

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Appellant,

v.

MARIA ELENA LOPEZ,

Defendant and Respondent.

Case No. S238627

**SUPREME COURT
FILED**

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Third Appellate District, Case No. C078537
Yolo County Superior Court, Case No. CRF143400
The Honorable Samuel McAdam, Judge

Deputy

ANSWER TO AMICUS CURIAE BRIEF

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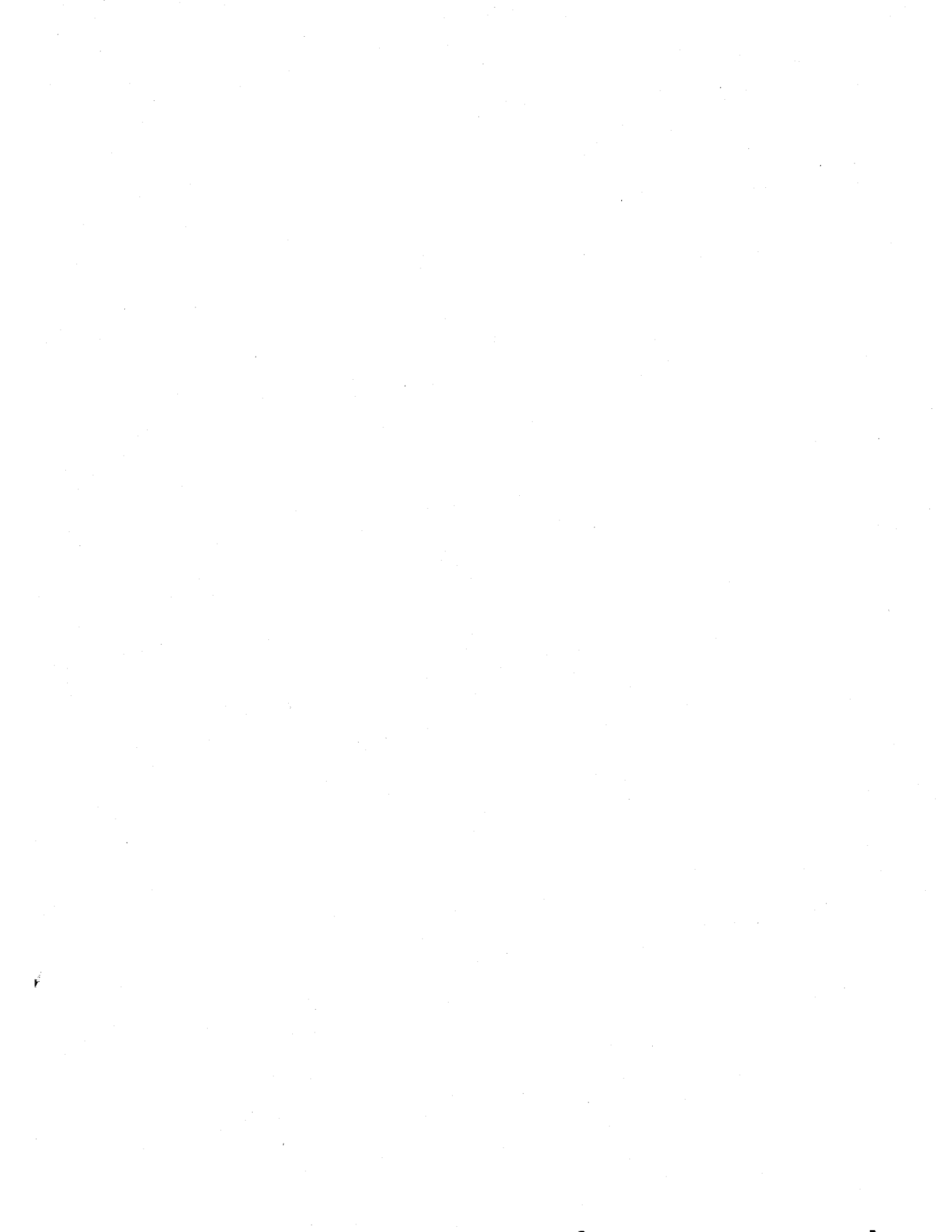
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INTRODUCTION

When an officer is aware of a California Vehicle Code violation, and the driver does not produce satisfactory identification, a minimally intrusive search of the car for such identification is reasonable, promotes citation and release in lieu of arrest, and avoids misidentification and impersonation. The amicus brief filed in support of respondent Maria Lopez does not undermine the People's arguments that it was reasonable for Officer Jeff Moe to search her car for identification when she admitted that she was unlicensed and informed him that her identification might be in the car. Lopez already had exited her car before she was detained, and she was justifiably handcuffed when she resisted detention. These facts made it unreasonable to permit Lopez to rummage in the car herself for identification.

