No. _____

In the Supreme Court of the United States

JESUS LEONARDO ESQUIVEL-CARRIZALES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

While out shopping five days before Christmas, Petitioner had a brief interaction in the public parking lot of a shopping center with a man agents suspected was involved in drug trafficking. After Petitioner left the parking lot, a police officer stopped Petitioner for a purported traffic violation but never conducted a records check or issued a ticket. The Fifth Circuit held the stop was lawful because police had reasonable suspicion of a drug crime—suspicion based entirely on Petitioner's single interaction with another suspect.

The question presented is, for purposes of an investigative stop under the Fourth Amendment, is it reasonable for an officer to suspect an individual of criminal activity based solely on the actions of a companion?

PARTIES TO THE PROCEEDING

Petitioner is Jesus Leonardo Esquivel-Carrizales who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

DIRECTLY RELATED PROCEEDINGS

1. *United States v. Jesus Leonardo Esquivel-Carrizales*, 4:20-CR-161-1, United States District Court for the Southern District of Texas. Judgment and sentence were entered on October 25, 2021.

2. *United States v. Esquivel-Carrizales*, No. 21-20586, 2023 WL 5133293 (5th Cir. Aug. 10, 2023), Court of Appeals for the Fifth Circuit. The judgment affirming the conviction and sentence was entered on August 10, 2023.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Jesus Leonardo Esquivel-Carrizales seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINION BELOW

The opinion of the Court of Appeals was not published but is available at *United States v. Esquivel-Carrizales*, No. 21-20586, 2023 WL 5133293 (5th Cir. Aug. 10, 2023), and is reprinted on pages 1a–11a of the Appendix.

JURISDICTION

The Fifth Circuit entered judgment on August 10, 2023. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United Stated Constitution:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

A. Relevant Facts

This case stems entirely from a Department of Homeland Security investigation into Jose Santos-Esquivel—not Petitioner. In 2018, HSI agents in Brownsville, Texas were investigating several people in the commercial cargo business driving 18-wheelers for drug trafficking, including Santos. ROA.129. On November 15, 2018, a confidential informant told agents that Santos was looking for someone to build a hidden compartment on his personal truck (not an 18-wheeler), "presumably" to hide drugs or money. ROA.562, 577. Under the direction of agents, the informant built the compartment in an external diesel tank for Santos. ROA.129. Agents then got a tracking warrant and attached a GPS tracker to the truck. ROA.129.

On December 20, 2018, agents noticed that the GPS tracker was moving toward Houston, Texas, which they described as a major destination for drugs coming from Brownsville. ROA.129–130. Though they had received no additional information suggesting that Santos was moving drugs or money at that time, Brownsville agents called agents in Houston and asked that they surveil Santos. ROA.130, 571. Houston agents found Santos at 10:00pm parked in a shopping center parking lot. ROA.130. As it was just five days before Christmas, the shopping center was open. ROA.602. Agents saw a white Volkswagen parked a space or two over from Santos's truck and saw two guys walk to the car with a shopping cart holding their purchases. ROA.602. The two men—Petitioner and Alejandro Pena—placed their purchases into the

trunk of the car. ROA.130. They then spoke with Santos. ROA.130. Petitioner sat in Santos's truck for a "few minutes," and Pena took "something" out of the back seat of the truck and placed it into the trunk of the Volkswagen. ROA.585, 605. No one accessed the hidden compartment in the external diesel tank. Pena and Petitioner left in the Volkswagen, with Pena driving and Petitioner in the passenger seat. ROA.606.

HSI agents asked local law enforcement to pull the Volkswagen over for some traffic violation. ROA.608. Harris County Sheriff's Deputy Sweeney did so, alleging that Pena was driving five miles per hour over the speed limit and twice failed to signal a lane change. ROA.131. Sweeney claimed that Pena was nervous, so he instructed Pena to get out of the Volkswagen and sit in the back of the police cruiser. ROA.131. The deputy then walked back toward the Volkswagen and Petitioner, who does not speak English very well, started to get out. ROA.131. Sweeney told Petitioner to stay in the car, collected Petitioner's identification, and returned to the cruiser to run records checks on Petitioner and Pena. ROA.131. Sweeney then called for other officers and, when they arrived, placed Petitioner in the back of the other police vehicle. ROA.132. At some point, Pena consented to a search of the Volkswagen and Sweeney walked his K-9 around the car, who alerted to the presence of drugs. ROA.132.

