Nos. 15-AA-1394, 15-AA-1395

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

YOLANDE PAYNE-JONES,
DIAMOND LIMOUSINES, INC.

***Petitioners*,**

v.

D.C. TAXICAB COMMISSION,

***Respondent*.**

On Petition for Review from the Office of Administrative Hearings, No. C1532700637

BRIEF FOR PETITIONERS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Constitutional Provisions

Regulations

Other Authorities

INTRODUCTION

The facts of this case may seem mundane: a limousine driver was detained by a District of Columbia officer and received several citations for vehicle infractions.

The legal implications of this case, by contrast, are significant. This case tests the validity of a regulatory policy in the District of Columbia that allows law enforcement to search individuals every day in their places of business without any individualized suspicion. Specifically, District of Columbia regulations allow police officers and "vehicle inspection officers" to detain and inspect taxis and other vehicles for hire "at any time" that they are "on the public streets or public space" when not moving or carrying a passenger 31 D.C.M.R. § 608.2; Addendum (Add.) 1. The policy does not limit the discretion of enforcement officers in terms of the time, place, or scope of such detentions and inspections. Rather, as long as the vehicle is not moving or carrying a passenger, officers are given free rein to choose which vehicles for hire to search, how long to search them, and what to search them for. This policy is irreconcilable with the Fourth Amendment.

A search of commercial premises can offend the privacy interests underlying the Fourth Amendment just as much as a search of a residence. *See Marshall v. Barlow's, Inc.*, 436 U.S. 307, 312 (1978). Although a limited exception to ordinary Fourth Amendment principles applies to "pervasively regulated businesses," that exception applies only in "relatively unique circumstances." *Id.* at 313. The Supreme Court has recently cautioned against the expansion of this exception. *See City of Los Angeles v. Patel*, 135 S. Ct. 2443, 2455 (2015). To be constitutional, regulatory searches of pervasively regulated businesses must be "necessary to further" a "substantial" government interest and must provide "a constitutionally adequate substitute for a warrant" in terms of the "certainty and regularity of [their] application." *New York v. Burger*, 482 U.S. 691, 702-03 (1987).

Neither of these requirements is satisfied here. The random seizure of individuals engaging in their lawful business on D.C. streets is unnecessary to serve the District's safety interest, which could adequately be met through its routine vehicle inspection regime. And the unfettered discretion with which law enforcement officials exercise their authority to seize presumptively innocent individuals without suspicion of wrongdoing is the antithesis of the type of constraint necessary to bring an administrative inspection program within constitutional boundaries.

This Court should hold that the unconstrained inspection scheme for vehicles for hire in the District of Columbia violates the Fourth Amendment, and should reverse the decision below on that ground.

Additionally, the citations at issue are invalid because the regulations under which they were issued, as applied in these circumstances, are preempted by the federal Real Interstate Drivers Equity Act of 2002, which prohibits local jurisdictions from penalizing drivers who arrange to provide round trip interstate service with a stop outside the state of origin. Because the conduct that Congress sought to protect from local interference is precisely the conduct for which the citations here were issued, federal preemption bars their enforcement.

STATEMENT OF THE ISSUES

1. Whether random, suspicionless detentions and searches of vehicles for hire in the District of Columbia, as authorized by 31 D.C.M.R. § 608.2, violate the Fourth Amendment.

2. Whether under the Supremacy Clause the federal Real Interstate Drivers Equity Act of 2002, which prohibits state regulation of drivers contracted to provide round trip interstate service — including "intermediate stops" in the non-licensed state — preempts the application of a D.C. regulation prohibiting vehicle-for-hire drivers licensed out of state from "loitering" before immediately returning to the state in which they are licensed.

STATEMENT OF THE CASE

This appeal follows the final disposition of four Notices of Infraction issued by the Respondent, the District of Columbia Department of For-Hire Vehicles, previously the District of Columbia Taxicab Commission ("the Commission"), against Petitioners Yolande Payne-Jones and Diamond Limousines ("Diamond").

On June 17, 2015, Diamond and Payne-Jones filed a Motion to Dismiss Notices of Infractions, which was denied by ALJ Arabella W. Teal on June 24, 2015. On June 24, 2015, ALJ Ann C. Yahner presided over an evidentiary hearing regarding the stops and Notices of Infraction in question. Diamond and Payne-Jones filed a Motion to Reconsider and an Amended Motion to Reconsider the Motion to Dismiss on June 29, 2015 and July 14, 2015, respectively. Petitioners filed a final Addendum to their Amended Motion to Dismiss on September 4, 2015, to which the District responded on September 21, 2015 and October 23, 2015.

On November 23, 2015, ALJ Yahner issued two final orders (one for each Petitioner) upholding three Notices of Infraction against Payne-Jones and one against Diamond, each based on Payne-Jones's "loitering" in violation of 31 D.C.M.R. 828.1(d). Joint Appendix (App.) 87, 89-90. ALJ Yahner also issued an order denying Petitioners' motion to reconsider their motions to dismiss; in that order, she held that the stops in question did not violate the Fourth Amendment and were not preempted by the federal Real Interstate Driver Equity (RIDE) Act. App. 73-79. With respect to the Fourth Amendment, ALJ Yahner concluded that taxis were a pervasively regulated industry and the administrative search scheme passed all three prongs of the test established in *Burger*. App. 73-76, 79. With respect to preemption, she concluded that whether the RIDE Act applied to the NOIs in question was "a fact-specific inquiry that cannot be decided on motions to

dismiss." App. 78. By upholding the NOIs in her final order after the evidentiary hearing, ALJ Yahner necessarily rejected the preemption argument.

STATEMENT OF FACTS

A. Statutory and Regulatory Background

1. Regulation of Vehicles for Hire in the District of Columbia

The D.C. Taxicab Commission was created in 1985 to regulate the taxi and public vehicle-for-hire industry. *See* District of Columbia Taxicab Commission Establishment Act of 1985, D.C. Code § 50-301 *et seq.*, as amended ("the Establishment Act"). The Commission was renamed the Department of For-Hire Vehicles in 2016. *See* Transportation Reorganization Amendment Act of 2016, D.C. Code § 50-301.04.‡

The Establishment Act sets standards and regulations for many elements of the taxi and public vehicles-for-hire industry. These regulations require, among other things: licensing of operators, D.C. Code § 50-301.19, meter systems, *id.* § 50-381, uniform cruising lights, *id.* § 50-301.26(2), a uniform color scheme, *id.* § 50-201.26(3), and liability insurance, *id.* § 50-301.14.

