No. 16-1371

IN THE
Supreme Court of the United States

TERRENCE BYRD,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF OF NATIONAL MOTORISTS ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

AARON M. PANNER
Counsel of Record
THOMAS B. BENNETT
KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 326-7900
(apanner@kellogghansen.com)

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INTEREST OF *AMICUS CURIAE*[1]

Amicus National Motorists Association ("NMA") is a membership-based organization founded in 1982 to protect and uphold the rights of the driving public. NMA members, located in all 50 States and the District of Columbia, are keenly interested in maintaining safe and responsible highway travel. NMA's activities include advocacy for fair traffic laws and for law-enforcement actions that conform to legal and constitutional standards. NMA also seeks to promote greater trust and mutual respect among the nation's 250 million licensed drivers and law enforcement. NMA therefore has an interest in the correct interpretation and vigorous enforcement of the Fourth Amendment's protection against unreasonable search and seizure.

The purpose of this brief is to bring to the Court's attention two considerations that counsel against the rule applied by the Third Circuit in the decision on review. The first is the rise of car- and ride-sharing services. By departing from the standard-form contracts governing rental-car agreements, the rise of car- and ride-sharing services underscores the unadministrability of any Fourth Amendment rule premised on contractual restrictions rather than individuals' reasonable expectations of privacy. Second, NMA is concerned that the Third Circuit's rule abets and exacerbates the abuse of civil asset

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[1] Pursuant to Supreme Court Rule 37.6, counsel for *amicus* represents that it authored this brief in its entirety and that none of the parties or their counsel, nor any other person or entity other than *amicus* or its counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Pursuant to Rule 37.3(a), counsel for *amicus* also represents that all parties have consented to the filing of this brief.

forfeiture laws by law-enforcement officials. Courts and commentators have recognized that financial incentives may prompt law-enforcement officials to seek out opportunities to seize motorists' assets through asset forfeiture. A rule that denies Fourth Amendment protection to many motorists threatens to further accelerate existing abuses.

SUMMARY OF ARGUMENT

I. Car- and ride-sharing services rely on terms of service that differ in significant ways from traditional rental-car agreements. The rapid growth of such services guarantees that lower courts increasingly will confront questions about how to apply the rule at issue in this case to customers of such services. Because car- and ride-sharing services do not label drivers or passengers as "authorized" in the same way as traditional rental-car agencies, the Third Circuit's rule will raise a host of administrability problems that application of the "reasonable expectation of privacy" standard proposed by petitioner would avoid.

II. Because the Third Circuit's rule guarantees that a significant number of drivers of rental cars will be without Fourth Amendment protection, that rule creates "sitting ducks" for potentially abusive law-enforcement activity. As this case illustrates, law enforcement often can spot rental cars, which, under the Third Circuit's rule, may be subject to search even without reasonable suspicion of any crime. The importance of avoiding that result is underscored by the growth of civil asset forfeiture, which itself has given rise to abuses that the Third Circuit's rule threatens to make worse.

ARGUMENT

Petitioner has explained why he had a reasonable expectation of privacy when driving his fiancée's rental car: he was in possession and control of the vehicle and could exclude third parties from gaining access to it. Petitioner also has explained that the terms of the rental-car agreement between petitioner's fiancée and the rental-car agency do not control whether the driver of a vehicle has such a reasonable expectation of privacy. Indeed, this Court "adhere[s] to the view expressed in *Jones* [*v. United States*, 362 U.S. 257 (1960),] and echoed in later cases that arcane distinctions developed in property and tort law between guests, licensees, invitees, and the like, ought not to control" the Fourth Amendment analysis. *Rakas v. Illinois*, 439 U.S. 128, 143 (1978).

This brief offers two additional observations about the Fourth Amendment standard applied by the court below. The first is that, in a world of car- and ride-sharing, the suggestion that an individual's reasonable expectation of privacy turns on the degree of "authorization" to operate a particular vehicle implicates administrative complexity that would take the governing standard ever further from the reasonable expectation of privacy that is the touchstone of the Fourth Amendment. The second is that the bright-line distinction that the Third Circuit draws – when applied to a traditional rental-car arrangement like the one at issue here – provides an open invitation to improper and potentially abusive traffic stops and searches.