B. Proceedings Below

Petitioner filed a motion to suppress, arguing that the traffic stop was impermissibly prolonged in violation of *Rodriguez v. United States*, 135 S. Ct. 1609 (2015). ROA.1121–23, 1140–41. The district court held a hearing in which Sweeney testified that he was not

sure if he ever completed the records checks; he was not sure what, if anything, the record checks revealed; and he did not remember when the record checks came back. ROA.681–84. Petitioner argued that Sweeney impermissibly prolonged the traffic stop past the time needed to complete the checks and lacked reasonable suspicion to do so. Agents were working off information about another man, Santos, that was at least a month old. ROA.113. They had no information that Santos was transporting drugs on December 20th and all they saw that night was two unknown men exiting a department store five days before Christmas, placing their purchases into a vehicle, and talking with Santos. ROA.113. While Pena took "something" from Santos's truck, agents couldn't describe what that "something" was. ROA.113.

The district court denied the motion, concluding that "to the extent the stop could possibly be considered 'prolonged' for the traffic violation, it was not prolonged because it was necessary to investigate the reasonable suspicion that [Petitioner] and Pena had just engaged in a drug deal." ROA.156. The court concluded the officers had reasonable suspicion based on the hidden compartment in Santos's truck; that Santos drove from Brownsville to Houston, a known drug trafficking corridor; that Pena and Petitioner met with Santos in a shopping center parking lot; and that Pena took "something" from Santos. ROA.156.

The Fifth Circuit affirmed, holding it didn't matter whether Sweeney ever completed the records checks because he had reasonable suspicion that the Volkswagen contained drugs. *United States v. Esquivel-Carrizales*, No. 21-20586, 2023 WL 5133293, at

*4 (5th Cir. Aug. 10, 2023). Officers had reason to believe Santos was involved in drug trafficking, Petitioner interacted with Santos in a parking lot after apparently doing some Christmas shopping, and Pena was nervous when stopped by police. *Id.* Thus, the court did not "consider whether the traffic stop might have been unreasonably prolonged to investigate only traffic violations." *Id.*

REASONS TO GRANT THIS PETITION

I. The decision below conflicts with the decisions of at least six federal circuit courts on an important Fourth Amendment question.

A. At least six circuits have held that an automatic companion rule is unconstitutional.

The Fifth Circuit's decision in this case enacted a de facto automatic companion rule: When the police have reason to suspect a person is a drug dealer, they also have reasonable suspicion to detain others who interact with that person. At least six circuits disagree. *See, e.g., United States v. Drakeford*, 992 F.3d 255, 265 (4th Cir. 2021); *United States v. Mercer*, 834 F.3d 39, 43 (1st Cir. 2016); *United States v. McKie*, 951 F.3d 399, 401 (D.C. Cir. 1991); *United States v. Flett*, 806 F.2d 823, 827 (8th Cir. 1986); *United States v. Bell*, 762 F.2d 495, 499 (6th Cir. 1985); *United States v. Woods*, 351 F. App'x 259, 261 (10th Cir. 2009). These courts, based on a commonsense approach and a proper understanding of reasonable suspicion, have held that officers must observe more than "mere propinquity" or a singular interaction with a suspected criminal to warrant detention. *See McKie*, 951 F.3d at 402 (quoting *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979)). Police must justify the intrusion based on facts specific to the individual detained.