Under the Commission's regulations, taxis are required to be inspected "annually or at other times as required by the Commission" for

> (a) Safe operating condition and compliance with District of Columbia motor vehicle regulations with respect to the condition of the body and fenders, cleanliness, repairs, and other mechanical parts relating to both the exterior and interior condition of the taxi vehicle; and
>
> (b) Broken or damaged taximeters or Taxi Smart Meter System.

31 D.C.M.R. § 608.1; Add. 1. Likewise, "luxury class vehicles" (such as limousines) are also required to be inspected "annually by DMV to determine whether [they are] in compliance with"

‡ For convenience, this brief will continue to call the Department of For-Hire Vehicles "the Commission."

the applicable provisions "related to the vehicle's interior and exterior, body, cleanliness, repairs, mechanical parts, and the vehicle license . . . ." 31 D.C.M.R. § 1215.1; Add. 6.

The regulations permit vehicle-for-hire inspections on an ad hoc basis anywhere in the District, not only by designated "vehicle inspection officers" (also called "hack inspectors") but also by regular police officers:

> Any Hack Inspector, police officer, or other authorized agent of the District may inspect and test the meter and Taxi Smart Meter System, lights, brakes, steering assembly, tires, equipment, horn, or any other device required by Title 18 D.C.M.R. and the Commission's rules and regulations *at any time a taxicab is on the public streets or public space*.

31 D.C.M.R. § 608.2 (emphasis added); Add. 1. The same authority applies to luxury class vehicles. *See* 31 D.C.M.R. § 1215.2 (authorizing inspection of luxury vehicles' "lights, brakes, steering assembly, tires, horn, component of a system used to calculate fares, process payments or print receipts, or any other device or equipment installed in the vehicle . . . at any time when such vehicle is on the public streets or on public space"); Add. 6.

Although "traffic stops" and subsequent detentions of vehicles transporting passengers must be premised on reasonable suspicion of a legal or regulatory violation, *see* D.C. Code § 50-301.30; 58 D.C. Reg. 17 (Apr. 29, 2011) (amending 31 D.C.M.R. § 800.3), *available at* http://www.dcregs.dc.gov/Gateway/NoticeHome.aspx?NoticeID=999117; *see also* App. 78 (quoting 31 D.C.M.R. § 800.3), the Commission's orders applying 31 D.C.M.R. § 608.2 make clear that when a vehicle for hire is not transporting passengers or otherwise moving, officers may detain a vehicle for hire on the street for an impromptu "vehicle inspection" without any suspicion at all. Specifically, in 2011, the Commission issued General Order No. 2 ("G.O. #2"), authorizing "vehicle inspections in the field," which do not require any suspicion. G.O. #2; Add. 11. This provision contrasts with General Order No. 1 ("G.O. #1") governing "traffic stops," which requires

"reasonable cause to believe that a public vehicle-for-hire operator is in violation of a specific provision of Title 31 of D.C.M.R." Add. 10.

A "vehicle inspection" is defined as "a temporary detention of a standing vehicle for the purpose of determining whether the vehicle is safe for public transport, the driver is legally licensed to operate as an operator of a Public Vehicle for Hire, and all legally required documents are in order." G.O. #2; Add. 12. Vehicle inspections cover at least the following features of a vehicle:

1. Body appearance
2. Glass. No cracks. Proper working order. No tint on Taxicabs
3. Fenders
4. All identifying [illegible][§]
5. Seats. Rear seats shall be vinyl, leather, or covered with plastic
6. No shades in window
7. Properly working instrument panel
8. Interior light
9. Safety equipment: Partition, interior camera, or 911 Dome Light
10. Radio dispatch equipment. If stated on vehicle.
11. Valid DMV Inspection sticker
12. Meter sealed, printing properly, certification matches vehicle
13. Air Conditioner operating (May 15th to October 15th)
14. Heating system operating (October 16th to May 14th)
15. Hubcaps, Wheel covers,
16. Tires. Proper size, inflation, tread depth.

Id. G.O. #2 further provides that inspections are "not limited to" these sixteen features. *Id.*

2. Regulations Specific to Out-of-Jurisdiction Vehicles

Vehicle-for-hire drivers from out of state are regulated under 31 D.C.M.R. § 828 (the Reciprocity Regulation). The Reciprocity Regulation allows vehicles for hire licensed in certain Maryland and Virginia counties to enter D.C. to discharge passengers, § 828.1(b); Add. 3, or to make pre-arranged pick-ups for transport to a non-D.C. destination, § 828.1(a); Add. 3. A vehicle

[§] Petitioners attempted to obtain a legible copy from the Commission, but the Commission's attorneys informed undersigned that it has no legible copy. The fact that the Commission itself cannot produce a legible copy of its own order underscores the absence of meaningful constraint on officers' discretion, as described below at Part I.B.

that discharges passengers coming from outside the District may also pick up other passengers to transport them directly to the licensed jurisdiction. § 828.1(b); Add. 3. However, such vehicles may not enter D.C. "for the purpose of discharging passengers" and then "transport passengers within the District of Columbia," § 828.1(c); Add. 3; may not discharge passengers and then cruise, park, loiter, or solicit passengers in the District, § 828.1(d) (requiring outside-licensed vehicles for hire to "return immediately and directly to their respective jurisdiction of licensure"); Add. 3; and must have been dispatched while the driver was still in the licensing jurisdiction. § 828.1(e); Add. 3. Any vehicle-for-hire driver licensed in Maryland or Virginia who "violates a provision of [the Reciprocity Regulation] is subject to fine and penalty for unlicensed operator (non-resident) and unlicensed vehicle (non-resident) and is subject to fine and penalty . . . , impoundment of the vehicle or, upon conviction, imprisonment for not more than ninety (90) days." § 828.8; Add. 4. These rules apply equally to luxury class vehicles for hire. *See* 31 D.C.M.R. § 1219.1; Add. 8.

