 (*Ingle*), citing Veh. Code § 12951.) And in *People v. Webster* (1991) 54 Cal.3d 411 (*Webster*), this Court acknowledged an officer's authorization to inspect a vehicle's title and registration (*id.* at p. 430, citing Veh. Code § 2805, subd. (a)) and a driver's obligation to provide a driver's license and registration upon an officer's demand (*ibid.*, citing Veh. Code §§ 4462, subd. (a),

12951, subd. (b)). Notably, each of these limited searches was for items that fell within the regulatory scheme that underlies the limited privacy interest.

Importantly, when searching for subjects of the regulatory scheme, the courts have again authorized these searches only for "limited" purposes. (See *Jackson*, *supra*, 74 Cal.App.3d at p. 367 ["an officer may enter a vehicle to check on the registration in *limited* circumstances" when " 'investigating [a vehicle's] title or registration' " (emphasis added)]; *Webster*, *supra*, 54 Cal.3d at pp. 429-430 [officer "acted properly" when he "entered the car for the *limited purpose* of finding the registration" after all occupants denied ownership of the vehicle (emphasis added)]; *People v. Turner* (1994) 8 Cal.4th 137, 182 (*Turner*) [because Vehicle Code section 2805 authorizes officers to inspect a vehicle's title to determine ownership, *"[w]ithin constitutional limits*, this statute authorizes an officer to enter a stopped vehicle and conduct an immediate warrantless search for the required documents" (emphasis added)].) The searches themselves were required to be limited to "traditional repositories of auto registrations." (*Webster*, at p. 431.)

This Court then took a different approach in *In re Arturo D.* (2002) 27 Cal.4th 60 (*Arturo D.*). The defendant driver, a minor, was stopped late at night, quite a distance from the address he had given officers. (*Id.* at p. 83.) He admitted that the vehicle did not belong to him or his passengers. (*Ibid.*) The driver could not provide the officer with "a driver's license or other documentation of his identity, and . . . failed to provide the officer with vehicle

registration documentation." (*Id.* at p. 84.) This Court approved of the officer's entry into the vehicle "to conduct a limited search for both registration and identification documents." (*Id.* at p. 78.)

The Court noted that "the United States Supreme Court ha[d] not specifically approved or defined the scope of a warrantless search for registration or identification," but it compared its decision to the United States Supreme Court's decisions in *Class* (observing a vehicle identification number) and *Michigan v. Long* (1983) 463 U.S. 1032 [103 S.Ct. 3469, 77 L.Ed.2d 1201] (*Long*) (protective search of passenger compartment where a weapon may be hidden). (*Arturo D.*, *supra*, 27 Cal.4th at p. 79.) However, permitting searches where these items might be found does not provide the same rationale to support searches for non-regulatory information like non-license identification or for weapons that bear on officer safety concerns. Unlike a search that may turn up "regulatory documentation," "nothing—not the Constitution, nor any statute, nor the cases cited by the majority [in *Arturo D.*]—authorizes police to conduct a warrantless vehicle search in an attempt to discover the license of a driver who asserts he or she does not have it in the car." (*Id.* at pp. 89-90 (conc. & dis. opn. of Werdegar, J.).) "[T]hat criminals stopped for traffic infractions might occasionally lie about having a license in their possession is insufficient reason to carve out . . . a blanket exception to the warrant requirement to authorize police officers to conduct warrantless vehicle searches in all cases where stopped drivers profess to be without their licenses." (*Id.* at pp. 90-91 (conc. & dis. opn. of Werdegar, J.).) Accordingly, this Court should revisit

Arturo D. and hold that now, in light of *Gant* and its restrictions on a search incident to an arrest—when Fourth Amendment protections are reduced—a warrantless investigatory search for mere identification during a nonarrest detention is impermissible.

2. Exigency created by an automobile's inherent mobility permits a search of that automobile only with probable cause.

The inherent mobility of automobiles creates the necessity of a special exception to the requirement of a search warrant. (See *Carroll, supra,* 267 U.S. at p. 153 [differentiating between the practicalities of obtaining a warrant for homes or other structures and automobiles "because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought"].) That justification allows a warrantless search that is accompanied by probable cause to believe that the automobile contains contraband (*id.* at 154)—including a search of "every part of the vehicle and its contents that may conceal the object of the search" (*United States v. Ross* (1982) 456 U.S. 798, 823 [102 S.Ct. 2157, 72 L.Ed.2d 572] (*Ross*)) so long as probable cause justifies the initial search of the vehicle (*id.* at 825). If police have probable cause to believe that the contents of the automobile or containers within it hold evidence or contraband, they may also search those containers. (*California v. Acevedo* (1991) 500 U.S. 565, 580 [111 S.Ct. 1982, 1991, 114 L.Ed.2d 619] (*Acevedo*).)