Amici argue that vehicle document searches are no longer allowed, identification cards are not a part of the vehicle regulatory scheme, and automobiles may not be searched upon less than probable cause. These meritless assertions do not assist Lopez here. Amici contend that viable alternatives make Officer Moe's search unreasonable. However, the existence of possible alternatives does not prove a violation, and Amici's alternatives are not viable.

In short, nothing presented by Amici undermines the reasonableness of Officer Moe's conduct when he searched for identification exactly where Lopez indicated it might be. The Court of Appeal correctly reversed the trial court's suppression ruling based upon the well-established vehicle document search exception, which would include a limited search for a driver's license or identification. The vehicle document search exception is justified by important rationales, including the need to ascertain the true identity of a driver before a citation and release can occur, the extremely

low expectations of privacy associated with highly regulated automobile travel upon public roadways, and public safety.

Searches for satisfactory identification are reasonable because no viable alternative exists beyond arresting the driver, an act substantially more intrusive than a cursory document search. The long-standing vehicle document search exception, which has been repeatedly endorsed by this Court, federal courts, and sister states, should be reaffirmed here.

ARGUMENT

I. OFFICER MOE'S LIMITED SEARCH FOR IDENTIFICATION WAS REASONABLE UNDER THE FOURTH AMENDMENT BECAUSE IT WAS VERY NARROW IN SCOPE AND SERVED CRITICAL STATE INTERESTS

Amici argue that a search of a detained person must be more restricted than the search of an arrested person. (Amicus Brief (Amici) at p. 7.) It is. Because the scope of a vehicle document search is both limited and narrow, it is reasonable under the Fourth Amendment. Amici also misapprehend the impact of one warrant exception upon another.

A. The Vehicle Document Search Exception Is Very Narrowly Drawn and Serves a Vital State Interest

Arturo D. searches are restricted in three ways. The first restriction narrows the occasions on which the search may occur. A vehicle document search for identification may be conducted only when a driver is subject to citation and has not produced satisfactory identification. (*In re Arturo D.* (2002) 27 Cal.4th 60, 65-67, 68-71, 76, fn. 16, 86 (*Arturo D.*); *Ingle v. Superior Court* (1982) 129 Cal.App.3d 188, 191-192, 194.) Thus, *Arturo D.* searches will never occur during the vast majority of routine traffic stops because the driver produces satisfactory proof of identification. The second restriction dramatically limits the scope of the search: a vehicle document search for identification is limited to the places in the car where the

identification is likely to be found. (*Arturo D.*, at pp. 66, 78, 86.) Third, a document search must stop when satisfactory identification is found because the primary justification for the search, establishing the true identity of a Vehicle Code violator, is completed.

The facts of this case illustrate the operation of those limitations.¹ After Lopez was asked for identification and told Officer Moe that her identification could be in the car, the officer searched only her purse—the place where her identification was most likely to be found. (IRT 34-36, 40.) He stopped searching Lopez’s purse as soon as he found the identification, and neither officer searched any other part of her car or her person. (IRT 34-36.) The search was minimally intrusive and designed to produce the mandatory identity document that must be maintained by drivers under the Vehicle Code. (See Vehicle Code §§ 12951, 40302.)

By contrast, the searches authorized under other exceptions—like searches incident to arrest and searches of automobiles based upon probable cause—are “*full-scale*” searches of potentially every part of a vehicle including the trunk and engine compartment and need not stop upon finding objects of the search. (*Arturo D.*, *supra*, 27 Cal.4th at pp. 74-76 [highlighting the major differences between a full-scale search for contraband and “a limited warrantless search of a vehicle for required regulatory documentation....”].) Thus, a document search is narrowly and carefully constrained to produce only a minimal intrusion to accomplish a

¹ Amici erroneously assert that this case involves a traffic stop. (Amici at pp. 5, 19.) Not so. The initial contact between Officer Moe and Lopez arose after she exited her vehicle, was consensual, and became a detention premised upon probable cause to believe she had violated the Vehicle Code. (IRT 33-36, 46, 47; ICT 40.) She simply was not detained when she was driving.

critical state need, namely, satisfactorily identifying traffic violators to permit law enforcement to correctly cite them and expediently release them.

