

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

KEENON GREEN,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

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QUESTION PRESENTED

The questions presented for review are:

- 1) Whether a court may deny discovery on a selective enforcement claim where the defendant has presented evidence—more than mere speculation—of a racially discriminatory pattern, on the ground that the showing is insufficiently comprehensive or representative.
- 2) Whether a court may deny discovery on a selective enforcement claim by treating a defendant's initiation of contact with law enforcement as a factor weighing against discovery, notwithstanding that law enforcement retains discretion over whether and how to pursue the investigation.

PARTIES, RELATED PROCEEDINGS, AND RULE 29.6 STATEMENT

The parties to the case are:

Keenon Green, Petitioner; and

The United States of America, Respondent.

The prior proceedings for this case are found at:

United States v. Green, No. 23-1294, United States Court of Appeals for the Ninth Circuit, memorandum decision affirming sentence (attached as Appendix A).

United States v. Green, No. 23-1294, United States Court of Appeals for Ninth Circuit, order denying the petition for panel rehearing and rehearing en banc (attached as Appendix B).

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A.	<i>United States v. Green</i> , United States Court of Appeals for the Ninth Circuit. Opinion affirming conviction, filed September 10, 2025
B.	<i>United States v. Green</i> , United States Court of Appeals for the Ninth Circuit. Order denying petition for panel rehearing and rehearing en banc, filed January 16, 2026.

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Petitioner Keenon Green respectfully prays that the Court issue a writ of certiorari to review the decision of the United States Court of Appeals for the Ninth Circuit filed on September 10, 2025, and the order denying rehearing and rehearing en banc filed on January 16, 2026.

INTRODUCTION

The Constitution prohibits selective enforcement of the law based on considerations such as race. *Whren v. United States*, 517 U.S. 806, 813 (1996). But raising such a claim presents a daunting challenge for a criminal defendant. Because, to prevail, a defendant must be able to establish that the enforcement action both had a discriminatory effect and was motivated by a discriminatory purpose. While this Court has not established what standard a defendant needs to satisfy to establish a right to discovery in such cases, several of the Circuit Courts have spoken on this issue.

The Ninth Circuit, following the reasoning of the Third and Seventh Circuits, has held that a defendant is unlikely to prevail on a claim of selective enforcement “without information that only the government has.” *United States v. Sellers*, 906 F.3d 848, 850 (9th Cir. 2018). But before obtaining that discovery, a defendant must make a threshold showing that the claim rests on “more than mere speculation.” *Id.* at 855.

Mr. Green did exactly that.

In support of his discovery request, Mr. Green did what the Ninth Circuit—like the Third and Seventh Circuits before it—had required: he provided evidence that racial discrimination may have played a role in his arrest. Mr. Green identified six other online sting operations similar to the one that ended in his arrest. And all seven of the defendants in those cases were, like Mr. Green, Black men. This data was “more than mere speculation” that race influenced enforcement decisions. *Sellers*, 906 F.3d at 855. Nonetheless, the district court denied the motion. On appeal, the Ninth Circuit affirmed.

The courts below agreed on the governing standard. Selective enforcement claims—those targeting discriminatory decisions by law enforcement, as opposed to prosecutors—are governed not by the demanding standard this Court established in *United States v. Armstrong*, 517 U.S. 456 (1996), but by a more relaxed standard under which a defendant need show only something more than speculation. *Sellers*, 906 F.3d 848, 855 (9th Cir. 2018). The reason for the relaxed standard is structural: defendants cannot satisfy demanding evidentiary requirements without the very

records they are seeking, because the evidence needed to prove selective enforcement lies in the government's exclusive possession. *Id.* at 853.

The Ninth Circuit applied that standard and found Mr. Green's showing insufficient. That holding is irreconcilable with *Sellers* and with the Equal Protection Clause for a reason that can be stated simply: the court denied discovery because Mr. Green's statistical showing was insufficiently comprehensive. But the only reason it was insufficiently comprehensive was that Mr. Green lacked access to the government's records—the records he was asking to discover. The court demanded, as a condition of granting discovery, information that only the discovery could supply. That is not the application of a relaxed standard. It is the elimination of the right.

Three additional features of the decision below confirm the error. First, the complete racial disparity Mr. Green presented—every comparable defendant a person of color—is not rendered meaningless by sample size. A 100% rate is categorically different from a partial disparity; its significance does not diminish because the sample is small. Second, the government's own conduct below confirms that Mr. Green needed discovery: the government identified an eighth comparable case that Mr. Green had not found, proving both that Mr. Green's methodology was sound and that the government possessed information he lacked. Third, the Ninth Circuit permitted the district court to treat Mr. Green's initiation of contact with the undercover officer as making his claim less likely—a proposition directly at odds

with decisions of the Seventh and Third Circuits, which hold that initiation is irrelevant to selective enforcement analysis.

This case presents a straightforward but important question: whether a court applying the relaxed *Sellers* standard may deny discovery on the ground that the defendant's showing is insufficiently comprehensive, when its only limitation is the defendant's lack of access to government records that the discovery would supply. The answer is no. The petition should be granted.

