No. 25-6535

IN THE SUPREME COURT OF THE UNITED STATES

JAMES ERIC LARREMORE, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the lower courts correctly found, on the particular facts of this case, that petitioner was not seized for Fourth Amendment purposes when a law enforcement officer interrupted his conversation with petitioner by saying "hang on a sec."

ADDITIONAL RELATED PROCEEDING

United States District Court (W.D. Tex.):

United States v. Larremore, No. 23-cr-289 (May 30, 2024)

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1-10) is reported at 150 F.4th 463.

JURISDICTION

The judgment of the court of appeals was entered on August 14, 2025. A petition for rehearing was denied on September 17, 2025 (Pet. App. Addendum 1-2). The petition for a writ of certiorari was filed on December 16, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court

for the Western District of Texas, petitioner was convicted on one count of transporting illegal aliens, in violation of 8 U.S.C. 1324(a)(1)(A)(ii) and (B)(ii). Judgment 1. The district court sentenced petitioner to 37 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. 8.

1. On the afternoon of July 9, 2023, in Brewster County, Texas, Brewster County Deputy Christoper Colona was parked on a remote section of highway where he could observe traffic coming from one of the few border patrol checkpoints near the Mexican border that is not continuously manned. Pet. App. 1. It was shortly after the checkpoint's regular shift change, and Deputy Colona was aware that smugglers frequently attempt to cross the border at that time. See ibid.

Deputy Colona saw a white pickup truck approach, pulling an empty open-air horse trailer with "an enclosed compartment large enough to hold people." Pet. App. 1. From prior interactions, Deputy Colona recognized the driver. Id. at 2. And he had received a tip from another officer that petitioner was suspected of smuggling people or drugs. Ibid.; see 9/18/23 Tr. 7-10; D. Ct. Doc. 44, at 2 (Oct. 6, 2023).

Deputy Colona "turned onto the highway, briefly accelerated, and then followed behind [petitioner] for slightly more than a minute." Pet. App. 2. "He did not engage his siren, turn on his emergency lights, physically block [petitioner's] vehicle, or

otherwise explicitly suggest that [petitioner] had to stop." Ibid. "Unprompted," petitioner drove his truck over to the shoulder, and Deputy Colona parked behind him. Ibid.

Deputy Colona exited his vehicle and walked up to the truck's passenger side. Pet. App. 2. Petitioner "extended his hand for a greeting;" Deputy Colona "reached his right arm into the truck for a handshake while resting his left hand on the front passenger side door," greeted petitioner, and asked petitioner about his travel and work. Id. at 2. While speaking with petitioner, Deputy Colona observed an open alcohol container inside the truck. Ibid. Deputy Colona then asked petitioner to "[h]ang on a sec for me" while walking to his patrol car. Ibid. (alteration in original). Deputy Colona explained that he made that statement to pause the conversation to radio his position to headquarters. Ibid.; see 9/18/23 Tr. 19-20, 60; D. Ct. Doc. 44, at 2-3.

Petitioner, however, "did not wait for the deputy to make the call." Pet. App. 2. Instead, he "immediately exited his truck from the driver side, walked in between the truck and trailer, and met Deputy Colona on the shoulder." Ibid. Observing a padlock securing the door of the horse trailer, Deputy Colona asked petitioner if he had a key. Ibid. Petitioner claimed he did not and, during his conversation with Deputy Colona, gave "inconsistent and suspicious" answers about his travel plans, the compartment's contents, who owned the trailer, and who had locked the compartment. Ibid. Eventually, Deputy Colona said that he

was concerned petitioner "was smuggling drugs" and "want[ed] to look inside" the trailer. Ibid. (alteration in original). A minute later, after further attempting to persuade petitioner to permit him to look inside the trailer, Deputy Colona stated that he "need[ed] to look inside the trailer." Ibid. (alteration in original).

After a nine-minute conversation that involved petitioner equivocating about whether to permit Deputy Colona to search the horse trailer, petitioner eventually stated that he had "three cousins" in the compartment and produced the key. Pet. App. 2. Inside the compartment were three illegal aliens. Ibid. Deputy Colona informed petitioner he was being detained and handcuffed him. 9/18/23 Tr. 60-61.

2. A federal grand jury in the Western District of Texas returned an indictment charging petitioner with one count of conspiring to transport illegal aliens, in violation of 8 U.S.C. 1324(a)(1)(A)(v)(I) and (B)(i), and one count of transporting illegal aliens, in violation of 8 U.S.C. 1324(a)(1)(A)(ii) and (B)(ii). Indictment 1-2.