Even with the concern of exigency and the potential loss of evidence, probable cause is nonetheless required before a search

pursuant to the automobile exception. Such an intrusion in the absence of a full arrest—and its justifiable infringement on the Fourth Amendment (see *Belton*, *supra*, 453 U.S. at pp. 460-461 [a custodial arrest justifies the infringement of an arrestee's privacy interests])—requires this heightened showing of cause before proceeding.

C. In *Belton* and *Gant*, the Supreme Court applied existing rules and principles for an automobile search incident to arrest—and in doing so, the Court did not depart from the original rationale for those rules.

Uniformity in the application of the law to a certain situation is of vital necessity. "When a person cannot know how a court will apply a settled principle to a recurring factual situation, that person cannot know the scope of his constitutional protection, nor can a policeman know the scope of his authority." (*Belton*, *supra*, 453 U.S. at pp. 459-60.) Consequently, in *Belton*, the Supreme Court held that, for the purposes of *Chimel*'s and *Robinson*'s limitations on a search incident to arrest, an arrest of an automobile occupant is no different than an arrest that takes place elsewhere. (See *id.* at p. 460 ["[An officer] may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile . . . [¶] [and] may also examine the contents of any containers found within the passenger compartment, for if the passenger compartment is within reach of the arrestee, so also will containers in it be within his reach"].)

When revisiting *Belton* in *Gant* twenty-eight years later, the Court clarified a common misapplication by the lower courts: that "a vehicle search would be authorized incident to every arrest of a recent occupant notwithstanding that in most cases the vehicle's passenger compartment will not be within the arrestee's reach at the time of the search." (*Gant, supra*, 556 U.S. at pp. 342-343.) Instead, it held that *Chimel* authorizes a vehicle search only if it is within "reaching distance" of the arrestee at the time of the search. (*Id.* at 343.) The Court voiced concern about "untether[ing] the rule from the justifications underlying the *Chimel* exception—a result clearly incompatible with our statement in *Belton* that it 'in no way alters the fundamental principles established in the *Chimel* case regarding the basic scope of searches incident to lawful custodial arrests.' " (*Ibid.*) The Court also authorized a search when it is "reasonable to believe the vehicle contains evidence of the offense of arrest." (*Id.* at p. 351.) While less than the probable cause required for a nonarrest search of a passenger compartment as authorized by *Acevedo*, this standard nevertheless limits the search to *evidence*—much like the exigency principles underlying the automobile exception. Staying true to these principles, the *Gant* Court balanced the permissible privacy infringement of an arrestee with a *limited* need to preserve evidence in potentially exigent circumstances.

Thus, in clarifying *Belton*, the Court limited, not expanded, the scope of the permissible search. The Fourth Amendment's "central concern" of giving law enforcement "unbridled discretion

to rummage at will among a person's private effects" is implicated by a search conducted outside these narrow permissions. (*Gant*, *supra*, 556 U.S. at p. 345.) "A rule that gives police the power to conduct such a search whenever an individual is caught committing a traffic offense, when there is no basis for believing evidence of the offense might be found in the vehicle, creates a serious and recurring threat to the privacy of countless individuals." (*Ibid.*)

II. A NONARREST SEARCH FOR IDENTIFICATION IS OUTSIDE THE PERMISSIBLE SCOPE OF EXISTING UNITED STATES SUPREME COURT EXCEPTIONS TO THE FOURTH AMENDMENT.

Applying the limitations of *Gant* to a nonarrest detention keeps in line with the balancing of interests and the fundamental principles that support the automobile exception and searches incident to arrest. What is proscribed under *Gant* during an arrest cannot be authorized during a nonarrest detention (when an individual has greater protections) or in the absence of other established search exceptions.