The D.C. Circuit has repeatedly confronted the so-called automatic companion rule and repeatedly rejected it, holding that reasonable suspicion requires an individualized assessment. *E.g., McKie*, 951 F.2d at 402; *United States v. Bailey*, 622 F.3d 1, 7 (D.C. Cir. 2010); *United States v. Holder*, 990 F.2d 1327, 1329

(D.C. Cir. 1993). For instance, the court remanded to the district court to determine whether officers had reason to believe the defendant had offered to sell drugs prior to their encounter when the defendant was detained for having his wheelchair pushed by a suspected drug dealer in a high crime neighborhood. *United States v. Lawson*, 15 F.3d 1160 (Table), at *1 (D.C. Cir. 1994) (unpublished). There, officers were "clearing the block" in a high drug area when they spotted "Erky Berk," whom they believed was a drug dealer. An unidentified woman told officers that "the guy in the wheelchair (Lawson) with Erky Berk has a lot of dope." *Id.* Officers detained the two men and ultimately found drugs on Lawson. *Id.* at *2. The circuit court reasoned that "mere association with a person suspected of criminal activity is insufficient to justify a stop." *Id.* at *5. "Having one's wheelchair pushed by a reputed drug dealer, even in the high drug neighborhood together with the unspecific tip, would, however, present a close case on the existence of sufficient suspicion to stop Lawson." *Id.* at *6. The court ultimately remanded the case for the district court to determine whether police had more information specific to Lawson. *Id.*

The D.C. Circuit is not alone. The majority of circuits require facts specific to the individual beyond mere association with a suspected drug dealer. *Compare McKie*, 951 F.2d at 402 ("The stop of McKie was not automatic—justified solely by the stop of Clipper—but rather had an independent foundation. McKie was observed walking and talking to a suspected drug dealer *at the very time and in the very place of the suspected drug dealing*."), *Bailey*, 622 F.3d at 7 ("Although appellant distinguishes *McKie* as involving po-

lice observation of the dealer and the defendant interacting, the officers observed and recorded appellant and Webb talking and walking together at the time and place Webb was arranging to sell drugs to undercover officer Watts."), *Holder*, 990 F.2d at 1329 ("Unlike the situation in *Ybarra*, where the defendant's presence in a public tavern was itself ostensibly innocent, Holder's presence in a private apartment just a few feet from a table full of cocaine can hardly be so described."), *and United States v. Reid*, 997 F.2d 1576, 1579 (D.C. Cir. 1993) ("There is more reason to suspect that an individual who is present in a private residence containing drugs is involved in illegal drug activity than someone who merely holds conversations with drug addicts in public places.") *with United States v. Tom*, 988 F.3d 95, 99 (1st Cir. 2021) ("Based on the previous controlled drug sales in which agents had seen Ochan participate—including the sale that day—agents had specific knowledge that Ochan sold drugs. From there, the sequence of events on the day of Tom's arrest—and the reasonable inferences generated by the sequence of events—is central in the reasonable suspicion calculation."), *United States v. Beauchamp*, 659 F.3d 560, 570 (6th Cir. 2011) ("Simply talking to someone else, without more, is innocent activity and does not indicate that a crime is happening or is about to take place."), *United States v. Tehrani*, 49 F.3d 54, 60 (2d Cir. 1995) (affirming when police connected the defendant to another person for whom "there is no dispute that" reasonable suspicion existed and the defendant could not answer the officer's questions), *and Woods*, 351 F. App'x at 261 (finding reasonable suspicion when a known drug dealer gave a package to another man who then gave the package to the defendant).

Even in the more lenient officer safety context of a *Terry* frisk, most courts have refused to adopt a rule of guilt by association. *See Flett*, 806 F.2d at 827 ("We decline to adopt the 'automatic companion' rule."); *United States v. Bell*, 762 F.2d 495, 499 (6th Cir. 1985) ("As to the propriety of the 'automatic companion' rule, we do not believe that the *Terry* requirement of reasonable suspicion under the circumstances has been eroded to the point that an individual may be frisked based on nothing more than an unfortunate choice of associates.") (internal citation omitted). The Sixth Circuit declined to find reasonable suspicion when officers frisked the defendant just because he was in a vehicle officers suspected had been used for drug trafficking. *United States v. Noble*, 762 F.3d 509, 524 (6th Cir. 2014) ("Here, there is no specific fact that links Noble to the drug-trafficking operation beyond the Tahoe."). Most courts agree that the Fourth Amendment requires more than mere association to justify intrusion on an individual's constitutional protections. "Otherwise, the police could frisk any 'nervous' passenger, who is in a car suspected of having drug-trafficking ties, including a fourth grader, a ninety-five-year-old gentleman with Parkinson's disease, or a judge of this court." *Id.* at 525.