B. Proof of Identity Is a Proper Subject of a Vehicle Document Search

Amici also argue that an identification document other than a driver's license is not a proper subject of a vehicle document search because only driver's licenses are part of the regulatory scheme. (Amici at pp. 9-13, 16-17.) In fact, Vehicle Code section 40302, subdivision (a), incorporates both driver's licenses and other forms of identification into the extensive regulations pertaining to drivers and automobiles, specifying a custodial arrest for a Vehicle Code violator who does not present a driver's license or "other satisfactory evidence of his or her identity. . . ."²

Amici mistakenly assert that identification "is not itself evidence." (Amici at p. 17.) Lopez's identification was necessary to establish the crime of arrest. Officer Moe had probable cause to believe that Lopez had driven illegally, but he did not yet know that her actual offense was driving upon a suspended license because he did not initially know her license status. (IRT 34.) Lopez's identification was relevant both as satisfactory evidence of who had perpetrated the driving offense (*People v. Willoughby* (1985) 164 Cal.App.3d 1054, 1064) and because it led to evidence that Lopez's license was suspended (see *People v. Nottoli* (2011) 199 Cal.App.4th 531, 553 [relevant evidence does not have to directly prove an

² For example, "a California identity card issued under [Vehicle Code] section 13000, though facially relegated to the category of 'other satisfactory evidence' of identity by [Vehicle Code] section 40302, was clearly contemplated by the Legislature to be the virtual equivalent of a driver's license for identification purposes. ([Veh. Code,] § 13005 [card shall resemble driver's license in appearance so far as possible, and shall contain same information].)" (*People v. Monroe* (1993) 12 Cal.App.4th 1174, 1186-1187.)

element]). It was reasonable for Officer Moe to search for identification to determine Lopez's true identity and to determine which restricted license status offense she had perpetrated.

C. *Arizona v. Gant* Addressed Only Searches Incident to Arrest and Left Undisturbed Other Established Exceptions Such as the Vehicle Document Search

Amici also argue that *Arturo D.* has been superseded by *Arizona v. Gant* (2009) 556 U.S. 332. (Amici at pp. 12-13.) But *Gant* explained, when it clarified the rules regarding vehicle searches incident to arrest, that its decision did not impact other established exceptions that permit warrantless searches. (*Gant, supra*, 556 U.S. at pp. 346-347.) The *Gant* court stated, "Other established exceptions to the warrant requirement authorize a vehicle search under additional circumstances when safety or evidentiary concerns demand" and "there may be still other circumstances in which safety or evidentiary interests would justify a search." (*Ibid.*) Thus, *Gant* does not impact established search exceptions beyond vehicle searches incident to arrest.

The vehicle document search exception is "long-standing" and has been used by sister states and federal courts for decades. (*Arturo D., supra*, 27 Cal.4th at pp. 68-71, 76, fn. 16; *People v. Schmitz* (2012) 55 Cal.4th 909, 943 (conc. and dis. opn. of Liu, J.) [recognizing the vehicle document search exception with citation to *Arturo D.* and *New York v. Class* (1986) 475 U.S. 106.]

The search here was reasonable because it was very narrow in scope and supported by an established and narrowly tailored warrant exception.

D. *Automobiles Are Reasonably Searched upon Less Than Probable Cause in Certain Circumstances*

Amici suggest that no search of an automobile may occur absent probable cause. (Amici at pp. 13-14.) That question is not at issue in this

case, since Officer Moe had probable cause to believe that Lopez had, at the very least, driven without a driver's license. In any event, the United States Supreme Court has endorsed automobile searches premised upon less than probable cause.³ For example, officers may conduct a *Terry*⁴ sweep of an automobile upon reasonable suspicion that a dangerous individual could access a weapon. (*Michigan v. Long* (1983) 463 U.S. 1032, 1049.)

Reasonable suspicion also justifies a search to reveal a vehicle identification number (VIN) that is obscured by papers during a traffic stop. (*New York v. Class, supra*, 475 U.S. at pp. 108, 111-119.) And *Gant* allows automobile searches based upon a "reasonable belief" that the car contains evidence related to the offense of arrest. (*Arizona v. Gant, supra*, 556 U.S. at pp. 343, 351.) These cases establish that automobiles may be searched under certain circumstances upon less than probable cause.

The vehicle document search exception is supported by the vital interest the State has in enforcing the traffic code and ensuring the safety of public highways. Such searches are narrowly drawn to target only the documents that must be maintained to operate a motor vehicle legally in California and guarantee that Vehicle Code violators are held accountable. The amici's arguments provide no basis to revisit *Arturo D.* here.

³ Even though probable cause was not required, Officer Moe had probable cause to believe that Lopez had, at a minimum, driven without a driver's license prior to the detention and search. (IRT 33-36, 46, 47; ICT 40 [finding that Officer Moe had probable cause to believe Lopez had driven without a valid license]; *People v. Lopez* (2016) 4 Cal.App.5th 815, 821, 825.)