I. THE RISE OF CAR- AND RIDE-SHARING SERVICES MAKES RELIANCE ON CONTRACTUAL AUTHORIZATION AS THE BASIS FOR FOURTH AMENDMENT PROTECTION UNADMINISTRABLE AND OBSOLETE

It might be argued that, whatever the infirmities of the rule applied below, at least it is clear: a quick look at the rental-car agreement tells the law-enforcement officer whether the Fourth Amendment applies or not. As we discuss below, where this bright-line distinction comes into play, it invites rather than discourages abuse. Furthermore, any administrative benefit is sharply limited by marketplace developments.

The rental-car agreement at issue in this case is a traditional one between a brick-and-mortar agency (Budget) and an individual renter.[2] But rental-car agencies are not, of course, the exclusive way to secure short-term use of cars in the marketplace. The rise of the "sharing economy" means that drivers can now increasingly choose to use car- and ride-sharing services, which are growing rapidly, instead.

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[2] The standard rental agreement in this case is familiar to anyone who has rented a car from a traditional rental-car agency. Indeed, the rental-car contract often is cited as an exemplar of standard-form contracts. *See*, *e.g.*, Robert A. Hillman & Jeffrey J. Rachlinski, *Standard-Form Contracting in the Electronic Age*, 77 N.Y.U. L. Rev. 429, 437 & n.39 (2002) (collecting instances in which rental-car agreements are used as exemplars of form contracts), http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1662&context=facpub; Irma S. Russell, *Got Wheels? Article 2A, Standardized Rental Car Terms, Rational Inaction, and Unilateral Private Ordering*, 40 Loy. L.A. L. Rev. 137, 144 & n.55, 184 & tbl. 1 (2006) ("Currently, the top ten rental car companies all use form contracts."), http://scholarship.law.umt.edu/cgi/viewcontent.cgi?article=1073&context=faculty_lawreviews.

In the sharing economy, the analogue to the traditional rental agreement is significantly more complex. Rather than one standard-form contract that governs nearly every rental on substantially similar terms, each service creates terms of use consistent with its business model. *See*, *e.g.*, *Meyer v. Uber Techs., Inc.*, 868 F.3d 66, 76-80 (2d Cir. 2017) (describing Uber's Terms of Service). In many cases, those terms of use apply to only a portion of the web of economic relationships between service, driver, rider, and car owner. And, unlike with traditional rental agreements, it can be significantly more difficult for police officers to know who is an authorized user under sharing-economy analogues.

Determining whether a motorist's or passenger's expectation of privacy is reasonable in cases of vehicles rented from a car- or ride-sharing service would be difficult if that question were governed by contractual relationships and property rights. Car- and ride-sharing services operate according to different business models that employ terms of use tailored to the particular model, and they vary in the degree to which they require prior authorization for third-party drivers and passengers.

1. For example, car-sharing services like Zipcar, car2go, Getaround, Enterprise CarShare, Hertz 24/7, and Maven offer to rent cars for time periods shorter than a day, with flexible pick-up and drop-off locations. Boston Consulting Group estimates that, by 2021, 6 million people in North America will be registered users of a vehicle-sharing service.[3] Some car-sharing

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[3] *See* Boston Consulting Group, *What's Ahead for Car Sharing?: Trajectory of Growth and Revenues*, http://bcgperspectives.com/content/articles/automotive-whats-ahead-car-sharing-new-mobility-its-impact-vehicle-sales/?chapter=7#chapter7.

companies – such as Zipcar and car2go – typically operate on a membership model. Customers pay a fee either monthly or upon registration, which gives them the right to use any available vehicle on demand or on very short notice.[4] Other car-sharing services are offered on a peer-to-peer basis: Users sign up to offer their own vehicles for rent by other users, with the sharing company acting as an intermediary.[5]

Membership-based car-sharing services typically restrict driving rights to members. For example, Zipcar's agreement permits other Zipcar members to drive rented vehicles, but only if accompanied by the reserving member and only if listed on that member's online account – but not any written rental agreement.[6] Similarly, car2go allows members to register additional "Co-Drivers" on a single online account.[7]

By contrast, peer-to-peer rental services involve cars that are owned by participants in the peer-to-peer network, rather than cars owned by the service itself. Such services often provide more liberal authorization. Peer-to-peer service Getaround allows renters to let any person who meets its eligibility requirements (which relate to age, criminal history, and license status) drive cars rented from other users, with no

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[4] *See*, *e.g.*, Zipcar, *How Does Zipcar Work?*, http://www.zipcar.com/how; car2go, *How It Works*, https://www.car2go.com/US/en/#152742 (last visited Nov. 16, 2017).

