No. 21-___

IN THE

# Supreme Court of the United States

ANTHONY W. KNIGHTS,

*Petitioner*,

v.

UNITED STATES,

*Respondent.*

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

## PETITION FOR A WRIT OF CERTIORARI


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## QUESTIONS PRESENTED

A Fourth Amendment seizure occurs when, "in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *Brendlin v. California*, 551 U.S. 249, 255 (2007).

The questions presented are:

1. Whether a court analyzing if a Fourth Amendment seizure has occurred is categorically barred from considering a person's race.

2. Whether a seizure occurred under all the circumstances of this case.

## RELATED PROCEEDINGS

*United States v. Anthony W. Knights*, No. 8:18-cr-00100-VMC-AAS-1 (M.D. Fla. Sept. 6, 2018).

*United States v. Anthony W. Knights*, No. 19-10083 (11th Cir. Mar. 10, 2021).

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## PETITION FOR A WRIT OF CERTIORARI

Petitioner Anthony W. Knights respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

## OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit (Pet. App. 1a-49a) is published at 989 F.3d 1281. The district court's opinion and order (Pet. App. 60a-69a) is available at 2018 WL 4237695.

## JURISDICTION

The court of appeals entered its judgment on March 10, 2021. Pet. App. 1a. On March 19, 2020, this Court entered a standing order that extends the time to file a petition for a writ of certiorari in this case to August 9, 2021. The Court has jurisdiction under 28 U.S.C. § 1254(1).

## RELEVANT CONSTITUTIONAL PROVISION

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.

## INTRODUCTION

This Court has held that a person is seized under the Fourth Amendment if "in view of *all the circumstances* surrounding the incident, a reasonable person would have believed that he was not free to leave." *Brendlin v. California*, 551 U.S. 249, 255 (2007) (emphasis added). "[W]hat constitutes a restraint on liberty prompting a person to conclude that he is not free to 'leave' will vary, not only with the particular police conduct at issue, but also with the setting in which the conduct occurs." *Michigan v. Chesternut*, 486 U.S. 567, 573 (1988).

Lower courts employ this test flexibly to determine whether a reasonable person would feel free to leave. They consider many factors, including the "threatening presence of several officers," the "use of forceful language or tone of voice," and the "location in which the encounter takes place," *United States v. Smith*, 794 F.3d 681, 684 (7th Cir. 2015), as well as age, immigration status, and other objective demographic characteristics, *see, e.g.*, *Jones v. Hunt*, 410 F.3d 1221, 1226 (10th Cir. 2015); *United States v. Moreno*, 742 F.2d 532, 536 (9th Cir. 1984). Courts stress that any list of factors is neither "exhaustive nor exclusive." *Smith*, 794 F.3d at 684.

The decision below departs from this comprehensive approach by singling out and categorically excluding race from the totality-of-the-circumstances analysis. The Eleventh Circuit, like other courts, considers various other demographic characteristics. But it nevertheless held that "the race of a suspect is *never* a factor in seizure analysis." Pet. App. 11a (emphasis added).

There is no principled reason for this selective exclusion. Race, like other individual characteristics, can help generate "commonsense" inferences about whether a reasonable person would feel free to leave. Pet. App. 13a (quoting *J.D.B. v. North Carolina*, 564 U.S. 261, 272 (2011)). Here, two armed police officers cornered petitioner Anthony Knights, a young Black man, in the middle of the night. The officers constrained Mr. Knights's freedom of movement and targeted him for interrogation, despite his efforts to signal he did not wish to engage. Acknowledging race as part of the totality of the circumstances confirms that a reasonable person in Mr. Knights's position would not have thought he was "free to leave."

The Eleventh Circuit thought it must close its eyes to race because of concerns about objectivity and equal protection. That reasoning is unpersuasive, and ignores the many contexts in which the law acknowledges the continuing reality of race as a potential factor in law enforcement interactions—such as when courts evaluate whether a police stop was pretextual or a particular individual voluntarily consented to a police search.

Artificially excising race from the totality of the circumstances renders a seizure analysis incomplete as a practical matter. It precludes courts from accurately assessing "the coercive effect of police conduct, taken as a whole." *Chesternut*, 486 U.S. at 573. The Eleventh Circuit's all-circumstances-but-race test also fails to ensure that all citizens, regardless of race, are afforded the same Fourth Amendment protection against unlawful seizure.

At a minimum, the decision below vividly demonstrates that the lower courts need fresh

guidance in assessing when a reasonable person would "feel free" to terminate a police encounter. No reasonable person in Mr. Knights's shoes would have believed he could lawfully ignore police officers after they made a show of authority that clearly indicated an attempt to initiate an investigatory stop. Police-citizen encounters are a commonplace feature of everyday life, yet for decades, this Court has not taken up a case involving the "free to leave" standard. This case presents a timely opportunity to clarify the seizure doctrine to ensure that it accurately reflects how reasonable people perceive police encounters. Certiorari should be granted.

## STATEMENT OF THE CASE

### A. Factual background

After midnight on January 26, 2018, Officers Andrew Seligman and Brian Samuel of the Tampa Police Department began a vehicle patrol of the Live Oaks Square neighborhood in Tampa, Florida—a neighborhood known for frequent and tense police-minority encounters. *See* ECF 34, U.S. Opp. to Suppression Mot. 2; Pet. App. 3a, 71a.

Mid-patrol, the officers saw petitioner Anthony Knights and another man, Hozell Keaton, standing next to a parked Oldsmobile sedan. Pet. App. 61a. The Oldsmobile belonged to Mr. Knights's wife, and the two friends were listening to music in the front yard of a home that belonged to a member of Mr. Keaton's family. *Id.* 3a, 61a-62a.

Upon seeing Mr. Knights and Mr. Keaton leaning into the car, the officers jumped to a different conclusion: they suspected the men might be "burglarizing the vehicle." ECF 34 at 2. Driving past

the Oldsmobile "for a better look," they heard someone unsuccessfully try to start the car. Pet. App. 3a. Concerned that the two men "might be . . . trying to steal the [car], the officers decided to investigate further." *Id.*

Rather than park down the street from the Oldsmobile and approach on foot, Officer Seligman swung the police car around and cut across the narrow street to where the Oldsmobile was parked. Pet. App. 3a. He parked the patrol car in the street headed the wrong way, aligning his trunk with the trunk of the Oldsmobile. *Id.* 67a, 72a. The front of the Oldsmobile was crowded in by a mailbox and a "large, overgrown shrub" that "nearly touched" the car. *Id.* 71a. A second mailbox and garbage can hedged in the Oldsmobile at its rear, *id.* 3a, while a fence ran along the passenger side of the car, *id.* 71a.

