

No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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ELEUTERIO ZUBIA-MELENDEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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ON PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
FIFTH CIRCUIT COURT

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PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED FOR REVIEW

1. Whether, in light of *Class v. United States*, 138 S. Ct. 798, 200 L. Ed. 2d 37 (2018), a guilty plea forecloses a defendant’s ability to raise, on direct appeal, a Fourth Amendment challenge to suspicionless, technology-driven surveillance—such as license-plate readers at unmanned checkpoints—where the legal basis for the claim was unsettled at the time of the plea.

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## **OPINIONS BELOW**

The unpublished decision of the Fifth Circuit Court of Appeals is attached as [App. A]. The Judgment of the District Court is attached as [App. B].

## **PARTIES TO THE PROCEEDING AND COMPLIANCE WITH RULE 14(B)**

The parties concerned are included in the caption of this matter, and there are no corporate parties.

## **JURISDICTION**

The jurisdiction of the Fifth Circuit Court of Appeals was invoked from the denial by the United States District Court for the Western District of Texas, under 28 U.S.C. § 1291 and 18 U.S.C. § 3742.

The decision of the Court of Appeals was entered on May 2, 2025 [App. A]. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS**

This case concerns the constitutionality of a criminal conviction obtained under 8 U.S.C. § 1324(a)(1)(A)(v)(I) and (B)(i), where the evidence underlying the charge was derived from suspicionless, technologically driven surveillance at an unmanned border checkpoint. The core constitutional provision at issue is the Fourth Amendment to the United States Constitution, as interpreted by this Court in *Class*

*v. United States*, 138 S. Ct. 798, 200 L. Ed. 2d 37 (2018), and related jurisprudence concerning post-plea constitutional challenges. The Fourth Amendment to the United States Constitution provides:

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.

U.S. Const. amend. IV.

The statutory basis for Petitioner’s underlying offense is found in Title 8, which states that anyone who,

(ii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law; [and . . .]

(II) aids or abets the commission of any of the preceding acts, shall be punished as provided in subparagraph (B).

(B) A person who violates subparagraph (A) shall, for each alien in respect to whom such a violation occurs—

(i) in the case of a violation of subparagraph (A)(i) or (v)(I) or in the case of a violation of subparagraph (A)(ii), (iii), or (iv) in which the offense was done for the purpose of commercial advantage or private financial gain, be fined under title 18, imprisoned not more than 10 years, or both.

8 U.S.C. § 1324(a)(1)(A)(v)(I), (B)(i) (2024).

These provisions are central to Petitioner’s challenge. He contends that the warrantless license-plate-reader surveillance used at the border checkpoint constituted a Fourth Amendment violation and that *Class* permits direct post-plea

review of such constitutional claims where the issue was not fully known or developed at the time of the guilty plea.

### **STATEMENT OF THE CASE**

This case arises from a prosecution initiated by license-plate-reader (LPR) surveillance at an unmanned border checkpoint, where the petitioner's vehicle was flagged without a warrant or any contemporaneous suspicion. Mr. Zubia-Melendez pleaded guilty before any court had addressed the constitutional implications of this surveillance method. He now seeks review of whether that plea forecloses his ability to challenge the legality of the search.

Mr. Zubia-Melendez was charged in a two-count indictment, filed on December 14, 2023. On January 25, 2024, Mr. Zubia-Melendez pleaded guilty to the Transportation of Illegal Aliens for Financial Gain with a written consent to plea before the Magistrate Judge.

The facts underlying the charge stemmed from Petitioner's brief contact with an unmanned border checkpoint equipped with LPR surveillance technology. Petitioner contended that the LPR data was used to initiate suspicionless enforcement action that ultimately led to his arrest and conviction. The district court did not address the constitutional implications of the surveillance, and the issue was not developed in the plea colloquy or sentencing.



Sentencing was held on May 30, 2024. Mr. Zubia-Melendez was sentenced to 51 months confinement in the BOP, with credit for time served while in custody for this federal offense pursuant to 18 U.S.C. § 3585(b). Written judgment was entered on May 30, 2024. Mr. Zubia-Melendez timely filed a notice of appeal on May 31, 2024. The Fifth Circuit affirmed without addressing the Fourth Amendment question or the applicability of *Class v. United States*, 138 S. Ct. 798, 200 L. Ed. 2d 37 (2018), to post-plea challenges involving new or undisclosed constitutional claims. This petition follows.

## **REASONS FOR GRANTING THE WRIT**

### **I. This Court should clarify that *Class* permits post-plea challenges to modern surveillance tactics that were legally unsettled at the time of the plea.**

This case presents an important and unresolved constitutional question: whether a guilty plea forecloses a defendant from raising, on direct appeal, a Fourth Amendment challenge to suspicionless, technologically driven surveillance—specifically, the use of license-plate readers (LPRs) at unmanned checkpoints—where the implications of that surveillance were unsettled at the time of the plea. The Fifth Circuit refused to reach the merits of this claim, holding instead that the plea constituted a waiver. In doing so, it cited *Class* but failed to apply it meaningfully.

