

IN THE UNITED STATES SUPREME COURT

No. _____

UNITED STATES OF AMERICA,

Respondent-Appellee,

vs.

NICOLAS COBO-COBO,

Petitioner-Appellant.

ON PETITION FOR WRIT OF *CERTIORARI* TO THE UNITED STATES
COURT OF APPEALS FOR THE 8TH CIRCUIT

PETITION FOR *CERTIORARI*

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QUESTIONS PRESENTED FOR REVIEW

I. WHETHER LAW ENFORCEMENT AGENT, WHILE CONDUCTING AN ARREST OF A ROOMMATE IN THE INTERIOR OF THE UNITED STATES, MAY USE A SUSPECTS' RACE AND ENGLISH SPEAKING ABILITY AS RELEVANT FACTORS TO SEIZE HIS PERSON FOR PURPOSES OF DETERMINING LAWFUL PRESENCE WITHIN THE UNITED STATES?

LIST OF PARTIES

1. All parties appear in the caption.

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District Court

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Magistrate Judge

United States v. Cobo-Cobo, No. 16-CR-LRR (July 6, 2016)

JURISDICTION

This is an appeal from a federal criminal conviction arising in the Northern District of Iowa. Judgment (Oct. 21, 2016); Docket 64. The Petitioner, Nicolas Cobo-Cobo, received a 90 day sentence on October 20, 2016. Judgment; Docket 64. He filed a timely notice of appeal on October 31, 2016. Notice; Docket 67. See Fed. R. Crim. Proc. 4 (b) (1) (A) (i). This Court has jurisdiction over final decisions of the court of appeals. See 28 U.S.C. § 1291, 28 U.S.C. § 1331, 28 U.S.C. § 1254 (1).

TIMELINESS

The 8th Circuit denied Mr. Cobo-Cobo's final petition for rehearing and *en banc* review on December 7, 2017. Appx. A. This Petition is filed within 90 days

of that date. See US Supreme Court Rule 13 (1) (“A petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review.”). The 90 day deadline falls on March 7, 2018. In this case, the appeal will be timely because the Petition was delivered to a third party commercial carrier on March 7, 2018. Thus, assuming this Petition is received within three calendar days, the Petition will be considered timely filed. See U.S. Supreme Court Rule 29.2 (“A document is timely filed ... if it is delivered on or before the last day for filing to a third-party commercial carrier for delivery to the Clerk within 3 calendar days.”).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

(Set forth *verbatim* in Appendix A)

1. 4th Amendment to US Constitution
2. 42 U.S.C. § 408 (a) (7) (B)

STATEMENT OF THE CASE

Nature of the Case:

The Petitioner, Nicolas Cobo-Cobo, seeks review of one suppression issue arising out of a federal criminal case in the Northern District of Iowa. On March 23, 2016, a Grand Jury indicted Mr. Cobo-Cobo on one count: Misuse of a Social Security Number in violation of 42 U.S.C. § 408 (a) (7) (B). Docket 1.

District Court Case

On June 6, 2016, Petitioner filed a Motion to Suppress. Docket 20. On July 6, 2016, the Honorable Magistrate Judge Jon Scoles issued a Report and Recommendation denying the Motion. Order; Appx. G. On July 28, 2016, Mr. Cobo-Cobo entered his condition guilty plea, reserving his right to challenge any unfavorable ruling on his Motion. Guilty Plea; Docket 47. On August 24, 2016, the Honorable Judge Linda Reade denied Defendant's Objections to the Report and Recommendation. Order Denying Motion; Appx. F.

8th Circuit

On October 12, 2017, the three judge panel of the 8th Circuit affirmed the District Court. Panel Opinion, Appx. C. On December 7, 2017, the Circuit denied Mr. Cobo-Cobo-s Petition for Rehearing and *En Banc* Review. Order; Appx. B.

FACTS

Hearing testimony:

The Honorable Magistrate Judge Jon Scoles held two evidentiary hearings on June 15, 2016, and June 21, 2016 respectively.

