No. 22-50045

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
VICTOR MANUEL RAMIREZ,
Defendant-Appellant.

On Appeal from the United States District Court
for the Central District of California
No. 8:20-CR-00134-SVW-1
Hon. Stephen V. Wilson

BRIEF OF *AMICI CURIAE* AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA AND AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA IN SUPPORT OF APPELLANT'S PETITION FOR REHEARING *EN BANC*

Tiffany Bailey
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF SOUTHERN CALIFORNIA
1313 West Eighth Street
Los Angeles, California 90017
(213) 977-9500
tbailey@aclusocal.org

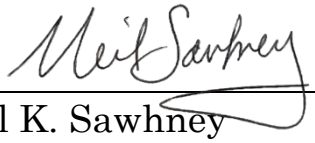
Neil K. Sawhney
Shilpi Agarwal
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF NORTHERN CALIFORNIA
39 Drumm Street
San Francisco, CA 94111
(415) 621-2493
nsawhney@aclunc.org

Counsel for Amici

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rules 26.1 and 29(a)(4)(A) of the Federal Rules of Appellate Procedure, *amici curiae* state that they do not have a parent corporation and that no publicly held corporation owns 10 percent or more of their stock.

Date: August 12, 2024



Neil K. Sawhney
AMERICAN CIVIL LIBERTIES UNION FOUNDATIONS

Counsel for Amici

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Rules

Other Authorities

STATEMENT OF INTEREST[1]

The American Civil Liberties Union ("ACLU") Foundations of Northern California and Southern California are affiliates of the ACLU, a national nonprofit, nonpartisan organization dedicated to furthering the principles of liberty and equality embodied in the Constitution and this Nation's civil rights laws. For decades, these ACLU affiliates have advocated to promote racial justice, to protect the Fourth Amendment rights of the criminally accused, and to advance equal protection for people of color. They have frequently appeared before this Court, both as direct counsel and *amici curiae*, in cases implicating the Fourth Amendment's protections. *See, e.g.*, *United States v. Esqueda*, No. 22-50170; *United States v. Estrella*, No. 22-10027; *Sanchez v. Los Angeles Dept. of Transp.*, No. 21-55285; *Nehad v. Browder*, No. 18-55035; *United States v. Gilton,* No. 16-10109; *Haskell v. Harris*, No. 10-15152; *United States v. Pool*, No. 09-10303.

[1] *Amici* submit this brief pursuant to Circuit Rule 29-2(a) and certify that all parties have consented to its timely filing. Pursuant to Federal Rule of Appellate Procedure Rule 29(a)(4)(E), *amici* also certify that no person or entity, other than *amici*, their members, or their counsel, made a monetary contribution to the preparation or submission of this brief or authored this brief in whole or in part.

INTRODUCTION

Police officers may not "turn a routine traffic stop into a fishing expedition for unrelated criminal activity." *Ohio v. Robinette*, 519 U.S. 33, 41 (1996) (Ginsburg, J., concurring). The panel's decision here, however, does precisely that. It not only allows but encourages officers to ask about a driver's parole status in *every* traffic stop. And it does so without imposing any limits on officers' discretion: The panel reasoned—in the face of the evidence—that questioning a driver or passenger about their parole status *always* advances officer safety, regardless of whether the officer has any suspicion that the person is actually on parole.

As a result, the rule adopted by the panel will subject everyone within the Ninth Circuit—not just parolees—to more frequent police questioning, with dire consequences for individuals' privacy and civil liberties. Those consequences will be borne disproportionately by people and communities of color, who already experience higher rates of pretextual traffic stops and the negative impacts that flow from such stops. In light of these consequences, and because the panel's categorical rule sharply departs from the individualized analysis that the Fourth Amendment requires, this Court should grant rehearing *en banc*.

ARGUMENT

I. The panel's holding incentivizes police officers to question people about their parole and probation status in every traffic stop.

The Supreme Court has repeatedly held that the Fourth Amendment imposes meaningful limits on the duration and scope of traffic stops. Like any investigative detention, a traffic stop "must be temporary and last no longer than is necessary to effectuate the purpose of the stop." *Florida v. Royer*, 460 U.S. 491, 500 (1983).[2] As to duration, any traffic stop "exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures." *Rodriguez v. United States*, 575 U.S. 348, 350 (2015). Traffic stops also must be limited in scope: While an officer may make "ordinary inquiries incident to the traffic stop," an officer may not make unrelated inquiries "in a way that prolongs the stop, absent the reasonable suspicion" needed to detain an individual. *Id.* at 355 (quoting *Illinois v. Caballes*, 543 U.S. 405, 408 (2005)).