Petitioner moved to suppress the evidence discovered during his interaction with Deputy Colona, claiming that he was seized for Fourth Amendment purposes without reasonable suspicion at multiple possible points during the interaction, including after the deputy asked petitioner to "[h]ang on [a] sec." See D. Ct. Doc. 20, at 6 (Aug. 21, 2023); see id. at 6-7.

Following an evidentiary hearing at which Deputy Colona testified, the district court denied the motion. D. Ct. Doc. 44, at 7-9. Applying "the Fourth Amendment's 'free to leave' test," the court found (among other things) that Deputy Colona's "request to 'hang on a sec' was not such that a reasonable person would feel he was not free to leave." Id. at 7. The court observed that the Deputy's "casualness does not indicate that [petitioner] was compelled to remain in his truck." Id. at 8. The court also observed that petitioner "did not submit to Colona's request to 'hang on,'" but instead "exited the vehicle the moment Colona stepped away," with "the two resum[ing] their conversation near the locked trailer door." Ibid. "And were [the deputy's statement] an order," the court continued, Deputy "Colona did not repeat it once [petitioner] joined him" or "make any further demands." Id. at 8 & n.25.

Petitioner subsequently pleaded guilty to the substantive transportation-of-illegal-aliens count, but reserved a right to appeal the district court's suppression ruling. See D. Ct. Doc. 72, at 3 (Jan. 10, 2024); D. Ct. Doc. 75 (Jan. 25, 2024); see also 1/10/24 Tr. 4-5. The district court sentenced petitioner to 37 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3.

3. The court of appeals affirmed. Pet. App. 1-8. Among other things, the court rejected petitioner's contention that "Deputy Colona's 'hang on a sec' statement was equivalent to an

officer's oral command to not move." Id. at 4; see id. at 4-5. The court instead determined that the district court's factual finding that "the statement was a pause in consensual conversation and [thus] not a seizure" was not clearly erroneous. Id. at 4.

In analyzing this issue, the court of appeals looked to four nonexclusive factors--"(1) the threatening presence of several police officers; (2) the display of a weapon by an officer; (3) physical touching of the person of the citizen; and (4) the use of language or tone of voice indicating that compliance with an officer's request was compelled"--derived from Justice Stewart's opinion in United States v. Mendenhall, 446 U.S. 544, 554 (1980), and considered "the totality of the circumstances" broadly. Pet. App. 4-5. In addition to finding that "[t]he Mendenhall factors do not support a seizure in this case," the court analyzed "the language and meaning of the 'hang on a sec' statement." Id. at 5.

In doing so, the court of appeals emphasized that "[o]fficer statements are not made in a vacuum." Pet. App. 5. And it observed that the statement here "was made in a casual tone" that was "anything but authoritative," "was bookended by consensual conversation," and "was not repeated." Ibid. It accordingly explained that the phrase was "not plainly [an] order," and noted that it was "not interpret[ed]" as such by petitioner, who did not "stay put," but instead "exited his truck and met Deputy Colona on the side of the road." Ibid. The court also observed that petitioner's actions did not generate a response from Deputy

Colona, noting that "[i]f Deputy Colona had issued an order, he certainly could have repeated it considering [petitioner's] non-compliance." Ibid. In sum, the court found that the "context before and after the statement suggests a consensual conversation" and not a seizure. Ibid.

Chief Judge Elrod concurred in part and dissented in part. Pet. App. 8-10. She would have found that petitioner was seized "as soon as" Deputy Colona "directed [petitioner] to 'hang on.'" Id. at 8.

ARGUMENT

Petitioner renews his contention (Pet. 5-9) that his Fourth Amendment right against unreasonable seizure was infringed when Deputy Colona asked him to "hang on a sec" during their initial, consensual conversation. The court of appeals correctly rejected that contention, and its factbound decision does not conflict with any decision of this Court or any other court of appeals. No further review is warranted.

1. Petitioner provides no sound reason to overturn the lower courts' fact-specific finding that he was not seized when Deputy Colona asked him to "hang on a sec." Pet. App. 4-5; D. Ct. Doc. 44, at 7-9.

a. The Fourth Amendment guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. Amend. IV. The seizure of a person "can take the form of 'physical force' or a

'show of authority'" by the police "that 'in some way restrains the liberty' of the person." Torres v. Madrid, 592 U.S. 306, 311 (2021) (quoting Terry v. Ohio, 392 U.S. 1, 19 n.16 (1968)) (brackets omitted). With respect to a "show of authority" seizure, this Court has made clear that an individual is "seiz[ed]" within the meaning of the Fourth Amendment only when a law-enforcement officer invokes his authority to direct the individual's movements and the individual submits to that show of authority. California v. Hodari D., 499 U.S. 621, 626-627 (1991) (quotations omitted); see Brower v. County of Inyo, 489 U.S. 593, 597-598 (1989). Without physical restraint, "there is no seizure without actual submission." Brendlin v. California, 551 U.S. 249, 254 (2007)