June 15, 2016 Hearing

Agent Michael Fischels testified at the hearing. He works for the Department of Homeland Security. Suppress Hearing I (“SH I”) Tr. 12, LL 7-8. On December 20, 2011, he and another Agent, were conducting surveillance on an un-related investigation. The driver of a vehicle appeared to match the description of the person that they were looking for. SH I. 13, LL 4-10. He and Agent Lund pulled in behind the driver of the vehicle, and asked for identification. SH I at 13, LL 14-25. The Officers asked for identification and the driver was not able to provide any identification. SH I at p. 15, LL 1-15. The driver stated that he was from Guatemala, and that he did not have immigration papers. SH at p. 15, LL 8-13. The officers then arrested him. They asked him where he lived, and he showed them where the apartment was. SH I 16, LL 4-10. The Agents explained to him that he would be taken to the Cedar Rapids immigration office for fingerprinting, and asked him if he had any belongings in his apartment. SH I at p. 16, LL 15-22. They then asked for permission, according to Agent Fischels, and he claimed that the person (subsequently identified as Elias Mendoza-Marcos) gave them permission to enter. SH I 17, LL 6-13. They then followed him up into the house, and noticed there were other residents there. Agent Fischels then identified three other persons in the apartment. He suspected that they were

undocumented based upon the following characteristics:

On top of the driver being identified as an undocumented alien, it is also common for undocumented aliens to reside together. Once we were in the apartment none of the residents spoke English. They were all -- all appeared to be of Hispanic descent. When we asked for identification, none of the residents were able to provide us with any state issued ID, which is almost common amongst undocumented aliens.

SH 1 at p. 19, LL 19-25; p. 20, LL 1-4. The officers were able to identify that none of the names matched the name of the actual suspect that they were looking for. SH 1 p. 21, LL 18-21. Agent Fishcels identified a Carlson Identification Badge as belong to the Defendant. He was not clear as to whether that badge was obtained at the scene, or at the immigration stage. SH I p. 24, LL 17-22.

After placing them on the couch, the officers determined that all of them did not have status and arrested all four. SH I p. 25, LL 10-15. Backup was called. *Id.* At the immigration officer, criminal histories were run. None had a criminal history; however, they discovered that Mr. Cobo-Cobo had an immigration history. SH I p. 26, LL 7-10.

On cross-examination, Agent Fischels recalled virtually nothing about the actual suspect he was investigation. He did not know his name. He did not recall

what he looked like. He was not sure what crime they were investigating him for, though he thought it might have been a stabbing. He also confirmed that the suspect did not live at the apartment where Mr. Cobo-Cobo was found. SH I 28, LL1-25. He had no indication that the suspect was an immigration violator. SH I p. 30, LL 4-7. After the officers obtained identification, they were able to eliminate Mr. Mendoza as a possible suspect, and also did not have any indication that the suspects may have lived in the apartment where Mr. Cobo-Cobo was staying. SH I p. 31, LL 11-25. Prior to obtaining the “consent,” Mr. Fischel’s was not able to determine Mr. Mendoza’s age. He did not Mirandize Mr. Mendoza, though Mr. Mendoza was in custody. SH I at p. 32, LL 1-25. He also did not determine whether Mr. Mendoza has any familiarity with the legal system. SH I at p. 33, LL 1-4.

Prior to entering the apartment, Mr. Mendoza did not inform Agent Fischels that there any other undocumented persons living there. SH I p. 34, LL 22-25, SH I at p. 35, LL 1-7. After he entered the apartment, he relied on at least two factors to determine that the others living there were undocumented: the Hispanic appearance, and lack of English speaking ability. SH I at p. 35, LL 14-20. Prior to entering the apartment, Agent Fischels had no information to indicate the sleeping person (Mr. Cobo-Cobo) had committed any crime. SH p. 35, LL 1-25.

Importantly for this case, Agent Fischels unequivocally confirmed that he did not have any evidence that Mr. Cobo-Cobo had violated the law prior to ordering him on the couch. They only learned that information after seizing them and placing them on the couch. Here is the exchange:

Q. And while they were sitting on the couch, did you have any indication that an individual identified as Mr. Cobo-Cobo was violating the law?