[2] Unless otherwise indicated, all internal citations, quotation marks, and alterations are omitted.

The panel's decision defies these established limitations on traffic stops. It holds that asking a stopped individual about their parole status comports with the Fourth Amendment—even though it indisputably prolongs the traffic stop without any reasonable suspicion of an independent offense. The panel nevertheless reasoned that asking a vehicle's occupant about parole is constitutional because it "reasonably relates" to officer safety, based on the premise that someone on parole "has committed a crime serious enough to have merited prison time." *United States v. Ramirez*, 98 F.4th 1141, 1145–46 (9th Cir. 2024). As Mr. Ramirez explains in his petition for rehearing (at 15–18) and we explain in Section II below, that officer-safety rationale is critically flawed on its own terms.

More importantly, however, the panel's holding has no limitation: It allows for questioning of a vehicle's occupant without *any* suspicion that the individual is in fact on parole. And that question is of extraordinary use to police officers, because individuals on parole are subject to search at any time, by any officer, with or without cause. *See, e.g.*, Cal. Penal Code § 3067; *United States v. Estrella*, 69 F.4th 958, 964 (9th Cir. 2023). Thus, if the person answers affirmatively to an officer's

question about parole, then the officer is no longer limited to the traffic stop's "mission"; instead, he can conduct a wide-ranging "[o]n-scene investigation into other crimes." *Rodriguez*, 575 U.S. at 356.

This case precisely illustrates the concern that the panel's decision will incentivize fishing expeditions. Detective Buchanan testified that his "practice" is to ask stopped individuals about parole status for the express purpose of determining "whether or not they are subject to search and seizure . . . without a warrant, reasonable suspicion, or probable cause." ER 90. In light of the panel's decision, it is reasonable to expect that Detective Buchanan's "practice" will soon become standard operating procedure for police officers across the Ninth Circuit.

II. The panel's categorical rule cannot be justified by any plausible officer-safety rationale.

The petition persuasively explains why the panel's holding conflicts with the Supreme Court's and this Court's precedent, as well as general Fourth Amendment principles. *See* Pet. 7–19. We write to highlight the central—and erroneous—premise of the panel's decision: the notion that officer safety is somehow advanced by knowing a person's parole or probation status.

During a lawful traffic stop, the Fourth Amendment permits an officer to "attend to related safety concerns" while "address[ing] the traffic violation that warranted the stop." *Rodriguez*, 575 U.S. at 354. The key word there is "related." *Rodriguez* did not establish a free-ranging officer-safety exception to the Fourth Amendment. To the contrary, "unrelated precautions, which do not stem[ ] from the mission of the stop itself . . . cannot justify extending a traffic stop"—even if the precaution would, in some general sense, advance officer safety. *See United States v. Evans*, 786 F.3d 779, 787 (9th Cir. 2015).

The parole-status question here is not "related" to traffic-stop-specific safety concerns. In holding otherwise, the panel asserted that, "in assessing potential risks involved in a traffic stop, it is useful for a police officer to know if the person remains on parole because a parolee has committed a crime serious enough to have merited prison time." *Ramirez*, 98 F.4th at 1144–45. But, in just the next sentence of its opinion, the panel undercut that assertion, stating that, "[t]o be sure, a parolee may not necessarily be more dangerous than a non-parolee." *Id.* at 1145.

The panel was right the second time around. That's because "knowing" whether a vehicle's occupant is on parole or probation does

"not [] ma[k]e the officers any safer." *See United States v. Landeros*, 913 F.3d 862, 868 (9th Cir. 2019); *see also, e.g.*, *United States v. Yates*, 2024 WL 69072, at *4 (N.D. Cal. Jan. 5, 2024) ("[I]nquiries about whether someone has completed the incarceration portion of their sentence but remains under supervision does not relate to officer safety."). Contrary to the panel's reasoning, parole status standing alone tells the officer nothing about whether the person questioned is dangerous. The vast majority of people on parole do not have a violent conviction.[3] Nor does parole status reveal anything about whether a person is more likely to commit a crime.[4] Moreover, officers have more effective tools for assessing whether a stopped person may be dangerous, including criminal-history checks—which this Court has already held are justified by safety concerns that relate to the traffic stop. *See United States v. Hylton*, 30 F.4th 842, 846–48 (9th Cir. 2022). As Detective Buchanan

[3] Danielle Kaeble, *Probation and Parole in the United States, 2021*, U.S. Dep't of Just. (Feb. 2023) https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/ppus21.pdf (detailing that less than one-third (29%) of adults on parole in 2021 were convicted of a violent offense).