OPINIONS BELOW

On September 10, 2025, a three-judge panel of the Ninth Circuit affirmed Mr. Green's conviction and sentence in a published opinion. *See* Appendix A. On January 16, 2026, the panel issued an order denying Mr. Green's petition for rehearing and petition for rehearing en banc. *See* Appendix B.

JURISDICTION

On September 10, 2025, the Ninth Circuit affirmed Mr. Green's sentence in a published decision. *See* Appendix A. On January 16, 2026, the same three-judge panel denied Mr. Green's petition for rehearing and petition for rehearing en banc. *See* Appendix B. This Court thus has jurisdiction under 28 U.S.C. § 1254(1).

STATEMENT OF FACTS

Mr. Green was arrested following an online sting operation conducted by the San Diego Human Trafficking Task Force, a multi-agency unit comprised of federal, state, and local law enforcement officers. As part of that operation, an undercover officer created a fictitious Instagram account posing as a young woman engaged in

prostitution. The account's profile, images, and messaging were designed to signal involvement in commercial sex activity. The officer did not initiate contact with users; instead, she responded to individuals who sent messages and continued conversations if they appeared to involve potential criminal activity.

Mr. Green communicated with the undercover account over a period of several weeks. After an initial exchange, the conversation turned to prostitution, including discussion of working together and the terms under which such an arrangement might occur. At that point, the undercover officer introduced the possibility that she was underage. The communications continued, and Mr. Green was ultimately arrested after arranging to meet in person. Mr. Green was charged with attempted sex trafficking of a minor and related offenses.

Before trial, Mr. Green sought discovery to support a claim of racially selective enforcement. Because information about the task force's investigative practices and targeting decisions was not publicly available, counsel reviewed comparable federal prosecutions in the Southern District of California over a period of approximately ten years. That review identified six other cases involving similar social media sting operations in which defendants were charged under the same statutes. All seven defendants—including Mr. Green—were Black men.

Based on that showing, Mr. Green requested narrowly tailored discovery concerning the task force's use of social media accounts, the scope of its investigative activities, and the demographics of individuals targeted in similar operations. The requested discovery was directed at information necessary to

determine whether the task force's enforcement practices reflected a discriminatory pattern.

The district court denied the motion. It concluded that Mr. Green's evidentiary showing was insufficient because it did not reflect the full "universe" of the task force's work and was therefore too limited to support discovery. The court also noted that Mr. Green had initiated contact with the undercover account and suggested that this fact made selective enforcement more difficult to establish.

The Court of Appeals affirmed. It held that the district court did not abuse its discretion in denying discovery based on the perceived insufficiency of Mr. Green's statistical showing. The court also approved the district court's consideration of Mr. Green's initiation of contact as a factor bearing on the strength of his claim.

This petition follows.

REASONS FOR GRANTING THE PETITION

I.

The decision below permits courts to deny selective enforcement discovery despite a showing of “more than mere speculation.”

Sellers rests on a fundamental premise: defendants asserting selective enforcement claims face a structural information asymmetry. As *Sellers* explained, requiring a defendant to identify who could have been investigated but was not, or to define the full universe of enforcement decisions without discovery, would improperly ask the defendant to “prove a negative,” because “there is simply no statistical record for a defendant to point to.” 906 F.3d at 853 (citation omitted). For that reason, *Sellers* rejected discovery standards that condition access to discovery on a defendant’s ability to identify similarly situated non-targets or otherwise marshal comprehensive enforcement data. *Id.* at 853–55.

That more flexible standard reflects a basic structural reality. Unlike selective prosecution claims, where comparative charging data may be available, selective enforcement claims challenge investigative decisions for which no public record exists. *Sellers*, 906 F.3d at 853. Requiring defendants to present comprehensive or representative data at the threshold thus reintroduces the very barrier *Sellers* sought to remove.

The panel’s decision cannot be reconciled with that principle. The district court denied discovery because Mr. Green’s evidence—six comparable federal cases—did not “reflect[] the universe of the work that’s done by the law enforcement agency” and was therefore “too small to be reliable.” App. A 12–15.

The characterization of Mr. Green’s evidence as “too small” misapprehends what *Sellers* requires. *Sellers* asks whether a defendant has presented “something more than mere speculation.” 906 F.3d at 855. Seven cases over ten years, all involving Black defendants charged under identical statutes by the same task force following similar operations, is not mere speculation—it is a pattern that warrants investigation. This is particularly so because “there is no reason to suspect that persons of a particular race” are more likely to participate in a particular offense, unless one believes members of that race are inherently more prone to committing that crime, “a dangerously racist view that has no place in the law.” *Id.* at 860 (Nguyen, J., concurring). By rejecting this showing as “too small,” the panel effectively requires defendants to present comprehensive enforcement data before obtaining the discovery that would reveal such data—precisely the Catch-22 *Sellers* sought to avoid.