By the time Officer Seligman finished parking the patrol car, Mr. Keaton had retreated into his relative's house. Pet. App. 4a, 72a. Mr. Keaton's departure left Mr. Knights alone with the two uniformed officers. *Id.*

As the officers approached, Officer Seligman "trained his flashlight" on Mr. Knights. Pet. App. 4a. Mr. Knights "tried to signal that he was not interested in chatting" by climbing into the car, sitting in the driver's seat, and shutting the door. *Id.* 4a, 21a, 73a. At that point, as the magistrate judge later explained, Mr. Knights "would have had significant difficulty" driving away "without hitting the patrol car or an officer." *Id.* 81a.

Still shining his flashlight, Officer Seligman rapped on the driver's window. Pet. App. 4a. When Mr. Knights opened the door, Officer Seligman smelled an

odor of burnt marijuana. *Id.* After Mr. Knights complied with a direction to produce his driver's license and explained that the Oldsmobile belonged to him and his wife, Officer Seligman began "a narcotics investigation." *Id.* 73a.

Officer Seligman instructed Mr. Knights to step out of the car, "moved him toward the back of the car, and had him place his hands on top of the car." Pet. App. 73a. After searching Mr. Knights, Officer Seligman searched the Oldsmobile and found a handgun, rifle, and two firearm cartridges. *Id.* 4a. Mr. Knights acknowledged that he owned the handgun. *Id.*

### B. Procedural history

1. A grand jury indicted Mr. Knights on one count of possession of a firearm and ammunition by a felon. 18 U.S.C. §§ 922(g)(1), 924(a)(2) (2015); Pet. App. 5a. Mr. Knights moved to suppress the evidence and admission the officers obtained during the search, arguing that both were the fruits of an unlawful seizure. Pet. App. 5a. The seizure occurred, he explained, when the officers parked in a manner that impeded his ability to drive or walk away. At the latest, it occurred when they approached his car and rapped on the window. *Id.*

The magistrate judge recommended that the motion be granted. The judge found that the officers lacked reasonable suspicion to make a stop when they parked their car. Pet. App. 93a. And she found that the officers seized Mr. Knights when "Officer Seligman parked the patrol car trunk-to-trunk next to the Oldsmobile and impeded Mr. Knights's freedom of movement." *Id.* Officer Seligman's "show of authority, by approaching Mr. Knights seated in the Oldsmobile,

in uniform and flashing a flashlight at him further establishe[d]" the seizure. *Id.* Under these circumstances, the judge concluded, "no reasonable person in Mr. Knights's position would feel free to leave or disregard the two officers." *Id.* 81-82a.

2. The district court rejected the magistrate judge's recommendation and denied Mr. Knights's motion to suppress. The court reasoned that the officers did not seize Mr. Knights when they parked trunk-to-trunk with the Oldsmobile, against the direction of traffic and impeding his exit, because Mr. Knights could have either abandoned his car and walked past the officers, or used "skilled driving" to drive away while avoiding a collision with the two armed officers or property. Pet. App. 68a. The court did not opine on whether Mr. Knights could reasonably have declined to open his car window once the officers rapped on it. And it concluded that once he opened the window and the officers smelled marijuana, they had a lawful basis to seize Mr. Knights. *Id.* 6a.

At a bench trial, Mr. Knights and the government stipulated to the other relevant facts. The district court sentenced Mr. Knights to 33 months of imprisonment. Pet. App. 6a.

3. Mr. Knights appealed the denial of his suppression motion. Pet. App. 6a. He explained that, given the totality of the circumstances, a reasonable person in his position would not have felt free to disregard the police contact and leave the encounter. To begin, as the magistrate judge had found, no reasonable person would feel free to simply walk or drive away from two armed officers in the middle of the night with no witnesses present; in a neighborhood

with contentious relations with the police; after the officers had constrained his freedom of movement and targeted him for interrogation, despite his effort to signal that he was not interested in engaging by getting into his car and closing the door. ECF 28, Mot. to Suppress 10-11; Pet. App. 3a, 6a. But in particular, no young Black man in that situation would possibly feel "free to leave."

The Eleventh Circuit affirmed the district court's ruling. Pet. App. 51a. The court initially agreed with Mr. Knights that "the age and race of a suspect may be relevant factors" in determining whether a reasonable person would feel free to leave. *Id.* 59a. The court concluded, however, that this particular "encounter was not coercive," reasoning that the officers did not "make a show of authority communicating" to Mr. Knights that he was not free to leave, *id.* 58a-59a. In the court's assessment, the officers merely "approached [Mr. Knights's] car to try to speak to him, without conveying that [he] was required to comply." *Id.* at 58a.

Mr. Knights petitioned for rehearing, Pet. App. 2a, explaining that the panel's conclusion that his encounter with the officers was "consensual" could not be reconciled with its recognition that age and race were relevant to the seizure inquiry. The court then requested supplemental briefing on "whether the race of a suspect may be a relevant factor in deciding whether a seizure has occurred under the Fourth Amendment." *Id.* 95a.

The Eleventh Circuit then vacated its original opinion and issued a rehearing opinion adopting a new, categorical rule: "the race of a suspect is never a factor in seizure analysis." Pet. App. 2a, 11a. Despite

recognizing that "race can be relevant in other Fourth Amendment contexts," and that "the suspect's age, education, and intelligence" are relevant to the seizure analysis, the court held that race should be excluded from the seizure analysis because it does "not lend [itself] to objective conclusions" and could not be taken into account in a "rigorous" or "systematic" way. *Id.* 8a, 12a-13a (internal quotation marks omitted). Moreover, permitting race to inform the totality-of-the-circumstances inquiry would "run[] afoul of the Equal Protection Clause." *Id.* 14a. Because the court declined to consider race at all, the other circumstances of the encounter "remain[ed] dispositive," *id.*, and the court adhered to its conclusion that Mr. "Knights's interaction with the officers was a consensual encounter that did not implicate the Fourth Amendment." *Id.* 2a.

Judge Rosenbaum concurred only in the judgment. She expressed concern that a race-free analysis ignores the "reality" of police encounters for "Black Americans." Pet. App. 29a. Judge Rosenbaum explained that studies show that "Black and white individuals do not equally feel 'free to leave' citizen-police encounters." *Id.* 27a. And she recognized that "Black citizens" are "all the more" likely to comply with the police because they fear the "negative consequences [that] accompany a failure to comply." Indeed, "the fear of violence often overlays the entire law-enforcement encounter." *Id.* 31a. The free-to-leave analysis needs to be "improve[d]," Judge Rosenbaum reasoned, so that "people of all races . . . feel equally able to exercise their Fourth Amendment rights to leave a legally consensual citizen-police encounter." *Id.* 27a.