[4] Bd. of Parole Hearings, *Recidivism*, Cal. Dep't of Corr. & Rehab., https://www.cdcr.ca.gov/bph/recidivism/ (last visited Aug. 9, 2024) (only around 3% of California life-term inmates granted parole between 2011 and 2014 were convicted of a new misdemeanor or felony in the first three years of parole.)

admitted here, the point of questioning about parole is not to advance officer safety, but to enable ordinary investigation of crimes. ER 90.

If anything, prolonging a traffic stop to ask questions about parole status is "inversely related to officer safety." *Evans*, 786 F.3d at 787; *see Landeros*, 913 F.3d at 868; Pet. 21–23. Asking a vehicle's occupant about parole has the potential to "transform[] what would have been a routine traffic stop into an investigation into whether a felon was in possession of a weapon or contraband"—a situation that potentially poses far more danger to the officer. *See United States v. Taylor*, 634 F. Supp. 3d 690, 699 (N.D. Cal. 2022). In short, the panel's officer-safety rationale cannot withstand scrutiny. For that reason, too, en banc review is warranted.

III. The panel's categorical rule will have severe consequences and will disproportionately harm people of color.

A. The expanded use of questioning blessed by the panel's decision will erode the public's civil liberties and privacy.

As explained, the panel's categorical rule incentivizes all officers within the Ninth Circuit to ask about parole status whenever they undertake a traffic stop. This new legal regime imposes serious privacy and civil-liberties costs on both parolees and the general public.

To start, every traffic stop within the Ninth Circuit will be extended so that officers can ask about parole and probation status. Although the panel viewed this additional questioning as "negligible," *Ramirez*, 98 F.4th at 1142, prolongation of a traffic stop even for a few questions "intrude[s] upon privacy and personal security." Jeannine Bell, *The Violence of Nosy Questions*, 100 B.U. L. Rev. 935, 939 (2020). Indeed, *Rodriguez* and this Court's cases following it all rest on the premise that extending a traffic stop for unrelated inquiries—no matter how brief—violates individuals' right to be free from unreasonable search and seizures. *See Rodriguez*, 575 U.S. at 356–57; *see also Evans*, 786 F.3d at 786–87; *Landeros*, 913 F.3d at 866–68.

But the panel's decision will have a more pernicious consequence than merely prolonging those traffic stops that *already* would have occurred in the absence of the panel's categorical rule. It will also result in officers making *more* traffic stops altogether. Simply put, the panel's decision will lead to more "fishing expeditions" on our roads and highways—a traffic-stop equivalent of the "general warrants" that the Fourth Amendment was intended to prohibit. *See Go–Bart Importing Co. v. United States*, 282 U.S. 344, 357 (1931) (explaining that the Fourth

Amendment's fundamental purpose is "to protect against all general searches").

This state of affairs is particularly concerning because, given the substantial discretion already afforded officers in executing traffic stops, the panel's decision effectively grants officers license to stop whomever they believe fits their preconceived "profile" of a parolee. This will especially impact communities in which there are higher concentrations of parolees and former parolees.

In fact, there is ample evidence that the permissive nature of parole searches already poses a civil rights "hazard" for non-parolees who live in the same neighborhoods as parolees, plausibly because police cast an impermissibly wide net in neighborhoods where they are more likely to encounter parolees. *See* Tonja Jacobi et. al., *The Attrition of Rights Under Parole*, 87 S. Cal. L. Rev. 887, 942–43 (2014). In a study of New York City police statistics, for example, researchers found that "police are stopping individuals where parolees reside at far greater rates than individuals in parolee sparse districts," meaning that "[n]onparolees as well as parolees are likely being subjected to increased stops, searches, and arrests." *Id.* at 950, 974. Indeed, an increase in the number of parolees in a zip code

by just one parolee increases the average number of stops by almost eighteen, suggesting that the policing of parolees has significant spillover effects for the local community. *See id.* at 956–57. The researchers concluded that the data "shows strong support for the argument that both individual parolees and the community generally are being dramatically affected by the permissive police parolee stop and search jurisprudence" and that "the lowered rights of parolees have the effect of diminishing the rights of their neighbors." *Id.* at 957–58.