A. A search for mere identification does not comport with the justifications for the automobile exception.

A search for identification other than a driver's license is outside the scope of the limited justifications for warrantless automobile searches. In the absence of an arrest, automobile

searches are limited to the scope set forth by the automobile exception: probable cause to believe that the vehicle or containers within it contain contraband or evidence. (See *Carroll*, *supra*, 267 U.S. at p. 154; *Ross*, *supra*, 456 U.S. at p. 825; *Acevedo*, *supra*, 500 U.S. at p. 580.)

Non-driver's license identification is not part of the "pervasive regulation by the State" (*Class*, *supra*, 475 U.S. at p. 113), not related to "periodic inspection and licensing requirements" (*Opperman*, 428 U.S. at p. 368), and not regulated or mandated under the Vehicle Code (see *Jackson*, *supra*, 74 Cal.App.3d at p. 367; *Ingle*, *supra*, 129 Cal.App.3d at p. 194; *Webster*, *supra*, 54 Cal.3d at p. 430; *Turner*, *supra*, 8 Cal.4th at p. 182). Identification other than a driver's license is not the fruit of the automobile's regulatory scheme that gives rise to a limited privacy interest.

Identification, in nearly all instances, is not itself evidence. The admitted lack of a driver's license cannot yield any additional, tangible evidence of the offense of driving without a license. (See *Gant*, *supra*, 556 U.S. at p. 343 ["In many cases, as when a recent occupant is arrested for a traffic violation, there will be no reasonable basis to believe the vehicle contains relevant evidence"]; *Arturo D.*, *supra*, 27 Cal.4th at p. 90 (conc. & dis. opn. of Werdegar, J.) ["Is it reasonable to believe that a driver—just stopped by police for violating a traffic law—has actually secreted his driver's license somewhere in the car and prefers to deny its presence and risk arrest rather than produce it and hope for release pursuant to a traffic citation?"].) Identification, or the lack

thereof, will not provide necessary evidence of a moving violation or traffic infraction. (See *Knowles v. Iowa* (1998) 525 U.S. 113, 118 [119 S.Ct. 484, 488, 142 L.Ed.2d 492] (*Knowles*) ["Once [the defendant] was stopped for speeding and issued a citation, all the evidence necessary to prosecute that offense had been obtained. No further evidence of excessive speed was going to be found either on the person of the offender or in the passenger compartment of the car."].)

Nor can it be argued that an officer's warrantless search for identification is necessary to prevent the destruction of that identification, or that such destruction must be prevented at all costs. (See *Knowles*, *supra*, 525 U.S. at p. 118 ["As for the destruction of evidence relating to identity, if a police officer is not satisfied with the identification furnished by the driver, this may be a basis for arresting him rather than merely issuing a citation"].) While destruction of evidence is a valid concern under the exigency rationale, the destruction of identification does not implicate the same concerns.

B. Prohibiting a search like the one in this case does not render law enforcement helpless when they lack probable cause to search under *Acevedo* or do not arrest the suspect and search under *Gant*.

Forbidding a warrantless, nonarrest search of an automobile for identification or other nonevidence will not unduly burden law enforcement. This prohibition does not foreclose the possibility of

a nonarrest, non-probable cause search for other reasons. "Other established exceptions to the warrant requirement authorize a vehicle search under additional circumstances when safety or evidentiary concerns demand." (*Gant, supra,* 556 U.S. at p. 346.)

A traffic stop for a driving infraction "is more analogous to a so-called '*Terry* stop' . . . than to a formal arrest." (*Berkemer v. McCarty* (1984) 468 U.S. 420, 439 [104 S.Ct. 3138, 82 L.Ed.2d 317].) Indeed, when considering the level of permissible intrusion, "[t]he threat to officer safety from issuing a traffic citation . . . is a good deal less than in the case of a custodial arrest." (*Knowles, supra,* 525 U.S. at p. 117.) When officer safety *is* at issue, however,

> officers have other, independent bases to search for weapons and protect themselves from danger. For example, they may order out of a vehicle both the driver and any passengers; perform a "patdown" of a driver and any passengers upon reasonable suspicion that they may be armed and dangerous; conduct a "Terry patdown" of the passenger compartment of a vehicle upon reasonable suspicion that an occupant is dangerous and may gain immediate control of a weapon; and even conduct a full search of the passenger compartment, including any containers therein, pursuant to a custodial arrest.