Nonetheless, Judge Rosenbaum recognized that the court of appeals was not at liberty to make improvements to the doctrine. She concurred in the judgment because she, like the majority, believed that considering race within the current seizure framework would raise equal protection concerns. Pet. App. 15a. And she recognized that any real reassessment would need to come from this Court. *Id.*

## REASONS FOR GRANTING THE WRIT

Federal courts of appeals and state courts of last resort are divided three-to-three over whether race can ever inform the seizure analysis under the Fourth Amendment. There are millions of encounters between citizens and police every year; yet the constitutionality of purportedly consensual encounters involving racial factors now varies with the happenstance of geography. This Court's intervention is badly needed, and this case is an excellent vehicle to address the issue.

The Eleventh Circuit's approach—categorically excluding race from the seizure analysis—is wrong. That approach is contrary to the nature of the totality-of-the-circumstances inquiry, which demands a realistic assessment of the situation. It is also contrary to this Court's precedents, which recognize that objective personal characteristics—like age, race, and sex—properly inform similar inquiries. And the Eleventh Circuit's approach cannot be justified on administrability or equal protection grounds; police officers and courts permissibly consider the realities of race in other contexts.

At the very least, the improbable result in this case—holding that Mr. Knights was not seized when

common sense tells us no reasonable person in his shoes would have felt "free to leave"—signals the need for this Court to clarify the proper application of the Fourth Amendment seizure analysis.

## I. Courts are sharply divided over whether race can ever be considered in the Fourth Amendment seizure analysis.

1. In the decision below, the Eleventh Circuit held that courts "may not consider race to determine whether a seizure has occurred." Pet. App. 12a. The court acknowledged that other individual characteristics—including "age, education, and intelligence"—are relevant to whether a "reasonable person would feel free to terminate the encounter." *Id.* 8a-9a, 11a. But it treated race differently, asserting that race has no "objectively discernible relationship to a reasonable person's understanding of his freedom of action." *Id.* 12a.

In so holding, the Eleventh Circuit emphasized that the Tenth Circuit had adopted the same rule. In *United States v. Easley*, 911 F.3d 1074 (10th Cir. 2018), *cert. denied,* 139 S. Ct. 1644 (2019), Drug Enforcement Administration (DEA) agents boarded a Greyhound bus, questioned all the passengers, and searched their belongings. The agents then asked Ollisha Easley, the only Black passenger, to step off the bus for a second round of questioning. *Id.* at 1078. After "consider[ing] [her] race as one of several factors in assessing the totality of the circumstances surrounding her encounter," the district court concluded that the DEA agents seized Ms. Easley when they first questioned her on the bus. *United States v. Easley*, 293 F. Supp. 3d 1288, 1307 (D.N.M. 2018).

The Tenth Circuit reversed, holding that any "consideration of race in the reasonable person [seizure] analysis is error." 911 F.3d at 1082. Though the *Easley* court, like the Eleventh Circuit, accepted that age is relevant to the seizure analysis, it "distinguish[ed] race" from age because "there is no uniform way to apply a reasonable person test that adequately accounts for racial differences consistent with an objective standard for Fourth Amendment seizures." *Id.* The Tenth Circuit recently reaffirmed this holding in *United States v. Mercado-Gracia*, 989 F.3d 829, 837 (10th Cir. 2021).

The Fourth Circuit has adopted the same approach. In *Monroe v. City of Charlottesville*, 579 F.3d 380 (4th Cir. 2009), *cert. denied*, 559 U.S. 992 (2010), Charlottesville police, searching for a Black suspect, approached 190 young Black men to request a DNA sample. Larry Monroe, a Black man, gave the sample but later argued, in a suit under 42 U.S.C. § 1983, that the officers' visit to his home and DNA request was a seizure. Mr. Monroe contended that a reasonable person would not have felt free to terminate the police encounter given, among other factors, local "relations between law enforcement and members of minority communities." *Id.* at 386. The Fourth Circuit rejected Mr. Monroe's argument, dismissing any discussion of his race and characterizing the effect of police-minority relations as "irrelevant facts" that have no place in the seizure inquiry. *Id.* at 387. As a result, the Fourth Circuit held that Mr. Monroe had failed to state a claim for a Fourth Amendment violation.

2. By contrast, the Ninth and Seventh Circuits, along with the D.C. Court of Appeals, have refused to

categorically exclude race from the seizure analysis. These courts hold that race, like other objective factors, should be considered in the totality-of-the-circumstances test where it is relevant to the dynamics of a particular seizure.

In *United States v. Washington*, 490 F.3d 765 (9th Cir. 2007), the Ninth Circuit held that a late-night encounter between two police officers and a Black man sitting in his parked car escalated into a seizure under the Fourth Amendment. Late one evening on a Portland street, a police officer approached Bennie Washington's car in much the same way that Officer Seligman approached Mr. Knights, by shining a flashlight into the driver's seat. *Id.* at 767-68. The officer asked Mr. Washington if he would agree to be searched and then asked him to step out of his car. *Id.* at 768. At that point, a second officer arrived, searched Mr. Washington's car, and found a firearm that served as the basis for a Section 922(g)(1) conviction. *Id.* In concluding that the encounter had escalated into a seizure before the officers found the firearm, the Ninth Circuit considered "the total circumstances present in Washington's case," including the "publicized shootings by white Portland officers of African-Americans." *Id.* at 772-73.

The D.C. Court of Appeals has likewise held that a defendant's race can inform the seizure analysis. In *Dozier v. United States,* 220 A.3d 933 (D.C. 2019), four police officers, driving at night in a "high crime area," observed Samuel Dozier, a Black pedestrian, near a dark, secluded alley. *Id.* at 938, 943. After parking their car, two officers followed Mr. Dozier into the alley and repeatedly asked to "talk" to him. *Id.* at 938. Their requests "escalat[ed]," culminating with a "request"

for Mr. Dozier "to put his hands on the wall for a pat-down." *Id.* at 941, 947. In determining whether Mr. Dozier had been seized, the D.C. Court of Appeals explained that Black Americans' "fear of harm" at "the hands of police," and "resulting protective conditioning to submit to avoid harm," may be "relevant to whether there [is] a seizure." *Id.* at 944. In the dark and secluded alley that night, the court explained, Mr. Dozier "reasonably could have feared that unless he complied with the police requests, he would be vulnerable to police violence." *Id.* at 945. Accordingly, the court held that Mr. Dozier had been seized. *Id* at 947.

