No. 25–248

IN THE
Supreme Court of the United States

DISTRICT OF COLUMBIA,
Petitioner,

v.

R.W.,
Respondent.

On Petition for Writ of Certiorari to the District of Columbia Court of Appeals

BRIEF OF OKLAHOMA AND 27 OTHER STATES AS AMICI CURIAE IN SUPPORT OF PETITIONER

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"The States possess primary authority for defining and enforcing the criminal law." *Brecht v. Abrahamson*, 507 U.S. 619, 635 (1993) (citation modified). As of 2018, state and local law enforcement agencies across the country employed nearly 788,000 sworn officers of the law. ANDREA M. GARDNER & KEVIN M. SCOTT, U.S. DEP'T OF JUST., CENSUS OF STATE AND LOCAL LAW ENFORCEMENT AGENCIES, 2018 – STATISTICAL TABLES 1 (2022). Every day these brave men and women of law enforcement hold the line, defending civilized society from crime, corruption, violence, and more.

This case involves an issue faced by law enforcement daily throughout the nation—*Terry* stops and the rules by which they are governed. *See Terry v. Ohio*, 392 U.S. 1 (1968). "In terms of regulating police conduct on the streets of America, *Terry v. Ohio* is probably the most important Supreme Court decision in modern criminal procedure." Craig S. Lerner, *Reasonable Suspicion and Mere Hunches*, 59 VAND. L. REV. 407, 418 (2006). "In *Terry,* [this Court] held that an officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot." *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000) (citing *Terry*, 392 U.S. at 30). Recognizing the deference that is owed to law enforcement in developing reasonable suspicion, this Court has resisted attempts to "reduce[]" the

[1] Amici submit this brief pursuant to Sup. Ct. Rule 37.2. Pursuant to this rule, all parties received timely notice of the States' intention to file this brief.

reasonable-suspicion analysis "to a neat set of legal rules" and has instead commanded courts to "consider the totality of the circumstances—the whole picture" as it would be viewed by law enforcement. *United States v. Sokolow*, 490 U.S. 1, 7–8 (1989) (citation modified); *see also United States v. Cortez*, 449 U.S. 411, 417–18 (1981).

Unfortunately, some courts, including the one below, have not implemented this Court's command. Instead of applying the totality-of-the-circumstances approach, these courts are instead parsing the grounds for a police officer's suspicion to determine whether each ground, on its own, is sufficient to receive weight in the analysis. This approach is a threat to public safety, disregards the practical realities of how officers assess situations in the field, and has led to splits in authority within and across jurisdictions. Given the States' obligation to protect public safety and their oversight of thousands of police officers within their territorial boundaries, amici have a substantial interest in this Court's disposition of the case.

INTRODUCTION

At the heart of this Court's reasonable-suspicion jurisprudence is the recognition of a tension between how law enforcement officers weigh and process information to develop suspicion for a *Terry* stop and how judges are inclined to review the reasonableness of that suspicion. In *Cortez*, for example, this Court opined that the process of analyzing reasonable suspicion "does not deal with hard certainties, but with probabilities," that law enforcement officers are permitted to "formulate[] certain common sense

conclusions about human behavior[,]" and that "the evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement." 449 U.S. at 418; *see also Sokolow*, 490 U.S. at 7 ("The concept of reasonable suspicion, like probable cause, is not readily, or even usefully, reduced to a neat set of legal rules." (citation modified)). In other words, this "Court [has] acknowledge[d] that scholars (and judges?) may 'see and weigh' evidence differently than police officers" and that the latter "have access to information denied to those of us (scholars, judges) in cloistered libraries." Lerner, *supra*, at 467–68.

In an effort to harmonize law enforcement and judicial decision-making in this context, this Court has instructed lower courts to consider whether, "[b]ased upon th[e] whole picture[,] the detaining officers . . . [had] a particularized and objective basis for suspecting the particular person stopped of criminal activity." *Cortez*, 449 U.S. at 417–18. This "assessment must be based upon all the circumstances," including "various objective observations, information from police reports, if such are available, and consideration of the modes or patterns of operation of certain kinds of lawbreakers." *Id.* at 418. "From these data, a trained officer draws inferences and makes deductions—inferences and deductions that might well elude an untrained person." *Id.* This type of judicial assessment is commonly referred to as the totality-of-the-circumstances approach.

