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Heien v. North Carolina: Mistaken Conclusions on Mistakes of Law

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Heien v. North Carolina: Mistaken Conclusions on Mistakes of Law

HEIEN V. NORTH CAROLINA: MISTAKEN CONCLUSIONS ON MISTAKES OF LAW

ABSTRACT

The Fourth Amendment protects individuals against unreasonable searches and seizures. Traditionally, the primary mechanism for enforcing the Fourth Amendment has been the exclusionary rule. If a search was conducted in violation of the Fourth Amendment, any evidence of the defendant's illegal conduct was excluded from the defendant's criminal trial. The main rationale for the exclusionary rule is that when evidence is excluded, it deters police officers from future Fourth Amendment violations.

After deterrence became the primary justification for the exclusionary rule in the 1960s, the United States Supreme Court, in *United States v. Calandra*, declared that unless police officers can be deterred, the exclusionary remedy serves no purpose whatsoever. In subsequent cases, when police violated the Fourth Amendment, but acted reasonably in "good faith," the Court concluded that the exclusionary rule did not apply because the officer could not be deterred. The Court has since expanded the good-faith exception to an increasingly broad range of situations.

This Case Comment analyzes the Court's most recent expansion of the good-faith exception in the context of police mistakes of law. *Heien v. North Carolina* is the first Supreme Court case to hold that police officers who make (reasonable) mistakes of substantive law do not violate the Fourth Amendment. In effect, the Court not only expanded the circumstances to which the good-faith exception applies, but also made good faith an exception to the Fourth Amendment's requirements, rather than merely an exception to the exclusionary rule. Now, instead of deciding whether the search or seizure was reasonable, as required by the Fourth Amendment's text, the Court decides the convoluted metaquestion of whether it was reasonable for a police officer to believe the search was reasonable. This decision not only further erodes Fourth Amendment protections and stunts the evolution of Fourth Amendment doctrine, but also creates a perverse double standard for the criminal law maxim that "ignorance of the law is no excuse."

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INTRODUCTION

Early one morning in 2009, Maynor Vasquez and Nicholas Heien were driving down a major interstate in North Carolina.¹ Vasquez was driving, while Heien lay across the back seat.² Meanwhile, Officer Matt Darrisse sat on the side of the interstate watching traffic when he noticed that Vasquez looked “stiff and nervous” as he drove by.³ Darrisse pulled onto the interstate and began to follow Vasquez’s car.⁴ When Darrisse noticed that one of the rear brake lights was not working, he pulled Vasquez over, mistakenly believing that state law required two working brake lights.⁵ After giving Vasquez a citation, he got permission from both men to search the car and subsequently found a bag of cocaine.⁶ Heien, who was the owner of the car, was sentenced to two years in pris-

1. Heien v. North Carolina, 135 S. Ct. 530, 534 (2014).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.* at 534–35.

6. *Id.* at 534.

on for drug trafficking.⁷ He challenged the stop as a violation of the Fourth Amendment.⁸

In 2014, the Supreme Court granted certiorari in *Heien v. North Carolina*⁹ to review the question of “[w]hether a police officer’s mistake of law can provide the individualized suspicion that the Fourth Amendment requires to justify a traffic stop.”¹⁰ In an 8-1 decision, the Court held that “[t]o be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them ‘fair leeway for enforcing the law in the community’s protection.’”¹¹

This Case Comment argues that *Heien* was wrongly decided for a number of reasons. First, it provides police officers with a legal justification to circumvent Fourth Amendment protections and to stop drivers for violating laws that do not actually exist. Second, the decision creates a perverse double standard for the basic tenet that “ignorance of the law is no excuse.”¹² Police officers are now permitted to interpret vague laws in individualized, “reasonable” ways, but citizens are still expected to know and follow every law, regardless of how vague it is.¹³ In other words, citizens, most of whom have no legal education, are held to a higher standard regarding knowledge of the criminal code than the very people who are trained and entrusted to understand and enforce it.

Allowing an exception to the Fourth Amendment for police mistakes of law also seriously undermines the protections that the Fourth Amendment provides individuals. The Fourth Amendment states: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no [w]arrants shall issue, but upon probable cause”¹⁴ The Court routinely analyzes criminal Fourth Amendment cases using three basic steps.¹⁵ First, there must be a search, meaning the person must have a “reasonable expectation of privacy”¹⁶ or property interest¹⁷ in the area

7. Petition for a Writ of Certiorari at 3–5, *Heien v. North Carolina*, 135 S. Ct. 530 (2014) (No. 13-604).

8. *Id.* at 3–4.

9. 135 S. Ct. 530 (2014).

10. Petition for a Writ of Certiorari, *supra* note 7, at 1; *see also Heien*, 135 S. Ct. at 535.

11. *Heien*, 135 S. Ct. at 533, 536 (quoting *Brinegar v. United States*, 338 U.S. 160, 176 (1949)).

12. Justin F. Marceau, *The Fourth Amendment at a Three-Way Stop*, 62 ALA. L. REV. 687, 743 (2011) (“It is a hallmark of substantive criminal law that ignorance of the law is no defense.”); Robert L. Misner, *Limiting Leon: A Mistake of Law Analogy*, 77 J. CRIM. L. & CRIMINOLOGY 507, 509 (1986) (explaining that the rationale for this strict liability standard is that the refusal to reward ignorance ensures “that the proper standard of conduct will be learned and respected by others”).

13. *See Heien*, 135 S. Ct. at 536–40.

14. U.S. CONST. amend. IV.

15. Marceau, *supra* note 12, at 733.

16. *Katz v. United States*, 389 U.S. 347, 351 (1967) (holding that the Fourth Amendment protects “people, not places”); *Id.* at 360 (Harlan, J., concurring) (noting that the Fourth Amend-

searched.¹⁸ Second, the search must be reasonable, meaning the officer must have had probable cause that the person was doing something illegal.¹⁹ Third, if the search was unreasonable, the Court invokes the exclusionary remedy, meaning that the jury is barred from considering evidence of the defendant's illegal conduct that was obtained during the search.²⁰ The analysis in *Heien* comes in at the second step of this framework because the Court held that the Fourth Amendment is not violated if the officer makes an objectively reasonable mistake when interpreting the law.²¹

Previous Supreme Court cases that analyze police officer's "good-faith"²² mistakes in the context of searches and seizures focus on the third step in the above framework²³—whether the defendant should have access to the exclusionary remedy.²⁴ In these cases, the Court continually

ment's protection applies as long as the person had a "reasonable expectation of privacy" in the area searched).

17. In *United States v. Jones*, the Court considered whether the government's attachment of a GPS device to a vehicle, and its use of that device to monitor the vehicle's movements, constituted a search under the Fourth Amendment. 132 S. Ct. 945 (2012). The Court explained that the government's physical intrusion on an area, unlike an intrusion on an "effect," is of no Fourth Amendment significance because there is no meaningful interference with an individual's possessory property interests. *Id.* at 953.

18. Marceau, *supra* note 12, at 733.

19. *See id.* at 733, 751–54. Reasonableness comes in various forms in the different contexts of Fourth Amendment analysis. Generally speaking, a search and seizure is unreasonable if it was conducted without a warrant or if it was based on a warrant that was issued without probable cause. *See* Sam Kamin & Justin Marceau, *Double Reasonableness and the Fourth Amendment*, 68 U. MIAMI L. REV. 589, 595–98 (2014). In exigent circumstances, where obtaining a warrant would be impractical, the officer can conduct a search as long as he has probable cause for believing that the person committed a crime. *Id.* at 598–99. In the context of traffic stops, officers must have reasonable suspicion to stop a driver. *See id.* at 624–25.

20. Marceau, *supra* note 12, at 733. The exclusionary rule is the primary remedy for criminal Fourth Amendment cases. *See* Orin S. Kerr, *Fourth Amendment Remedies and Development of the Law: A Comment on Camreta v. Greene and Davis v. United States*, 2011 CATO SUP. CT. REV. 237, 239–40. In civil cases there are a variety of remedies in addition to the exclusionary rule. *See id.* at 241–44. These mostly arise in the context of damages against individual government agents and municipalities as well as injunctive or declaratory relief. *See id.*

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

22. When police act reasonably, but violate the Fourth Amendment, the Court calls it "good-faith." However, unlike the ordinary meaning of good faith, which refers to subjectively good intentions, good faith in the context of the Fourth Amendment refers to whether the officer made an objectively reasonable mistake. Sherry F. Colb, *U.S. Supreme Court Considers Whether the Fourth Amendment Allows Reasonable Mistakes of Substantive Law*, VERDICT (May 5, 2014), <https://verdict.justia.com/2014/05/05/supreme-court-considers-whether-fourth-amendment-allows-reasonable-mistakes-substantive-law-2>.

23. *See, e.g., Herring v. United States*, 555 U.S. 135, 138–39, 146–48 (2009) (holding that as long as the officer is negligent in attenuating the arrest, he is acting in good faith, and the jury should not be barred from considering all of the evidence); *Arizona v. Evans*, 514 U.S. 1, 3–4, 14 (1995) (refusing exclusion when an officer mistakenly believed that a warrant had been issued for an individual's arrest); *Illinois v. Krull*, 480 U.S. 340, 350–52, 359–60 (1987) (holding that the exclusionary remedy is unavailable when legislators violate the Fourth Amendment); *United States v. Leon*, 468 U.S. 897, 913–14 (1984) (holding that the exclusionary rule is unavailable when judges violate the Fourth Amendment).