In 2002, Congress passed the Real Interstate Driver Equity (RIDE) Act, which prohibits "States" (defined to include the District of Columbia, *see* 49 U.S.C. § 13102(21)) from "enact[ing] or enforc[ing] any law, rule, regulation, standard or other provision having the force and effect of law requiring a license or fee on account of the fact that a motor vehicle is providing pre-arranged ground transportation service" if the service is properly registered for the "interstate transportation of passengers," is properly registered in the State in which it is "domiciled or registered to do business," and is operating under "a contract for (i) transportation by the motor carrier from one State, including intermediate stops, to a destination in another State; or (ii) transportation by the motor carrier from one State, *including intermediate stops in another State*, to a destination in the original State." *id.* § 14501(d)(1) (emphasis added); Add. 15-16. An intermediate stop, in turn, is defined as

> a pause … in order for one or more passengers to engage in personal or business activity, but only if the driver providing the transportation to such passenger or passengers does not, before resuming the transportation of such passenger (or at least 1 of such passengers), provide transportation to any other person not included among the passengers being transported when the pause began.

Id. § 14501(d)(2); Add. 16.

B. The Infractions at Issue

On Saturday March 7, 2015, Petitioner Yolande Payne-Jones was in the driver's seat of a Year 2000 Lincoln Continental Stretch Limo, Maryland license plate 03748LM, which was stopped near a McDonalds located on the 1200 block of F Street NW. App. 22-23. She was properly licensed as a Maryland driver. App. 27. Hack Inspector Gregory Wallace noticed her vehicle and approached her to conduct a "safety compliance check." App. 23. In other words, the inspector conducted a suspicionless inspection of Ms. Payne-Jones's vehicle. *See* G.O. #2; Add. 12 (defining "vehicle inspection" as a "temporary detention of a standing vehicle for the purpose of determining whether the vehicle is safe for public transport, the driver is legally licensed to operate as an operator of a Public Vehicle for Hire, and all legally required documents are in order"). During the course of this stop, Ms. Payne-Jones was not free to leave and was ordered to provide documents to the inspector. *See* App. 23.

Among the documents Inspector Wallace demanded and received from Ms. Payne-Jones was the trip manifest, which reflected that Ms. Payne-Jones was to drive Kimberly Mosher, the president of Diamond Limousines Inc., from Maryland to a dinner in Washington, D.C., and back to Maryland after dinner. App. 33-34, 40. The manifest indicated that there was no charge for this trip. App. 33-34.

As a result of that stop, Inspector Wallace issued five Notices of Infraction (NOIs) to Ms. Payne-Jones, and one to Diamond. Two of these, related to insurance, were ultimately dismissed.

App. 86. The other four NOIs were all predicated on the fact that Ms. Payne-Jones was operating a "[p]ublic vehicle[] for hire licensed outside of the District of Columbia and entering the District of Columbia for the discharge of passengers" and did not "return immediately and directly to [her] respective jurisdiction of licensure without cruising, parking, [or] loitering … in the District," in violation of 31 D.C.M.R. § 828.1(d). *See* App. 22-24, 87, 90. Based on this violation, Ms. Payne-Jones was issued a $50 ticket for loitering (NOI No. 7019479062, App. 3). Despite the fact that loitering was her only substantive offense, she was issued two additional NOIs — imposing additional fines of $1,000 each — for being a non-D.C. resident without a D.C. license (NOI No. 7019479106, App. 1) and for being a non-D.C. resident without a D.C.-registered vehicle (NOI No. 7019479095, App. 2). Diamond was additionally issued an NOI for $500 for permitting a non-D.C. resident to operate a vehicle for hire in D.C. without a D.C. license (NOI No. 7019479110, App. 1).

Before the Office of Administrative Hearings, Ms. Payne-Jones and Diamond argued, among other defenses, that the suspicionless search of Ms. Payne-Jones's vehicle violated the Fourth Amendment and that the federal RIDE Act preempted the application of the D.C. regulations at issue by specifically authorizing Ms. Payne-Jones to provide "transportation . . . from one State, *including intermediate stops in another State*, to a destination in the original State." 49 U.S.C. § 14501(d)(1) (emphasis added); Add. 15.

After conducting an evidentiary hearing, ALJ Yahner issued her final orders (one for each Petitioner) with findings of fact and conclusions of law; on the same day, she denied a motion to reconsider Petitioners' motion to dismiss pressing their Fourth Amendment and preemption challenges. The final orders incorporated by reference the order denying the motion to reconsider. App. 87, 90. In the final orders, the ALJ sustained the infractions for loitering, for "unlicensed

operator, non-DC resident", and for "unlicensed vehicle, non-DC resident" against Ms. Payne-Jones, App. 84-87, and she likewise sustained the infraction for "permitting an unlicensed limousine operator" against Diamond, App. 89-90. In the order denying the motion to reconsider the motion to dismiss, ALJ Yahner rejected the Fourth Amendment defense on the ground that taxis are a pervasively regulated industry and the administrative search scheme passed all three prongs of the *Burger* test. App. 73-76, 79. In the same order, ALJ Yahner stated that the question whether the RIDE Act applied to the NOIs at issue was "a fact-specific inquiry that cannot be decided on motions to dismiss." App. 78. By upholding the NOIs in her final order after the evidentiary hearing, ALJ Yahner necessarily rejected the preemption defense.

This appeal followed.

SUMMARY OF ARGUMENT

The District of Columbia allows roving enforcement officers to conduct random administrative inspections of standing vehicles for hire without individualized suspicion. The officers have unlimited discretion as to which vehicles to inspect, how long to detain them, and what to inspect both inside and outside the vehicle. This practice is incompatible with the Fourth Amendment.

The "basic purpose" of the Fourth Amendment "is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials." *Camara v. Municipal Court*, 387 U.S. 523, 528 (1967). The exception to the Fourth Amendment's warrant and suspicion requirements for "pervasively regulated industries" is a limited one that the Supreme Court has acknowledged must be constrained lest the "narrow exception" be permitted to "swallow the rule." *City of Los Angeles v. Patel*, 135 S. Ct. 2443, 2455 (2015). This is because, when "the government intrudes on a person's property, the privacy interest suffers" regardless of "whether the

government's motivation is to investigate violations of criminal laws or breaches of other statutory or regulatory standards." *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 312-13 (1978). In other words, for taxi drivers who are subject to repeated intrusions at the unchecked whims of inspecting officers, it matters little that their vehicles are being searched for regulatory violations as opposed to criminal ones.