Although *Sellers* affords district courts discretion in managing discovery, that discretion concerns the scope and tailoring of discovery, not whether discovery is categorically unavailable because a defendant’s initial showing is necessarily incomplete. Once a defendant provides “*something* more than mere speculation,” the district court can then “use its discretion—as it does for all discovery matters—to allow limited or broad discovery based on the reliability and strength of the defendant’s showing.” *Sellers*, 906 F.3d at 855. Thus, under *Sellers*, thin or imperfect evidence may justify limited discovery, but it does not justify foreclosing discovery altogether. The panel’s approach functionally reintroduces the heightened

evidentiary threshold *Sellers* rejected by permitting courts to deny discovery based on the perceived insufficiency of a defendant's sample size.

If left uncorrected, the decision will allow district courts to deny selective enforcement discovery whenever a defendant cannot identify enough cases to approximate—to use the district court's term—“the universe of the work that's done by the law enforcement agency,” Op. 14, an outcome that renders *Sellers*'s recognition of informational asymmetry largely illusory.

The decision below permits courts to deny selective enforcement discovery whenever a defendant cannot present a sufficiently comprehensive statistical showing—an outcome that transforms the “more than mere speculation” standard into a practical impossibility. Because that approach undermines the ability to litigate constitutional claims and conflicts with the principles articulated by this Court and other courts of appeals, review is warranted.

II.

The decision below permits courts to treat a defendant's initiation of contact as a factor weighing against selective enforcement discovery.

The Ninth Circuit's decision permits district courts to consider defendant-initiated contact as a factor that could weigh against a request for selective enforcement discovery. App. A 15–17. The district court emphasized that it was “difficult to even figure out how the government would have known [Mr. Green's] race or gender based on the initial communications on the internet which are anonymous,” and that Mr. Green “initiated the conduct here with the undercover officer.” The panel characterized this reasoning as permissible consideration of

factors affecting “the reliability and strength of the defendant's showing.” App. A 16–17. But multiple circuits have rejected the contention that who initiated contact is relevant to any selective enforcement analysis.

In *United States v. Davis*, 793 F.3d 712 (7th Cir. 2015) (en banc), the government argued that because the defendant “himself initiated matters by pestering the informant for robbery opportunities,” race could not have played a role in the investigation. *Id.* at 722–23. The Seventh Circuit rejected this reasoning, holding that even when a defendant initiates contact, “it remains possible that [law enforcement] would not have pursued this investigation had [the defendant] been white.” *Id.* at 723. Regardless of who makes first contact, law enforcement still has discretion about who to investigate and how far to pursue that investigation.

The Third Circuit reached the same conclusion in *United States v. Washington*, 869 F.3d 193 (3d Cir. 2017). There, the government posited that because its agents had not actually selected or targeted any of the defendants a selective enforcement claim was “categorically forestalled.” *Id.* at 222. But the court disagreed, noting that “[t]his argument was raised in and rejected by *Davis*. We agree with the Seventh Circuit that . . . it remains possible that the [government] would not have pursued the investigation had [the crew] been white.” Like *Davis*, *Washington* recognizes that law enforcement exercises meaningful discretion even when defendants initiate contact, and that discretion may be exercised in a discriminatory manner.

Here, the Ninth Circuit attempts to distinguish *Davis* and *Washington* by suggesting the district court merely found selective enforcement “less likely” given

defendant-initiated contact, rather than categorically foreclosing the claim. App. A 16–17. But that distinction does not save the decision. *Davis* and *Washington* hold that defendant initiation is *irrelevant* to selective enforcement analysis because law enforcement retains discretion over whether and how to pursue investigations regardless of who makes first contact. If initiation is irrelevant, it cannot properly weigh against discovery—whether as a categorical bar or as a factor making selective enforcement “less likely.”

Allowing courts to treat initiation as reducing the likelihood of selective enforcement creates the same practical problem *Davis* and *Washington* identified: it systematically disadvantages defendants in reverse-sting operations. This is precisely the type of informational asymmetry *Sellers* sought to address.

The panel’s recharacterization thus does not resolve the conflict with *Davis* and *Washington*. Whether initiation is treated as disqualifying or merely as making selective enforcement “less likely,” the underlying premise—that initiation affects the probability of discriminatory enforcement—conflicts with those decisions’ recognition that enforcement discretion exists regardless of who initiates contact.

Absent correction, the panel’s decision will permit district courts to deny selective enforcement discovery whenever investigations originate through interactions initiated by defendants—a result that would substantially limit *Sellers*’ reach in precisely the investigative contexts where enforcement discretion is most opaque and discovery is most needed. As *Sellers*, *Washington*, and *Davis* all reflect, it is a common—if not integral—feature of reverse sting operations that defendants initiate contact with law enforcement. The panel’s decision would effectively place a

thumb on the scale in those cases, making access to selective enforcement discovery even harder to obtain. Such a result is contrary to the animating principle of *Sellers*.

Treating a defendant's initiation of contact as a basis to deny discovery places a thumb on the scale against selective enforcement claims in precisely the cases where enforcement discretion is hardest to scrutinize. Because that approach conflicts with the recognition that law enforcement retains discretion regardless of who initiates contact, it warrants this Court's review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'P. Barr', written over a horizontal line.

Date: April 16, 2026

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