24. There is one exception to this. Five years before the Court explicitly adopted the good-faith exception in *United States v. Leon*, it decided *Michigan v. DeFillippo*, which essentially used the good-faith justification to hold that an officer's reasonable reliance on a law that was later invali-

held that the officers' mistakes did violate the Fourth Amendment; however, because the officers reasonably believed they had satisfied the probable cause requirement (i.e., they acted in good faith), they did not have mental states that could be deterred through legal sanctions. As such, the supposed sole justification for the exclusionary rule did not apply, and the evidence was admitted.²⁵

Heien essentially shifted the good-faith exception from a question of remedy to a question of right. Consequently, the availability of the Fourth Amendment's protections will no longer turn on whether the search or seizure was reasonable, as the text of the Fourth Amendment requires. Instead, the validity of a search or seizure will turn on the convoluted metaquestion of whether it is reasonable for the police officer to believe the search was reasonable. This runs the risk of suppressing any meaningful development of the Fourth Amendment because instead of analyzing many of the critical and evolving aspects of reasonable searches and seizures, the Court will decide whether it was reasonable for the officer to make a mistake about the relevant law.

In short, the *Heien* decision shows that the Court has not only expanded the good-faith exception to include police mistakes of substantive law, but also has begun to use the good-faith exception to limit the availability of the Fourth Amendment right, in addition to the Fourth Amendment remedy. Expanding this exception both in degree and application will cause the Fourth Amendment's general guarantee to be free from unreasonable searches to only apply if the search involves egregious officer conduct and obvious culpability.²⁶ Over time, as remedies fade from the Court's analyses, there will be less of a need to litigate Fourth Amendment cases, and the doctrine will stagnate and lose its living character.²⁷ But most importantly, under *Heien*, if a law is unclear, citizens are punished instead of the government.

Part I of this Case Comment will trace the emergence of deterrence as the primary justification for the exclusionary remedy and show how the Court's focus on officer culpability began the era of good-faith exceptions. It will then summarize the current state of the good-faith excep-

dated for void-for-vagueness grounds did not violate the Fourth Amendment itself. *DeFillippo*, 443 U.S. 31 (1979). Once the good-faith exception was expressly adopted in *Leon*, the Court only used it to bar defendants' access to the exclusionary remedy. *See id.* at 35–36, 39–40.

25. David Gray, *A Spectacular Non Sequitur: The Supreme Court's Contemporary Fourth Amendment Exclusionary Rule Jurisprudence*, 50 AM. CRIM. L. REV. 1, 30–31 (2013).

26. On the day *Herring* was decided, Tom Goldstein, a lawyer who has argued almost two-dozen cases before the Supreme Court, blogged, "Today, the Supreme Court holds that negligent errors by the police generally do not trigger the exclusionary rule. . . . Put another way, the Supreme Court today extended the good faith exception to ordinary police conduct." Tom Goldstein, *The Surpassing Significance of Herring*, SCOTUSBLOG (Jan. 14, 2009, 11:32 AM), <http://www.scotusblog.com/wp/the-surpassing-significance-of-herring/>. *Heien* merely extends this notion through the mistake of law exception.

27. *See* Marceau, *supra* note 12, at 732.

tion to show how it has significantly eroded the exclusionary remedy and paved a path for allowing police mistakes of law. Part II provides a brief summary of the facts of *Heien* as well as the majority, concurring, and dissenting opinions. Part III analyzes how *Heien*'s extension of the good-faith exception has narrowed the scope of the Fourth Amendment right and precluded any discussion of the Fourth Amendment's exclusionary remedy. Now, as long as the officer makes an objectively reasonable mistake, the Fourth Amendment is nothing more than a holographic promise that disappears when invoked.

I. BACKGROUND

A. *The Fourth Amendment's Protections and the Importance of the Exclusionary Rule*

The exclusionary rule emerged as the primary remedy for Fourth Amendment violations in *Weeks v. United States*.²⁸ The *Weeks* Court emphasized that a law enforcement officer's Fourth Amendment violations could not be approved by judges under any circumstances for two key reasons.²⁹ First, courts are bound by the duty to uphold the Constitution.³⁰ Second, if personal property can be seized and "used in evidence against a citizen accused of an offense, the protection of the 4th Amendment" to be free from unreasonable searches and seizures "is of no value, and . . . might as well be stricken from the Constitution."³¹ The Court emphasized that remedies define rights and that, without the exclusionary rule, police officers have no incentive to refrain from conducting unreasonable searches and seizures.³² Additionally, the Court stressed that judicial integrity would be threatened if Fourth Amendment violations were approved by judicial decision.³³ These foundational justifications made up the backbone of the Fourth Amendment, and in effect, what was reasonable was narrowly construed in all contexts, making the exclusionary rule a natural adjunct to Fourth Amendment violations.³⁴ However, at the time *Weeks* was decided, the Fourth Amendment only applied to fed-

28. 232 U.S. 383 (1914), *overruled by* *Mapp v. Ohio*, 367 U.S. 643 (1961). In *Weeks*, a federal marshal entered the defendant's house without a warrant and seized papers that were later admitted in trial as proof of the defendant's lottery crimes. *Id.* at 388-89. The Court held that the evidence should be excluded because the seizure violated the defendant's Fourth Amendment rights. *Id.* at 398.

29. *See id.* at 393-94.

30. *Id.* at 393 ("The efforts of the courts and their officials to bring the guilty to punishment, praiseworthy as they are, are not to be aided by the sacrifice of those great principles established by [sic] years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the land.").

31. *Id.*

32. *See id.*

33. *See id.* at 394.

34. *See Gray, supra* note 25, at 14-15.

eral officers because the Bill of Rights had not yet been extended to the states.³⁵

It was not until 1949, in *Wolf v. Colorado*,³⁶ that the Court incorporated the Fourth Amendment to the states.³⁷ The majority opinion in *Wolf* emphasized that the exclusionary rule is both an individual remedy to the person whose Fourth Amendment rights have been violated as well as a general deterrent aimed at law enforcement officers.³⁸ Nevertheless, the Court declined to extend application of the exclusionary rule because it decided that it would be best for states to fashion their own remedies to Fourth Amendment violations.³⁹ However, in 1961, in *Mapp v. Ohio*,⁴⁰ the Court incorporated the exclusionary rule to the states when it confirmed that other remedies had proved to be “worthless and futile” when it came to punishing and deterring law enforcement misconduct.⁴¹ The Court also emphasized that the exclusionary rule is an essential part of the right to privacy embodied in the Fourth Amendment and that failing to require exclusion when law enforcement agents violate the Fourth Amendment would be “to grant the right but in reality to withhold its privilege and enjoyment.”⁴²

In addition to providing a framework for the expansion of the exclusionary rule’s application, *Weeks*, *Wolf*, and *Mapp* demonstrate that deterring police officers was initially viewed as only a partial justification for exclusion that helped strengthen its application rather than fully support it.⁴³ However, starting in the 1960s, deterrence began to emerge as the exclusionary rule’s most important justification.⁴⁴ In *Elkins v. United States*,⁴⁵ Justice Stewart explicitly stated that the exclusionary rule’s “purpose is to deter—to compel respect for the constitutional guaranty in the only effectively available way—by removing the incentive to disregard it.”⁴⁶ Eventually, in *United States v. Calandra*,⁴⁷ the Court declined

35. See Marceau, *supra* note 12, at 700–01.

36. 338 U.S. 25 (1949), *overruled by* *Mapp v. Ohio*, 367 U.S. 643 (1961).

37. *Id.* at 27–28, 33.

38. *Id.* at 30–31.

39. *Id.* at 31–33.

40. 367 U.S. 643 (1961).

41. *Id.* at 651–53, 657–58.

42. *Id.* at 655–56.

43. See *id.* at 659 (explaining that judicial integrity is another imperative consideration of the exclusionary rule); see also Robert M. Bloom & David H. Fentin, “A More Majestic Conception”: *The Importance of Judicial Integrity in Preserving the Exclusionary Rule*, 13 U. PA. J. CONST. L. 47, 47, 53 (2010) (“Judicial integrity was the original reason for adopting the exclusionary rule in the Supreme Court case of *Weeks v. United States*”); Gray, *supra* note 25, at 17 (discussing how in *Wolf v. Colorado* “the Court had fully embraced punishment and deterrence as partial justifications of the exclusionary rule”).

44. See Gray, *supra* note 25, at 17–18.

45. 364 U.S. 206 (1960).

46. *Id.* at 217. *Elkins* barred use of the so-called “silver platter” doctrine, which allowed federal prosecutors to avoid the exclusionary rule remedy by encouraging state officers to unlawfully obtain evidence on their behalf. *Id.* at 208. The Court emphasized the importance of preventing

to recognize any justification for the exclusionary rule other than deterring law enforcement officers.⁴⁸ Significantly, *Calandra* marked the shift in Fourth Amendment jurisprudence from using deterrence as a justification for invoking the exclusionary remedy to a justification for barring application of the exclusionary remedy.⁴⁹ The Court accomplished this by setting forth the notion that if the exclusionary rule does not have the effect of deterring the police officer, it has no purpose whatsoever.⁵⁰ This shift acted as a catalyst for allowing the Court to use a theory of police culpability and punishment to guide its practices.⁵¹ But the difficulty in proving that an officer's mistake was objectively unreasonable has created an increasing number of ever-expanding good-faith exceptions that have been slowly reshaping the exclusionary remedy's role in Fourth Amendment criminal procedure.⁵²

B. The Expansion of the Good-Faith Exception

The most important exception that stemmed from using deterrence to bar exclusion came up in *United States v. Leon*.⁵³ There the Court established that when an officer violates the Fourth Amendment, but reasonably believes that he has satisfied the legal probable cause standard, he is acting in good faith.⁵⁴ Accordingly, because the officer did not have a mental state that could be deterred, evidence of the defendant's illegal conduct was not suppressed.⁵⁵ In *Leon*, police officers obtained a search warrant to enter Leon's residence and subsequently found a large quantity of illegal drugs.⁵⁶ Later, the warrant was held to have been invalid because it was issued without probable cause.⁵⁷ The Court initially attempted to make *Leon*'s holding a narrow exception by only applying it to excuse an officer's reasonable reliance on a warrant that was later invalidated.⁵⁸ However, over time, the Court began to routinely rely on *Leon*'s reasoning—the exclusionary rule “cannot be expected, and

courts from serving as “accomplices in the willful disobedience of a Constitution they are sworn to uphold.” *Id.* at 223.