(*Id.* at pp. 117-118, citations omitted.) A protective search of an automobile's passenger compartment consequently follows *Terry* principles: "the search of the passenger compartment of an automobile, *limited to those areas in which a weapon may be placed or hidden,* is permissible if the police officer possesses a reasonable belief based on 'specific and articulable facts which, taken together

with the rational inferences from those facts, reasonably warrant' the officers in *believing that the suspect is dangerous and the suspect may gain immediate control of weapons.*" (*Long, supra,* 463 U.S. at p. 1049, emphases added.)

If, during the course of an investigatory traffic stop or a *Terry*-like "patdown" of the passenger compartment, an officer does develop probable cause to believe there is evidence or contraband, he may proceed to search the automobile under *Acevedo.* (See *Acevedo, supra,* 500 U.S. at p. 580 ["The police may search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained"].)

Alternatively, if an arrest is eventually made, an officer may still lack reason to believe that evidence of the offense of arrest may be found within the automobile—such as in the case of driving without a license. Unrelated contraband that was unknown at the time of arrest may nevertheless become discovered if the vehicle is subsequently impounded and a routine inventory search is conducted. (See *Opperman, supra,* 428 U.S. at p. 372 ["inventories pursuant to standard police procedures are reasonable"]; see also *Florida v. Wells* (1990) 495 U.S. 1, 4 [110 S.Ct. 1632, 1635, 109 L.Ed.2d 1] ["[A]n inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence. The policy or practice governing inventory searches should be designed to produce an inventory. The individual police officer must not be allowed so much latitude that inventory searches are turned into 'a purposeful and general means of discovering evidence of crime.' "].)

And in the absence of any of those exceptions, an officer can always rely on the permission granted by a consent search. The scope of a consent search may be dictated by the party granting consent; in an ideal scenario, it can be imagined that the interests of both the officer and the detainee will be protected.

For example, in a case like the one before this Court, when an officer asks for alternative identification and is similarly informed that the detainee might have some identification inside the automobile, the officer should take his request a step further by affirmatively requesting consent to obtain it himself. The detainee may precisely direct the officer: "Yes, it's in my wallet on the passenger seat," or, "Yes, it's in my purse, but only look in the large pocket." In a less ideal scenario, the detainee may simply say "yes" to a request for consent, and a reasonable search pursuant to that consent may inadvertently uncover items that the detainee would have preferred to not reveal. The officer must simply have conducted this consent search within a reasonable interpretation of the scope of consent, such as looking in a wallet or purse. (See *Florida v. Jimeno* (1991) 500 U.S. 248, 251 [111 S.Ct. 1801, 1803-1804, 114 L.Ed.2d 297] ["The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of 'objective' reasonableness—what would the typical reasonable person have understood by the exchange between the officer and the suspect?"].)

If, ultimately, an officer is unable to procure consent to search and no other exception applies, he has other options to confirm the detainee's identity: "run the driver's name on the

computer in an attempt to determine his or her true identity . . . , ask the driver to submit a thumbprint, accept other evidence of identification, or arrest the driver. All these options address the concern that the officer know to whom he or she is issuing the traffic citation, thereby providing some guarantee the infractor will appear in court or pay the required fine." (*Arturo D.*, *supra*, 27 Cal.4th at p. 91 (conc. & dis. opn. of Werdegar, J.), citations omitted.) "No court has ever sanctioned the alternative the majority endorses here: searching the driver's vehicle (and by logical implication, the driver's person) for the missing driver's license." (*Ibid.*)

CONCLUSION

For the foregoing reasons, this Court should reverse the decision below and uphold the trial court's suppression of the evidence retrieved during a search for identification.

October 17, 2017 By: _____

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CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, 8.204(c)(1).)

The text of this brief consists of 4,583 words as counted by the Microsoft Word version 2016 word processing program used to generate the brief.

October 17, 2017 By: _____
Emily A. Rehm

By: _____
Michael M. Epstein

By: _____
Rachel E. VanLandingham

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the county of Los Angeles, State of California. My business address is 3050 Wilshire Boulevard, Los Angeles, California 90010.

On October 17, 2017, I served true copies of the following document(s) described as **APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF; AMICI CURIAE BRIEF OF EMILY A. REHM, MICHAEL M. EPSTEIN, AND RACHEL E. VANLANDINGHAM IN SUPPORT OF DEFENDANT AND RESPONDENT MARIA ELENA LOPEZ** on the interested parties in this action as follows:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 17, 2017, at Los Angeles, California.

Rachel E. VanLandingham