⁴ *Terry v. Ohio* (1968) 392 U.S. 1.

II. AMICI'S SUGGESTED ALTERNATIVES DO NOT UNDERMINE THE REASONABLENESS OF OFFICER MOE'S ACTIONS AND ARE NOT VIABLE

Amici argue that a consent search or thumbprint were viable alternatives to a vehicle documentation search. (Amici at pp. 18-22.) A limited search for identification documentation was reasonable here because consent and a thumbprint were not reasonably required or viable alternatives.

The existence of alternative courses of action does not make an officer's search unreasonable. The question is not what alternatives were available, but rather whether Officer Moe's conduct was reasonable. (*United States v. Sharpe* (1985) 470 U.S. 675, 686-687 [so long as the conduct of the officers was reasonable, available alternatives do not establish a violation].) Here, Officer Moe conducted an extremely limited search for identification necessary to determine the violation that had occurred and to complete any citation. This limited search complied with the Fourth Amendment.

Amici suggest that an officer should not search for identification unless the detainee has been asked about the search and has given consent. (Amici at p. 21.) However, defendants frequently withhold such consent, and there is no showing in the record that such consent would have been forthcoming from Lopez. (See *Arturo D.*, *supra*, 27 Cal.4th at pp. 66.) Whether or not a driver consents to a search for documentation mandated by the Vehicle Code, officers must have a viable way to ensure the true identity of the person receiving a citation. And in this case, the officer further needed the identification to determine which offense had been

committed. A request for consent that may be withheld is not a viable alternative.⁵

Amici contend that other alternatives including running the driver's name on the computer or asking the driver to submit a thumbprint would be viable alternatives. (Amici at pp. 21-22, citing *Arturo D.*, *supra*, 27 Cal.4th at p. 91 (conc. and dis. opn. of Werdegar, J.)) Amici are incorrect. Running a name offered by a driver does not eliminate the problem that arises when the driver is impersonating another individual. Impersonation is a problem that frustrates both the criminal justice system and poses potential harm to the impersonated individual. (*Hill v. California* (1971) 401 U.S. 797, 803, fn. 7; see, e.g., *Davis v. United States* (2011) 564 U.S. 229, 235 (*Davis*) [false name given during traffic stop]; *People v. Mai* (2013) 57 Cal.4th 986, 1039 [during traffic stop, driver gave officer false name then killed him]; *People v. Redd* (2010) 48 Cal.4th 691, 712-713 [driver gave police his brother's name]; IRT 43 [Officer Moe routinely found verbal identification unsatisfactory because his experience showed that people frequently misrepresented their identity].) Moreover, it is common for people to misidentify themselves using another person's personal details. (*People v. Redd*, *supra*, 48 Cal.4th at pp. 712-713 [driver refused to provide photographic identification and gave police his brother's name and birth certificate]; *People v. Cole* (1994) 23 Cal.App.4th 1672, 1676 [defendant provided a false middle name and birth date to the arresting officer]; *People v. Robertson* (1990) 223 Cal.App.3d 1277, 1279 abrogated on another ground in *People v. Rathert* (2000) 24 Cal.4th 200,

⁵ Amici also assert that officers are required to ask about the location of the required vehicle documents before searching. (Amici at p. 10.) Such a request is not reasonably required by the Fourth Amendment. (*Arturo D.*, *supra*, 27 Cal.4th at pp. 78 [an officer is "not obligated to take the driver's word on" where his or her "license or other identification" is located].)

205-208 [defendant falsely impersonated his brother upon being arrested for stealing a truck and continued to do so at arraignment by signing his brother's name on the booking and release forms]; *People v. Chardon* (1999) 77 Cal.App.4th 205, 212 [defendant signed her sister's name on a traffic citation].) Simply put, running someone's name is not viable because it does not rule out impersonation.

Nor is a thumbprint a viable alternative to a brief search for the identification that Lopez indicated might be in her car. A thumbprint in lieu of satisfactory identification is addressed in Vehicle Code section 40303.⁶ That code section contemplates potentially accepting a thumbprint for purposes of issuing the citation after it is determined that no satisfactory identification exists. The Vehicle Code gives officers the discretion to exhaust all avenues of identification before accepting a thumbprint. Additionally, Vehicle Code section 40303 is based on a known violation of the Vehicle Code. Here, the offense could not be determined without obtaining satisfactory proof of Lopez's identity.