A different type of approach has arisen among a minority of jurisdictions, and it was utilized in the

opinion below. Pet. 13–21. Under this approach, a court reviewing whether a law enforcement officer had reasonable suspicion to initiate a *Terry* stop does not consider all the circumstances together, at least not initially. Rather, the court examines each basis or trigger for an officer's suspicion one-by-one to determine the weight, if any, that each circumstance should be afforded. *See, e.g.*, Pet. App. 7a–18a; *United States v. Peters*, 60 F.4th 855, 865–70 (4th Cir. 2023); *Vasquez v. Lewis*, 834 F.3d 1132, 1137–38 (10th Cir. 2016). Where a court finds a circumstance unworthy of weight for any reason—such as, the factor being too broad, *see, e.g.*, *Vasquez*, 834 F.3d at 1137, or subject to innocuous or non-criminal explanations, *see, e.g.*, *United States v. Hernandez-Mandujano*, 721 F.3d 345, 350 (5th Cir. 2013)—it is jettisoned from the analysis as if it had not been part of the whole picture before the detaining officer. Indeed, just last month the D.C. Court of Appeals doubled down on the approach employed in the opinion below and adopted by a minority of circuits. *See In re E.A.*, ___ A.3d ___, No. 23-FS-1042, 2025 WL 2535114, at *3 (D.C. Sept. 4, 2025) (noting this Court's command to review the totality of the circumstances but stating that "[t]here are nonetheless guardrails on the constellation of facts that may contribute to a reasonable articulable suspicion finding" and that "the government has a threshold evidentiary burden to meet before it can rely on . . . a [radio] dispatch to defend a stop").

Here, in a short period of time, a police officer received a report of a suspicious car at a particular address, came upon a single occupied vehicle at that address, saw two passengers flee from that vehicle, and then saw the car itself move in reverse despite one

of its doors hanging open. Picking apart each of these factors one-by-one, the court below found no reasonable suspicion for a *Terry* stop. For purposes of this brief, amici States will call this method the "isolationist" approach, although they certainly do not disagree with the "divide-and-conquer" characterization used by Petitioner. Whatever the label, this Court should grant certiorari and reject this misguided approach that contradicts established precedent and common sense.

SUMMARY OF THE ARGUMENT

The isolationist approach is contrary to this Court's precedents, and it is misguided for several reasons beyond that, including practicality and common sense. Pet. 26–29.

First, the approach hamstrings law enforcement in deciding whether to initiate a *Terry* stop, forcing them to weigh each circumstance alone to determine whether it is capable of innocent explanation and preventing them from considering certain circumstances at all. Moreover, officers have little idea of which circumstances will later be banned from consideration by a court or a particular judge, sometimes years after the fact. The result is that officers initiate fewer *Terry* stops and that, in turn, leads to reduced rates of preventing and detecting crime. As such, the isolationist approach threatens public safety.

Second, the isolationist approach is divorced from how humans—here, law enforcement officers—make decisions in dangerous, time-pressured situations. In such fraught circumstances, humans typically engage in contextualized, automatic, associative, and

experience-based decision-making. They do not methodically parse available information to determine whether each piece of the puzzle on its own is worthy of consideration, nor do they necessarily scrutinize each factor for potential innocent explanations. The reality of this type of intuitive, holistic decision-making is best respected through the totality-of-the-circumstances approach, which considers the "whole picture . . . as understood by those versed in the field of law enforcement." *Cortez*, 449 U.S. at 418.

Third and *finally*, the intra-jurisdictional split in the District of Columbia, Pet. 20–21, on this issue is not unique. Similar conflicts arise whenever law enforcement must operate under a state's totality-of-the-circumstances framework in criminal cases yet face a federal circuit court's isolationist framework for purposes of 42 U.S.C. § 1983 liability—and vice versa. Or where a state or local police officer's *Terry* stop might result in a federal prosecution. The same conflict in reasonable-suspicion standards also arises any place cross-deputized officers are policing an Indian reservation that falls within a state applying one standard and a federal circuit court applying another. The implications of all these splits for law enforcement and public safety provide additional justification for this Court's intervention.

This Court should grant certiorari review.