The suspicionless inspection regime for vehicles for hire in the District of Columbia falls short of Fourth Amendment requirements in several ways. In addition to the vehicle-for-hire industry not fitting the definition of a "pervasively regulated industry," the inspection scheme is not necessary to further the government's interests in ensuring safe vehicles for the public and does not limit the discretion of enforcement officers nearly enough to provide an adequate substitute for the normal requirements of the Fourth Amendment. The current system fails to prevent taxi drivers' expectations of privacy from being "subject to arbitrary invasions solely at the unfettered discretion of officers in the field," *Brown v. Texas*, 443 U.S. 47, 51 (1979), and is therefore unconstitutional. Because the infractions at issue arose out of the District's unconstitutional suspicionless-search practice, they should be vacated.

The infractions at issue are additionally preempted by federal law. In the RIDE Act, Congress forbade states from imposing additional regulations on out-of-state drivers attempting to provide round trip services to clients who wish to make temporary stops in the middle of an interstate journey. That is, Congress sought to ensure that taxi and limousine drivers could do exactly what Ms. Payne-Jones did on March 7, 2015 without the threat of burdensome fines and fees. Because the Notices of Infraction at issue here conflict with the text and purpose of Congress' enactment, these applications of the District's Reciprocity Regulation cannot be upheld.

ARGUMENT

On review of agency action, this Court considers questions of law de novo. *King v. D.C. Dep't of Employment Servs.*, 742 A.2d 460, 466 (D.C. 1999).

I. Administrative Inspections of Vehicles for Hire in the District of Columbia Do Not Satisfy the Fourth Amendment Standard for a Closely Regulated Industry.

The detention of a vehicle by a government officer is a seizure within the meaning and protection of the Fourth Amendment. *See, e.g.*, *Delaware v. Prouse*, 440 U.S. 648, 653 (1979). That conclusion holds regardless of whether the vehicle was moving or not prior to its detention. *See Mitchell v. United States*, 746 A.2d 877, 885 (D.C. 2000) (noting the fact that a detained vehicle "was already 'stopped,' *i.e.*, parked, when the officer came up to him does not alter the nature of the encounter" for purposes of Fourth Amendment analysis). Generally, police need reasonable suspicion of criminal wrongdoing to conduct any investigative stop. *See, e.g.*, *United States v. Arvizu*, 534 U.S. 266, 273 (2002). The Fourth Amendment's protections apply to commercial as well as residential premises. *See See v. City of Seattle*, 387 U.S. 541, 546 (1967).

The Supreme Court has carved out a limited exception to ordinary Fourth Amendment standards for administrative searches of commercial premises in "pervasively regulated industries." *New York v. Burger*, 482 U.S. 691, 693 (1987). Administrative searches constitute one of the recognized "special needs" of the government that "make the warrant and probable-cause requirement impracticable." *City of Los Angeles v. Patel*, 135 S. Ct. 2443, 2452 (2015) (quoting *Skinner v. Ry. Labor Executives' Ass'n*, 489 U.S. 602, 619 (1989)).

As a threshold matter, the D.C. vehicle-for-hire industry does not easily fit the mold of a pervasively regulated industry, as clarified by *Patel*. The pervasively regulated industry exception applies only in "relatively unique circumstances." *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 313 (1978); *see also Burger*, 482 U.S. at 701 (describing the "narrow focus" of the exception). In the

past forty-five years, the Supreme Court has found the exception applicable only with respect to four industries, each of which presented "a clear and significant risk to the public welfare." *Patel*, 135 S. Ct. at 2454 (citing *Colonnade Catering Corp. v. United States*, 397 U.S. 72 (1970) (liquor industry); *United States v. Biswell*, 406 U.S. 311 (1972) (firearm and ammunitions sales); *Donovan v. Dewey*, 452 U.S. 594 (1981) (mining); and *Burger*, 482 U.S. at 691 (automobile junkyards)). The Court has found no industry to be "closely regulated" for the purpose of that exception in the past 30 years. Closely regulated industries are those that "have such a history of government oversight that no reasonable expectation of privacy . . . could exist for a proprietor over the stock of such an enterprise." *Id.* (quoting *Barlow's*, 436 U.S. at 313). Although some courts had, prior to the Supreme Court's decision in *Patel*, held that taxicabs are a pervasively regulated industry, *Patel* held that the hotel industry did not meet the criteria and cautioned against the further expansion of the "pervasively regulated" category. *See id.* at 2454-56.

The taxi industry has much more in common with the hotel industry than with the liquor, firearms, mining, or junkyard industries. The taxi industry poses no greater "risk to the public welfare," *id.* at 2454, than the operation of motor vehicles generally, yet no one would seriously contend that ordinary passenger cars, or even rental cars, are subject to a suspicionless administrative inspection regime. Although the District has included numerous taxi regulations in the motor vehicle title of the D.C. Code (Title 50), hotels warrant an entire title of their own (Title 30). Like the regulations in *Patel* requiring hotels to "maintain a license, collect taxes, conspicuously post their rates, and meet certain sanitary standards," the D.C. taxi regulations do not establish a "comprehensive scheme of regulation that distinguishes [taxis] from numerous other businesses." *Id.* at 2455.

Even if vehicles for hire are a closely regulated industry, administrative searches of closely regulated businesses must "satisfy three additional criteria to be reasonable under the Fourth Amendment" under *New York v. Burger* and its progeny (the "*Burger* prongs"). *Id.* at 2456. First, "there must be a 'substantial' government interest that informs the regulatory scheme pursuant to which the inspection is made." *Burger*, 482 U.S. at 702 (quoting *Dewey*, 452 U.S. at 602). Second, "the warrantless inspections must be 'necessary to further [the] regulatory scheme." *Id.* (quoting *Dewey*, 452 U.S. at 600). Third, "the statute's inspection program, in terms of the certainty and regularity of its application, [must] provid[e] a constitutionally adequate substitute for a warrant." *Id.* (quoting *Dewey*, 452 U.S. at 603).

The District's suspicionless inspection regime fails two of the three *Burger* prongs. Petitioners concede that the government's interests in "adequate and high quality taxi passenger service" for "all quadrants and neighborhoods of the District," D.C. Code § 50-301.02(a)(1), as well as "ensuring the safety of passengers, pedestrians, and other drivers on local roadways," *D.C. Prof'l Taxicab Drivers Ass'n v. District of Columbia*, 880 F. Supp. 2d 67, 73 n.7 (D.D.C. 2012), are substantial and therefore satisfy the first *Burger* prong (a substantial government interest). However, the suspicionless search regime (a) is unnecessary for the furtherance of that interest, and (b) does not provide an adequate substitute for a warrant.