B. The Fifth Circuit stands alone in finding reasonable suspicion based on the actions of a companion, and the circuit split is compelling.

By holding that reasonable suspicion exists based solely on a single interaction with a suspected criminal, the Fifth Circuit created a lopsided split. *See Esquivel-Carrizales*, 2023 WL 5133293, at *4. Unlike the

majority, the Fifth Circuit does not require independent factors to support reasonable suspicion when the defendant interacted with a person for whom officers had reason to believe was engaged in criminal activity.

In Petitioner's case, a sheriff's deputy detained Petitioner because of the month-old actions of another person. While agents suspected Santos of trafficking, they had no information indicating he was doing so on December 20, 2018, in Houston, Texas. *Cf. McKie*, 951 F.2d at 402 (McKie was observed walking and talking to a suspected drug dealer *at the very time and in the very place of the suspected drug dealing*."). The last bit of information agents received about Santos was that he had a compartment installed on his truck in mid-November. (ROA.571). They had no information about Petitioner at all. But the court still upheld a detention of indeterminate length because two men were observed Christmas shopping and then spoke to a suspected dealer in a public parking lot. *See Esquivel-Carrizales*, 2023 WL 5133293, at *4; *cf. Holder*, 990 F.2d at 1329 (holding reasonable suspicion existed when defendant was in companion's private apartment with drugs in plain view). Indeed, the court determined that it didn't matter whether the officer ever effectuated the purported purpose of the stop (the traffic violation) because reasonable suspicion already existed based on the sole contact with Santos. *Esquivel-Carrizales*, 2023 WL 5133293, at *4.

And Petitioner's case is not a one-off. The Fifth Circuit also found reasonable suspicion based on the defendant's proximity to another suspect in *United States v. Thomas*, 997 F.3d 603 (5th Cir. 2021). There, police spotted a vehicle stolen in an aggravated rob-

bery ten days earlier. *Id.* at 607. Officers saw two people sitting inside the vehicle and four others, including Thomas, standing outside of it having a conversation. *Id.* Thomas was standing by the driver's side. *Id.* Officers detained all six people, but their suspicions as to Thomas "were based entirely on his presence in a high-crime area, his proximity to the stolen vehicle, and his interaction with others in and around the vehicle." *Id.* The Fifth Circuit held that Thomas was not stopped based on his proximity to a suspect because no "specific person" had been identified for the aggravated robbery. *Id.* at 613. But reasonable suspicion nonetheless existed because of Thomas's proximity to the stolen vehicle and his interactions with others in and around it. *Id.* at 614.

In his dissent, Judge Costa identified three features of the case that undermined reasonable suspicion: (1) officers had no description of the robbers, (2) "officers saw two men inside the stolen car, making them (and not Thomas) the reasonable suspects," and (3) the theft happened ten days before police found the car. *Id.* at 616 (Costa, J., dissenting). Judge Costa decried the "lack of precedent" for the majority's ruling and pointed out it was "hard to reconcile" with this Court's decision in *Ybarra v. Illinois*, 444 U.S. 85 (1979). *Id.* at 617. There was no individualized suspicion of Thomas. It was all based on his proximity to other people in a stolen car. *Id.* at 618. "Where is the limit on this 'close by' suspicion? Could one dozen, two dozen people milling around a stolen car all be stopped and frisked?" *Id.* But the majority did not require any individualized factors to uphold the search. The Fifth Circuit concluded that reasonable suspicion for one person is enough to detain others who have the misfortune to interact with them.