ARGUMENT

I. The Isolationist Approach to Reasonable Suspicion Threatens Public Safety.

During a summer night in 1975, around 2:30 a.m., a Utah Highway Patrolman named Sergeant Bob Hayward came upon an occupied Volkswagen Beetle parked on the street of his neighborhood, which had seen a rash of burglaries. Apparently startled by the sudden appearance of Sergeant Hayward's patrol vehicle and the brightness of its headlights, the Volkswagen's driver suddenly caused the car to lurch forward, with its headlights still off, by slamming the clutch pedal, shifting the car into first gear, and then hitting the gas. His suspicion aroused, Sergeant Hayward followed the Volkswagen, which proceeded to speed away and run two stop signs before he pulled it over.

The driver of the Volkswagen? Ted Bundy. Inside the Volkswagen, Sergeant Hayward found, among other things, a rope, masks, gloves, a pry bar, trash bags, a flashlight, wire, an ice pick, and handcuffs. Even more unsettling, the front passenger seat was removed. Bundy was arrested for possession of burglary tools and evading police. Having already murdered more than twenty people at this point, Bundy had likely been prowling for his next murder victim, and Sergeant Hayward's stop probably saved lives. Moreover, although Bundy was soon released based on the charges stemming from that night, the incident placed him on law enforcement's radar, and

within months he had been linked to multiple murders.[2]

To be sure, very few *Terry* or traffic stops result in the capture or identification of a person as notorious as a serial killer. But the Bundy example illustrates the important role such stops play in preventing and reducing crime and offers a ready hypothetical for consideration of how reasonable suspicion should be measured. Furthermore, case law and empirical data demonstrate that a link between *Terry* stops and reducing crime is not merely hypothetical. All things considered, the isolationist approach is dangerously misguided and a threat to public safety. This Court should grant certiorari review.

A. The isolationist approach to reasonable suspicion leads to fewer *Terry* stops.

As the certiorari petition amply demonstrates, the isolationist approach threatens public safety by making officers overly cautious and less likely to intercede to protect the public. Pet. 22–23. Consideration of the Bundy example illustrates this point.

Imagine that Sergeant Hayward had considered initiating a *Terry* stop as soon as Bundy's Volkswagen lurched forward with its headlights off. This is not an unrealistic hypothetical; one account suggests that Sergeant Hayward did in fact develop suspicion in

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[2] This account of Bundy's 1975 arrest is gleaned from Chapter 4 of KEVIN SULLIVAN, THE TRAIL OF TED BUNDY: DIGGING UP THE UNTOLD STORIES (WildBlue Press 2016), and Chapter 7 of KEVIN SULLIVAN, THE BUNDY MURDERS: A COMPREHENSIVE HISTORY (McFarland, Inc. 2009).

that moment that criminal activity was afoot.[3] Given the *totality* of the circumstances considered *together*—it was the middle of the night, the neighborhood recently had been the repeated target of burglars, and the driver's abrupt movement and apparent attempted departure upon seeing the patrol vehicle—a court would likely conclude that Sergeant Hayward had reasonable suspicion to initiate a *Terry* stop. *See, e.g.*, *Wardlow*, 528 U.S. at 124–25 (holding that *Terry* stop of individual was supported by reasonable suspicion where he was present in a high-crime area and fled unprovoked upon noticing the police); *Washington v. State*, 287 A.3d 301, 309 (Md. 2022) (same); *State v. Richardson*, 501 N.W.2d 495, 497 (Iowa 1993) (reversing lower court's finding of no reasonable suspicion where officer pulled over the defendant after seeing the defendant's car parked in an area that had frequently been burglarized, the area was nonresidential with "no legitimate attractions[,]" it was the middle of the night, and the car attempted to pull away upon seeing the officer's approach).

But now imagine that Sergeant Hayward was governed by the isolationist approach in making this hypothetical decision. The first factor—the time of night—must receive "little weight." Pet. App. 16a. After all, considered on its own, the fact that someone is out at 2:30 a.m. could have numerous innocent explanations, such as heading to or from an overnight shift or emergency diaper run. Pet. App. 15a.

Turning to the second factor, the spate of recent burglaries in the neighborhood, Sergeant Hayward would need to be ready to precisely describe those

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[3] *See* SULLIVAN, THE BUNDY MURDERS, *supra* note 2, at 150.

recent crimes and link them to the specific suspicious behavior of the Volkswagen's driver, knowing that a court would be reviewing "the quality and specificity of the information, with particular focus on the recency, frequency, and geographic proximity of the relevant criminal activity." *Mayo v. United States*, 315 A.3d 606, 635 (D.C. 2024) (en banc). Absent such a comprehensive explanation, a court may well give virtually no weight to the recent crime in the neighborhood. *See id.* at 635–36.