Finally, the Seventh Circuit has acknowledged that race can be relevant to the seizure inquiry. In *United States v. Smith*, 794 F.3d 681 (7th Cir. 2015), the court held that officers seized Dontray Smith, a young Black pedestrian, when they cycled past him in an alley, swung around to face him, pedaled toward him, and posed a "single, accusatory question": "Are you in possession of any guns, knives, weapons, or anything illegal?" *Id.* at 685. Mr. Smith argued that, as a young Black male approached by multiple police officers in a confrontational manner, he reasonably did not feel free to walk away. *Id.* at 687-88. The Seventh Circuit recognized "the relevance of race in everyday police encounters with citizens in Milwaukee and around the country," and acknowledged that race can sometimes properly inform the seizure analysis. *Id.* at 688.[1]

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[1] Several federal district and state intermediate courts have embraced the reasoning of the Seventh and Ninth

3. The conflict on the question presented is widely acknowledged. In the decision below, the Eleventh Circuit expressly joined the Tenth Circuit and rejected the Seventh Circuit's approach. Pet. App. 11a-12a. State high courts have likewise acknowledged the deepening split.

The Massachusetts Supreme Judicial Court, for example, has recognized that the "Courts of Appeals for the Ninth and Tenth Circuits have come to different conclusions about whether to include race" in the seizure analysis, and the Seventh Circuit, too, has "stat[ed] that race is relevant." *Commonwealth v. Evelyn*, 152 N.E.3d 108, 120 (Mass. 2020). Though "factors other than race" sufficed to establish that the *Evelyn* defendant had been seized, the court recognized that "African-Americans, particularly males, may believe that they have been seized in situations where other members of society would not," and "agree[d] that the troubling past and present of policing and race are likely to inform how African-

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Circuits and the D.C. Court of Appeals. *See United States v. Perkins*, 2019 WL 1026376, at *4 (E.D. Mo. Jan. 16, 2019) (acknowledging the argument that a reasonable person, "particularly when the person . . . is African American," would not feel free to leave); *United States v. Hill*, 2019 WL 1236058, at *3 (E.D. Pa. Mar. 11, 2019) (similar); *Doe v. City of Naperville*, 2019 WL 2371666, at *4 (N.D. Ill. June 5, 2019) (analyzing seizure from perspective of "a reasonable twelve-year-old, African American child"); *State v. Johnson*, 440 P.3d 1032, 1042 n. 5 (Wash. Ct. App. 2019) (declining to "assert that race could never be a factor"); *In re D.S.*, 2021 WL 212363, at *6 (Md. Ct. Spec. App. Jan. 21, 2021) (explaining that courts can consider "perceptions about race-related risks in interacting" with police).

Americans . . . interpret police encounters." *Id.* at 120-21.

Similarly, the South Carolina Supreme Court has recognized that courts are divided over the question presented. *See State v. Spears*, 839 S.E.2d 450, 460-61 (2020) (contrasting *Smith* with *Easley*). The court did not resolve whether "race is a factor to be considered" because the defendant had not preserved the argument. *Id.* at 461. Two justices, however, authored opinions explaining that courts must be allowed to consider a defendant's race in the seizure analysis. *Id.* at 462 (Hearn, J., concurring); *id.* at 462-63 (Beatty, C.J., dissenting). Given "the dynamics between marginalized groups—particularly African-Americans—and law enforcement," Chief Justice Beatty explained, "it is no surprise that scholars have also found African-Americans often perceive their interactions with law enforcement differently than other demographics." *Id.* at 463. Accordingly, "a true consideration of the totality of the circumstances" necessarily encompasses a defendant's race, where relevant. *Id.*

## II. This case is an excellent vehicle to address a question central to countless interactions between citizens and police.

1. The role of race in the seizure analysis has been percolating through this country's courts for nearly three decades. As early as 1992, Judge Mack of the D.C. Court of Appeals argued that a defendant's race could properly inform the seizure analysis. *In re J.M.*, 619 A.2d 497, 512 (D.C. 1992) (Mack, J., concurring in part and dissenting in part). In the decades since, courts have regularly grappled with the question, *see Washington*, 490 F.3d 765; *Monroe*, 579 F.3d 380;

*Smith*, 794 F.3d 681, and with increasing frequency. In the past three years, no fewer than ten federal and state courts have issued opinions analyzing how race informs the reasonable person analysis. *See* Part I, *supra*.

This mounting urgency is far from surprising, as the question presented is central to the core protections of the Fourth Amendment. Race continues to inform the everyday reality of police encounters for Black Americans, from school children and university professors to army officers, a Senator, and even a former President.[2] A rule that forbids courts from considering how race may inform the coerciveness of a particular seizure defies this real-world experience.

Moreover, there are millions of encounters between citizens and police each year. In 2018, the Bureau of Justice Statistics estimated that about 28.9 million U.S. residents experienced contacts initiated by police.[3] The Bureau further estimates that

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[2] *See, e.g.*, Pet. App. 33a; Tim Scott, *GOP Sen. Tim Scott: I've Choked on Fear When Stopped by Police. We Need the JUSTICE Act*, USA TODAY (June 18, 2020), https://perma.cc/PB7V-5U23; Barack Obama, A Promised Land at 395-96 (2020); Mike Ives & Maria Cramer, *Black Army Officer Pepper-Sprayed in Traffic Stop Accuses Officers of Assault*, N.Y. Times (Apr. 10, 2021), https://perma.cc/Z6Z5-Q3ND; Eliza Shapiro, *Students of Color Are More Likely to Be Arrested in School. That May Change*, N.Y. Times (June 20, 2019), https://perma.cc/3R9M-3HBQ.

[3] Erika Harrell & Elizabeth Davis, *Contacts Between Police and the Public, 2018 – Statistical Tables*, Bureau Just. Stat. 3 (Dec. 2020), https://perma.cc/G65P-N8T5.

3,528,100 of those contacts were stops where police approached individuals in a public place or near a parked vehicle, similar to the stop at issue here.[4] The vast majority of these encounters affect innocent civilians and turn up no evidence, and are thus never subject to judicial scrutiny.[5] But they may be unconstitutional, traumatic, and socially damaging all the same. *See, e.g.*, Amanda Geller, et al., *Aggressive Policing and the Mental Health of Young Urban Men*, 104 Am. J. Pub. Health 2321, 2324 (2014). It is thus critical for all concerned that courts provide clear guidance concerning the circumstances that transform an encounter into a seizure. And given the divide among lower courts on the recurrent question presented here, only this Court can ensure that geography does not dictate whether courts can assess the true coerciveness of particular police encounters.