47. 414 U.S. 338 (1974).

48. *Id.* at 347. *Calandra* held that the exclusionary rule does not apply to grand jury investigations. *Id.* at 351–52. The Court explained that it is unlikely that police would carry out an unlawful search and seizure in an effort to gather information to ask questions at a grand jury proceeding and as such, applying the exclusionary rule in such cases would not deter police misconduct. *Id.*

49. See Gray, *supra* note 25, at 20.

50. See *Calandra*, 414 U.S. at 350–52. According to the *Calandra* Court, the exclusionary rule was nothing more than a “judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved.” *Id.* at 348.

51. See Gray, *supra* note 25, at 22–23.

52. See Bloom & Fentin, *supra* note 43, at 57–59; see also Marceau, *supra* note 12, at 733.

53. 468 U.S. 897 (1984).

54. *Id.* at 913.

55. See *id.* at 923–24.

56. *Id.* at 901–02.

57. *Id.* at 903–04.

58. Marceau, *supra* note 12, at 739.

should not be applied, to deter objectively reasonable law enforcement activity,⁵⁹—as a basis for expanding the good-faith exception.⁶⁰

In 2009, in *Herring v. United States*,⁶¹ the Court held that an officer's good-faith reliance on a clerk's mistake would also preclude application of the exclusionary rule because at the time of the search, the officer reasonably believed he had satisfied the necessary probable cause requirement.⁶² Significantly, the *Herring* Court created a new standard for invoking the good-faith exception by explaining that as long as the officer was merely negligent in conducting a search or seizure, he does not have a mental state that can be deterred, and thus, the jury should not be barred from considering all the evidence.⁶³ However, the notion that punishing negligent behavior cannot be deterred through sanctions runs completely contrary to our entire system of tort law.⁶⁴ Indeed, as Justice Ginsberg pointed out in her dissent, almost all of tort law is based on the premise that liability for negligence incentivizes people to act with greater care.⁶⁵

Herring also directly contradicted almost all of the Supreme Court's exclusionary-remedy precedent by stating, "exclusion 'has always been our last resort, not our first impulse.'"⁶⁶ Going forward, the Court shifted away from viewing the exclusionary rule as a natural adjunct to a Fourth Amendment violation and started viewing it as an extraordinary step that should only be used in cases involving flagrant police misconduct.⁶⁷

Two years later, the good-faith rationale was extended by *Davis v. United States*,⁶⁸ which held that an officer's reasonable reliance on a binding appellate precedent, which was later overruled by a Supreme

59. *Leon*, 468 U.S. at 919.

60. *See, e.g., Davis v. United States*, 131 S. Ct. 2419, 2426–28 (2011); *Herring v. United States*, 555 U.S. 135, 139–44 (2009); *Arizona v. Evans*, 514 U.S. 1, 10–12, 14 (1995); *Illinois v. Krull*, 480 U.S. 340, 347–51 (1987); *Massachusetts v. Sheppard*, 468 U.S. 981, 987–91 (1984).

61. 555 U.S. 135 (2009).

62. *Id.* at 144–46; *see also Kamin & Marceau, supra* note 19, at 591 (explaining that a search can be sufficiently unreasonable to violate the defendant's right, but not so unreasonable that he should have access to the exclusionary remedy).

63. *See Herring*, 555 U.S. at 147–48.

64. *Id.* at 153 (Ginsberg, J., dissenting) ("The exclusionary rule, the Court suggests, is capable of only marginal deterrence when the misconduct at issue is merely careless, not intentional or reckless. The suggestion runs counter to a foundational premise of tort law—that liability for negligence, *i.e.*, lack of due care, creates an incentive to act with greater care." (citation omitted)).

65. *Id.*

66. *Id.* at 140 (majority opinion) (quoting *Hudson v. Michigan*, 547 U.S. 586, 591 (2006)); *see also id.* at 137 ("Our cases establish that such suppression is not an automatic consequence of a Fourth Amendment violation. Instead, the question turns on the culpability of the police and the potential of exclusion to deter wrongful police conduct.").

67. *See Kamin & Marceau, supra* note 19, at 618 ("[T]he exclusionary rule now requires a fact-specific inquiry into the culpability of the officer, and where an officer was acting reasonably, even when the Fourth Amendment was violated, exclusion is not permitted.").

68. 131 S. Ct. 2419, 2428–29 (2011).

Court case, does not trigger application of the exclusionary rule.⁶⁹ Once again, the Court analyzed whether the police officer acted in good faith and subsequently held that the seizure was sufficiently unreasonable to violate the defendant's Fourth Amendment right, but because the officers were acting reasonably, there was no justification for the exclusionary remedy.⁷⁰

C. *The Emergence of Police Mistakes of Law*

The Court also used the good-faith exception to broaden related exceptions like mistake of fact and mistake of law.⁷¹ Mistake of fact has long been viewed as insufficient to trigger the exclusionary rule because probable cause and reasonable suspicion do not require meticulous accuracy.⁷² However, unlike mistake of fact, mistake of law has historically never served as an exception to the exclusionary rule because it contradicts the most important maxim of substantive criminal law: ignorance of the law is no excuse.⁷³ The rationale behind a strict liability standard for mistake of law is that refusing to reward ignorance will encourage citizens and law enforcement alike to learn and respect the law.⁷⁴ However, after *Herring*, some courts⁷⁵ began to acknowledge that, in certain cir-

69. *Id.* at 2428–29. In *Davis*, police officers conducted a traffic stop and arrested the defendant for giving a false name. *Id.* at 2425. They subsequently searched his car and found a gun. *Id.* The Court held that the evidence of the gun should not be suppressed because the officer acted in objectively reasonable good faith. *Id.* at 2428–29.

70. *Id.*

71. Gray, *supra* note 25, at 38–40; Marceau, *supra* note 12, at 742–54.

72. Marceau, *supra* note 12, at 742–43 (explaining that lower courts have historically acknowledged that the maxim has no less force in the context of the good-faith exception to the exclusionary rule: “Even a good faith mistake of law by an officer cannot form the basis for reasonable suspicion, because ‘there is no good-faith exception to the exclusionary rule for police who do not act in accordance with governing law.’” (quoting *United States v. King*, 244 F.3d 736, 739 (2001))).

73. *See id.* at 743–44; *see also* Albert W. Alschuler, Term Paper, *Herring v. United States: A Minnow or a Shark?*, 7 OHIO ST. J. CRIM. L. 463, 488–89 (2009).

74. *See* Gray, *supra* note 25, at 43; Wayne A. Logan, *Police Mistakes of Law*, 61 EMORY L.J. 69, 91 (2011) (“Reciprocal expectations of law-abidingness between government and citizens can scarcely be expected to endure if one party—the government—need not uphold its end of the bargain.” (footnote omitted)).

75. In 2005, the Eighth Circuit Court of Appeals was the first Court to hold, in *United States v. Martin*, that police can make objectively reasonable mistakes of law. 411 F.3d 998 (8th Cir. 2005). The officer pulled over a Native American driver because he only had one working light and subsequently discovered that Martin had a pound of marijuana in the car. *Id.* at 1000. It was undisputed that the officer mistakenly understood the Motor Vehicle Code to require two working brake lights, when it actually only required one. *See id.* However, the Court held that the search and seizure did not violate the Fourth Amendment and explained that “the validity of a stop depends on whether the officers actions were objectively reasonable in the circumstances, and in mistake cases the question is simply whether the mistake, whether of law or fact, was an objectively reasonable one.” *Id.* at 1001; *see also* Logan, *supra* note 74, at 80–81 (discussing how, in addition to the Eighth Circuit, the D.C. Circuit, as well as the state appellate courts in Georgia, Mississippi, Ohio, and South Dakota have condoned what they consider to be reasonable mistakes of law).

cumstances, mistakes of law bar exclusion because of the good-faith exception.⁷⁶

Herring's effect on subsequent cases involving police mistakes began a new phase of limiting the use of the exclusionary rule to instances where law enforcement officers have knowledge that their conduct is unconstitutional.⁷⁷ If the officer lacks knowledge that his conduct is unconstitutional, there is no way to deter him, and therefore, his conduct is reasonable.⁷⁸ Under this approach, the blamelessness of a law enforcement officer, not a Fourth Amendment violation, determines the availability of exclusion.⁷⁹ *Heien* essentially moved the good-faith justification outlined in *Herring* from a question of remedy to a question of right by holding that as long as the officer's basis for probable cause is based on an "objectively reasonable" mistake of the law, there is no Fourth Amendment violation in the first place.⁸⁰

Police mistakes of law can be divided into three broad categories.⁸¹ The first category concerns whether a law that was invoked by a police officer as a basis for an arrest, but later found unconstitutional, violates the Fourth Amendment.⁸² In *Michigan v. DeFillippo*,⁸³ the Court held that the search was still reasonable and thus did not violate the Fourth Amendment because law enforcement should not be required to anticipate that a court would later overturn particular laws.⁸⁴ However, exclusion is still available when the statute is "so grossly and flagrantly unconstitutional that any person of reasonable prudence would be bound to see its flaws."⁸⁵

The second category involves mistakes that relate to Fourth Amendment procedure, such as when a warrant is required and what

76. See Marceau, *supra* note 12, at 745 ("There is a sense that *Herring* has ushered in, despite protestations by the Court to the contrary, an era of exclusion that is markedly more focused on the culpability of the officer—in assessing the deterrence benefit of the exclusionary rule, the relative culpability of the offending officer has moved to the forefront of the remedial analysis.")