The third factor—the driver's abrupt movement and apparent attempted departure upon seeing the patrol vehicle—would receive only "slight weight." Pet. App. 18a. Never mind that Sergeant Hayward could reasonably have interpreted the car's lurching forward as a reaction to his sudden appearance and a prelude to flight; such movement was too brief in time and distance to receive more than minimal weight under the isolationist approach. Pet. App. 16a–18a.

Having applied the isolationist approach, a court could rather easily find that Sergeant Hayward lacked reasonable suspicion to stop Bundy in this hypothetical, with each of the three factors analyzed separately carrying little to no weight in its analysis. Under such a regime, Sergeant Hayward would have had no choice but to allow Bundy to continue driving, with his ultimate ability to stop Bundy depending on the happenstance of whether Bundy was careless enough to commit a significant traffic infraction. Under the totality-of-the-circumstances approach, however, a court would be much more likely to conclude that, in evaluating Sergeant Hayward's actions, Bundy's A+B+C = reasonable suspicion. In this type of regime, Sergeant Hayward could have

acted quickly, without worrying about whether a court would disagree.

Although Bundy *did* subsequently run two stop signs, this only underscores the harm of the isolationist approach. This hazardous driving (running two stop signs) put other motorists in danger—an unnecessary risk that would be prevented by an earlier *Terry* stop in a totality-of-the-circumstances jurisdiction. *Cf.* Lerner, *supra*, at 415–16 (opining that judicial "micro-management of police forces across America" in scrutinizing *Terry* stops has made the typical police officer less likely to act on suspicions of criminal activity).

Simply put, in an isolationist jurisdiction, law enforcement will be less likely to initiate legitimate *Terry* stops, and thus the public will have been made less safe. Indeed, some courts applying a totality-of-the-circumstances approach and finding reasonable suspicion have indicated that their conclusion would be different under an isolationist approach. *See, e.g.*, *United States v. Bontemps*, 977 F.3d 909, 917 (9th Cir. 2020) ("While the fact-driven nature of a *Terry* analysis does not mean any one of these factors is necessary to justify an investigatory stop such as this, they were sufficient in this case when considered together."); *State v. Johnson*, 861 S.E.2d 474, 484 (N.C. 2021) (finding reasonable suspicion because, even though "[s]tanding alone" each of the factors articulated by the officer could not create reasonable suspicion, the court "do[es] not assess each of these factors . . . in isolation" but instead "examine[s] the totality of the circumstances . . . to achieve a comprehensive analysis").

B. Fewer Lawful *Terry* stops means more crime.

Lawful *Terry* stops serve an important function by allowing officers, based on reasonable suspicion and the totality of the circumstances, to intervene before or shortly after crimes occur. Courts across the country have repeatedly upheld convictions arising from such stops, establishing their important role in apprehending serious offenders. *See, e.g.*, *United States v. Langston*, 110 F.4th 408, 413, 421–22 (1st Cir. 2024) (*Terry* stop resulted in conviction of defendant, previously convicted of theft and drug trafficking, of felon in possession); *United States v. Pace*, 48 F.4th 741, 744–46, 748–50 (7th Cir. 2022) (*Terry* stop resulted in discovery of methamphetamine in defendant's SUV and conviction of possession with intent to distribute); *United States v. Harvey*, 1 F.4th 578, 579–83 (8th Cir. 2021) (*Terry* stop resulted in apprehension of defendant and conviction of felon in possession); *United States v. Ayala*, 740 F. Supp. 3d 314, 321–24, 330–32 (S.D.N.Y. 2024) (*Terry* stop resulted in apprehension of, and gun and drug-trafficking charges against, defendant suspected of shooting victim in the stomach); *Baggett v. State*, 888 S.E.2d 636, 640–41, 643 (Ga. Ct. App. 2023) (*Terry* stop resulted in apprehension of defendant who had trafficked persons for sexual servitude, committed child molestation, and possessed a firearm during a felony); *State v. Cyprian*, 340 So. 3d 271, 275–76, 284 (La. Ct. App. 2021) (*Terry* stop resulted in apprehension of defendant guilty of second-degree murder); *Cruz v. State*, 320 So. 3d 695, 705–07, 713–14 (Fla. 2021) (*Terry* stop resulted in apprehension of defendant who had recently committed capital

murder, burglary while armed, robbery with a firearm, and kidnapping); *State v. Thomas*, 953 N.W.2d 793, 798–99, 805–07 (Neb. 2021) (*Terry* stop resulted in apprehension of defendant guilty of gun and drug charges); *Lumpkin v. State*, 849 S.E.2d 175, 178–80, 185–86 (Ga. 2020) (*Terry* stop resulted in apprehension of defendants who had just committed robbery–murder and discovery of "four firearms, a ski mask, a stocking cap, several sets of latex gloves, duct tape, . . . a laptop belonging to [the victim]'s mother," and gunshot residue on the defendants' hands).