This Court’s intervention is warranted to resolve a growing split over the scope of *Class* and to ensure that structural constitutional claims, particularly those targeting new surveillance methods, are not categorically immunized from appellate review.<sup>1</sup>

**A. The Fifth Circuit refused to apply *Class*, creating a conflict that requires resolution.**

The Fifth Circuit dismissed Mr. Zubia-Melendez’s appeal in full, concluding that his unconditional guilty plea waived any Fourth Amendment claim. The court acknowledged *Class* but summarily held that “Zubia-Melendez’s various challenges to the waiver are unavailing” and declined to reach the merits. See App. A at 2. That ruling misreads *Class* and deepens confusion among the lower courts.

In *Class*, the Court held that a guilty plea does not foreclose constitutional claims that do not contradict the indictment or the plea agreement and that can be resolved based on the existing record. Mr. Zubia-Melendez likewise does not dispute that he transported undocumented individuals. Instead, his challenge targets the government’s use of suspicionless, dragnet-style surveillance to initiate the prosecution, raising a structural constitutional claim that survives the plea under *Class*. This claim, like in *Class*, targets the government’s authority to prosecute, not the factual basis of guilt. By refusing to apply *Class*, the Fifth Circuit excluded an

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<sup>1</sup> *Class v. United States*, 138 S. Ct. 798, 200 L. Ed. 2d 37 (2018).

entire category of modern constitutional claims from appellate review based solely on procedural posture.<sup>2</sup>

**B. Fourth Amendment challenges to digital dragnet tactics raise structural concerns that survive guilty pleas.**

This Court has made clear that guilty pleas do not waive constitutional objections that implicate the structure and legitimacy of government authority.<sup>3</sup> The government’s use of suspicionless, technology-driven systems, such as license-plate readers, to flag individuals without contemporaneous suspicion creates precisely the kind of structural Fourth Amendment defect that merits review. The LPR system used here functioned as a retroactive surveillance net, flagging Mr. Zubia-Melendez’s vehicle based on stored metadata rather than any real-time behavior. Such algorithmic flagging, devoid of individualized suspicion, is antithetical to the Fourth Amendment. These surveillance practices, if left unchecked by post-plea review, could evade all constitutional scrutiny simply because the government obtained a plea.

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<sup>2</sup> *Class*, 138 S. Ct. 798.

<sup>3</sup> See *Class*, 138 S. Ct. at 803–4.

**C. The legal framework was not settled at the time of Mr. Zubia-Melendez’s plea.**

At the time of Mr. Zubia-Melendez’s notice of appeal, the legality of LPR surveillance at unmanned checkpoints remained unsettled. A few months later, the Fifth Circuit addressed geofence warrants in *Smith*, opening the door to challenges involving similarly invasive, technology-driven mass surveillance. Yet the Fifth Circuit has not acted on the specific question presented here, whether LPR dragnet monitoring at unmanned checkpoints constitutes a Fourth Amendment search.<sup>4</sup>

Like geofence warrants, LPR systems indiscriminately collect locational data from unsuspecting individuals and enable retrospective targeting without a warrant. The *Smith* court’s analysis confirms that such surveillance raises significant constitutional concerns. That legal evolution matters: a defendant should not be deemed to have waived a constitutional claim when the legal foundation for the claim had not yet been crystallized. This Court has repeatedly granted certiorari to clarify whether and when post-plea claims survive based on later-evolving constitutional doctrine.

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<sup>4</sup> *United States v. Smith*, 110 F.4th 817 (5th Cir. 2024).

**D. Plea-based prosecutions and the rise of passive surveillance have raised the stakes.**

Today, over 95% of federal convictions result from guilty pleas. Simultaneously, law-enforcement agencies are increasingly relying on passive, technologically-driven surveillance methods, like license-plate readers, geofence warrants, and cell-site data collection, many of which operate without judicial oversight. If constitutional challenges to these methods are foreclosed merely because the government secured a plea before their legality was tested, a vast category of unconstitutional surveillance practices may escape review entirely. The Court's guidance is urgently needed to clarify that *Class* extends to structural Fourth Amendment claims that challenge how prosecutions are initiated, not merely the fact of guilt.

**II. Technologically enabled dragnet surveillance lacks constitutional safeguards and merits this Court's review.**

This Court has previously examined other classes of technological surveillance, such as GPS tracking and the contents and locations of individuals' cell phones. Though LPRs differ from the technologies examined in these cases, the core issue in all remains the same: The historically unprecedented reach of digital technology has enabled a level of constant surveillance which must be squared with the Fourth Amendment.