77. See, e.g., *United States v. McCane*, 573 F.3d 1037, 1044 (10th Cir. 2009) ("[E]vidence should be suppressed only if it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment." (quoting *Herring v. United States*, 555 U.S. 135, 144–46 (2009))).

78. Marceau, *supra* note 12, at 745.

79. *Id.*

80. *Heien v. North Carolina*, 135 S. Ct. 530, 539–40 (2014).

81. Marceau, *supra* note 12, at 744–45.

82. Logan, *supra* note 74, at 76.

83. 443 U.S. 31 (1979). In *DeFillippo*, a Detroit city ordinance authorized police to stop and question individuals if they had probable cause that the person was doing something illegal. *Id.* at 33. Officers found DeFillippo in an alley with a woman who was in the process of lowering her slacks. *Id.* When asked for identification, DeFillippo gave inconsistent and evasive responses. *Id.* He was subsequently arrested and searched, and the police found illegal drugs. *Id.* at 34. The ordinance was later invalidated on void-for-vagueness grounds. *Id.* at 35.

84. *Id.* at 37–38.

85. *Id.* at 38.

level of suspicion⁸⁶ is required for a warrantless stop or arrest.⁸⁷ In these circumstances, the mistake involves the application of the Fourth Amendment itself, as opposed to an extrinsic law.⁸⁸ For example, in *Stoner v. California*,⁸⁹ the police searched the petitioner's hotel room without a warrant and without consent from the petitioner.⁹⁰ Instead, they obtained permission from the hotel's night-desk clerk.⁹¹ The Court unanimously held that the search was unreasonable because the police did not have a warrant.⁹² As such, evidence found in the hotel room was excluded.⁹³

The third category of police mistakes of law involves misinterpretations of settled law.⁹⁴ In these situations, courts analyze the reasonableness of an officer's interpretation of the law, which now hinges on whether the officer acted in good faith and whether his behavior is something that can be deterred.⁹⁵ Police mistakes of substantive law have remained one of the last circumstances where the good-faith exception does not apply and where a defendant can realistically rely on the exclusionary remedy.⁹⁶ However, *Heien v. North Carolina* closed in this gap by holding that an officer's objectively reasonable mistake of law provides the necessary reasonable suspicion to preclude any application of the Fourth Amendment's protections.⁹⁷ In effect, ignorance of the law is an excuse.

II. HEIEN V. NORTH CAROLINA

A. Facts

In April 2010, a North Carolina policeman named Sargent Matt Darisse sat in his patrol car observing traffic on a major interstate.⁹⁸ Dar-

86. Reasonable suspicion is a standard used in criminal procedure that is less stringent than probable cause. Reasonable suspicion is sufficient to satisfy brief stops and detentions, but it is not enough to justify a full search. *Terry v. Ohio*, 392 U.S. 1, 20–22 (1968) (holding that a brief stop is only valid if the officers have an objectively reasonable suspicion to believe that a law is being violated).

87. Logan, *supra* note 74, at 77.

88. *See id.*

89. 376 U.S. 483 (1964).

90. *Id.* at 484–85.

91. *Id.* at 485.

92. *Id.* at 490.

93. *Id.*

94. Marceau, *supra* note 12, at 744.

95. Logan, *supra* note 74, at 78–79. There is a fear that, after *Herring*, courts will begin to hold that as long as the police officer was negligent in making the arrest, the behavior is reasonable, and the Fourth Amendment's protections barred. Marceau, *supra* note 12, at 741 (“[T]here is a palpable fear that the ‘sweeping language’ from [*Herring*] will be used to establish an understanding of the good faith exception as ‘a general exception to exclusion for negligent—rather than reckless or deliberate—police misconduct.’” (quoting *I. Fourth Amendment – Exclusionary Rule*, 123 HARV. L. REV. 153, 157 (2009))).

96. *See* Logan, *supra* note 74, at 79.

97. *See Heien v. North Carolina*, 135 S. Ct. 530, 536 (2014).

98. *Id.* at 534.

isse noticed that the driver of a passing car looked “stiff and nervous,” so he started following in his car.⁹⁹ After following for several miles, Darisse noticed that only one of the brake lights of the car was working, so he pulled the driver over.¹⁰⁰ When he asked the driver of the car, Maynor Javier Vasquez, for his license and registration, he noticed that the owner of the car, Nicholas Brady Heien, was lying across the rear seat.¹⁰¹ There were no problems with the documents, and Darisse issued a warning ticket.¹⁰² However, Darisse became suspicious when the two men gave inconsistent answers about their destination and acted nervous.¹⁰³ Vasquez and Heien answered further questions, and when Darisse asked whether he could search the car, the men consented.¹⁰⁴ After a thorough search of the car, Darisse found a sandwich bag that contained cocaine, and both men were arrested.¹⁰⁵

B. Procedural History

The trial court denied Heien’s motion to suppress the evidence and concluded that the faulty brake light gave Darisse reasonable suspicion to stop the vehicle.¹⁰⁶ “Heien pleaded guilty but reserved his right to appeal the suppression decision.”¹⁰⁷ The North Carolina Court of Appeals reversed, holding that the stop was invalid “because driving with only one . . . brake light was not [technically] a violation of North Carolina law.”¹⁰⁸ The relevant provision of the vehicle code states that a car must be “equipped with a stop lamp on the rear of the vehicle,”¹⁰⁹ and it was undisputed that Heien had one working brake light. The State appealed, and the North Carolina Supreme Court reversed and concluded that Darisse could have reasonably read the statute to require that both brake lights need to be in working order.¹¹⁰ The case was remanded to the North Carolina Court of Appeals, which affirmed the trial court’s denial of the

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.* at 535.

107. *Id.*

108. *Id.*

109. Section 20-129(d) of the North Carolina General Statutes provides in relevant part: “Rear Lamps. -- Every motor vehicle . . . shall have all originally equipped rear lamps or the equivalent in good working order . . .” Subsection (g) provides:

No person shall sell or operate on the highways of the State any motor vehicle, motorcycle or motor-driven cycle, manufactured after December 31, 1955, unless it shall be equipped with a stop lamp on the rear of the vehicle. The stop lamp shall display a red or amber light visible from a distance of not less than 100 feet to the rear in normal sunlight, and shall be actuated upon application of the service (foot) brake. The stop lamp may be incorporated into a unit with one or more other rear lamps.

N.C. GEN. STAT. ANN. §§ 20-129(d), (g) (2009).

110. *Heien*, 135 S. Ct. at 535.

motion to suppress.¹¹¹ The Supreme Court then granted certiorari to review the question of “[w]hether a police officer’s mistake of law can provide the individualized suspicion that the Fourth Amendment requires to justify a traffic stop.”¹¹²

C. Majority Opinion

Chief Justice Roberts authored the majority opinion, and Justices Scalia, Kennedy, Thomas, Ginsberg, Breyer, Alito, and Kagan joined.¹¹³ The opinion affirmed the state court’s ruling that reasonable suspicion can rest on a mistake of law.¹¹⁴ Justice Roberts began by emphasizing that the Court has long held that “the ultimate touchstone of the Fourth Amendment is ‘reasonableness.’”¹¹⁵ However, “[t]o be reasonable is not to be perfect,” and therefore, the Fourth Amendment allows some mistakes on behalf of law enforcement officers.¹¹⁶ The opinion stressed that the limiting factor is that “the mistakes must be those of reasonable men.”¹¹⁷

Justice Roberts then delved into justifying mistakes of substantive law by explaining that a reasonable person can confuse the law just as much as he could confuse the facts, and both are equally compatible with the concept of reasonable suspicion.¹¹⁸ Indeed, to justify this type of seizure, officers only need reasonable suspicion instead of probable cause.¹¹⁹ Reasonable suspicion, the Court explained, is defined as “a particularized and objective basis for suspecting the particular person stopped” broke the law.¹²⁰ The Court went on to explain that reasonable suspicion arises from both “an officer’s understanding of the facts and his understanding of the relevant law.”¹²¹ After mentioning that there are no recent precedents that address substantive mistakes of law in the context of the Fourth Amendment, the opinion stressed that the concept has appeared in numerous cases since the early 1800s.¹²² It also recognized that there were no cases that were directly on point but explained a contrary conclusion would be difficult to reconcile with *DeFillippo*, which held that there is no Fourth Amendment violation if government searches are based on statutes that are later declared unconstitutional.¹²³

111. *Id.*

112. Brief for Petitioner-Appellant, *Heien v. North Carolina*, 135 S. Ct. 530 (2014) (No. 13-604), 2014 WL 2601475, at *1.

113. *Heien*, 135 S. Ct. at 533.

114. *Id.* at 534.

115. *Id.* at 536 (quoting *Riley v. California*, 134 S. Ct. 2473, 2482 (2014)).