[5] *See*, *e.g.*, Getaround, *How It Works*, https://www.getaround.com/tour (last visited Nov. 16, 2017).

[6] *See* Zipcar, *Allowed Drivers* ("Only active members are allowed to drive Zipcars."), https://support.zipcar.com/hc/en-us/articles/220676487-Allowed-Drivers (last visited Nov. 16, 2017).

[7] *See* car2go, *Frequently Asked Questions – Can I share my car2go account?*, https://www.car2go.com/US/en/faq/ (last visited Nov. 16, 2017).

obligation to identify such third-party drivers in advance.[8]

The variations in car-sharing companies' terms of service are unlikely to have any direct impact on whether a motorist has an expectation of privacy when she is operating a vehicle. Furthermore, their very variety – and complexity – demonstrate why tying Fourth Amendment rights to contractual arrangements is unworkable in many situations.

In addition, there is a further practical difficulty: because car-sharing accounts are typically managed online, there is no physical rental agreement inside the vehicle that could be inspected by law enforcement.[9] To the extent car-sharing services rely on lists of authorized drivers, co-drivers, or members, those lists exist in each user's online account, not on a carbon-paper contract in the glovebox. For that reason, the administrative simplicity of the rule applied below would not exist in cases of car-sharing vehicles. *Cf.* JA48 (testimony that arresting officer was "not required to [contact the rental agency or the

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[8] *See* Getaround, *Renter Policy* ("You understand and agree that, should you permit someone else to operate a Car during a Rental on your account, such person has independently reviewed and meets our Eligibility Criteria and would be considered an Authorized Driver at the time of the Rental."), https://www.getaround.com/terms/renter (last visited Nov. 16, 2017).

[9] *See* Zipcar, *Allowed Drivers* ("Only active members are allowed to drive Zipcars. You can share the fun of driving only if your co-pilot is also an active member."), https://support.zipcar.com/hc/en-us/articles/220676487-Allowed-Drivers (last visited Nov. 16, 2017); car2go, *Frequently Asked Questions – Can I share my car2go account?* ("A Co-Driver is someone you trust that you invite to share payment and/or share recent trip history with. You can add a Co-Driver from your online account."), https://www.car2go.com/US/en/faq/ (last visited Nov. 16, 2017).

person listed on the rental-car agreement] because it says no other driver permitted and it was a current contract").

2. Ride-sharing services like Uber, Lyft, and Via are growing even more rapidly than car-sharing services. As of 2016, 15% of adults – and 28% of 18-to-29-year-olds – in the United States had used such a service.[10] According to data reported by the Bureau of Labor Statistics and analyzed by the Brookings Institution, the number of drivers associated with ride-sharing firms grew by 10% from 2012-2013, 34% from 2013-2014, and 63% from 2014-2015 (the latest year for which data are available).[11]

Ride-sharing companies style themselves as platforms that connect drivers with users, rather than as livery or rental-car companies in their own right. Under this model, drivers are contractually deemed to be independent contractors rather than employees of the ride-sharing company.[12] Ride-sharing companies' terms of service differ accordingly from those of either car-sharing services or traditional rental-car agencies.

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[10] *See* Aaron Smith, Pew Research Ctr., *Shared, Collaborative and On Demand: The New Digital Economy* at 17-18 (May 2016), http://assets.pewresearch.org/wp-content/uploads/sites/14/2016/05/PI_2016.05.19_Sharing-Economy_FINAL.pdf.

[11] *See* Ian Hathaway & Mark Muro, Brookings, *Ridesharing Hits Hyper-Growth* (June 1, 2017), https://www.brookings.edu/blog/the-avenue/2017/06/01/ridesharing-hits-hyper-growth/.

[12] *See*, *e.g.*, Uber, *U.S. Terms of Use* § 3 (effec. Mar. 23, 2017) ("The Services comprise mobile applications and related services . . . , which enable users to arrange and schedule transportation, logistics and/or delivery services . . . under agreement with Uber or certain of Uber's affiliates ('Third Party Providers')."), https://www.uber.com/legal/terms/us.