The panel's decision will only worsen these spillover effects. People mistaken for, associated with, and living in the same neighborhood as parolees and former parolees are likely to encounter increased, prolonged, and more intrusive traffic stops as a result of the panel's holding. Not only will that subject these people to substantial costs in terms of privacy and civil liberties, but it will also expose them to the heightened risks of violence, injury, and death that attend traffic stops and police-civilian interactions more generally.[5]

[5] *See, e.g.*, Public Policy Inst. of Cal., *Police Use of Force and Misconduct in California* (2021), https://www.ppic.org/publication/police-use-of-force-and-misconduct-in-california/ (noting that "[v]ehicle and pedestrian stops account for about 15 percent of police encounters in which a civilian is seriously injured or killed"); Raheem Hosseini & Joshua

B. The harms that flow from the panel's decision will disproportionately impact people and communities of color.

The panel's decision will also have grave consequences for communities of color. In assessing whether someone is likely to be on parole—and thus subject to suspicionless search—officers will rely on their own memories, preconceptions, and biases (whether conscious or not). There is little doubt that this will result in increased traffic stops of people of color, especially Black, Hispanic, and Indigenous people, who historically bear the brunt of discriminatory policing practices.

Indeed, researchers consistently find that "the burden of [traffic] stops falls disproportionately on drivers of color." *See United States v. Hunter*, 88 F.4th 221, 228–29 (3d Cir. 2023) (McKee, J., concurring) (citing studies). California traffic-stop data similarly reveals stark racial disparities. In 2022, 12.5% of all people stopped were Black, despite Black people comprising only 5.4% of California's population; and 42.9% of people stopped were Hispanic, even as Hispanic people constitute 32.4%

Sharpe, *California Police Officers Have Killed Nearly 1,000 People in 6 Years*, S.F. Chron., Sept. 3, 2022, https://www.sfchronicle.com/sf/article/California-police-violence-17416510.php.

of the population.[6] The disparities are equally stark with respect to searches. In 2022, Indigenous and Black people were 10% and 8% more likely to be searched than white people, respectively.[7] In fact, during vehicle-registration stops alone, Black individuals were 4.6 times more likely to be searched than white people.[8] Despite generally being subjected to higher rates of stops, individuals of all non-white groups—and especially Hispanic and Middle Eastern/South Asian individuals—were less likely than white individuals to be carrying contraband or evidence of a crime.[9] Studies also show that "Black and Hispanic drivers [are] often searched on the basis of less evidence than [white people]."[10] A legal regime in which officers can pull people over with the intent of

---

[6] Racial & Identity Profiling Advisory Bd., *Racial & Identity Profiling Advisory Bd. Annual Report 2024*, Cal. Dep't of Just., 46, (Jan. 1, 2024) https://oag.ca.gov/system/files/media/ripa-board-report-2024.pdf.

[7] *Id.* at 8.

[8] *Id.* at 47.

[9] *Id.* at 8 (finding that search discovery rates were 5.6% lower for Middle Eastern/South Asian individuals and 4.0% lower for Latine individuals than for white individuals).

[10] Sharad Goel & Cheryl Phillips, *Police Data Suggests Black and Hispanic Drivers Are Searched More Often Than Whites*, Slate, Jun. 19, 2017, https://slate.com/technology/2017/06/statistical-analysis-of-data-from-20-states-suggests-evidence-of-racially-biased-policing.html.

asking about parole status to conduct suspicionless searches will only exacerbate this disparity and invite more racial profiling into policing.

As discussed above, increased numbers of traffic stops will lead to a similar increase in unsafe interactions between the police and the public. This, too, will disproportionately impact people of color, especially Black and Hispanic individuals, who already face higher rates of violent interactions with the police. *See Hunter*, 88 F.4th at 230 (McKee, J., concurring) (citing studies finding that people of color are "more likely to be perceived as dangerous and therefore more likely to be subjected to force"). In 2022 in California, over 48% of police force incidents were directed at Hispanic individuals, and Black people experienced another nearly 20% of the same; these incidents were also more likely to involve discharging of a firearm.[11] Over half of all individuals suffering serious bodily injury in police use of force incidents were Hispanic, and another nearly one-fifth were Black.[12] In comparison, only one-fourth of incidents

---

[11]Rob Bonta, Cal. Att'y Gen., *2022 Use of Force Incident Reporting*, Cal. Dep't of Just., 2, 32 (2023). https://data-openjustice.doj.ca.gov/sites/default/files/2023-06/USE%20OF%20FORCE%202022f.pdf.