The benefit of lawful *Terry* stops in reducing and preventing crime is borne out in the data. In 2023, five professors of criminology and related fields released the results of a meta-analysis of forty studies of police-initiated pedestrian stops that were published between 1970 and 2021. KEVIN PETERSEN ET AL., POLICE STOPS TO REDUCE CRIME: A SYSTEMATIC REVIEW AND META-ANALYSIS 3 (John Wiley & Sons Ltd. 2023). The meta-analysis concluded that such police stops "were associated with a statistically significant reduction in crime of 13% ($p < 0.001$) for treatment areas relative to control areas." *Id.* at 23.

While criticisms of some police stop practices exist, the totality-of-the-circumstances approach ensures that lawful *Terry* stops must rest on "a particularized and objective basis for suspecting the particular person stopped of criminal activity." *Cortez*, 449 U.S. at 417–18. Limiting this standard in favor of the isolationist approach would mean fewer lawful *Terry* stops and more crimes left unprevented or unpunished. This Court should grant certiorari and reverse.

II. The Isolationist Approach Is Contrary to How Law Enforcement Officers Make Decisions.

This Court previously rejected a defendant's proposed rule that officers must use the least intrusive means available to verify or dispel their suspicions that a defendant is, or is about to be, engaged in criminal activity. *Sokolow*, 490 U.S. at 10–11. Such a rule, this Court reasoned, "would unduly hamper the police's ability to make swift, on-the-spot decisions . . . and . . . would require courts to indulge in unrealistic second-guessing." *Id.* at 11 (citation modified). But this is exactly the effect of the isolationist approach. As a matter of common sense, this approach is contrary to how police officers make decisions on the ground.

The opinion below starkly illustrates this contrast. The court considered the various parts of the picture available to the detaining officer in isolation and declared whether each part was appropriate to be included in the analysis at all. For instance, the court decided that the radio dispatch should have received no weight because it was not readily verifiable and was too broad. App. 7a–10a. But in practice, the detaining officer would have weighed the radio dispatch together with all other information available—which could corroborate the dispatch—while also drawing on his past experiences. *See* Jonathan St. B. T. Evans & Keith E. Stanovich, *Dual-Process Theories of Higher Cognition: Advancing the Debate*, 8 Persps. on Psych. Sci. 223, 225 (2013) (fast decision-making is "contextualized," "[a]utomatic," "[a]ssociative," and "[e]xperience-based"). Simply put, no officer sits, in the stress of the moment, and evaluates each slice of information in front of him *in*

isolation without connecting the factors in his or her mind from the get-go. That just isn't how human thinking works.

The court's repeated dismissal of factors that could alone be consistent with innocent behavior was also contrary to how police officers make decisions in fast-paced, potentially dangerous situations. App. 15a–16a, 18a. As one judge explained in criticizing this type of judicial second-guessing of a "tense, dangerous, and uncertain" police/civilian encounter in which "[o]fficers . . . were forced to make a split-second threat assessment": "Unlike us[,] . . . [the officers] had to interpret what Smith was doing in real time. We can play and replay the video recording, but the officers had less than four seconds to interpret Smith's ambiguous movement toward the ground behind the air-conditioning unit." *Smith v. Finkley*, 10 F.4th 725, 756 (7th Cir. 2021) (Sykes, C.J., dissenting).