A. Warrantless Suspicionless Searches Are Not Necessary To Further the District's Regulatory Scheme.

Burger's second prong tests whether the government's interest requires dispensing with the Fourth Amendment mainstays of warrants and individualized suspicion. As the Supreme Court explained in *Donovan v. Dewey*, "[i]nspections of commercial property may be unreasonable if they . . . are unnecessary for the furtherance of [government] interests." 452 U.S. at 599 (citing *Colonnade*, 397 U.S. at 77). In *Dewey*, the Court concluded that in the context of underground

mines, just as in the case of firearm and alcohol dealers, "if inspection is to be effective and serve as a credible deterrent, unannounced, even frequent, inspections are essential." *Id.* at 603 (quoting *Biswell*, 406 U.S. at 316). The Court came to the same conclusion for automobile junkyards in *Burger*, finding that "surprise [was] crucial if the regulatory scheme aimed at remedying [the] major social problem [of automobile theft] [was] to function at all." *Burger*, 482 U.S. at 710. As the Seventh Circuit encapsulated the second *Burger* prong, in order to show that "warrantless, suspicionless inspections [are] necessary to further the regulatory scheme[,] the government must demonstrate that imposition of a warrant or reasonable suspicion requirement would frustrate the purposes of the regulatory scheme." *Schaill by Kross v. Tippecanoe County Sch. Corp.*, 864 F.2d 1309, 1317 (7th Cir. 1988).

Unlike for firearm and liquor dealers, mines, and automobile junkyards, surprise suspicionless inspections of taxis are not necessary to further the government's interest, which here is in maintaining safe vehicles for hire. In the former industries, businesses seeking to flout regulations or hide illegal contraband or activities can easily feign compliance for pre-scheduled inspections and later resume unlawful practices. In contrast, a vehicle-for-hire driver would have no reason or incentive to maintain her "Taxi Smart Meter System, lights, brakes, steering assembly, tires, equipment, horn," or any "other mechanical parts relating to both the exterior and interior condition of the taxi vehicle" for purposes of regular scheduled inspections, only to purposefully disable or damage those mechanisms following the inspection. 31 D.C.M.R. §§ 608.1., 608.2; Add. 1. Furthermore, unlike a junkyard, through which "stolen cars and parts often pass quickly," *Burger*, 482 U.S. at 710, there is no risk of criminal concealment inherent to the maintenance of taxis. The better analogy is to building inspections, which the Supreme Court held may not be carried out through a regime of warrantless inspections, *See v. City of Seattle*, 387 U.S.

541, 545-46 (1967): as in the case of building code violations, violations of taxi regulations regarding functioning equipment would be "relatively difficult to conceal or to correct in a short time," *Biswell*, 406 U.S. at 316 (citing *See*, 387 U.S. at 541). Moreover, taxi inspections are even more closely analogous to private motor vehicle inspections, which occur at scheduled intervals, and do not raise concerns that owners will disable their brakes or wipers after they pass.

Accordingly, a system of regular, pre-scheduled inspections plus in-the-field inspections based on reasonable suspicion of a violation (such as observing a non-working light) would not "frustrate" the government's interest. Indeed, many other United States cities do not require surprise inspections of vehicles for hire and advance their safety and other regulatory interests through mandated periodic inspections alone. *See, e.g.,* San Francisco Transportation Code div. II, art. 1100, § 1113(s)(1) (2008) (requiring that taxis be inspected "every six months if they are used as spare vehicles or have 200,000 miles or more on the odometer"); Boston Police Department, Hackney Carriage Rules § 3(III)(d) (2008) ("Every vehicle shall be periodically inspected to ensure that it meets the above requirements on a schedule determined by the Inspector of Carriages and available from the Office of the Inspector of Carriages. Notice will be sent to all Medallion Owners or Lessees at least thirty (30) days before any such inspection."); Rules of the City of New York, tit. 35, §§ 58-29 (b), 59A-26, 59B-26 (requiring taxis and other for-hire vehicles to be inspected every four months and providing no street enforcement mechanism). If the District is concerned that yearly inspections are insufficient to sufficiently deter and detect violations, it may require more frequent scheduled inspections, as San Francisco and New York do, and as the District used to do prior to October 2012. *See* 59 D.C. Reg. 8564, 8572 (July 20, 2012) (requiring semi-annual inspections), *available at* http://www.dcregs.dc.gov/Gateway/FinalAdoptionHome.aspx?RuleVersionID=3972361; 59 D.C.

Reg. vol. 40 (Oct. 5, 2012) (amending requirement to annual inspections), *available at* http://www.dcregs.dc.gov/Gateway/NoticeHome.aspx?NoticeID=3698627. Requiring an up-to-date seal of inspection to be prominently displayed would help ensure the efficacy of such an inspection regime; under such a scheme, the lack of an up-to-date inspection sticker would provide reasonable suspicion to stop a vehicle for hire, thus providing a constitutionally sound basis for a stop. Indeed, regulation through periodic inspections and visible display of inspection verification is how the District regulates the far more numerous population of private vehicles on its roads.

In her denial of Petitioners' amended motion to dismiss, the ALJ focused on "[t]he need for random inspections … in cases where public vehicles for hire licensed in another jurisdiction are operating in the District." App. 70. Based on the need to detect out-of-state drivers violating "regulations which prohibit loitering and soliciting of passengers in the District," the ALJ worried that the regulatory scheme "would hardly be effective if inspections could only be made based on prior proof of reasonable suspicion." *Id.* This conclusion does not withstand scrutiny. Unlike vehicles for hire that are based in the District, out-of-state vehicles are subject to regulations that are both fewer and easier to enforce by observation. The ALJ cited two: loitering and soliciting of passengers in the District. Hack inspectors would have no difficulty establishing reasonable suspicion of loitering or soliciting passengers in the District if they observed these substantive acts in the field. Violations of traffic laws, too, would be easily observable and therefore provide reasonable suspicion for a stop.

In sum, the element of surprise is not necessary to detect or deter violations of taxi regulations in the District of Columbia, and requiring reasonable suspicion for stops in the field would not frustrate the government's interest. As a result, the current system of random suspicionless inspections fails the second prong of the *Burger* test.