116. *Id.*

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

118. *Id.*

119. *Id.*

120. *Id.* (quoting *Navarette v. California*, 134 S. Ct. 1683, 1687–88 (2014)).

121. *Id.*

122. *Id.* at 536–37.

123. *Id.* at 537–38.

Justice Roberts then rejected Heien's argument that *DeFillippo* was a case solely about the exclusionary rule by explaining that *DeFillippo*'s marginal discussion¹²⁴ of the exclusionary rule does not displace the holding that the search did not violate the Fourth Amendment.¹²⁵ It then drew a parallel to *Heien* by explaining that "there was no violation of the Fourth Amendment" because the officer's mistake about whether both brake lights were required by the vehicle code was reasonable.¹²⁶ Heien's second argument attacked the notion that the Fourth Amendment's tolerance of mistake of fact should extend to mistake of law because mistake of law is plainly a question of the officer's knowledge rather than a judgment the officer made on the fly while working in the field.¹²⁷ Justice Roberts addressed this argument by pointing out that an officer may suddenly confront a situation in the field where the statute is unclear, which makes mistake of law and mistake of fact one category that hinges on reasonableness, rather than two separate categories.¹²⁸ The opinion also rejected the suggestion that the decision would discourage police from learning the law because the mistake must still be "*objectively reasonable*."¹²⁹

The last major point that the Court addressed was that ignorance of the law is still no excuse.¹³⁰ In cases like this one, police are trying to implement the Fourth Amendment, not break the law.¹³¹ Thus, when law enforcement officers reasonably believe that others have broken the law, they may stop them to investigate without violating the Fourth Amendment.¹³²

D. Concurring Opinion

Justice Kagan, with whom Justice Ginsberg joined, agreed with the majority opinion that the "Fourth Amendment tolerates only . . . *objectively* reasonable mistakes of law."¹³³ Justice Kagan's first main point was that an officer's subjective understanding is irrelevant and that the government cannot defend the officer using mistake of law if the officer was unaware or untrained in the law.¹³⁴ Her second point was that "if [a] statute is genuinely ambiguous," then the mistake is reasonable.¹³⁵ If the statute is not genuinely ambiguous, the statute must be "really difficult"

124. The Court pointed out that in *DeFillippo*, the Court stated in a footnote that that suppression of the evidence found on *DeFillippo* would serve none of the purposes of the exclusionary rule. *Id.* at 538.

125. *Id.*

126. *See id.* at 539.

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.* at 540.

131. *Id.*

132. *Id.*

133. *Id.* (Kagan, J., concurring) (quoting *id.* at 539 (majority opinion) (alteration in original)).

134. *Id.* at 541.

135. *Id.*

to understand or a “very hard question of statutory interpretation.”¹³⁶ The opinion concluded by speculating that the vehicle code posed a difficult question of interpretation because it had conflicting signals as to whether the brake light requirement was to be taken in the singular or plural.¹³⁷

E. Dissenting Opinion

Justice Sotomayor began her dissent by agreeing with the majority opinion that “the ultimate touchstone of the Fourth Amendment is ‘reasonableness.’”¹³⁸ However, she promptly pointed out that “a fixed legal yardstick” would make it easier to administer this notion rather than a vague standard of reasonable legal mistakes.¹³⁹ She emphasized that the state of the law should always trump an individual’s misunderstanding of the law because, unlike facts, the meaning of the law is not indefinite.¹⁴⁰ As such, it is a court’s job to interpret the law, not a police officer’s.¹⁴¹ She also pointed out that permitting mistakes of law to justify seizures has the effect of preventing the clarification of the law because courts no longer need to clarify laws through decisions; they merely need to decide if the officer’s interpretation was reasonable.¹⁴² Additionally, Justice Sotomayor pointed out that *DeFillippo* was not a case about mistake of law at all because it simply concerned the validity of a law.¹⁴³ Thus, the Court was wrong in justifying the decision in *Heien* using *DeFillippo*.¹⁴⁴ She concluded by explaining that she would hold that “an officer’s mistake of law, no matter how reasonable, cannot support the individualized suspicion necessary to justify a seizure under the Fourth Amendment.”¹⁴⁵

III. ANALYSIS

The *Heien* decision further erodes the general guarantee to be free from unreasonable searches and seizures because it allows police to enforce nonexistent laws without violating the Fourth Amendment. Indeed, as long as a police officer makes an objectively reasonable mistake (i.e., he is acting in good faith), when interpreting and enforcing the law, it is the citizen who is punished instead of the government. Expanding the good-faith exception in this way not only limits the scope of the Fourth Amendment right, but also expands the factual scenarios where the Court will preclude any discussion of the exclusionary remedy.

136. *Id.* (quoting Transcript of Oral Argument at 50, *Heien v. North Carolina*, 135 S. Ct. 530 (2014) (No. 13-604)).

137. *Id.* at 541–42.

138. *Id.* at 542 (Sotomayor, J., dissenting) (quoting *Riley v. California*, 134 S. Ct. 2473, 2482 (2014)).

139. *Id.*

140. *Id.* at 542–43.

141. *Id.* at 543.

142. *Id.* at 542–43.

143. *Id.* at 546.

144. *See id.* at 546–47.

145. *Id.* at 547.

The following analysis proceeds in three main sections. Section A will discuss how the Court accomplished this expansion. Section A.1 will show how the Court broadened the holding in *DeFillippo* to justify allowing police mistakes of law, and Section A.2 will show how the Court combined police mistakes of law and mistakes of fact into one category. Section B will show how *Heien*'s expansion of the good-faith exception is procedurally eroding the Fourth Amendment and stunting the development of the Fourth Amendment's doctrine. Section C will discuss the implications of allowing police to make mistakes of substantive law. Section C.1 will show how the expansion of police discretion will disproportionately impact minorities, and Section C.2 will show how allowing police mistakes of law threatens judicial integrity, undermines the expectation that the law is "definite and knowable," and disincentivizes legislators to make laws that are clear and concise.

A. The Unlimited Scope of Reasonable Mistakes of Law

Since the Court first started making good-faith exceptions to the exclusionary rule, it has struggled to find a way to limit each exception to a narrow range of circumstances.¹⁴⁶ As a result, all of the exceptions have followed a trend of expanding to encompass an increasingly broad range of situations.¹⁴⁷ *Heien* is unique in the expansion of the good-faith exception because it not only gives police officers a legal justification to use a nonexistent law to circumvent Fourth Amendment protections, but also contradicts the most important maxim of substantive criminal law that "ignorance of the law is no excuse."¹⁴⁸ The Court accomplished this disturbing expansion in two significant ways. First, it broadened the holding in *DeFillippo* to justify allowing a law enforcement officer to make a reasonable mistake of substantive law. Second, the Court erased the differences between mistake of law and mistake of fact by combining them into one broad category.¹⁴⁹ Now, as long as the officer makes an objectively reasonable mistake, the Fourth Amendment is nothing more than a holographic protection that disappears when invoked.

146. See Marceau, *supra* note 12, at 733.

147. See *id.*

148. Notably, *Heien* argued that because the maxim ignorance of the law is no excuse applies to citizens who break the law, it should also apply to police. In the majority opinion, the Court responded to this argument by explaining that ignorance of the law does not apply because *Heien* "is not appealing a brake light ticket; he is appealing a cocaine-trafficking conviction as to which there is no asserted mistake of fact or law." *Heien*, 135 S. Ct. at 540. But the ultimate effect of this decision is that the Court no longer holds police officers accountable to knowing and abiding by the rule of law. The phrases "reasonable mistake of law" and "ignorance of the law" essentially mean the same thing. See Alschuler, *supra* note 73, at 488–89 (explaining that the good-faith exception in *Leon* weakens the exclusionary rule because it undermined the familiar rule of strict liability: ignorance of the law is no excuse).

149. See *Heien*, 135 S. Ct. at 536–37.

1. The Vague Limit on Objectively Reasonable Mistakes

Throughout the past decade, the Court has made a routine of using search and seizure precedents in a way that ignores any limitations on good-faith exceptions yet bolsters the notion that, if the police officer acted reasonably, deterrence cannot be achieved.¹⁵⁰ The source of this problem dates back to *Leon*, which was initially intended to limit the good-faith exception to situations that involve an officer's reasonable reliance on a warrant that is later invalidated.¹⁵¹ However, in subsequent cases,¹⁵² the Court refused to acknowledge that the good-faith exception only applies to invalidated warrants and simply explained that if the officer reasonably believes he has satisfied the probable cause requirement, the exclusionary rule serves no purpose whatsoever.¹⁵³

The Court used the same tactic in *Heien* to expand DeFillippo's mistake of law limitations. In *Heien* the Court's central justification for expanding the good-faith exception to include mistakes of substantive law was that a contrary ruling would contradict the Court's holding in *DeFillippo*.¹⁵⁴ However, *DeFillippo* was intended to set precedent only in circumstances where the law enforcement officer relied on a law that was later deemed unconstitutional.¹⁵⁵ In contrast, *Heien* had nothing to do with a law that was later deemed unconstitutional. It involved a police officer's interpretation of an ambiguous law and whether his interpretation was reasonable.¹⁵⁶ Yet, instead of limiting DeFillippo's narrow ruling by recognizing that it does not overlap with the facts of *Heien*, the Court justified allowing police mistakes of substantive law by implying that, in both cases, the officers acted reasonably.¹⁵⁷

Moreover, instead of providing a clear standard to limit the scope of reasonable mistakes, the Court provided an extremely vague and expansive standard by stating that the only "limit is that 'the mistakes must be those of reasonable men.'"¹⁵⁸ In essence, it remains entirely unclear how much law a reasonable police officer is supposed to know. Do reasonable police officers know the most recent Supreme Court cases interpreting the laws? Are police officers acting reasonably if they simply follow the

150. See Gray, *supra* note 25, at 19–22 (discussing the Court's contemporary deterrence-only approach).

151. See *United States v. Leon*, 468 U.S. 897, 922–23 (1984).

152. *Herring v. United States*, 555 U.S. 135, 138–39 (2009) (holding that as long as the officer is negligent in attenuating the arrest, he is acting in good faith, and the jury should not be barred from considering all of the evidence); *Arizona v. Evans*, 514 U.S. 1, 14–16 (1995) (refusing exclusion when an officer mistakenly believed that a warrant had issued for an individual's arrest); *Illinois v. Krull*, 480 U.S. 340, 355 (1987) (holding that the exclusionary remedy is unavailable when legislators violate the Fourth Amendment.).