Furthermore, there is no showing in this record that Officer Moe had any ability to either roll or scan Lopez's prints.⁷ There is no showing in the record that Officer Moe's county had provided him with any equipment needed to record Lopez's prints. Also, a thumbprint would have been of no

⁶ Vehicle Code Section 40303 provides in relevant part, "Whenever a person is arrested for any of the offenses listed in subdivision (b) and the arresting officer is not required to take the person without unnecessary delay before a magistrate, the arrested person shall, in the judgment of the arresting officer, either be given a 10 days' notice to appear, or be taken without unnecessary delay before a magistrate. . . . The officer may require that the arrested person, if he or she does not have satisfactory identification, place a right thumbprint . . . on the 10 days' notice to appear when a 10 days' notice is provided."

⁷ Also, safety concerns suggest that it would be unreasonable to expect officers to fingerprint drivers who resist detention.

value in identifying Lopez if her prints were not already in the system. The record provides no support for the conclusion that Officer Moe could identify Lopez via her thumbprint.

Finally, the thumbprint alternative is authorized only for specific crimes. The statute does not extend the use of thumbprints to driving without a license. (Veh. Code, §§ 12500, 12951, 40303.) While a thumbprint may be taken in lieu of arresting a driver for driving on a suspended license (Veh. Code, § 40303, subd. (b)(10), citing Veh. Code, § 14601 et seq.), Officer Moe did not know Lopez's offense was driving on a suspended license until after he had searched for and found her identification and then checked with Dispatch. (IRT 34; ICT 1.)

Amici cite *Knowles v. Iowa* (1998) 525 U.S. 113, 118 and assert that identification will not provide evidence relevant to a moving violation. (Amici at p. 18.) However, as stated in the People's merits answer at pages 30-31, *Knowles* is distinguishable from the facts here. In *Knowles*, the officer knew the driver's identity and traffic offense before searching; by contrast, Officer Moe did not know either Lopez's identity or which traffic offense she had committed. Furthermore, as noted above, a document search is distinguishable from the "full-scale search" prohibited in *Knowles*. (*Arturo D.*, *supra*, 27 Cal.4th at pp. 74-76.)

Finally, Amici cite to Justice Werdegar's concerns stated in her concurring and dissenting opinion in *Arturo D.* (Amici at pp. 12, 21-22; *Arturo D.*, *supra*, 27 Cal.4th at pp. 89-91 (conc. and dis. opn. of Werdegar, J.)) Justice Werdegar's concerns are not a basis to revisit *Arturo D.* here. Justice Werdegar questioned the reasonableness of searching for a driver's license that the driver has declared is not in the car. (*Id.* at pp. 89-90 (conc. and dis. opn. of Werdegar, J.)) However, that is not what happened here. Officer Moe searched specifically for identification that Lopez said might be in the car. And, in any event, Justice Werdegar's concern does not fully

consider that individuals with outstanding warrants have an incentive to deny they have a license or to try to impersonate someone else in an effort to avoid discovery of the warrant. (See *People v. Redd, supra*, 48 Cal.4th at pp. 712-713.)

Justice Werdegar asserts that the possibility that the driver would lie about having a license is not a sufficient basis to allow a document search. (*Arturo D., supra*, 27 Cal.4th at pp. 90-91 (conc. and dis. opn. of Werdegar, J.)) However, this is not the overarching justification for the search here. Simply put, officers cannot fill out a citation form and release a driver without knowing who that individual is and which offense should be written on the citation.⁸

Without a brief and minimally intrusive document search, drivers who fail to present satisfactory identification will have to be arrested. Such an arrest with a full search of the arrestee's person is surely more intrusive than a narrowly limited search for identification documents. (*Arturo D.*, at p. 76, fn. 17.) Officers must be permitted some ability to search for satisfactory proof of identity in order to comply with the preference for citation and release. Otherwise, custodial arrests will increase anytime identification is questionable in a citation context.

⁸ Justice Werdegar's analysis did not address the present situation in which both the identity of the driver and the exact offense were unknown prior to the search.

CONCLUSION

The judgment of the Court of Appeal should be affirmed.

Dated: November 20, 2017 Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached **ANSWER TO AMICUS CURIAE BRIEF** uses a 13 point Times New Roman font and contains 2,831 words.

Dated: November 20, 2017

XAVIER BECERRA
Attorney General of California

A handwritten signature in black ink that reads "R. Todd Marshall". The signature is written in a cursive, slightly slanted style.

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Lopez**

No.: **S238627**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On November 21, 2017, I served the attached **ANSWER TO AMICUS CURIAE BRIEF** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 21, 2017, at Sacramento, California.

Declarant