2. This case squarely presents the question of whether race can ever inform the Fourth Amendment

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[4] *Id.* at 4 tbl.2.

[5] *See, e.g.*, *Floyd v. City of New York*, 959 F. Supp. 2d 540, 558 (S.D.N.Y. 2013) ("[I]n 98.5% of the [NYPD's] 2.3 million frisks [from 2004-2012], no weapon was found."); Emma Pierson, et. al, *A large-scale analysis of racial disparities in police stops across the United States*, 4 Nature Human Behavior 726, 739 (2020) (in tens of millions of vehicle stops from 2011 to 2018, less than one-fifth of municipal patrol searches turned up contraband). As Judge Calabresi has noted, "no more than a handful" of searches that "tur[n] up nothing" will "get to court" as 42 U.S.C. § 1983 suits. *United States v. Weaver*, 975 F.3d 94, 109 (2d Cir. 2020) (Calabresi, J., concurring).

seizure analysis. Indeed, the panel granted rehearing for the sole purpose of resolving that question.

In its initial ruling, the Eleventh Circuit held that "the age and race of a suspect may be relevant factors" in determining whether a reasonable person would feel free to leave, but concluded that "the totality of the circumstances establish that this encounter was not coercive." Pet. App. 59a. Mr. Knights petitioned for rehearing, explaining that if the court had properly contemplated age and race, it would have concluded that a seizure had occurred. The Eleventh Circuit then ordered supplemental briefing addressing "whether the race of a suspect may be a relevant factor in deciding whether a seizure has occurred." *Id.* 95a.

"[W]ith the benefit of [that] additional briefing by the parties," Pet. App. 7a, the Eleventh Circuit vacated its original opinion and announced that race, unlike other demographic characteristics, is always irrelevant to the seizure inquiry. *Id.* 11a. It concluded: "we may not consider race in deciding whether a seizure has occurred, and the [other] circumstances of Knights's encounter with the police remain dispositive." *Id.* 14a. On that basis, the court held that "[i]n this encounter, a reasonable person would have felt free to leave." *Id.* 9a.

3. The facts of this case are undisputed. Mr. Knights and the government stipulated to the relevant facts and, at a bench trial, the district court found Mr. Knights guilty of violating Section 922(g) based on that stipulation. Pet. App. 6a; ECF No. 75, Trial Min. The only dispute was a legal question: at what point during the police encounter was Mr. Knights seized?

The record reflects that Mr. Knights is a young, Black man who was outnumbered and targeted for questioning by two armed police officers in the middle of the night, after the officers impeded his ability to drive away and disregarded his attempts to avoid an encounter. Pet. App. 3a-4a, 11a. Mr. Knights was alone with the officers, because Mr. Keaton was nearly inside the house before the officers parked their car in a manner that blocked Mr. Knights's path. *Id.* 4a; *see also id.* 20a-21a, 52a, 62a.

And the encounter took place in Live Oaks Square, a heavily policed neighborhood in Tampa—a city where, according to a 2016 Department of Justice report, there exist "stark racial disparities" in police stops.[6] Further, from 2013 to 2020 and adjusted for population, a Black person was 2.6 times more likely to be killed by Tampa police than a white person.[7] All the individuals killed by Tampa police since 2018 were Black men.[8] In fact, just two weeks after Mr. Knights's seizure, Tampa police officers shot and killed Sidney T. Richardson IV, a Black former Marine, in a home

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[6] *See* Greg Ridgeway, *et al.*, An Examination of Racial Disparities in Bicycle Stops and Citations Made by the Tampa Police Department Community Oriented Policing Services, U.S. Department of Justice 2 (2016) (Tampa police stopped Black cyclists at nearly three times the rate of white cyclists).

[7] Campaign Zero, Police Scorecard, https://policescorecard.org/fl/police-department/tampa.

[8] Mapping Police Violence, https://mappingpoliceviolence.org/.

only four miles north of Mr. Knights's encounter with police.[9]

Given the totality of these circumstances, Mr. Knights's race undoubtedly reinforces the conclusion that a reasonable person in his position would not have felt free to leave. But the Eleventh Circuit held that it was categorically barred from taking race into account. The facts here thus starkly present that question for this Court's review.

## III. The Eleventh Circuit's decision is incorrect.

The decision below also warrants review because it improperly singles out and excludes race in an analysis designed to encompass "all the circumstances surrounding the encounter." *United States v. Drayton*, 536 U.S. 194, 201 (2002) (quoting *Florida v. Bostick*, 501 U.S. 429, 439 (1991)). That approach cannot be reconciled with the Fourth Amendment's central tenets, this Court's precedents, or common sense. At a minimum, the flawed holding in this case—that Mr. Knights should have felt "free to leave" in circumstances where no citizen would feel that way—underscores the need for this Court's intervention to ensure that the seizure test is honestly applied and the Fourth Amendment's protection against unreasonable seizures is not illusory.

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[9] Tony Marrero, *Friends say man shot by Tampa police was former U.S. Marine with PTSD*, Tampa Bay Times (Feb. 12, 2018), https://perma.cc/ZG3M-Y5B3.

### A. The Eleventh Circuit's categorical exclusion of race is inconsistent with a totality-of-the-circumstances analysis.

1. Whether a "seizure" has occurred under the Fourth Amendment depends on whether the circumstances of a particular police encounter would have made a reasonable person, in the defendant's position, feel coerced into cooperation. The inquiry thus asks: what is the effect of "all of the circumstances surrounding the incident" on a reasonable person's belief in her freedom to leave? *Brendlin v. California*, 551 U.S. 249, 255 (2007) (internal quotation marks omitted). While the exact contours of the analysis may vary according to the context in which the police-citizen encounter takes place, that central inquiry remains. *See, e.g.*, *Bostick*, 501 U.S. at 436-47 (where the citizen "has no desire to leave," the inquiry is whether "a reasonable [person] would feel free" to "terminate the encounter," "taking into account *all of the circumstances*") (emphasis added).

This Court has repeatedly rejected lower courts' attempts to fashion "bright-line" rules that rely on certain factors to the exclusion of others in determining whether a police encounter "is or is not necessarily a seizure." *Michigan v. Chesternut*, 486 U.S. 567, 572-73 (1988); *see Bostick*, 501 U.S. at 435-36 (rejecting rule that a seizure necessarily occurs when police randomly board a bus to question passengers). "Not once" has the Court "excluded from the custody analysis a circumstance that [it] determined was relevant and objective, simply to make the fault line between custodial and

noncustodial 'brighter.'" *J.D.B. v. North Carolina*, 564 U.S. 261, 280 (2011).