On the one hand, such companies prohibit customers from allowing other people to use their accounts.[13] As a result, calling an Uber for a friend or family member is generally a violation of Uber's terms of use. On the other hand, ride-sharing companies typically do not themselves own the vehicles their customers ride in; the drivers do. For that reason, each ride is governed by a new agreement between the driver and the passenger.[14]

The introduction of a third party into the web of overlapping agreements governing a customer's use of a vehicle means that there are three separate contracts; by the Third Circuit's reasoning, each of those may bear on the question whether the passenger's expectation of privacy is reasonable.

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[13] *See* Uber, *U.S. Terms of Use* § 4 (effec. Mar. 23, 2017) ("You may not authorize third parties to use your Account . . . ."), https://www.uber.com/legal/terms/us; Lyft, *Lyft Terms of Service* § 3 (last updated Sept. 30, 2016) ("You may not allow other persons to use your User account, and you agree that you are the sole authorized user of your account."), https://www.lyft.com/terms.

[14] *See* Lyft, *Lyft Terms of Service* § 1 (last updated Sept. 30, 2016) ("Each transportation Service provided by a Driver to a Rider shall constitute a separate agreement between such persons."), https://www.lyft.com/terms. That unwritten contract likely incorporates by reference many of the service's terms of use, including with respect to payment, which is made to the service rather than the driver. *See*, *e.g.*, Uber, *U.S. Terms of Use* § 5 (effec. Mar. 23, 2017) ("You understand that use of the Services may result in charges to you for the services or goods you receive ('Charges'). Uber will receive and/or enable your payment of the applicable Charges for services or goods obtained through your use of the Services."), https://www.uber.com/legal/terms/us.

II. THE RULE APPLIED BELOW INVITES ABUSIVE ASSET-FORFEITURE PRACTICES

In recent years, NMA and its members have become increasing concerned that civil asset forfeiture is not being used fairly or in a manner consistent with constitutional principles. Because the rule applied below creates a bright-line rule that unauthorized drivers of borrowed rental cars lack Fourth Amendment rights to challenge searches of those vehicles after a lawful traffic stop, it "invite[s] police officers to stop" rental cars "regardless of probable cause or reasonable suspicion of anything illegal." *Brendlin v. California*, 551 U.S. 249, 263 (2007). "The fact that evidence uncovered as a result of an arbitrary traffic stop would still be admissible . . . would be a powerful incentive to run . . . 'roving patrols.'" *Id.*

Those incentives are magnified by current civil asset forfeiture policies, which generally permit law enforcement to share in the proceeds of assets seized. By creating a category of motorists that law-enforcement officers can identify as subject to lesser Fourth Amendment protection, the rule applied below encourages officers to conduct highway interdictions designed to seize assets.

A. Law-Enforcement Officers in Jurisdictions Subject to the Rule Applied Below Are Especially Likely To Detain Rental Cars

The facts of this case illustrate that law-enforcement officers in jurisdictions governed by the rule applied below may see the fact that a vehicle is a rental car as a reason to pull it over.

The arresting officer testified that he had identified petitioner's vehicle as a rental car. JA62-63 ("I observed a gray rental vehicle pass my location."). After pulling petitioner over – for driving in the left

lane without passing[15] – and requesting his identification, the officer asked whether the vehicle was petitioner's. JA37. When petitioner replied that it was a rental car, the officer asked to see the rental agreement. *Id.* After running a criminal-history check, the officer reviewed the rental agreement to determine whether petitioner was named on it (which he was not). JA38.

After asking petitioner to exit the vehicle, the officer apparently sought to use the fact that he was not named in the rental agreement to convince petitioner to consent to a search of the car. JA48 ("I may have actually explained to him that I didn't need his consent because he's an unauthorized driver of the vehicle."). When petitioner declined to consent, the officer proceeded to search both the passenger compartment and the trunk of the automobile. JA39-40, 162. The officer testified that at that point he understood that he was authorized to conduct a search because the rental agreement "says no other driver permitted and it was a current contract." JA48.

Those actions were not accidental: rather, they reflected precisely the type of procedure that the Third Circuit's rule encourages. *See* JA45.

B. Civil Asset Forfeiture Gives Law Enforcement Financial Incentives To Stop and To Search Vehicles

Civil asset forfeiture is a common and growing practice used frequently against motorists.[16] State and

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[15] *See* 75 Pa. Cons. Stat. § 3313(d)(1)(i)-(ii).