A. During the time period that they were sitting on the couch, yes, because that's when we talked to them, asked them for their IDs and determined them to be undocumented aliens.

Q. So prior to the time they made it on the couch, did you have any indication that these individuals, including Mr. Cobo-Cobo, was violating the law?

A. No.

SH at p. 37, LL 10-22. He confirmed that none of the individuals, including Mr. Cobo-Cobo, were free to leave after they were placed on the couch. SH I at p. 38, LL 1-4. On the couch, they provided identification, though it was not a state issued ID. Mr. Fischels' did recall whether it was a passport, or any other document indicating foreign alienage, just that it was not a state issued ID. SH 1,

p. 39, LL 1-10. He confirmed that other than Mr. Mendoza providing access to apartment, he had no independent avenue to get inside the apartment. SH I at p. 40, LL 19-25. Agent Fischels concluded his testimony by confirming that if the individuals providing the same ID were white and spoke English, he would have had less suspicion that they were undocumented. SH I at p. 49, LL 7-15.

Agent Andrew Lund largely confirmed Agent Fischel's testimony SH I at p. 50-59. Outside of the apartment, they had no indication that the individuals residing inside the apartment were also undocumented. SH I at p. 65, LL 15-18. Agent Lund confirmed that he did not ask for consent to enter the apartment. SH I at p. 66, LL 8-10. Agent Lund also noted the soccer flags, and the fact that undocumented people tend to live together in the apartment. SH I at p. 66, LL 110. Once in the apartment, he did not recall whether they asked for identification before, or after they were on the couch, but he did confirm that they were not free to leave once on the couch. SH I at p. 17-24.

Agent Lund confirmed that none of the occupants of the apartment were free to leave as soon as they entered the apartment. SH I at p. 72, LL 14-22. He did not recall the precise form of ID provided by Mr. Cobo-Cobo but confirmed that it was not an official government issued ID. SH I at p. 72, LL 14-22. None of the

suspects were provided Miranda warnings since they were not investigation criminal violations. SH I at p. 74, LL 1-3.

The Parties conducted a second hearing because Agent Osterberg was not available during the second hearing. Agent Osterberg confirmed that this investigation began by reviewing only the immigration file. Suppression Hearing II June 21, 2016 (hereinafter “SH II”) at p. 101, LL 1-15. After that hearing, Mr. Osterberg then remembered that the investigation began after receiving an email on December 22, 2015, and that is what caused him to begin the investigation and call up the Respondent’s A-File.

Mr. Cobo-Cobo also called Elias Mendoza-Marcos, the person that the officers claimed gave voluntary consent to enter the apartment in which Mr. CoboCobo was residing. SH II at p. 112. He expressly testified that he did not give permission to enter. SH II at p. 113, LL 2-8.

REASONS FOR GRANTING THE WRIT

I. THE PANEL DECISION CONFLICTS WITH THE 9TH CIRCUIT AS TO WHETHER A SUSPECT’S RACE AND INABILITY TO SPEAK ENGLISH CAN BE CONSIDERED “RELEVANT FACTORS” FOR PURPOSES OF CONDUCTING A SEIZURE, AND ALSO DEMONSTRATES THE NEED FOR THIS COURT TO DETERMINE WHETHER THE DICTA IN BRIGNONI-PONCE APPLIES WITH EQUAL FORCE TO THE INTERIOR OF THE UNITED STATES.

A. Overview of Issue

Mr. Cobo-Cobo was sleeping in his bed when his roommate, Elias Mendoza-Marcos, was detained for being in the United States without authorization.

Officers had no prior knowledge that Mr. Cobo-Cobo was violating the law when he was woken up. He had been detained after the immigration officials were conducting surveillance on an unrelated stabbing. After detaining Mr. Mendoza-Marcos, the officers brought him back to his apartment to allow him to get clothes. While inside the apartment, the officers ordered all occupants on the couch based almost entirely Mr. Cobo-Cobo's race, inability to speak English, and the soccer posters on the wall. The 8th Circuit relied on a series of *post hoc* justifications that contradicted the stated reasons by the officers, and also, on 40 year old Supreme Court precedent from this Court allowing race to be a relevant factor in detaining someone suspected of immigration violations.