B. The Search Scheme Does Not Provide an Adequate Substitute for a Warrant.

Under the third *Burger* prong, in order to provide a "constitutionally adequate substitute for a warrant" based on "the certainty and regularity of its application," *Burger*, 482 U.S. at 711 (quoting *Dewey*, 452 U.S. at 603)), a regulatory search scheme "must perform the two basic functions of a warrant": (a) advising the property owner that a search is being made pursuant to law and properly defining the scope of that search; (b) limiting the discretion of the inspecting officer in terms of "time, place, and scope." *Id.* at 703. Although the D.C. regulatory scheme does notify vehicle-for-hire drivers that they "will be subject to periodic inspections," *id.* (quoting *Dewey*, 452 U.S. at 600), it does not adequately limit enforcement officers' discretion.

First, the regulatory search scheme does not adequately limit officers' discretion as to the scope of searches. Hack inspectors and police officers are authorized under 31 D.C.M.R. § 1215.2 to

> inspect and test a [luxury] vehicle's lights, brakes, steering assembly, tires, horn, component of a system used to calculate fares, process payments or print receipts, or any other device or equipment installed in the vehicle or authorized or required by a provision of this title or Title 18 of the D.C.M.R., at any time when such vehicle is on the public streets or on public space.

Add. 6; *see also* 31 D.C.M.R. § 608.2 (providing similar scope of inspection for taxis); Add.1. However, G.O. #2 goes further, listing sixteen areas for inspection and then providing that inspecting officers' discretion is "not limited to" any particular features. G.O. #2; Add. 12. The General Order provides no limitation on what the inspector may inspect.

Second, the regulatory scheme does not provide any limitation to the duration of a stop. The Supreme Court has held that extending the duration of even a suspicion-based traffic stop beyond what is necessary to address the initial purpose of the stop can convert a constitutional stop into an unconstitutional one. *See Rodriguez v. United States*, 135 S. Ct. 1609, 1614-15 (2015).

Unconstrained discretion as to the duration of *suspicionless* stops is at least as problematic. *Cf. United States v. Woodrum*, 202 F.3d 1, 12 (1st Cir. 2000) (noting constitutional relevance of limitations as to length of stops in taxi search program).

Third, the District's program does not limit the discretion of enforcement officers to decide *which* vehicles to stop. This lack of guidance unleashes the very danger that the framers sought to constrain in passing the Fourth Amendment: arbitrary enforcement that is susceptible to abuse and discrimination. *See, e.g.*, *United States v. Martinez-Fuerte*, 428 U.S. 543, 554 (1976) ("The Fourth Amendment imposes limits on search-and-seizure powers in order to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals."). Accordingly, several courts have struck down similar inspection schemes for failing to constrain officers' enforcement discretion. *See State v. McClure*, 74 S.W.3d 362, 373–76 (Tenn. Crim. App. 2001) (holding that a vehicle inspection under a Tennessee statute and the FCMS Regulations did not satisfy *Burger*'s third prong because, despite being limited in time, place, and scope, there was testimony that the inspecting officers had "complete discretion to decide which vehicles to inspect" and were "not given any guidance by the rules or superior officers"); *State v. Landrum*, 739 N.E.2d 1159, 1165 (Ohio 2000) (holding that a commercial motor vehicle inspection did not satisfy *Burger*'s third prong where inspecting officers had complete discretion over which trucks to stop and when they could be stopped); *State v. Hone*, 866 P.2d 881, 883 (Ariz. Ct. App. 1993) (concluding that an Arizona statute authorizing officers to stop livestock trailers did not satisfy *Burger*'s third prong because it gave the officers discretion to stop any vehicle).

Finally, officers' discretion is not sufficiently limited regarding the time and place of vehicle inspections. The regulations allow hack inspectors and police officers to conduct inspections without suspicion "at any time a taxicab is [standing] on the public streets or public

space [without a passenger]," 31 D.C.M.R. § 608.2; Add. 1; *accord* 31 D.C.M.R. § 1215.2 (same, for luxury vehicles); Add. 6, as well as whenever "directed by [the] D.C. Taxicab Commission." G.O. #2; Add. 11. In other words, the only limit in terms of permitted time or place of inspections is when vehicles for hire are located in privately owned spaces, such as a garage or driveway, or "[s]treets, alleys and other thoroughfares where the underlying land is owned by private citizens or entities," 12 D.C.M.R. § 202A (defining "private thoroughfare"), and even these spaces may be invaded for purposes of a search if "directed by [the] D.C. Taxicab Commission." G.O. #2; Add. 11. The regulatory scheme does not even limit inspections to *on-duty* vehicles for hire. *Cf. Burger*, 482 U.S. at 711 (noting with approval the limitation that "officers are allowed to conduct an inspection only during the regular and usual business hours" (internal alteration and quotation marks excluded)). As such, inspectors and police officers are free under the regulatory scheme to stop and inspect vehicles for hire without suspicion even when drivers are off duty and are thus functionally no different from any other private vehicle. Ultimately, the search scheme confers "almost unbridled discretion upon . . . officers . . . in the field[] as to when to search and whom to search." *Barlow's*, 436 U.S. at 323 (finding that merely limiting searches of commercial premises to "reasonable times, and within reasonable limits and in a reasonable manner" was inadequate to satisfy the Fourth Amendment).

Courts have struck down suspicionless taxi-inspection regimes based on the broad discretion afforded to enforcement officers. For example, in *State v. White*, 818 A.2d 361 (N.J. Super. Ct. 2002), the court held that the state's Taxi Vehicle Safety Check Program was unconstitutional both under the balancing test for suspicionless stops set forth in *Brown v. Texas*, 443 U.S. 47 (1979), and as a regulatory inspection scheme under the *Burger* framework. *White*, 818 A.2d at 368. With respect to the *Burger* test, in addition to finding that the New Jersey program

violated the first two criteria, the court found that the program failed "to provide a constitutionally adequate substitute" for a warrant under the third *Burger* prong based in part on the fact that it "allow[ed] virtually unfettered discretion of the inspecting officer." *Id.* at 368. Likewise, *In re Muhammad F.*, 722 N.E.2d 45 (N.Y. 1999), held that a New York regulatory search scheme that allowed random stops of taxicabs to confirm driver safety was unconstitutional under the *Brown* balancing test based on many of the same factors that drive the *Burger* inquiry. The court focused on a number of problematic features of the stops, including the excessively intrusive nature of the stops often conducted by plainclothes officers in unmarked police cars and the "standardless and unconstrained discretion" afforded to officers. *Id.* at 50-52 (quoting *Delware v. Prouse*, 440 U.S. 648, 661 (1979)). And in *United States v. Santiago*, 950 F. Supp. 590 (S.D.N.Y. 1996), the court held in a criminal case that a stop made pursuant to the same roving suspicionless taxi stop program at issue in *Muhammad* "plainly" violated a defendant's Fourth Amendment rights because, among other problems, "there are no written rules governing the manner in which the stops are to be made," and because "the individual police officers (or precinct commanders) decide where and when to conduct their stops." *Id.* at 596.