[16] *See*, *e.g.*, Michael Sallah, Robert O'Harrow Jr., Steven Rich & Gabe Silverman, *Stop and Seize*, Wash. Post (Sept. 6, 2014) (describing use of civil forfeiture against motorists), http://www.washingtonpost.com/sf/investigative/2014/09/06/stop-and-seize/

federal civil forfeiture laws permit law-enforcement officers to seize property without prior judicial process if there is probable cause to believe that the property is connected to a crime. *See*, *e.g.*, 18 U.S.C. § 981(b) (authorizing seizure without a warrant of property subject to forfeiture when the seizure is made pursuant to a lawful arrest or search).

In most cases, state or federal law allows law-enforcement agencies to share in the proceeds of asset forfeiture and to use that revenue for unrelated purposes, providing an incentive for increasing use of the practice. *See Policing for Profit*, *supra* note 16, at 14; *see also Leonard v. Texas*, 137 S. Ct. 847, 848 (2017) (Thomas, J., statement respecting the denial of certiorari) ("[B]ecause the law enforcement entity responsible for seizing the property often keeps it, these entities have strong incentives to pursue forfeiture."). Those incentives have fueled the practice's growth to such an extent that, in 2014, assets seized by federal law-enforcement agencies were more valuable than assets stolen in reported burglaries.[17]

A recent investigative report found that, from September 2001 to September 2014, law-enforcement officials conducted 61,998 warrantless cash seizures through the Department of Justice's Equitable

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?utm_term=.681c254afa16; Dick M. Carpenter II, Lisa Knepper, Angela C. Erickson & Jennifer McDonald, Inst. for Justice, *Policing for Profit: The Abuse of Civil Asset Forfeiture* (2d ed. Nov. 2015) ("*Policing for Profit*") (describing the practice generally), http://ij.org/wp-content/uploads/2015/11/policing-for-profit-2nd-edition.pdf.

[17] *See* Christopher Ingraham, Wonkblog, *Law Enforcement Took More Stuff From People Than Burglars Did Last Year*, Wash. Post (Nov. 23, 2015), https://www.washingtonpost.com/news/wonk/wp/2015/11/23/cops-took-more-stuff-from-people-than-burglars-did-last-year/.

Sharing Program, which authorizes sharing federal forfeiture proceeds with cooperating state and local law-enforcement agencies. *See Stop and Seize*, *supra* note 16. Of the $2.5 billion in proceeds from those seizures, $1.7 billion was shared with state and local law-enforcement agencies, with much of it being used to pay salaries or other operating expenses. *See id.*

In many cases, police discover the assets to be seized during a search of a vehicle; accordingly, a significant portion of the "egregious and well-chronicled abuses" caused by this system have fallen on motorists. *Leonard*, 137 S. Ct. at 848 (Thomas, J., statement respecting the denial of certiorari) (collecting such examples); *see also Stop and Seize*, *supra* note 16 (noting "the role of the federal government and the private police trainers in encouraging officers to target cash on the nation's highways").

For example, it has been reported that police in Tenaha, Texas, employ a practice of stopping out-of-town drivers for minor infractions, seizing the property in their automobiles, and exchanging their freedom for a waiver of any right to challenge the forfeiture.[18] One motorist allegedly was stopped after driving in the left lane for more than half a mile without passing (the same traffic infraction for which petitioner was stopped, JA36-37, 65) before he and a companion were threatened with charges of money laundering and child endangerment if they did not agree to forfeit cash that was found during a search of his car. *See* Stillman, *supra* note 18.

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[18] *See* Sarah Stillman, *Taken*, The New Yorker (Aug. 12 & 19, 2013), https://www.newyorker.com/magazine/2013/08/12/taken; *Leonard*, 137 S. Ct. at 848 (Thomas, J., statement respecting the denial of certiorari) (noting this example).