By disagreeing with at least six other circuits to have addressed the issue, the Fifth Circuit has created a split on the question of whether it is reasonable for an officer to suspect an individual of criminal activity based solely on the actions of a companion. The split, and the need for this Court's review, is particularly compelling. Because the Fifth Circuit decided the question differently, the Fourth Amendment will apply differently to law enforcement detentions depending on the circuit where the stop occurs. Allowing the Fifth Circuit's decision to go unreviewed would alter the Fourth Amendment's protections. Whether a detention is reasonable under the Fourth Amendment should not turn on which circuit an individual happens to be in.

This Court should grant review to answer the question. *See, e.g., Manuel v. City of Joliet*, 137 S. Ct. 911, 917 (2017) (explaining that the Court granted review to address the Seventh Circuit's "outlier" decision).

II. The Fifth Circuit's decision is wrong.

The Fifth Circuit stands alone because it misapplied the Fourth Amendment. This Court should review the decision below before other courts are tempted to follow in the Fifth Circuit's footsteps and redefine reasonable suspicion.

The Fourth Amendment protects against "unreasonable searches and seizures." U.S. Const. amend. IV. It allows investigative stops, like the one in this case, only when the investigating officer has reasonable suspicion that criminal activity "may be afoot." *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (internal quotation marks omitted). Reasonable suspi-

cion requires more than an "inchoate and unparticularized suspicion or 'hunch.'" *Terry v. Ohio*, 392 U.S. 1, 27 (1968). The officer "must have a particularized and objective basis for suspecting the *particular person* stopped of criminal activity." *United States v. Cortez*, 449 U.S. 411, 417–18 (1981) (emphasis added).

In *Ybarra v. Illinois*, this Court held that a search warrant for a bar and bartender did not authorize police to frisk patrons of the bar. 444 U.S. 85, 90–91 (1979). Emphasizing that police "knew nothing in particular about Ybarra, except that he was present, along with several other customers, in a public tavern" when police suspected the bartender would have heroin for sale, this Court determined that officers lacked probable cause or even reasonable suspicion. *Id.* at 91–93. Although police had probable cause to search the bartender, "a person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person." *Id.* at 91.

Similarly, the Court held that an officer lacked probable cause to search, or reasonable suspicion to frisk, a person based on the officer witnessing several conversations between that person and "a number of known narcotics addicts over a period of eight hours." *Sibron v. New York*, 392 U.S. 40, 62–63 (1968). "The inference that persons who talk to narcotics addicts are engaged in the criminal traffic in narcotics is simply not the sort of reasonable inference required to support an intrusion by the police upon an individual's personal security." *Id.* at 62. The Court emphasized that the officer knew nothing about the defendant before approaching him and "was completely ignorant

regarding the content of these conversations" with the addicts. *Id.*

The Fifth Circuit flouted this Court's command for individualized suspicion, granting police the power to invade any person's liberty without evidence to suggest they have done anything wrong. The Fifth Circuit's companion rule goes too far and demands this Court's attention.

III. The question presented is important and recurring and warrants this Court's review.

This case involves an important, recurring Fourth Amendment issue with significant implications for the daily actions of law enforcement and, in turn, the individual rights of the citizen.

Traffic stops and narcotics investigations are among the most common police tasks. But law enforcement is only permitted such an intrusion when those actions are justified by reasonable suspicion tailored to the individual. The number of courts that have considered whether a stop was justified by reasonable suspicion demonstrates beyond dispute that the question presented regularly confronts state and federal courts across the country. A rule like the one enacted by the Fifth Circuit eviscerates the protections offered by even the lowest bar to police action.

Beyond the issue's recurrence, the Court should grant review of this case because it presents a clean vehicle to address the lopsided conflict between the circuits on a constitutional question of nationwide significance. The issue was raised and addressed at every stage of the proceedings. The facts are not in dispute. And because the scenario of a traffic stop to investigate narcotics is so common, if the Court does not take

this case, the inconsistent application of the Fourth Amendment is likely to persist for years to come. The tension is untenable.

CONCLUSION

This Court should grant *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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