Especially in this toxic political climate relating to immigration, this Court should clarify this important area of law. The President has celebrated law enforcement officials such as Sheriff Arpaio, who celebrated race based profiling to detain individuals suspected of violating immigration laws. The 8th Circuit had no trouble upholding this detention, even though the officers expressly admitted to the use of race and language to seize an innocent 3rd party such as Mr. Cobo-Cobo.

B. The 8th Circuit Panel's Adjudication.

Before addressing the factors supporting grant of *certiorari*, it is important to understand the underlying error, the agents' significant use of race and language skills to determine whether to seize someone. The 8th Circuit Panel found that it was ok to use those factors along with other factors to justify a decision to seize Mr. Cobo-Cobo.

The Panel believed that Mr. Cobo-Cobo was over emphasizing the extent to which the officers relied upon his race and language skills to seize him. See Panel at p. 5 (this "assertion mischaracterizes the record."). The Panel identified the following factors as sufficient grounds to seize Mr. Cobo-Cobo:

1. "For instance, the court found that the agents, based on their experience, suspected Cobo-Cobo was in the country illegally because it was common for unrelated illegal-alien males to live together."
2. "When they seized Cobo-Cobo they had already arrested one of his unrelated male roommates for being an illegal alien."
3. "The court also credited the agents' testimony that none of the men spoke English, a circumstance that indicated that they had not been in the country for long."

4. “In addition, Lund testified that he had been to the same apartment several times and knew that the landlord rented to undocumented aliens.”
5. “It is inconsequential that one or both of the agents also considered Cobo-Cobo's heritage in seizing him since *Brignoni-Ponce* expressly recognizes that heritage may be a "relevant factor," among others, in forming a reasonable suspicion.”

Panel at p. 5; Appx. C-5.

The Panel seemed to think that Mr. Cobo-Cobo was ginning up on the record based upon race. No such ginning was done; the claim about race came straight from the officer's testimony. Prior to entering the apartment, Mr. Mendoza did not inform Agent Fischels that there any other undocumented persons living there. SH I p. 34, LL 22-25, SH I at p. 35, LL 1-7. After he entered the apartment, he relied on at least two factors to determine that the others living there were undocumented: the Hispanic appearance, and lack of English speaking ability. SH I at p. 35, LL 14-20. Prior to entering the apartment, Agent Fischels had **no information** to indicate the sleeping person (Mr. Cobo-Cobo) had committed any crime. SH p. 35, LL 1-25. Importantly for this case, Agent Fischels unequivocally confirmed that he did not have any evidence that Mr. Cobo-Cobo had violated the law prior to ordering him on the couch.

They only learned that information after seizing them and placing them on the couch. Here is the exchange:

Q. And while they were sitting on the couch, did you have any indication that an individual identified as Mr. Cobo-Cobo was violating the law?

A. During the time period that they were sitting on the couch, yes, because that's when we talked to them, asked them for their IDs and determined them to be undocumented aliens.

Q. **So prior to the time they made it on the couch, did you have any indication that these individuals, including Mr. Cobo-Cobo, was violating the law?** A. No.

SH at p. 37, LL 10-22. He confirmed that none of the individuals, including Mr. Cobo-Cobo, were free to leave after they were placed on the couch. SH I at p. 38, LL 1-4. On the couch, they provided identification, though it was not a state issued ID. Mr. Fischels' did recall whether it was a passport, or any other document indicating foreign alienage, just that it was not a state issued ID. SH 1,

p. 39, LL 1-10. Agent Fischels **concluded his testimony by confirming that if the individuals providing the same ID were white and spoke English, he would have had less suspicion that they were undocumented.** SH I at p. 49, LL 7-15.

Here, the officers relied upon factors that, even if permitted in 8th Circuit, clearly conflict with the approach taken in California.