One investigation into civil asset forfeiture practices found a common pattern that is echoed in the present case: "In case after case, highway interdictors appeared to follow a similar script." *Stop and Seize*, *supra* note 16. "Police set up what amounted to rolling checkpoints on busy highways and pulled over motorists for minor violations, such as following too closely or improper signaling." *Id.*; *cf.* JA36-37 (explaining that petitioner was pulled over for driving in the left lane). "They quickly issued warnings or tickets." *Stop and Seize*, *supra* note 16; *cf.* JA45 ("Q. And issue him a traffic citation for driving in the left lane? A. A warning."). "They studied drivers for signs of nervousness, including pulsing carotid arteries, clenched jaws and perspiration." *Stop and Seize*, *supra* note 16; *cf.* JA68 ("The first thing I observed was extreme nervousness from the operator."). "They also looked for supposed 'indicators' of criminal activity, which can include such things as trash on the floor of a vehicle, abundant energy drinks or air fresheners hanging from rearview mirrors." *Stop and Seize*, *supra* note 16; *cf.* JA70 (noting that Byrd "picked up a sweatshirt that was on the passenger floor").

The burdens of such routinized use of civil asset forfeiture fall disproportionately on the "poor and other groups least able to defend their interests in forfeiture proceedings." *Leonard*, 137 S. Ct. at 848 (Thomas, J., statement respecting the denial of certiorari). And, because those same people are more likely to use cash over other forms of payment, they are more likely to carry assets worth seizing. *See id.* The poor are also least able to afford the cost and logistical

burdens associated with challenging a seizure, which can be significant. *See id.*[19]

Abuse of civil asset forfeiture has led to criticism even from the law-enforcement agencies whose budgets rely on it. Earlier this year, the Department of Justice's Office of the Inspector General issued a report faulting the Department's use of civil asset forfeiture for lack of oversight and questionable investigative effectiveness.[20] That report found that asset seizures resulting from "interdiction operations" – i.e., traffic stops and searches at mass transportation hubs or parcel distribution centers – were particularly unlikely to be related to new or ongoing investigations or lead to arrests and prosecutions. OIG Report at iii. Despite the concerns expressed in the OIG Report, in July the Department of Justice issued a new order that superseded prior restrictions on federal "adoption" of seizures by state and local law enforcement and authorized expanded use of civil asset forfeiture. *See* Office of the Att'y Gen., Order No. 3946-2017 (July 19, 2017), https://www.justice.gov/file/982611/download.

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[19] Under current law in Illinois, in order to challenge the seizure of assets, property owners must pay a bond equal to the greater of $100 or 10% of the property's value. *See* 725 Ill. Comp. Stat. 150/6(C)(2); *Policing for Profit*, *supra* note 16, at 12. If unsuccessful, property owners not only lose the value of the bond, but also must pay the full cost of the forfeiture proceeding. *See* 725 Ill. Comp. Stat. 150/6(C)(2); *Policing for Profit*, *supra* note 16, at 12. And, even if they win, they nevertheless must pay 10% of the cost of the bond. *See* 725 Ill. Comp. Stat. 150/6(C)(3); *Policing for Profit*, *supra* note 16, at 12.

[20] *See* U.S. Dep't of Justice, Office of the Inspector General, Evaluation & Inspections Div. 17-02, *Review of the Department's Oversight of Cash Seizure and Forfeiture Activities* (Mar. 2017) ("OIG Report"), https://oig.justice.gov/reports/2017/e1702.pdf.

C. The Rule Applied Below Magnifies Incentives Created by Civil Asset Forfeiture

The incentives created by the rule applied below make it uniquely prone to abuse. Unlike limitations on the applicability of the Fourth Amendment that rely on an officer's subjective good faith, the rule below turns solely on contractual terms that law-enforcement officers can review before determining whether to conduct an unreasonable search.

The arresting officer in this case was able to identify petitioner's vehicle as a rental car, even as it drove past him at highway speed. JA63. And, after he pulled the car over, the rental agreement made it easy for the officer to determine that petitioner was not an authorized driver. JA68 ("[I]t says no other driver permitted and it was a current contract.").

Although no forfeiture is at issue, this case nevertheless illustrates how a combination of (1) standard rental agreements with strict authorized-driver policies; (2) a rule that restricts the Fourth Amendment rights of unauthorized drivers of rental cars; and (3) financial incentives for law-enforcement agencies to maximize the value of assets they seize and forfeit creates dangerous incentive for law enforcement to detect, stop, and search rental cars once they have determined that the driver is unauthorized.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

AARON M. PANNER
Counsel of Record
THOMAS B. BENNETT
KELLOGG, HANSEN, TODD,
FIGEL & FREDERICK,
P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 326-7900
(apanner@kellogghansen.com)

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