**A. *Carpenter, Riley, and Jones* demand heightened scrutiny of emerging digital surveillance**

In *Carpenter*, this Court held that the government’s acquisition of historical cell-site location information (CSLI) without a warrant violated the Fourth Amendment.<sup>5</sup> The Court rejected the argument that individuals sacrifice privacy merely by exposing their movements to the public. Instead, it held that modern surveillance tools aggregate massive volumes of data to create a “detailed chronicle of a person’s physical presence” that implicates the “privacies of life.”<sup>6</sup>

LPR systems function in the same way. Each scan captures a time-stamped location tied to a specific individual. When stored and aggregated, this information can retroactively reconstruct a person’s movements over days, weeks, or months. Used without warrants, this data collection violates the principles articulated in *Carpenter, Jones, and Riley*.<sup>7</sup>

Moreover, the Fifth Circuit in *Smith* agreed. The court squarely held that geofence warrants, another tool for location-based dragnet surveillance, were unconstitutional.<sup>8</sup> LPRs, like geofence warrants, enable suspicionless data mining and preemptively identify potential suspects from a population of innocents. If

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<sup>5</sup> *Carpenter v. United States*, 138 S. Ct. 2206, 201 L. Ed. 2d 507 (2018).

<sup>6</sup> *Carpenter*, 138 S. Ct. at 2020, 2040.

<sup>7</sup> *Carpenter*, 138 S. Ct. 2206, *United States v. Jones*, 565 U.S. 400 (2012), *Riley v. California*, 573 U.S. 373 (2014).

<sup>8</sup> *Smith*, 110 F.4th 817.

anything, LPRs are worse: They require no warrant, no contemporaneous suspicion, and no magistrate oversight.

**B. The government's post hoc justifications cannot cure the constitutional violation.**

The government has argued that Mr. Zubia-Melendez was not subject to a “stop” in the Fourth Amendment sense because he voluntarily pulled over. But this argument fails. Law-enforcement agents initiated the surveillance and followed him based solely on LPR data—data whose reliability, currency, and origin were never explained. A reasonable person in Mr. Zubia-Melendez’s position, trailed by border agents in a marked vehicle, would not feel free to leave.

The idea that such a surveillance-triggered encounter is “consensual” conflicts with the basic Fourth Amendment jurisprudence of this Court.<sup>9</sup> A stop initiated solely by algorithmic suspicion and physical trailing, without probable cause or a warrant, is the very definition of an unreasonable seizure.

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<sup>9</sup> See *United States v. Mendenhall*, 446 U.S. 544 (1980).

**C. Lower courts need guidance on the intersection of *Class* and modern surveillance.**

Since *Class* was decided, lower courts have struggled to apply its principles in the context of digital surveillance and evolving Fourth Amendment doctrine. Some circuits interpret *Class* narrowly, allowing only statutory or jurisdictional challenges to survive guilty pleas. Others, like the Fifth Circuit here, acknowledge *Class* but sidestep its application when the challenge implicates surveillance-triggered seizures. This fragmented approach leaves defendants, counsel, and district courts without clear guidance on how to preserve, and adjudicate, constitutional claims based on novel technologies. The Court's intervention is necessary to resolve this uncertainty and to ensure that guilty pleas do not become a procedural shield for unconstitutional investigatory practices.

**III. This case presents a clean vehicle to resolve an important constitutional question.**

The record in this case is well-developed. The stop was initiated after a license-plate-reader system, operating at an unmanned checkpoint, flagged the defendant's vehicle based on historical surveillance data. No warrant was obtained. The LPR alert, rather than any independent real-time suspicion, was the basis for law-enforcement engagement. Agents' visual observations occurred only after the vehicle had already been targeted. The legal issue was preserved on appeal. The



constitutional claim is narrow but consequential. And no factual dispute clouds the question presented: whether a guilty plea bars direct appellate review of a Fourth Amendment challenge to suspicionless, technology-driven surveillance whose legal implications were unsettled at the time of the plea.

This Court has not yet addressed how *Class* applies to modern surveillance technology. Nor has it considered whether Fourth Amendment claims tied to suspicionless digital tracking are categorically waived by guilty pleas. In a legal system where 95% of criminal convictions result from guilty pleas, this Court's intervention is urgently needed to clarify whether the government can circumvent constitutional scrutiny of new surveillance regimes by inducing a plea before their legality is litigated.

## CONCLUSION

Certiorari should be granted to resolve the critical question left open by *Class*: whether a guilty plea forecloses a defendant's ability to challenge, on direct appeal, the constitutionality of suspicionless, technology-driven surveillance that was unknown or legally unsettled at the time of the plea. This case presents the right vehicle, on a timely issue of national importance, implicating millions of Americans subject to passive tracking through license-plate databases and other digital dragnets. The Court should grant review and reaffirm that the Constitution does not

yield to convenience, nor to the rapid pace of technological change. FOR THESE REASONS, Petitioner Eleuterio Zubia-Melendez requests of this Court that his Petition for Writ of Certiorari be GRANTED.

Respectfully submitted,

A handwritten signature in black ink that reads "Joseph Ostini". The signature is written in a cursive, flowing style.

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