Here, too, the detaining officer did not have time to isolate each circumstance before him, such as the time of night, and consider whether that factor, on its own, might indicate "partying, a night shift, walking a dog, [or] an emergency diaper run." Pet. App. 15a. Rather, he considered that circumstance based on his past experiences and training and in the context of the entire picture—a report of a suspicious car at a particular address; a single occupied vehicle at that address, from which two passengers had just fled; and movement by that car despite one of its doors hanging open. *See* Kelly Amy Hine, et al., *Exploring Police Use of Force Decision-Making Processes and Impairments Using a Naturalistic Decision-Making Approach*, 45 Crim. Just. & Behav. 1782, 1785 (2018) ("During high-pressure situations, including some police–citizen

encounters, officers may not have the luxury of making slow, considered analytical decisions and, instead, rely on intuition and experience (via real-world exposure or training[).]"). The record indicates that the officer had a matter of seconds to decide whether to detain the car and its driver. He spotted the car as he turned a corner into the parking lot; the "two guys" exited the car, saw him, and then fled; and then the car started to reverse out of its spot as he pulled up behind it. Pet. App. 42a–43a, 46a–47a. The record does not suggest that the officer saw or heard anything suggestive of dog-walking or partying—such as the sounds of a dog or music—that would make alternative, innocent explanations for the circumstances readily apparent.

The opinion below implicitly shows hostility toward this sort of fast, intuitive decision-making, and the hostility is unwarranted. *See* Hine, *supra*, at 1785 ("[J]ust because a decision is made using heuristics does not necessarily mean it will be inaccurate. More often than not, intuitive decision making can lead to fast and accurate decisions."). More importantly, this Court has already said that police officers are not required to "rule out the possibility of innocent conduct." *United States v. Arvizu*, 534 U.S. 266, 277 (2002); *see also Barnes v. Felix*, 605 U.S. 73, 89 (2025) (Kavanaugh, J., concurring) (recognizing that police officers must often make "life-or-death decisions . . . in a few seconds in highly stressful and unpredictable circumstances"). Yet below, that is effectively what the court required.

The totality-of-the-circumstances approach, applied correctly, better appreciates the reality of how police officers make decisions. *See Arvizu*, 534 U.S. at

274–75 (recognizing that, in *Terry*, "[a]lthough each of the series of acts [observed by the detaining officer] was perhaps innocent in itself, . . . taken together, they warranted further investigation" (citation modified)). In commanding courts to apply the totality-of-the-circumstances approach, this Court recognized that reasonable suspicion "does not deal with hard certainties, but with probabilities." *Cortez*, 449 U.S. at 418. Law enforcement officers are permitted to "formulate[] certain common sense conclusions about human behavior." *Id.* And, as already discussed above, "the evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement." *Id.*

Courts applying the isolationist approach are out of step with both this Court's command and the nature of human decision-making in the hazardous, time-pressured situations faced by law enforcement officers every day. This Court should grant certiorari review.

III. The Split Among Courts Is Exacerbated by Intra-Jurisdictional Splits.

As Petitioner demonstrates in its petition for certiorari, not only does this case touch on a split among federal courts of appeal and states' supreme courts, but an intra-jurisdiction split has arisen within the District of Columbia on how reasonable suspicion should be measured. Pet. 20–21. This is not the only such intra-jurisdictional split.

A significant number of state and local law enforcement officers are subject to two courts that apply different methods for analyzing reasonable suspicion. For instance, every year, numerous *Terry*

stops by local or state police officers result in federal prosecutions for possession of a firearm by a person previously convicted of a felony. This was the context of *United States v. Peters*, 60 F.4th 855, 858–71 (4th Cir. 2023), in which the Fourth Circuit applied the isolationist approach to find that two Richmond Police Department officers lacked reasonable suspicion to stop the defendant. Pet. 16–17. But these officers had likely been trained to formulate reasonable suspicion according to the totality-of-the-circumstances approach employed by Virginia's commonwealth courts. *See, e.g.*, *McCain v. Commonwealth*, 659 S.E.2d 512, 517 (Va. 2008) ("Nervousness during the course of a traffic stop, standing alone, is insufficient to justify a frisk for weapons, but nervous, evasive behavior is a pertinent factor for consideration in assessing the totality of the circumstances." (citation modified)). Thus, because any given *Terry* stop could result in either a commonwealth or federal prosecution, such officers are forced to develop reasonable suspicion under both standards.