C. The 8th Circuit’s Panel Decision Conflicts with the 9th Circuit as to Whether a Suspect’s Race Can be Considered a “Relevant Factor” for Purposes of Effecting a *Terry* Seizure, and also, Demonstrates the Need for this Court to Revisit the Scope of the 40 Year Old Plus Brignoni-Ponce.

What weight, if any, can an officer place upon a defendant’s race and English speaking ability to seize someone for purposes of deciding whether to seize the suspect for violating a civil immigration law, and does such use make it an unreasonable seizure under the 4th Amendment? This issue remains surprisingly undeveloped in the US Supreme Court. This has obviously weighed in a variety of contexts the connection between racial prejudice and the administration of justice. *See Buck v. Davis*, 137 S. Ct. 759, 776–77, 197 L. Ed. 2d 1 (2017) (only *de minimus* references to racial prejudice in death penalty phase warranted new hearing noting that “[s]ome toxins can be deadly in small doses.”) However, the connection between race, language skills and detention has not been developed in the interior. Most of this Court’s precedent relates to use of racial

consideration on the border with Mexico, where the Court this Court has been more pragmatic. To the extent circuits have addressed this issue, there remains a split between the 8th and 9th Circuit and 6th Circuit about whether use of race and English speaking skills can be used as a relevant factor to determine whether to seize a suspect.

1. Brignoni

The current confusion in the circuits arising from dictum in a 1975 Supreme Court case, *Brignoni-Ponce*, in which, this Court addressed whether law enforcement could consider a suspect's race in deciding whether to seize them near the United States-Mexico border. *US. v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975). The Supreme Court held that the Border Patrol had to have reasonable suspicion that a person was in the country without authorization prior to stopping a vehicle to question its occupants about their immigration status. *Id.* Even then, absent consent or the development of probable cause, it could only make a brief *Terry*-like stop to conduct a quick and limited inquiry. In that case, the Court further held that the Hispanic race of the occupants of a vehicle being driven in close proximity to the border did not, without more, provide reasonable suspicion to stop a car at all. *Id.*

Even if [the officers] saw enough to think that the occupants were of Mexican descent, this factor alone would justify neither a reasonable belief

that they were aliens, nor a reasonable belief that the car concealed other aliens who were illegally in the country. Large numbers of native-born and naturalized citizens have the physical characteristics identified with Mexican ancestry, and even in the border area a relatively small proportion of them are aliens. **The likelihood that any given person of Mexican ancestry is an alien is high enough to make Mexican appearance a relevant factor, but standing alone it does not justify stopping all Mexican-Americans to ask if they are aliens.**

Id. at 886–87, 95 *S.Ct.* 2574 emphasis added. *Brignoni-Ponce* thus generally stands for the proposition that a person's Mexican ancestry, even when that person is in proximity to the border, does not provide sufficient reasonable suspicion, on its own, to justify even a brief investigative detention. However, the opinion's observation in dicta that “[t]he likelihood that any given person of Mexican ancestry is an alien is high enough to make Mexican appearance a relevant factor” has been interpreted by ICE to mean that a person's Hispanic appearance can be used as one amongst a number of factors in establishing the requisite quantum of reasonable suspicion to justify a brief investigative detention.

2. 9th Circuit and 6th Circuits - English and Ethnicity May not Be Considered as Relevant Factors to Seize.

Since *Brignoni*, this Court has not addressed precisely this issue. This has led to disparate results in the circuits. In the 9th Circuit, the Court had no problem allowing use of race as a relevant factor; however, the Court was clear that it only permitted race as a relevant factor when police had a description of suspect, including the suspect's race. *See United States v. Montero-Camargo*, 208 F.3d 1122, 1134, n. 21 (9th Cir.2000) (en banc) ("Nor do we preclude the use of racial or ethnic appearance as one factor relevant to reasonable suspicion or probable cause when a particular suspect has been identified as have a specific racial or ethnic appearance, be it Caucasian, African–America, Hispanic or other.") (emphasis in original). It held, however, as had previous courts before it, that it is not appropriate for law enforcement to consider race as being an indicator that a person is more likely to be a perpetrator of a generic class of crime. *See id.* at 1122 n. 10 (citing *United States v. Rodriguez–Sanchez*, 23 F.3d 1488, 1492 (9th Cir.1994) (holding that reasonable suspicion cannot be based "on broad profiles which case suspicion on entire categories of people without any individualized suspicion of the particular person to be stopped") and *See also United States v. Rodriguez*, 976 F.2d 592, 595-96 (9th Cir.1992) (Accordingly, to establish reasonable suspicion, an officer cannot rely solely on generalizations that, if accepted, would cast suspicion on large segments of the law abiding population.)