[12] *Id.* at 42.

involving white individuals resulted in serious bodily injury.[13] Even worse, 51% of the people killed in use of force incidents were Hispanic and 15% were Black, while white people made up a disproportionately low 28%.[14] The disproportionality extends beyond California, as, across the country, Black, Hispanic, and Indigenous men are more likely to be killed by police than white men, and Black and Indigenous women are more likely to be killed by police than white women.[15] Given that interactions with the police are generally deadlier for people of color, offering police officers greater incentive to pull people over will only exacerbate these numbers.

Beyond the impact on specific individuals of color, the panel's decision will have serious effects on communities of color more broadly.

---

[13] *Id.*

[14] *Id.* at 45.

[15] Frank Edwards et al., *Risk of Being Killed by Police Use of Force in the United States by Age, Race-Ethnicity, and Sex*, 116 Proc. Nat'l Acad. of Sci. of the U.S. of Am. 16793, 16794 (Aug. 5, 2019) (finding that "Black men are about 2.5 times more likely to be killed by police…than are white men. Black women are about 1.4 times more likely to be killed by police than are white women…American Indian men are between 1.2 and 1.7 times more likely to be killed by police than are white men, and American Indian women are between 1.1 and 2.1 times more likely to be killed by police than are white women. Latino men are between 1.3 and 1.4 times more likely to be killed by police than are white men…").

As explained, as a result of the panel's holding, police officers are likely to concentrate their increased traffic-stop efforts in areas with higher concentrations of parolees. And Black and Hispanic individuals comprise disproportionately high fractions of California's parolee population, while white people are disproportionately underrepresented in the parolee population.[16] Given the existing residential segregation in California,[17] the panel's decision is likely to result in police officers further expanding their reach into overpoliced communities, exposing people of color on parole and those living or working around them to increased, longer, and more frequent interactions with the police. These consequences only

---

[16] Off. of Rsch., *Summary of Parole Offender Data Points for Month-end July 2024*, Cal. Dep't of Corr. & Rehab., Parole Tab (August 9, 2024), https://public.tableau.com/app/profile/cdcr.or/viz/OffenderDataPoints/SummaryInCustodyandParole (finding that Black, Latine, and white people are 23.4%, 47.3%, and 22.6% of California's parolee population, respectively); Racial & Identity Profiling Advisory Bd., *Racial & Identity Profiling Advisory Bd. Annual Rep. 2024*, Cal. Dep't of Just., 46 (Jan. 1, 2024), https://oag.ca.gov/system/files/media/ripa-board-report-2024.pdf (finding that Black, Latine, and white people make up 5.4%, 32.4%, and 35.8% of California's population, respectively).

[17] Hayley Smith, *California Still Highly Segregated By Race Despite Growing Diversity, Research Shows*, L.A. Times, June 28, 2021, https://www.latimes.com/california/story/2021-06-28/l-a-segregation-problems-unchanged-in-decades-study-shows (highlighting a study finding that the Los Angeles metropolitan area "remains the sixth-most segregated" metropolitan area in the country, and that "[s]ome other regions of the state ranked in the study did even worse").

underscore how critical it is that this Court rehear this case *en banc* and reject the panel's erroneous, categorical rule.

CONCLUSION

The Court should grant the petition for rehearing en banc.

Date: August 12, 2024

Neil K. Sawhney
Shilpi Agarwal
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA
39 Drumm Street
San Francisco, CA 94111
(415) 621-2493
nsawhney@aclunc.org

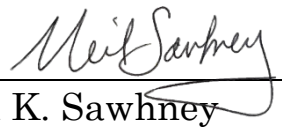
Tiffany Bailey
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF SOUTHERN CALIFORNIA
1313 West Eighth Street
Los Angeles, California 90017
(213) 977-9500
tbailey@aclusocal.org

Counsel for Amici

CERTIFICATE OF COMPLIANCE

I certify that this brief contains 3,351 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6). I further certify that this brief is an amicus brief and complies with the word limit of Fed. R. App. P. 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).

Date: August 12, 2024



Neil K. Sawhney
AMERICAN CIVIL LIBERTIES UNION FOUNDATIONS

Counsel for Amici