153. See Gray, *supra* note 25, at 39–41.

154. See *Heien*, 135 S. Ct. at 538–39.

155. See *Michigan v. DeFillippo*, 443 U.S. 31, 39 (1979).

156. *Heien*, 135 S. Ct. at 535.

157. See *id.* at 538–39.

158. *Id.* at 536 (quoting *Brinegar v. United States*, 338 U.S. 160, 176 (1949)).

text of the statutes as they appear on their computers, or do they need to continue to study the laws? Is a police officer still acting reasonably if she bases her decisions on what she was taught in police academy but does not actually know what the law says? In *Heien*, it seems likely that the police officer may have never read the statute concerning brake lights and that he may have just assumed that driving with only one working brake light violated the law. Later in the opinion, Justice Roberts explained that there is no Fourth Amendment violation if the mistake of law simply relates to the question of “whether it was reasonable for an officer to suspect that the defendant’s conduct was illegal.”¹⁵⁹ Thus, as long as the officer has an inkling of suspicion that a person is doing something illegal, he can circumvent the Fourth Amendment to find out.

2. Reasonable Mistakes of Law Are Inherently Different from Reasonable Mistakes of Fact

In addition to using precedent as a justification for expanding the mistake of law exception, the Court also expanded the breadth of reasonable mistakes by combining mistake of law and mistake of fact into one category.¹⁶⁰ The Court prefaced this notion when it explained that to be “reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes.”¹⁶¹ It went on to explain that reasonable mistakes of law and fact are equally compatible with the concept of reasonable suspicion because reasonable suspicion “arises from the combination of an officer’s understanding of the facts and his understanding of the relevant law.”¹⁶² However, the ultimate effect of expanding police mistakes to include all mistakes of law is that it causes the existence of the Fourth Amendment to be entirely dependent on the reasonableness of the officer’s understanding of the law.

There are important practical distinctions that the Court ignored when it combined mistakes of law and fact. First, officers have always had some leeway in making probable-cause determinations because factual scenarios are almost always somewhat ambiguous.¹⁶³ As Justice Sotomayor pointed out, “what is generally demanded of the many *factual determinations* . . . is not that they always be correct, but that they always be reasonable.”¹⁶⁴ This leeway makes sense considering that an officer’s understanding of the facts is often a combination of quick observations

159. *Id.* at 539.

160. *See id.* at 536.

161. *Id.*

162. *Id.*

163. *See id.* at 542–43 (Sotomayor, J., dissenting).

164. *Id.* at 543 (quoting *Illinois v. Rodriguez*, 497 U.S. 177, 185 (1990)).

and assessments of human behavior.¹⁶⁵ In contrast, interpretation of the law does not require human behavior observations or inquiry.¹⁶⁶

Furthermore, officers are often expected to make factual determinations under time pressure, especially in the context of traffic stops.¹⁶⁷ The Court has taken this into consideration by explaining that “[t]he calculus of reasonableness must” take into account “the fact that police officers . . . often [need] to make split-second judgments” in situations that are tense and unpredictable.¹⁶⁸ In contrast, officers are not under time pressure to learn the law while on patrol duty.¹⁶⁹ Rather, police officers should know and understand the law before they are given a duty to enforce it. Considering the advancements in police training and technology, it is extremely unfair for the Court to pronounce that police do not have to know every facet of the law, but citizens do.¹⁷⁰ The absurdity of this approach becomes even more apparent when one considers that when a police officer is off duty, and is driving as a citizen, he has a duty to know every nuance of the law, but as soon as he puts on his uniform and badge, he has no such duty. In sum, trying to figure out what the law entails is not something that should involve spur-of-the-moment decision-making; rather, it is a function of prior training, practice, and various forms of technology. Indeed, the notion that the law is “definite and knowable” is at the core of our legal system.¹⁷¹

Justice Sotomayor addressed this in her dissent by explaining that the Court has always emphasized that the facts leading up to the search, in combination with the law, are what provide a basis for probable cause—“not an officer’s conception of the rule of law,” and certainly not “an officer’s reasonable misunderstanding about the law.”¹⁷² She went on to emphasize that there is “scarcely a peep” in the history of the Fourth Amendment suggesting that an officer’s understanding of the law is intended to factor into the reasonableness metric.¹⁷³ In fact, *Heien* contradicts the long line of precedents explaining that the principle components of reasonable suspicion and probable cause have always been an officer’s assessment of the facts weighed against rule of law, not an officer’s as-

165. *Id.* at 542–43.

166. *Id.* at 543.

167. *Id.*

168. *Graham v. Connor*, 490 U.S. 386, 396–97 (1989) (discussing the scope of reasonableness in the context of police stops).

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

170. Logan, *supra* note 74, at 84 (discussing how the argument that laws are too voluminous and complex is “especially unjustified given unprecedented improvements in the educational backgrounds of police and ready access to substantive law, including via dashboard computers”).

171. *Heien*, 135 S. Ct. at 543 (Sotomayor, J., dissenting); *cf.* Logan, *supra* note 74, at 83 (“The expectation that the law be ‘definite and knowable’ is no more tenable for police today than it is for the lay public.” (footnote omitted)).

172. *Heien*, 135 S. Ct. at 542 (Sotomayor, J., dissenting).

173. *Id.* at 543.

assessment of the law.¹⁷⁴ Ultimately, the effect of combining mistakes of law and fact into one category is that the availability of Fourth Amendment protections now hinge on the reasonableness of the officer's knowledge and understanding of the law.

B. Eliminating Discussion of the Exclusionary Remedy Will Stunt Meaningful Development of the Fourth Amendment

Other Supreme Court cases that discuss police officers' mistakes in the context of searches and seizures hold that the mistakes violate the Fourth Amendment right; however, because the officer acted reasonably, there is no justification for the exclusionary remedy.¹⁷⁵ In contrast, the *Heien* Court discussed the police officer's legal error in the context of the scope of the right, thereby precluding any discussion of the exclusionary remedy.¹⁷⁶ Over time, this approach runs the risk of limiting any meaningful development of the Fourth Amendment because, instead of deciding whether the search and seizure was reasonable, the Court decides whether it was reasonable for the officer to make a mistake about the relevant law. As remedies fade from the Court's analyses, there will be less of a need to litigate Fourth Amendment cases, and the doctrine will stagnate and lose its living character.¹⁷⁷ In short, *Heien* demonstrates that the Court is much more concerned with short-term implications of officer culpability and deterrence than the long-term development of the Fourth Amendment.

174. See, e.g., *Devenpeck v. Alford*, 543 U.S. 146, 153 (2004) (explaining that an arresting officer's state of mind does not factor into the probable-cause inquiry, "except for *the facts* that he knows" (emphasis added)); *Ornelas v. United States*, 517 U.S. 690, 696 (1996) (explaining that the principal components of probable cause are "the events which occurred leading up to the stop or search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion or to probable cause"); *Illinois v. Rodriguez*, 497 U.S. 177, 185 (1990) ("[W]hat is generally demanded of the many *factual determinations* that must regularly be made by agents of the government . . . is not that they always be correct, but that they always be reasonable." (emphasis added)); *Pullman-Standard v. Swint*, 456 U.S. 273, 289 n.19 (1982) ("[T]he issue is whether the facts satisfy the [relevant] statutory [or constitutional] standard, or to put it another way, whether the rule of law as applied to the established facts is or is not violated."); *Terry v. Ohio*, 392 U.S. 1, 21–22 (1968) (framing the question as to whether the "facts" give rise to reasonable suspicion).

175. See, e.g., *Herring v. United States*, 555 U.S. 135, 147–48 (2009) (holding that the exclusionary rule is not invoked when the officer acts in good faith but is simply negligent in making an arrest); *Arizona v. Evans*, 514 U.S. 1, 15–16 (1995) (refusing to apply the exclusionary rule when an officer mistakenly believed that a warrant had issued for an individual's arrest); *Illinois v. Krull*, 480 U.S. 340, 349 (1987) (extending the "good faith" exception to the exclusionary rule to cover cases in which police carry out a search or seizure pursuant to the authority of a statute that a court later determines violates the Fourth Amendment); *United States v. Leon*, 468 U.S. 897, 913 (1984) (creating a good-faith exception to the exclusionary rule when a warrant is issued by a "detached and neutral" judge). The only other case to hold that an officer's legal error did not violate the Fourth Amendment right was *Michigan v. DeFillippo*, which held that an officer's reliance on a law that was later invalidated for void-for-vagueness grounds did not violate the Fourth Amendment. 443 U.S. 31, 39–40 (1979).