Where officers' actions do not show "an unambiguous intent to restrain or when an individual's submission to a show of governmental authority takes the form of passive acquiescence," the appropriate inquiry is "whether 'a reasonable person would feel free to decline the officers' requests or otherwise terminate the encounter.'" Brendlin, 551 U.S. at 255 (quoting Florida v. Bostick, 501 U.S. 429, 436 (1991)); see United States v. Drayton, 536 U.S. 194, 201-202 (2002). Relevant circumstances can include whether the officer displayed a weapon, gave any commands or conveyed any type of threat, or used language or a tone of voice that indicated that compliance was required, as well as the location of the encounter, the number of officers, the officers'

proximity to the citizen, and the timing of the officers' arrival. See Bostick, 501 U.S. at 432, 437; United States v. Mendenhall, 446 U.S. 544, 554 (1980) (opinion of Stewart, J.); see, e.g., Drayton, 536 U.S. at 203-204. The reasonable-person test "is objective and 'presupposes an innocent person.'" Drayton, 536 U.S. at 202 (quoting Bostick, 501 U.S. at 438) (emphasis omitted).

b. The lower courts correctly applied those principles to the specific facts of this case to find that petitioner was not seized when Deputy Colona asked him--in a tone that was "anything but authoritative"--to "hang on a sec." Pet. App. 4-5.

As the court of appeals recognized, "[t]he Mendenhall factors do not support" petitioner's claim there was a seizure here. Pet. App. 5. Deputy Colona did not, for instance, "brandish or otherwise reference his weapon" when asking petitioner to "hang on a sec." Ibid. He instead made the statement "in a casual tone," and it was "bookended by consensual conversation." Ibid. The deputy's use of a "polite" rather than "authoritative tone of voice" suggests that the phrase was not a command. Drayton, 536 U.S. at 204. The statement was also made early in an encounter, and was not accompanied by, or a part of, a "show of force [or] brandishing of weapons," the "blocking of exits," "threat[s]," or another "command." Pet. App. 5 (quoting Drayton, 536 U.S. at 204).

Even "[petitioner] himself did not interpret the[] words as an order to stay put," but instead "immediately" left his truck and approached the deputy on the other side of the vehicle. Pet.

App. 5. The deputy, in turn, "did not object" or "repeat his statement"--as he "certainly could have," and likely would have, if he in fact "had issued an order." Ibid.

The district court found Deputy Colon's statement to be "a pause in consensual conversation and not a seizure," Pet. App. 4, and the court of appeals correctly declined to disturb that finding--which rested in significant part on the district court's evaluation of Deputy Colona's testimony. See id. at 5.

c. Characterizing the statement as a "polite command," Pet. 5, petitioner asserts that it should automatically be equated with a seizure. Even if that were an accurate characterization, the assertion would not follow: this Court has "made it clear that for the most part per se rules are inappropriate in the Fourth Amendment context." Drayton, 536 U.S. at 201. And nothing required the court of appeals to set aside the district court's finding that the statement--made in a tone that was "anything but authoritative," "bookended by consensual conversation," and not treated by either party as a command to remain in place, Pet. App. 5--was not a submission-producing "show of authority," Hodari D., 499 U.S. at 626-627, that would amount to a Fourth Amendment seizure.

Petitioner's factbound dispute with the decision below, and his embrace of the dissenting opinion, do not demonstrate that it presents a question of law that might warrant this Court's review. This Court "do[es] not grant a [writ of] certiorari to review

evidence and discuss specific facts," United States v. Johnston, 268 U.S. 220, 227 (1925), especially when the lower courts are in agreement, see Kyles v. Whitley, 514 U.S. 419, 456-457 (1995) (Scalia, J., dissenting) ("[U]nder what we have called the 'two-court rule,' the policy [in Johnston] has been applied with particular rigor when district court and court of appeals are in agreement as to what conclusion the record requires.") (citing Graver Tank & Mfg. Co. v. Linde Air Prods. Co., 336 U.S. 271, 275 (1949)). Nor do any of petitioner's arguments undermine the lower courts' determinations, which are amply supported by "all of the circumstances surrounding the incident." Brendlin, 551 U.S. at 255 (quoting Mendenhall, 446 U.S. at 554 (opinion of Stewart, J.)).