The court's characterization of the New York program is equally applicable to the suspicionless-inspection regime at issue here: "[T]his program permits the exercise of a great deal of discretion by … officers and a possibility of an abuse of that discretion." *Id.*; *accord Commonwealth v. Carle*, No. 94-11049, 1995 WL 737537, at *3 (Mass. Super. Ct. Oct. 31, 1995) ("[T]he 'Operation Taxi' policy fails to meet constitutional requirements because it grants the police the 'unbridled discretion' to stop any taxi at any time without any grounds to believe anything is amiss."). Cases in which courts have upheld suspicionless taxi-search programs, by

contrast, have depended largely on the voluntariness of the programs. *See United States v. Woodrum*, 202 F.3d 1, 12 (1st Cir. 2000); *New York v. Abad*, 771 N.E.2d 235, 238-39 (N.Y. 2002).

The decision in *D.C. Professional Taxicab Drivers Ass'n v. District of Columbia*, 880 F. Supp. 2d 67, 74 (D.D.C. 2012), is not to the contrary. That case involved a Fourth Amendment challenge to a D.C. enforcement regime that predated G.O. #2, and the court held that the Fourth Amendment claim was rendered moot by the then-recent promulgation of G.O. #1. Although a footnote dictum in the opinion suggested that the enforcement regime created by G.O. #1 and 31 D.C.M.R. § 608.2 is permissible, the court noted that the plaintiffs there had not briefed or otherwise addressed the issue of the constitutionality of suspicionless stops and the court treated that issue as "conceded." *D.C. Prof'l Taxicab Drivers Ass'n*, 880 F. Supp. 2d at 73 n.7

Ultimately, the discretion of hack inspectors and police officers enforcing vehicle-for-hire regulations in the District of Columbia is inadequately limited, or not limited at all, as to the time, place, scope, and duration of vehicle inspections. In essence, the regulatory scheme makes taxis and other vehicles for hire a "Fourth-Amendment-free zone" in the District of Columbia. As a result, the D.C. suspicionless inspection scheme for vehicles for hire fails the third prong of *Burger* and is unconstitutional under the Fourth Amendment.

II. The Application of the Anti-Loitering Provision of 31 D.C.M.R. § 828.1 to Intermediate Stops During Interstate Trips Is Preempted by the Real Interstate Driver Equity (RIDE) Act.

"Where a state statute conflicts with, or frustrates, federal law, the former must give way." *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 663 (1993) (citing U.S. Const., Art. VI, cl. 2; *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981)). Congressional intent to preempt local law may be "explicitly stated in the statute's language or implicitly contained in its structure and purpose." *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977). Thus, preemption may be express

or implied. *See Murray v. Motorola, Inc.*, 982 A.2d 764, 771 (D.C. 2009). Express preemption occurs "where statutory language 'reveals an explicit congressional intent to pre-empt state law' . . . ." *In re Couse*, 850 A.2d 304, 308 (D.C. 2004) (quoting *Barnett Bank of Marion County v. Nelson*, 517 U.S. 25, 31 (1996)). Two categories of preemption exist under the category of implied preemption. First, under "field preemption," federal law supplants state law where "federal law so thoroughly occupies a legislative field 'as to make reasonable the inference that Congress left no room for the States to supplement it.'" *Id.* (quoting *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992)). Second, under the doctrine of "conflict preemption," federal law trumps state law where "compliance with both federal and state regulations is a physical impossibility, . . . or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objecti[ves] of Congress." *Id.* (citations omitted). Conflict preemption may result in the negation of certain applications of a state law or regulation, rather than a preemption of the state regulation on its face. *See, e.g., Geier v. Am. Honda Motor Co., Inc.*, 529 U.S. 861, 874 (2000) (finding that state tort action was preempted by federal law).

Preemption analysis is "'guided by the oft-repeated comment that the purpose of Congress is the ultimate touchstone in every pre-emption case,' such that 'any understanding of the scope of a pre-emption statute must rest primarily on a fair understanding of congressional purpose,' as discerned from the statutory language, the statutory framework, and the structure and purpose of the statute as a whole." *Couse*, 850 A.2d at 308 (citation and internal quotation marks omitted).

One explicit purpose of the RIDE Act was to shield from local regulation the very conduct reflected on Ms. Payne-Jones's manifest — transporting a passenger across state lines and returning that passenger to the original state after a stop. Specifically, the statute prevents states from imposing additional licenses or fees for vehicles for hire who "contract for . . . transportation

. . . from one State, including intermediate stops in another State, to a destination in the original State." 49 U.S.C. § 14501(d)(1); Add. 15-16. The statute in turn defines "intermediate stop" as "a pause in the transportation in order for one or more passengers to engage in personal or business activity, but only if the driver . . . does not, before resuming the transportation of such passenger . . . , provide transportation to any other person not included among the passengers being transported when the pause began." 49 U.S.C. § 14501(d)(2); Add. 16.

In contrast, the D.C. Reciprocity Regulation, 31 D.C.M.R. § 828.1(d); Add. 3, mandates that drivers "return immediately and directly to their respective jurisdiction of licensure" after discharging passengers, without "cruising, parking, [or] loitering." The regulation defines "loitering" as "the failure of a driver, while in service, to proceed directly to the prearranged destination to service a trip permitted by this section or return directly to his or her licensing jurisdiction." The D.C. Reciprocity Regulation thus outlaws the "intermediate stop" that the RIDE Act protects.