176. *Heien*, 135 S. Ct. at 536–40.

177. *Marceau*, *supra* note 12, at 731.

The exclusionary rule's ability to develop the Fourth Amendment's guarantee to be free from unreasonable searches and seizures becomes abundantly clear when one compares the Fourth Amendment's development before and after the exclusionary rule was automatically applied.¹⁷⁸ Simply put, before the exclusionary rule existed, the Court rarely addressed the meaning of the Fourth Amendment, and as such, Fourth Amendment law never evolved or developed.¹⁷⁹ In contrast, when the Court automatically applied the exclusionary rule, the content of the Fourth Amendment was thoroughly explained.¹⁸⁰ Today, the Court is somewhere in the middle of these two extremes, which can partially be attributed to the growing list of good-faith exceptions to the exclusionary remedy.¹⁸¹ However, after *Heien*, the Court will likely use the good-faith exception to narrow the scope of the Fourth Amendment right, in addition to the remedy, which will provide enough momentum to begin a new era where the exclusionary rule is only applied in cases with flagrant officer conduct.¹⁸²

Indeed, the *Heien* Court continued the trend of applying *Herring* and *Davis*'s assessment of the reasonableness of the officer's conduct (i.e., the good-faith exception). However, instead of admitting the evidence of cocaine found in *Heien*'s car by barring the exclusionary remedy, the Court justified admitting the evidence by holding that the search did not violate *Heien*'s Fourth Amendment right.¹⁸³ This procedurally different way of using the good-faith exception contracts the scope of the Fourth Amendment's protections by causing the validity of the search or seizure to hinge on the convoluted metaquestion of whether it is reasonable for a police officer to believe the search was reasonable.¹⁸⁴ Notably, none of the Justices in the majority or concurring opinions discussed the validity of the search or the exclusionary remedy. Instead, they vaguely navigated the scope of "objectively reasonable" mistakes.¹⁸⁵ The majority opinion ambiguously stated that "[t]he limit is that 'the mistakes must be those of reasonable men.'"¹⁸⁶ Justice Kagan's concurring opinion made the standard slightly more lucid when she explained that a mistake

178. *See id.* at 731–32.

179. *Id.* ("If . . . violations of the Fourth Amendment are understood to result in a nearly absolute and automatic application of the exclusionary rule, as the Court seemed to anticipate in *Katz v. United States*, then courts adjudicating criminal cases will have no choice but to carefully and precisely articulate the content of the Fourth Amendment." (footnote omitted)).

180. *Id.*

181. *Id.* at 732.

182. *See Kamin & Marceau, supra* note 19, at 615–18 ("Taken together, *Hudson*, *Herring*, and *Davis* represent a fundamental reworking of the exclusionary rule.").

183. *Heien v. North Carolina*, 135 S. Ct. 530, 539 (2014) ("Here, by contrast, the mistake of law relates to the antecedent question of whether it was reasonable for an officer to suspect that the defendant's conduct was illegal. If so, there was no violation of the Fourth Amendment in the first place.").

184. *See id.*

185. *Id.* (emphasis omitted).

186. *Id.* at 536 (quoting *Brinegar v. United States*, 338 U.S. 160, 176 (1949)).

of law is only reasonable if judges would take opposite positions on what it says.¹⁸⁷ But when the contours of the Fourth Amendment right are articulated in the context of the officer's mistake, rather than the validity of a search or seizure, the Court has no incentive to reach the merits of the case.¹⁸⁸ The Court seems to have forgotten that when it first began to meaningfully develop the Fourth Amendment, it emphasized that remedies define rights and that without the exclusionary remedy police officers have no incentive to refrain from conducting unreasonable searches and seizures.¹⁸⁹

C. The Implications of Allowing Reasonable Mistakes of Substantive Law

Police should not be excused from making mistakes of law because when police become interpreters of the law, in addition to merely enforcers, it undermines our criminal justice system and disserves many of our basic rule-of-law values. Allowing police to make mistakes of law not only creates a perverse double standard for the well-known maxim "ignorance of the law is no excuse," but also deprives individuals of their physical liberty and causes police officers to violate their own sworn duty to enforce the law.¹⁹⁰ Indeed, *Heien v. North Carolina* gave the Court an opportunity to put legal bounds on an already discretionary law enforcement system. Instead, the Court essentially gave police officers a license to stop individuals based on whatever subjective criteria they see fit. As long as police officers can point to one of the numerous ambiguously worded traffic codes as a legal justification, they will no longer violate the Fourth Amendment. This endorsement of police discretion will not only exacerbate the problem of racially charged traffic stops, but also will threaten judicial integrity, undermine the expectation that the law is clear and knowable, and disincentivize legislators to make laws that are clear and concise.

1. The Expansion of Police Discretion Will Have a Disproportionate Effect on Minorities

For the last half-century, courts have played an important role in interpreting and clarifying substantive criminal laws after they have been codified by legislatures.¹⁹¹ However, allowing police officers to take over the role of interpreting substantive criminal laws signifies "a [major] departure from this institutional arrangement."¹⁹² Indeed, allowing police

187. See *id.* at 541 (Kagan, J., concurring).

188. See Marceau, *supra* note 12, at 695.

189. *Weeks v. United States*, 232 U.S. 383, 393 (1914) ("If letters and private documents can thus be seized and held and used in evidence against a citizen accused of an offense, the protection of the 4th Amendment, declaring his right to be secure against such searches and seizures, is of no value, and, so far as those thus placed are concerned, might as well be stricken from the Constitution."), *overruled by Mapp v. Ohio*, 367 U.S. 643 (1961).

190. Logan, *supra* note 74, at 70.

191. *Id.* at 95.

192. *Id.*

officers to make mistakes of law will encourage officers to interpret laws in ways that best serve the government's crime control interests because the only limit on their mistakes is that they must be "mistakes . . . of reasonable men."¹⁹³ This endorsement of police discretion will remove any incentive for police officers to refrain from conducting racially charged traffic stops because they will be able to stop an individual based on any ambiguously worded traffic code.

There is a dire need for the Court to better address the problems that stem from racial tension between police officers and minorities. Indeed, there is widespread agreement that the War on Drugs has exacerbated racial profiling in the context of traffic stops and that allegations of racism remain prevalent throughout American streets and courtrooms.¹⁹⁴ In just the past few months, the deaths of Levar Jones,¹⁹⁵ Walter Scott,¹⁹⁶ and Samuel DuBose,¹⁹⁷ all of whom were black men that were shot by a white police officer during a traffic stop, have illuminated that the racial tension between minorities and law enforcement is in dire need of being more seriously addressed. But these scenarios provide just a sampling of the nationwide problem. According to the Justice Department's 2012 statistics, black drivers are 31% more likely to be pulled over than white drivers,¹⁹⁸ more than twice as likely to be subject to police searches as white drivers, and more than twice as likely to not be given any reason

193. See *Heien v. North Carolina*, 135 S. Ct. 530, 536 (2014); Logan, *supra* note 74, at 95.

194. See, e.g., Gabriel J. Chin, *Race, The War on Drugs, and the Collateral Consequences of Criminal Conviction*, 6 J. GENDER RACE & JUST. 253, 254 (2002) ("The War on Drugs . . . is a new occasion for the employment of traditional techniques of discriminating against racial minorities."); Jamie Fellner, *Race, Drugs, and Law Enforcement in the United States*, 20 STAN. L. & POL'Y REV. 257, 257-59 (2009) ("The costs and benefits of [the] . . . 'war on drugs' [has been] fiercely debated. . . . [But there is no dispute] 'that this ostensibly race-neutral effort has been waged primarily against black Americans.'").

195. A white police officer stopped Levar Jones for a seatbelt violation. Jason Hanna et al., *Video Shows Trooper Shooting Unarmed Man, South Carolina Police Say*, CNN (Sept. 26, 2014, 8:53 AM), <http://www.cnn.com/2014/09/25/justice/south-carolina-trooper-shooting/>. When Jones reached for his wallet, the officer thought he was reaching for his gun and shot him. *See id.*

196. A white police officer stopped Walter Scott because he had broken brake light. Dana Ford, *South Carolina Ex-Police Officer Indicted in Walter Scott Killing*, CNN (Jun. 8, 2015, 5:30 PM), <http://www.cnn.com/2015/06/08/us/south-carolina-slager-indictment-walter-scott/>. "[A] dash cam video . . . shows the two men talking before Scott gets out of the car and runs." *Id.* It then shows the police officer chasing him and then shooting him. *Id.*

197. A white police officer stopped Samuel DuBose "because his car didn't have a front license plate." Charles M. Blow, Op-Ed., *The Shooting of Samuel DuBose*, N.Y. TIMES (July 29, 2015), http://www.nytimes.com/2015/07/30/opinion/charles-blow-the-shooting-of-samuel-dubose.html?_r=0. His body camera shows the officer taking out his gun and shooting DuBose in his car without any provocation. *Id.* The officer then lied about the stop to authorities and said he was being "dragged by the vehicle and had to fire his weapon." *Id.* (quoting Officer Tensing's information report).

198. Christopher Ingraham, *You Really Can Get Pulled over for Driving While Black Federal Statistics Show*, WASH. POST (Sept. 9, 2014), <https://www.washingtonpost.com/news/wonk/wp/2014/09/09/you-really-can-get-pulled-over-for-driving-while-black-federal-statistics-show/>.

for the traffic stop.¹⁹⁹ In light of these statistics, as long as the Court continues to expand police discretion and ignore the role that the Fourth Amendment plays in protecting people from racial profiling,²⁰⁰ discrimination is unlikely to be ameliorated.