In the civil rights context, the 6th Circuit reaffirmed that Appellant

patrolman was not entitled to qualified immunity after he relied upon English speaking and Hispanic appearance to detain their persons, and separately, their green cards for four days. *Farm Labor Organizing Comm. v. Ohio State Highway*, 308 F.3d 523 (2002). *Farm Labor* is particularly helpful because the Panel here committed the same interpretive mistake that the deputy made by failing to consider the significant weight the Supreme Court gave to race and language considerations on the border as opposed to the interior of the United States:

The Ortiz Court therefore had no occasion to consider fully the equal protection implications raised when motorists are targeted for immigration investigations on the basis of their lack of familiarity with the English language. Moreover, the Supreme Court has cautioned against extending the logic of border enforcement cases to situations remote from the border, where the government interest in immigration policing may be less compelling.

Id. (citing *United States v. Ortiz*, 422 U.S. 891, 897, 95 S.Ct. 2585, 45 L.Ed.2d 623 (1975), *See United States v. Martinez-Fuerte*, 428 U.S. 543, 564 n. 17, 96 S.Ct. 3074, 49 L.Ed.2d 1116 (1976); accord *United States v. Brignoni-Ponce*, 422 U.S. 873, 881, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975) (noting that in the Fourth Amendment context, certain practices may be permitted at the border in part "because of the importance of the governmental interest at stake ... and the absence of practical alternatives for policing the border").

3. 8th Circuit

The 8th Circuit appears to read *Brignoni* as allowing consideration of race to narrow scope of identification, and therefore allowed a racially based stop following a robbery: “We do not agree with this contention because the color of a person's skin, be it black or white, is an identifying factor which, while insufficient by itself, assists the police in narrowing the scope of their identification procedure. *See United States v. Brignoni-Ponce*, 422 U.S. 873, 885-886, 95 S.Ct. 2574, 2582, 45 L.Ed.2d 607, 619 (1975). It thus authorized consideration of a suspect’s race to conduct a temporary *Terry* seizure. *United States v. Collins*, 532 F.2d 79, 82 (8th Cir. 1976).

Nearly 20 years later, the 8th Circuit continued to struggle with this issue. In a highway stop case, it rejected consideration of a suspect’s race in deciding to seize a furniture truck; however, it left open the possibility of consideration of such nationality and language if the record supported it with empirical studies:

Although nationality or race may be relevant factors in some instances, for example when they are used to establish identity, *see United States v. Collins*, 532 F.2d 79, 83 (8th Cir.), *cert. denied*, 429 U.S. 836, 97 S.Ct. 104, 50 L.Ed.2d 102 (1976), their relevance in this case is unclear. **The state has produced no evidence that Mexican citizens are any more or less likely**

to transport illegal drugs than native born or naturalized citizens of the United States.

United States v. Garcia, 23 F.3d 1331, 1335–36 (8th Cir. 1994) (emphasis supplied).

4. The Panel in this Case

Citing *Garcia*, and *Brignoni-Ponce*, the Panel here had no trouble permitting consideration of Mr. Cobo-Cobo's heritage, finding it "inconsequential that one or both of the agents also considered CoboCobo's heritage in seizing him since Brignoni-Ponce expressly recognizes that heritage may be a 'relevant factor,' among others, in forming a reasonable suspicion." Panel at p. 6 (See *id.*; see also *United States v. Garcia*, 23 F.3d1331, 1335 (8th Cir. 1994). We therefore reject this contention." Panel Decision at p. 6; Appx. C-6. The Panel also relied upon several factors to seize Mr. Cobo-Cobo: (1) his roommate was in the country illegally, (2) undocumented males live together, (3) none of them spoke English, and (4) the Agent Lund testified that he had been to the same apartment several times and knew that the landlord rented to undocumented aliens. Panel at 5.