In her order dismissing Petitioners' amended motion to dismiss, ALJ Yahner concluded that whether "the RIDE Act applies to any of the NOIs issued is a fact-specific inquiry that cannot be decided on motions to dismiss." App. 78. At the evidentiary hearing, Inspector Wallace testified that the trip manifest he examined during his inspection showed that Ms. Payne-Jones was commissioned to drive Kimberly Mosher, the owner of Diamond Limousines Inc., from Maryland to a dinner in Washington, D.C. and back to Maryland after the dinner. App. 33-34. Inspector Wallace did not question the veracity of the manifest — indeed, it was the entire basis for the notices of violation he issued. *See* App. 23-24. Inspector Wallace argued in the OAH hearing that, under the D.C. regulations, Ms. Payne-Jones "should've taken the vehicle outside the limits [of the District of Columbia] and returned to pick up the owner at the restaurant." App. 43. However,

waiting for Ms. Mosher inside the D.C. limits is precisely the sort of "intermediate stop" that cannot be prohibited or penalized under the RIDE Act: "a pause in the transportation in order for one or more passengers to engage in personal or business activity" — Ms. Mosher's dinner. Thus, Ms. Payne-Jones was ticketed under the Reciprocity Regulation for conduct that the RIDE Act aimed to preempt from local regulation.

The application of the D.C. regulations underlying the NOIs issued on account of Ms. Payne-Jones's lack of D.C. license and registration are expressly preempted by the RIDE Act. Although these violations were predicated on the act of loitering, *see* 31 D.C.M.R. 828.8; Add. 4, what Ms. Payne-Jones was literally ticketed for was being an out-of-state vehicle-for-hire driver driving in the District without a D.C. license and without a D.C.-registered vehicle. Through the application of its Reciprocity Regulation in the instant NOIs, D.C. is attempting to impose a "license" requirement on a driver engaging in trips exempted from such local licensure requirements under the RIDE Act. 49 U.S.C. § 14501(d)(1); Add. 15-16. These NOIs, unlike the NOI for the substantive violation of loitering, are imposed exclusively as an additional penalty for being an out-of-state vehicle-for-hire driver, and are therefore expressly preempted.

The imposition of a fine for "loitering" itself does not constitute a "license" requirement or a "fee" per se, so the application of the Reciprocity Regulation here is not preempted *expressly* by the RIDE Act's prohibition of state laws "requiring a license or fee on account of the fact that a motor vehicle is providing pre-arranged [interstate] ground transportation service." 49 U.S.C. § 14501(d)(1); Add. 15. However, Congress's purpose in passing the RIDE Act, "the ultimate touchstone" in analyzing whether state law was preempted, *Couse*, 850 A.2d at 308, demonstrates that the NOI issued to Ms. Payne-Jones for loitering is invalid on the basis of implied preemption. The legislative history demonstrates that, beyond a rigid definition of "license or fee," Congress

sought to prohibit any form of local regulation that would obstruct the conduct protected under the RIDE Act.

In describing Congress's goal in passing the RIDE Act, the congressional reports make clear that the statute sought to reach beyond "licenses" and "fees." The House Report explains that the statute "clarifies that a state or local government or an interstate agency *may not regulate* pre-arranged interstate ground transportation provided by carriers that meet all applicable vehicle and intrastate passenger transportation licensing requirements under state law." H.R. Rep. 107-282, at 2-3 (2002), *reprinted in* 2002 U.S.C.C.A.N. 1439, 1440 (emphasis added). The Senate Report describes the problem being addressed for taxicabs and limousines providing "pre-arranged interstate service": "these for-hire vehicles are subject not only to the laws and regulations of the State in which they are licensed or domiciled, but also to certain *requirements* that may be imposed by other States or municipalities in which fares originate or intermediate stops are made." S. Rep. 107-237, at 1-2 (2002) (emphasis added).

The Act's legislative history confirms that the trip for which the District seeks to fine Ms. Payne-Jones and Diamond is the type of transaction Congress acted to protect. Congressman Blunt, an original sponsor of the legislation, stated that the statute "prohibits states other than a home licensing state from enacting or enforcing a law requiring a fee or *some other payment requirements* on vehicles that provide prearranged ground transportation service." 148 Cong. Rec. H8083-02, H8085, 2002 WL 31507294 (emphasis added). Representative Petri put an even finer point on the issue:

> An example that illustrates the problem with the current framework is that of a traveler who arranges to be picked up at an airport. On the way home to another state, they wish to stop and have dinner within the same state in which they arrived. This seems like a reasonable situation. What could go wrong with this arrangement? Unfortunately, that stopover could result in the car being ticketed, towed and impounded. The customer is stranded to look for a way to get home and the car

> service is left without a car and with hundreds or even thousands of dollars in fines and fees.
>
> This is not a fair practice and H.R. 2546 corrects the problem.

147 Cong. Rec. H8053-01, H8055, 2001 WL 1409524. Rep. Petri's hypothetical reveals that one of the goals of the RIDE Act was to prevent precisely what happened to Diamond Limousine, Ms. Payne-Jones, and her passenger on March 7, 2015 — local regulatory obstruction of a vehicle for hire that crosses state lines for a passenger who wishes to make a stop. Accordingly, the imposition of fines based on "loitering" by an out-of-state driver conducting a quintessential "intermediate stop" on a pre-arranged interstate round trip "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Couse*, 850 A.2d at 308.

Addressing the conflict does not require the Court to strike down any provision of the vehicles-for-hire regulations on its face; rather, it may hold preempted the particular application of D.C. regulations to Ms. Payne-Jones and to Diamond. *See Black Car Assistance Corp. v. New Jersey*, 351 F. Supp. 2d 284, 288 (D.N.J. 2004) (holding that certain applications of a New Jersey licensing law were preempted).

CONCLUSION

For the foregoing reasons, the Court should hold that the suspicionless inspection regime authorized by General Order #2 violates the Fourth Amendment, and that the infractions at issue are preempted by the RIDE Act. Accordingly, the Court should vacate the Notices of Infraction issued to Ms. Payne-Jones and Diamond Limousines.

Respectfully submitted,

July 28, 2017

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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of this BRIEF FOR PETITIONERS along with the attached Addendum and the associated Appendix using the Court's e-filing system, upon the following counsel for Respondents, this 28th day of July 2017.

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ADDENDUM

TABLE OF CONTENTS