Instead, the Court has consistently reaffirmed that the correct approach to the seizure analysis is the "traditional contextual approach," where the relative weight of each factor hinges on the particular circumstances of the encounter. *Chesternut*, 486 U.S. at 572-73; *see also Maryland v. Pringle*, 540 U.S. 366, 370 (2003) (emphasizing that Fourth Amendment inquiries must be "practical" and "nontechnical" to account for "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act") (internal quotation marks omitted).

2. The Eleventh Circuit's ruling that race can never inform the totality of relevant circumstances contravenes these principles.

As "[c]ommon experience and common sense confirm," "conscious and unconscious prejudice persists in our society." *Georgia v. McCollum*, 505 U.S. 42, 61 (1992) (Thomas, J., concurring). Those prejudices include the "powerful racial stereotype" "of [B]lack men as violence prone," *Buck v. Davis*, 137 S. Ct. 759, 766 (2017), "morally inferior," and more likely to commit crimes, *Turner v. Murray*, 476 U.S. 28, 35 (1986) (plurality opinion). Race matters in the criminal justice context because these "racial biases, sympathies, and prejudices still exist." *Flowers v. Mississippi*, 139 S. Ct. 2228, 2274 (2019) (Thomas, J., dissenting). "[T]his is not a matter of assumptions," but "a matter of reality." *Id.*

Police-civilian encounters are prone to reflect this unfortunate reality. Obviously not all officers are

biased. But Black Americans have long experienced disproportionate violence in law-enforcement encounters. *See Terry v. Ohio*, 392 U.S. 1, 14-15 (1968) (recognizing "wholesale harassment" of Black individuals "by certain elements of the police community"). This reality persists today. Despite accounting for 13.4 percent of the population,[10] Black people comprise 21 percent of all police-civilian encounters,[11] 38.6 percent of the federal prison population,[12] and 24 percent of all people shot and killed by police.[13] And, in an analysis of recent police-civilian encounters, officers aimed or shot a gun at Black individuals at eight times the rate of white individuals, and threatened force or engaged in physical contact against Black individuals at four times the rate of white individuals.[14] *See also, e.g.*, *Commonwealth v. Hart*, 695 N.E.2d 226, 228 (Mass. App. Ct. 1998) ("[H]istorically . . . blacks who have walked, run, or raced away from inquisitive police

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[10] U.S. Census Bureau, QuickFacts (2019), https://perma.cc/WS3G-25XH.

[11] Harrell & Davis, *supra* note 3, at 3.

[12] Inmate Race, Fed. Bureau Prisons (2021), https://perma.cc/TPF6-3PD2.

[13] Julie Tate, et al., *Fatal Force*, Washington Post (Apr. 20, 2021, updated July 20, 2021), https://perma.cc/2K7N-3N87.

[14] Harrell & Davis, *supra* note 3, at 7.

officers have ended up beaten and battered and sometimes dead.").[15]

The impact of race on police encounters is well known and widely reported. "[T]he news has a daily accounting of the tragic consequences that can result if a minority citizen should in fact make any indication that he or she will not cooperate" with the police. Scott E. Sundby, *The Rugged Individual's Guide to the Fourth Amendment: How the Court's Idealized Citizen Shapes, Influences, and Excludes the Exercise of Constitutional Rights*, 65 UCLA L. Rev. 690, 725 (2018). As the president of a leading association of police chiefs has explained, the "dark side of our shared history . . . has created a multigenerational—almost inherited—mistrust between many communities of color and their law enforcement

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[15] *See also, e.g.*, Department of Justice, *Investigation of the Chicago Police Department* 146 (Jan. 13, 2017), https://perma.cc/K9D7-CUB7 (Black youth are "routinely" called "n****r," "animal," "monkey," or "pieces of shit" by CPD officers, according to reports from both residents and officers); Department of Justice, *Investigation of the Baltimore City Police Department* (Aug. 10, 2016), https://perma.cc/8YE5-4XXP (similar); *see also* Rob Voigt et al., *Language from police body camera footage shows racial disparities in officer respect*, 114 PNAS 6521, 6521 (Jun. 20, 2017) (body camera footage reflects that "[p]olice officers speak significantly less respectfully to black than to white community members in everyday traffic stops, even after controlling for officer race, infraction severity, stop location, and stop outcome").

agencies."[16] And Black Americans are all too aware of this reality: generations of Black parents have taught their children to be deferential toward police for fear of how "an officer with a gun will react." *Utah v. Strieff*, 136 S. Ct. 2056, 2070 (2016) (Sotomayor, J., dissenting).

Accordingly, "Black people often tread more carefully around law enforcement," Pet. App. 31a (Rosenbaum, J., concurring), reasonably believing—based on "pervasive" and "persuasive" evidence—that "contact with the police can itself be dangerous," *Illinois v. Wardlow*, 528 U.S. 119, 132 (2000) (Stevens, J., concurring). For example, a recent national study found that Black Americans are five times more likely than white Americans to report that they "worry a lot" about harm from a police encounter. Amanda Graham, et al., *Race and Worry About Police Brutality: The Hidden Injuries of Minority Status in America*, 15 Victims & Offenders 549, 557 (2020).

Any rule that aims to account for objective realities—and the "whole" of a police encounter, *Chesternut*, 486 U.S. at 574—thus cannot ignore the role that race might play, alongside other factors, in amplifying the coercive nature of a confrontation. A reasonable person, in deciding whether he is "free to leave" a police encounter, may reasonably consider the distinct experiences of Black men with police,

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[16] *See* Tom Jackman, *U.S. Police Chiefs Group Apologizes for 'Historical Mistreatment' of Minorities*, Washington Post (Oct. 17, 2016), https://perma.cc/NC2Z-P84S.

especially within a particular community—and the potential consequences of making the wrong choice.

### B. The Eleventh Circuit's decision contravenes this Court's precedents in analogous contexts.

The Eleventh Circuit's attempt to exclude race from the free-to-leave analysis disregards this Court's precedents regarding similar totality-of-the-circumstances tests, which hold that objective personal characteristics—such as age, race, and sex—all warrant consideration in appropriate cases.