For instance, petitioner asserts that Deputy Colona "chased" him "until he pulled over to the side of the road in a manner resembling a traffic stop." Pet. 8. But the district court and court of appeals rejected that assertion. See Pet. App. 4 ("[W]e discern no show of authority implicating the Fourth Amendment where Deputy Colona briefly accelerated, then drove behind [petitioner] for a short distance before following him to the shoulder of the highway."); D. Ct. Doc. 44, at 9-11; see also Michigan v. Chesternut, 486 U.S. 567, 576 (1988) ("Without more, the police conduct here--a brief acceleration to catch up with respondent, followed by a short drive alongside him--was not so intimidating that respondent could reasonably have believed that he was not free to disregard the police presence and go about his business.")

(quotations omitted). And it is undisputed that Deputy Colona did not turn on his lights or siren, or otherwise initiate a traffic stop. See Pet. App. 2.

Petitioner mentions (Pet. 8) that Deputy Colona "lean[ed] with his hands on [petitioner's] truck." But as the court of appeals noted, nothing about that contact "evidence[d] an objective intent to restrain." Pet. App. 4. "The touching lasted a mere twenty seconds and occurred while the two exchanged pleasantries in a casual tone." Ibid. Petitioner also argues (Pet. 8) that Deputy Colona's "body position * * * made it * * * dangerous for [him] to leave." But Deputy Colona was not blocking petitioner's truck when he said "hang on a sec;" the deputy was walking "to his patrol car." Pet. App. 2 (brackets omitted). And while Deputy Colona asked about petitioner's route and the trailer before asking him to "hang on a sec," see ibid. (brackets omitted); see Pet. 8, that discussion was "casual," Pet. App. 4.

2. Petitioner errs in asserting (Pet. 5-8) that the Fourth and Sixth Circuits would have reached a different outcome on these facts. The differing outcomes in the cases petitioner cites was not the product of conflicting legal approaches, but the product of different factual scenarios.

In United States v. Bowman, 884 F.3d 200, 205-206 (4th Cir. 2018), a police officer initiated a traffic stop, directed the defendant driver to exit the vehicle--leaving the defendant's passenger inside--and sit in the officer's patrol car while he

checked the defendant's license and registration. After issuing a traffic citation, the officer "completed the traffic stop by returning [the defendant's] driver's license and registration." Id. at 206. The defendant then consented to answering some more questions. See id. at 206-207. After completing those questions, the officer told the defendant he was going to question the passenger "if you don't mind, okay?", and instructed the defendant to "just hang tight right there." Id. at 207. Emphasizing that the defendant "was still seated in the patrol vehicle," and that the officer "made the statement as he was exiting the vehicle, suggesting that he was neither expecting nor interested in a reply," the Fourth Circuit concluded that "under these circumstances * * * , a reasonable person would have understood that he was no longer free to terminate the exchange." Id. at 212.

The Sixth Circuit's decision in United States v. Richardson, 385 F.3d 625, 629 (2004), similarly involved a completed traffic stop and a police officer directing a driver to remain in place while he questioned passengers, though analyzed whether a passenger had been seized. There, the police officer directed a driver stopped for traffic infractions to exit and step to the back of the car and then issued a citation. Id. at 627-628. After the driver consensually answered more questions, the officer, "instead of allowing [the driver] to return to the vehicle," told him to "hang out right here for me, okay?," while he went to ask

a passenger (the car's owner) for consent to search the car. Id. at 628 & n.1; see id. at 630. Considering "the specific facts of th[e] case," id. at 627, the Sixth Circuit found that the officer's "words alone were enough to make a reasonable person * * * feel that he would not be free to walk away," id. at 630. As the court emphasized, the driver had been instructed "to remain outside of the vehicle," and therefore was "not free to leave." Ibid. And because the driver was seized, so too were his passengers. Ibid.

The fact-specific determinations in those cases do not show that either court would upset the determination of the district court on the facts of this case. Among other things, unlike the drivers in Bowman and Richardson, petitioner was not the subject of an initial seizure, had not been removed from his vehicle, and--as evidenced by his voluntary movement--was under no obligation to remain precisely where he was. And neither decision purports to announce a rule broad enough to encompass every factual context. To the contrary, both the Fourth and Sixth Circuits continue to recognize that the applicable test is "whether the totality of the circumstances would convey to a reasonable person that she is not free to leave." United States v. Williams, 615 F.3d 657, 665 (6th Cir. 2010) ("The test is not whether police expressly instruct a person not to leave, but whether the totality of the circumstances would convey to a reasonable person that she is not free to leave."); see United States v. Cloud, 994 F.3d 233, 242 (4th Cir. 2021) ("[W]hether a reasonable person would have

felt free to leave requires a holistic analysis of the totality of the circumstances of the encounter.”).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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