In *Heien*, the majority opinion explained that “[r]easonable suspicion arises from . . . an officer’s understanding of the relevant facts and his understanding of the relevant law.”²⁰¹ Applied to the facts, Sergeant Darisse’s mistaken understanding of the brake light traffic law provided the necessary reasonable suspicion to stop and search Heien’s car.²⁰² However, the Court failed to acknowledge an important aspect of the “reasonable suspicion” that began the case. Sergeant Matt Darisse was sitting on the side of a major interstate watching cars drive by when he noticed that a Hispanic driver, Maynor Vasquez, looked “stiff and nervous” because he was “gripping the steering wheel at a 10 and 2 position and looking straight ahead.”²⁰³ In other words, Vasquez was followed for being Hispanic and driving a beat-up car in North Carolina.

Putting aside Darisse’s reliance on the brake light law that led to the Court’s mistake of law discussion, it is important to note that there are so many traffic violations that it has become “virtually impossible for a driver to not commit an infraction.”²⁰⁴ As such, a police officer can follow a car for a short time and almost always find a reason to pull the person over.²⁰⁵ Considering that minority drivers are much more likely to be pulled over than Caucasian drivers, it is difficult to ignore the role that race plays in the process.²⁰⁶

Before *Heien* was decided, the Rutherford Institute²⁰⁷ attempted to draw the Court’s attention to this problem by submitting an amicus curi-

199. LYNN LANGTON & MATTHEW DUROSE, U.S. DEP’T OF JUSTICE, POLICE BEHAVIOR DURING TRAFFIC AND STREET STOPS, 2011, at 1, 9, 17 (2013), <http://www.bjs.gov/content/pub/pdf/pbtss11.pdf>.

200. See Sherry F. Colb, *Stopping a Moving Target*, 3 RUTGERS RACE & L. REV. 191, 204–06 (2001) (explaining that one of the evils that the Fourth Amendment was to protect against is unbridled discretion of law enforcement agents).

201. *Heien v. North Carolina*, 135 S. Ct. 530, 536 (2014).

202. See *id.* at 535–36.

203. Dahlia Lithwick, *The Supreme Court Ignores the Lessons of Ferguson*, SLATE (Dec. 16, 2014), http://www.slate.com/articles/news_and_politics/jurisprudence/2014/12/heien_v_north_carolina_as_the_rest_of_the_country_worries_about_police_overreach.html (quoting Officer Matt Darisse’s suppression hearing testimony).

204. Paul Butler, *The White Fourth Amendment*, 43 TEX. TECH L. REV. 245, 252 (2010).

205. *Id.*

206. Furthermore, in *Whren v. United States*, the Court held that a police officer’s subjective motivation for stopping an individual is irrelevant and that the only inquiry is whether there is probable cause. 517 U.S. 806, 818–19 (1996). Consequently, even if the police officer has unconstitutional intentions for the stop, as long as he can conjure up a basis for probable cause based on a traffic code, there is no Fourth Amendment violation. See *id.*

207. The Rutherford Institute is a non-profit conservative legal organization dedicated to the defense of civil, especially religious, liberties and human rights. See generally RUTHERFORD INST., <https://www.rutherford.org/>.

ae brief thoroughly discussing how traffic stops disproportionately affect discrete and insular minorities.²⁰⁸ The brief emphasized that the expansion of police discretion as it relates to “mistakes of law will . . . have the effect of encouraging and increasing the number of legally baseless searches.”²⁰⁹ In other words, it gives officers a broader range of legal justifications to hide racially charged motives. Unfortunately, Justice Sotomayor was the only one to recognize this. In her dissent, she explained that expanding police discretion to include reasonable mistakes of law “further erod[es] Fourth Amendment[] protection of civil liberties in a context where that protection has already been worn down.”²¹⁰

2. Other Implications of Allowing Police to Make Mistakes of Substantive Law

The concept that the U.S. government is “a government of laws, and not of men” was first established by John Adams in 1780.²¹¹ Since then, this principle has been repeated in dozens of Supreme Court decisions and emphasized as an important part of guaranteeing all citizens equal protection under the law.²¹² However, *Heien* turned this notion on its head by defending the work of law enforcement officers, even if it eradicates the protections of the fundamental rights embedded in the Fourth Amendment. In effect, if the Fourth Amendment is controlled by “men” and not by “law,” it will threaten judicial integrity, undermine the expectation that the law is “definite and knowable,” and disincentivize legislators to make laws that are clear and concise.²¹³

First, allowing police mistakes of law significantly undermines judicial authority because instead of interpreting and clarifying statutory language, courts will instead feel the need to analyze whether the police officer’s interpretation of the law was reasonable.²¹⁴ The problem with allowing courts to resolve cases without interpreting the law is that most cases that involve police mistakes of law arise in the context of low-level offenses, like traffic codes, which are often worded in ambiguous ways and are in desperate need of clarification.²¹⁵ If each law enforcement officer is able to interpret these laws in different, yet “reasonable,” ways, they will never be clarified, which burdens citizens and law enforcement alike.²¹⁶ This not only portrays the message that the “suggestion box” for

208. Brief of The Rutherford Institute, Amicus Curiae in Support of the Petitioner at 1–3, *Heien v. North Carolina*, 135 S. Ct. 530 (2014) (No. 13-604).

209. *Id.* at 5.

210. *Heien v. North Carolina*, 135 S. Ct. 530, 543 (2014) (Sotomayor, J., dissenting).

211. Clifford W. Taylor, *A Government of Laws, and Not of Men*, 22 T.M. COOLEY L. REV. 199, 199 (2005) (quoting the Massachusetts Constitution of 1780).

212. *Id.*

213. See Logan, *supra* note 74, at 83, 95–98 (discussing the implications of police mistakes of law on separation of powers).

214. *Id.* at 95–96.

215. See *id.* at 95–98.

216. See *id.*

interpreting the law is always open, but also discourages police officers from learning and applying the law in a consistent way. In essence, it seriously undermines the foundational democratic principle that the law must be “definite and knowable.”²¹⁷

The majority opinion attempted to address this problem by pointing out that the objectively reasonable limit will provide enough of an incentive for police officers to continue to learn the law.²¹⁸ However, the Court ignored the fact that even if a police officer knows the law extremely well, he will still be able to use any ambiguous low-level offense to justify his search.²¹⁹ Moreover, the Court refused to acknowledge that police departments are far from being neutral and detached arbitrators in the judicial system, mostly because their primary goal is to appear to have a robust system of crime control.²²⁰ Police departments are not condemned for arresting too many criminals; however, they are condemned when they appear to be too soft on criminals, which is a threat if police officers always narrowly construe statutes.²²¹ To make things worse, police officers often lack direct oversight because most are employed by county, local, or municipal governments, which often have extremely decentralized accountability.²²² Simply put, allowing law enforcement officers to assume the role of interpreters of the law will have the effect of usurping judicial authority because courts will no longer be obliged to interpret statutory language and clarify the law; they will merely need to decide if the officer’s interpretation was reasonable.²²³ In effect, vague laws will become free tickets for police to circumvent Fourth Amendment protections and to search individuals at their discretion.

Validating police mistakes of law also undermines legislative accountability because when courts eliminate application of the exclusionary rule, legislators have little incentive to write laws that are clear and concise.²²⁴ It is important to note that legislators and law enforcement officials often work together to design policies that effectively bring the guilty to punishment. Accordingly, courts are reluctant to intervene or impose any substantive limits on this collective effort.²²⁵ By the same token, courts’ only significant tool for condemning Fourth Amendment policies is through the application of the exclusionary rule.²²⁶ Thus, when courts withhold its application, legislators have little incentive to make clear laws because they are no longer sensitized to losing cases where

217. *Id.* at 83.

218. *See Heien v. North Carolina*, 135 S. Ct. 530, 540 (2014).

219. Logan, *supra* note 74, at 83.

220. *Id.* at 98.

221. *Id.*

222. *See id.* at 98–99.

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

224. *See Logan*, *supra* note 74, at 101–02.

225. *Id.*

226. *See id.*

evidence has been excluded.²²⁷ As a result, police will have an even broader range of unclear substantive laws, which will give them more discretion in justifying unreasonable searches.²²⁸

CONCLUSION

Heien gives officers a legal justification to stop individuals at their discretion and to use an ambiguous law as a free ticket to circumvent Fourth Amendment protections. It also creates a perverse double standard for the basic tenet—ignorance of the law is no excuse—by allowing police officers to interpret laws in ways that best serve their interests, but requiring citizens to know and follow every law, regardless of how ambiguous it is. But what is particularly unique about *Heien* is that it expanded the good-faith exception in both degree and application; it limited the factual scenarios where the Court discusses the application of the exclusionary remedy and shifted the analysis of “objectively reasonable mistakes” from a question of remedy to a question of right. In doing so, *Heien* seriously undermined the protections that the Fourth Amendment provides individuals. Now, the availability of the Fourth Amendment right to be free from unreasonable searches and seizures no longer hinges on whether the search or seizure was reasonable, as the text of the Fourth Amendment requires. Instead, the validity of a search or seizure turns on the convoluted metaquestion of whether it is reasonable for a police officer to believe the search was reasonable.

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227. *Id.* (“When courts indulge police legal misunderstandings, especially relative to textually uncertain laws, and withhold application of the exclusionary rule, legislators, likely politically sensitized to the ‘loss’ of the more serious cases from which the seizures emanate, have less incentive to avoid textual imprecision.” (footnote omitted)).

228. *See id.*

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