In the closely analogous *Miranda* custody context, this Court held in *J.D.B v. North Carolina* that individual characteristics like age and disability can be relevant to whether a reasonable person would feel free to leave.[17] 564 U.S. 261, 277 (2011). A "reasonable child subjected to police questioning," the

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[17] The Fourth Amendment seizure analysis tracks the *Miranda* custody analysis, differing only in "degree," *United States v. Ortiz*, 781 F.3d 221, 229 (5th Cir. 2015): custody occurs when the restraint on freedom is tantamount to a formal arrest, *see California v. Beheler*, 463 U.S. 1121, 1125 (1983), while a seizure need not be so restraining, *see Berkemer v. McCarty*, 468 U.S. 420, 436-37 (1984). But both tests ask the same core question: whether a reasonable person would feel free to terminate an encounter. *See* 4 Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment § 9.4(a) (6th ed. 2020) (recognizing that after *J.D.B.*, the "analogous" Fourth Amendment seizure inquiry likely also "requires consideration of some known unique characteristics of the suspect (e.g., his youth)").

Court explained, "will sometimes feel pressured to submit when a reasonable adult would feel free to go." *Id.* at 272. Accordingly, the Court held, "the *Miranda* custody analysis includes consideration of a juvenile suspect's age"—alongside other "undeniably personal characteristics," such as "whether the individual being questioned is blind." *Id.* at 268, 278.

Likewise, in *United States v. Mendenhall*, the Court acknowledged that a Black woman's race and gender were relevant to whether she "felt unusually threatened by officers" and thus whether her consent to a prolonged encounter with federal agents was voluntary. 446 U.S. 544, 558 (1980). Like the seizure analysis, the consent analysis considers "the totality of all the circumstances" to determine whether "duress or coercion" bore on the individual's ability to terminate an encounter or deny a police request. *Id.* at 557. This Court has thus emphasized that the seizure and consent tests "turn on very similar facts," and "the question of voluntariness pervades both . . . inquiries." *United States v. Drayton*, 536 U.S. 194, 206 (2002). That race is likewise relevant to the seizure analysis follows *a fortiori*.

### C. The Eleventh Circuit's contrary reasoning is unpersuasive.

1. The Eleventh Circuit came to a contrary conclusion in part because it believed that race does not "lend [it]self to objective conclusions." Pet. App. 13a. But in *J.D.B.*, which held that age must be taken into account in the custody analysis, this Court distinguished between subjective factors that are "contingent on the psychology of [an] individual suspect"—like prior history with law enforcement—

and factors that "yield[] objective conclusions" relating to "a reasonable person's understanding of his freedom of action"—such as age. *J.D.B.*, 564 U.S. at 275. Race falls squarely on the latter side of this line. Understanding the effects of race does not require examining the psychology of individual suspects; rather, courts need only acknowledge the "commonsense conclusions about behavior and perception" that race "broadly" "generates." *Id.* at 272 (internal quotation marks omitted).[18]

And just as the concern about "gradations among children" "cannot justify ignoring a child's age altogether," *J.D.B.*, 564 U.S. at 279, the fact that "[t]here is no uniform life experience for persons of color," Pet. App. 13a, cannot justify ignoring race altogether. Ignoring "objective circumstances that are a matter of degree" would only "make the inquiry more artificial." *J.D.B.*, 564 U.S. at 279.

That race is relevant to determining whether *consent* is voluntary, *see Mendenhall*, 446 U.S. at 558, confirms its objective salience. To be sure, as the Eleventh Circuit emphasized, the consent test (unlike the seizure analysis) takes both objective and subjective considerations into account. Pet. App. 11a-12a. But race plays a role in the consent inquiry not because of a particular defendant's subjective experience, but rather because of its *objective* import: given "Black Americans' shared historic experience in police encounters, purported 'consent' is less likely to be truly voluntary when attributed to Black

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[18] Police need consider race only when, like age, it is "known to the officer" or would be "objectively apparent to a reasonable officer." *Id.* at 274.

individuals." *Id.* 34a-35a (Rosenbaum, J., concurring). Given that fact, "it is difficult to understand why that same shared experience would not be equally relevant to whether a Black citizen truly feels 'free to leave' a police encounter." *Id.* For precisely this reason, many lower courts have interpreted *Mendenhall* to suggest that race is relevant to the Fourth Amendment seizure analysis as well. *See United States v. Smith*, 794 F.3d 681, 688 (7th Cir. 2015); *State v. Ashbaugh*, 244 P.3d 360, 369 (Or. 2010).

2. The Eleventh Circuit is likewise wrong that accounting for race in the seizure inquiry is unworkable. Both police officers and courts are competent to consider demographic characteristics such as race. Indeed, "objective way[s] to consider race" already exist. Pet. App. 14a.

Law enforcement officers consider individuals' race in conducting certain routine police work. *See Brown v. City of Oneonta, N.Y.*, 221 F.3d 329, 333-34 (2d Cir. 2000) (holding that police officers can act on race- and gender-based "description[s] without violating the Equal Protection Clause"). For example, after the government observed that it would "affront common sense to expect that . . . skin color would play no part in arousing [border officers'] suspicions," U.S. Reply Brief 12, *United States v. Ortiz*, 422 U.S. 891 (1975), this Court held that "Mexican appearance" could contribute to reasonable suspicion. *United States v. Brignoni-Ponce*, 422 U.S. 873, 887 (1975). Police department manuals describe race as a

"discernible personal characteristic."[19] And some police departments require officers to note the "races of the persons involved" in their reports.[20]

Officers must also draw inferences from race on the frequent occasions when a person consents to a search or prolonged police encounter. Under this Court's cases, police in such situations must ensure that consent is truly voluntary and untainted by unique pressures the person may feel on account of her race. *See Mendenhall*, 446 U.S. at 558; *supra* at 28. It would "thus only add confusion" to allow officers to initiate police-civilian encounters without this same awareness. *J.D.B.*, 564 U.S. at 279.

Courts are likewise competent to incorporate objective personal characteristics, such as race, into their review of legal questions. They already consider such circumstances in similar Fourth and Fifth Amendment totality-of-the-circumstances inquiries. *See supra* at 27-28; *see also J.D.B.*, 564 U.S. at 279 (finding that police officers "are competent to evaluate the effect of relative age" and "[t]he same is true of judges"). This Court has made clear that courts are likewise competent to consider race to ensure that defendants receive fair trials. *See Rosales-Lopez v. United States*, 451 U.S. 182, 191-92 (1981) (trial judges are "required to 'propound appropriate questions designed to identify racial prejudice'" during voir dire when a defendant accused of a violent crime

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[19] *See, e.g.*, Seattle Police Department Manual, § 5.140 (2019); Baltimore Police Department, *Fair and Impartial Policing: Policy* 317 (Feb. 9, 2016).