D. This Case Demonstrates the Need to Clarify the Scope of Consideration of A Suspects Ethnicity and Language Skills to Seize a Suspect.

This is Court has not addressed the applicability of the cases on the Border to the interior of the United States. It provided well defined authority on the

border, recognizing pragmatically race and language as relevant factors among many in deciding whether to stop near the Mexican Border. *See United States v. Ortiz*, 422 U.S. 891, 897, 95 S.Ct. 2585, 45 L.Ed.2d 623 (1975); *See United States v. Martinez-Fuerte*, 428 U.S. 543, 564 n. 17, 96 S.Ct. 3074, 49 L.Ed.2d 1116 (1976); and *United States v. Brignoni-Ponce*, 422 U.S. 873, 885-886, 95 S.Ct. 2574, 2582, 45 L.Ed.2d 607, 619 (1975).

What relevance, if any, do these cases have in the interior? The agents here relied heavily on race and language to rouse a sleeping suspect and seize his person after a roommate was arrested while the agents were conduct surveillance an entirely unrelated criminal matter. If left unchecked, an entire class of persons would be subjected to unwarranted intrusions on their personal liberty.

The late great Judge Heaney clearly identified the issue in his dissent to *Collins*, cited *supra*: “While the factor of race eliminates from suspicion all persons of another race, it cannot be used to create suspicion of a particular person of that race.” *United States v. Collins*, 532 F.2d 79, 85 (8th Cir. 1976). Mr. Cobo-Cobo’s ethnicity and language skills generated suspicion that he was in the country illegally. Agent Fischels concluded his testimony by confirming that if the individuals providing the same ID were white and spoke English, he would have had less suspicion that they were undocumented. SH I at p. 49, LL 7-15. Thus, for the above reasons, *certiorari* should be granted. See US Supreme Court Rule 10 (a)

(to resolve a circuit split), and 10 (c) (*certiorari* should be granted to resolve an important question of federal law that has not been settled by US Supreme Court).

CONCLUSION

For the above reasons, Mr. Cobo-Cobo asks the Court to grant the Writ.

RESPECTFULLY SUBMITTED,

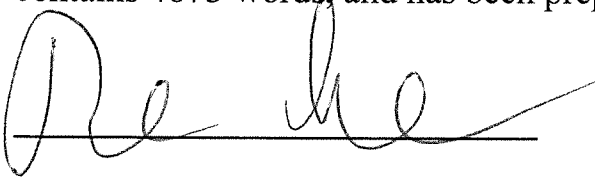


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CERTIFICATE OF WORD COUNT

I, Rockne Cole, the undersigned Counsel certify that the above Petition contains 4873 words, and has been prepared in 14 point New Times Roman.

A handwritten signature in cursive script, appearing to read 'Rockne Cole', written over a horizontal line.

CERTIFICATE OF SERVICE

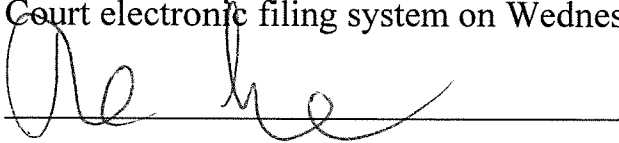
I, Rockne Cole, counsel for Appellant, hereby certify that, on March 7, 2018, I mailed an original and 10 copies via FedEx next day to:

United States Supreme Court
Clerk's Office
1 First Street, N.E.,
Washington, D.C. 20543

and one copy to:

Assistant United States Attorney Dan Tvedt
U.S. Attorney's Office
111 7th Ave, SE
Box #1
Cedar Rapids, IA 52401

Counsel also certifies that a copy of this filing was submitted to the US Supreme Court electronic filing system on Wednesday, March 7, 2018.

A handwritten signature in cursive script, appearing to read 'Rockne Cole', written over a horizontal line.