The same conflict arises by virtue of 42 U.S.C. § 1983 litigation. Take, for example, the Kansas Highway Patrol. Applying the isolationist approach of the Tenth Circuit, *Vasquez* held, in a § 1983 action, that "it was clearly established that the [Kansas Highway Patrol] Officers did not have reasonable suspicion based upon the articulated circumstances." 834 F.3d at 1139. But, for purposes of any state-court criminal proceedings, these officers were subject to the Kansas courts' totality-of-the-circumstances approach. *See, e.g.*, *State v. Bates*, 513 P.3d 483, 492 (Kan. 2022) ("Our task is not to pigeonhole each purported fact as either consistent with innocent

travel or manifestly suspicious, but to determine whether the totality of the circumstances justify the detention." (citation modified)).[4] Michigan appears to be in a similar situation. In *United States v. Williams*, the Sixth Circuit indicated that certain facts "must be set aside" entirely if they are not deemed individually probative of potential criminal activity. 615 F.3d 657, 667 (6th Cir. 2010). Yet, the Michigan Supreme Court has held that "while the degree of suspicion from each of the factors in isolation may have fallen short of providing reasonable particularized suspicion . . . that does not mean that these factors properly considered in the aggregate would not provide reasonable suspicion." *People v. Oliver*, 627 N.W.2d 297, 306 (Mich. 2001); *see also id.* ("The validity of such a cumulative analysis . . . is well established by law."). Again, officers in such jurisdictions are forced to formulate reasonable suspicion under two, dueling standards or risk § 1983 liability.

Oklahoma is in the same boat. The Oklahoma Court of Criminal Appeals, the state's highest court of criminal jurisdiction, applies the totality-of-the-circumstances approach. *State v. Roberson*, 492 P.3d 620, 622 (Okla. Crim. App. 2021) ("This Court follows the reasoning of *Arvizu*."). But the Tenth Circuit, in which Oklahoma sits, instead applies the isolationist approach, as shown by the certiorari petition. Pet. 14–16. Although most Fourth Amendment cases will likely work their way to the Court of Criminal Appeals

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[4] Although *Stone v. Powell* largely precludes the re-litigation of Fourth Amendment claims in federal habeas corpus proceedings, 428 U.S. 465, 481–82 (1976), this does not solve the problem of federal and state jurisdictions applying competing reasonable-suspicion standards in the § 1983 context.

through a prosecution and conviction, police officers in Oklahoma can never be sure whether they will also face a different standard in federal court.

And it gets even more complicated. Following *McGirt v. Oklahoma*, 591 U.S. 894 (2020), "[a]bout two million people live" in Indian country in Oklahoma, "and the vast majority are not Indians." *Oklahoma v. Castro-Huerta*, 597 U.S. 629, 634 (2022). With the resulting patchwork of state, tribal, and federal jurisdiction applying across a great swath of Oklahoma, cross-deputization agreements between state and local law enforcement officers with the federal government and tribes have become an increasingly important feature of policing in eastern Oklahoma. For instance, in Tulsa, which straddles the Muscogee and Cherokee Nations' reservations, all Tulsa Police Department officers are cross-deputized with the Muscogee Nation Lighthorse Police and Cherokee Marshals. Curtis Killman, *ICYMI: Cross-Deputization Means Nontribal Police Can Arrest Native Suspects*, TULSA WORLD (Jun. 29, 2023), https://tinyurl.com/5erv9aj2.

Imagine that a Tulsa police officer is determining whether to conduct a *Terry* stop. Will his decision be reviewed under a totality-of-the-circumstances approach or an isolationist approach? The answer unfortunately varies depending on whether the suspect will ultimately be prosecuted in state court or in federal court based on Indian country jurisdiction. The hypothetical Tulsa police officer—and countless actual officers in Oklahoma subject to cross-deputization agreements—must formulate reasonable suspicion under dueling standards or risk

a Fourth Amendment violation and suppression depending on the ultimate court of jurisdiction.

This particular problem is not unique to Oklahoma. "There are approximately 326 Indian land areas in the U.S. administered as federal Indian reservations[.]" U.S. DEP'T OF THE INTERIOR, *Frequently Asked Questions*, https://tinyurl.com/bddwe88w (last visited Oct. 13, 2025). Beginning in 2010, the passage of federal, state, and tribal laws aimed at facilitating the execution of cross-deputization agreements resulted in the successful implementation of such agreements by numerous law enforcement agencies across the country. NATIONAL SHERIFFS' ASSOCIATION, CROSS-DEPUTIZATION IN INDIAN COUNTRY 3, 13 (2018). However, any reservation that falls within both a totality-of-the-circumstances regime and an isolationist regime will have the same conundrum.

Just like the intra-jurisdictional split in the District of Columbia, these inconsistencies between state and federal courts, spanning across States, Indian country and beyond, create confusion among law enforcement, endanger public safety, and call for this Court's intervention.

CONCLUSION

This Court should grant the petition for certiorari.

Respectfully submitted,

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