[20] *See, e.g.*, *Dallas Police Department General Orders* 25 (Aug. 21, 2020), https://perma.cc/22XD-27YY.

so requests) (quoting *Ristaino v. Ross*, 424 U.S. 589, 597 n.9 (1976)); *Batson v. Kentucky*, 476 U.S. 79, 99-100 (1986) (courts consider race in assessing constitutionality of peremptory challenges). And courts employ tests that consider race, including tailored-reasonable-person and totality-of-the-circumstances tests, in a host of other contexts.[21]

3. Finally, courts do not run afoul of equal protection doctrine by considering race in a Fourth Amendment totality-of-the-circumstances test. Indeed, if the Eleventh Circuit were correct that courts make impermissible racial classifications whenever they acknowledge that race is relevant to a particular totality-of-the-circumstances analysis, *see* Pet. App.

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[21] *See J.D.B.*, 564 U.S. at 274 ("All American jurisdictions accept the idea that a person's childhood is a relevant circumstance" in tort law's objective reasonable-person test) (internal quotation marks and alterations omitted); *McGinest v. GTE Serv. Corp.*, 360 F.3d 1103, 1116 (9th Cir. 2004) (explaining that, in hostile-work-environment suit, "[b]y considering … discrimination from the perspective of a reasonable person of the plaintiff's race, we recognize forms of discrimination that are real and hurtful, yet may be overlooked if considered solely from the perspective of an adjudicator belonging to a different group than the plaintiff"); *State v. Wanrow*, 559 P.2d 548, 558-59 (Wash. 1977) (applying reasonable-woman standard for self-defense instruction), *superseded by statute on other grounds*; *Andrews v. City of Phila.*, 895 F.2d 1469, 1482 (3d Cir. 1990) (applying reasonable-woman standard for sexual harassment cases); *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2338-39 (2021) (considering race in the Voting Rights Act § 2 totality-of-circumstances analysis).

14a, several longstanding Fourth Amendment doctrines would be undermined.

For instance, the Eleventh Circuit's conclusion would cast doubt on *Mendenhall*, where this Court considered an individual's race and gender—both suspect classifications under the Fourteenth Amendment—when evaluating whether the defendant's consent to a prolonged police encounter was voluntary. 446 U.S at 558. It would also cast doubt on *Brignoni-Ponce*, where this Court allowed police to consider a driver's apparent nationality, another suspect classification, when generating reasonable suspicion for a traffic stop. 422 U.S. at 887. And it would cast doubt on the common police practice of treating race as a factor in establishing reasonable suspicion when it is part of a description of a suspect that fairly matches the seized individual. LaFave, § 9.5(h).

The Eleventh Circuit's rule operates as a one-way ratchet: law enforcement officers could permissibly rely on race when deciding whether to initiate an encounter, but in any ensuing proceeding a defendant would be prohibited from arguing that his race informs the totality-of-the-circumstances seizure analysis. It is an "anomalous result to hold that race may be considered when it harms people, but not when it helps them." *United States v. Montero-Camargo*, 208 F.3d 1122, 1135 (9th Cir. 2000).

Thus, if there is any equal protection infirmity in this case, it lies with the decision below. The Eleventh Circuit singled out race and excluded it from the totality-of-the-circumstances analysis, despite the inexorable conclusion that race can influence whether a reasonable person feels free to leave a police

encounter. To ignore the reality that a Black man's race may make him reasonably feel less free to terminate a particular police encounter is to write into law that the Constitution permits a police encounter with a Black individual to be more coercive. That approach cannot be squared with the Fourth Amendment's guarantee that people of all races are equally entitled to protection against unreasonable seizures.

### D. Irrespective of race, this Court should revisit how the "free to leave" test is applied.

Finally, regardless of the role of race, the Eleventh Circuit's holding that Mr. Knights should have felt "free to leave" clearly demonstrates the need for further guidance from the Court in the application of that constitutional standard.

Indeed, the magistrate judge in this case concluded that Mr. Knights was seized even without considering his race. That conclusion was correct. It defies credulity to suggest, as the Eleventh Circuit held, that *any* person would feel free to walk away after two uniformed officers in a marked police car spot him in the middle of the night, swing around to approach him, park against the flow of traffic to block him in, and emerge shining flashlights—and then, after the person has gotten into his parked car and closed the door, rap on the car window. On the contrary, any reasonable person in that situation would conclude that the officers had made a "show of authority," Pet. App. 10a, clearly requiring compliance. In fact, as a matter of good order and public safety, that is no doubt what a reasonable officer would intend and want the individual to conclude. *See, e.g.*, *Washington*, 490 F.3d at 773

(describing pamphlets issued by Portland Police Bureau advising citizens that the best way to avoid tragic confrontations was "to comply with an officer's instructions").

And here the reality is that, by all indications, the officers intended to make an investigatory stop, not simply to approach Mr. Knights and see if they could strike up a conversation. *Cf.* Pet. App. 10a (officers "approached his car to try to speak with him, without conveying that Knights was required to comply"). Only later did the government, or the courts, apparently doubt the strength of the officers' legal justification for such a stop, and thus move to the alternative argument that there was no initial "stop" at all. *See id.* 8a-9a (declining to reach alternative argument based on reasonable suspicion); *Id.* 86a (magistrate judge rejected argument that officers had reasonable suspicion to initiate a *Terry* stop).

The decision below thus exemplifies a need for further guidance from this Court regarding the "free to leave" seizure inquiry, even apart from the question of race. Not many items on the Court's docket are as important to the daily lives of civilians as the Fourth Amendment seizure analysis. As this Court has emphasized, "[f]ew protections are as essential to individual liberty as the right to be free from unreasonable searches and seizures." *Byrd v. United States*, 138 S. Ct. 1518, 1526 (2018). Whether a police seizure has occurred—and what circumstances are relevant to that inquiry—are "fundamental question[s]" of "real importance" at the heart of the Fourth Amendment. LaFave, § 9.4.

Yet it has been decades since this Court has offered guidance on the contours of the seizure inquiry.

While the Eleventh Circuit's categorical prohibition on consideration of race warrants review for all the reasons discussed above, review is also warranted so the Court can examine whether the lower courts' application of the free-to-leave standard accurately reflects how reasonable people do and should perceive the wide range of potential interactions with police, from casual and friendly to tense and fraught.

The seizure doctrine's ever-deepening distortions are on full display in the decision below. Indeed, the concurrence asked for this Court's review, expressing "deep[] concern[]" that the free-to-leave analysis "has become unworkable and dangerous," a form of "Russian Roulette" that "ensures that police-citizen encounters are rife with dangerous ambiguity" and sometimes "'reduces the Fourth Amendment to a form of words.'" Pet. App. 15a, 16a, 49a (quoting *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920)). Further guidance is sorely needed.

## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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August 6, 2021