No. 25-885

# In the Supreme Court of the United States

UNITED STATES, PETITIONER

*v.*

DONTE J. CARTER

*ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS*

## BRIEF IN OPPOSITION


Shay Dvoretzky
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
1440 New York Ave. NW
Washington, DC 20005

Brian D. Shefferman
SHEFFERMAN LAW
10325 Kensington Pkwy., #2
Kensington, MD 20895

Sherry M. Tanious
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
One Manhattan West
New York, NY 10001

Parker Rider-Longmaid
*Counsel of Record*
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
500 Boylston St.
Boston, MA 02116
617-573-4807
priderlo@skadden.com

Raza Rasheed
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
2000 Ave. of the Stars, Ste. 200N
Los Angeles, CA 90067

*Counsel for Respondent*

## QUESTION PRESENTED

The Fourth Amendment secures the "right of the people to be secure in their persons … against unreasonable … seizures." U.S. Const. amend. IV. This Court's precedents hold that "when an individual's submission to a show of governmental authority takes the form of passive acquiescence … a seizure occurs if 'in view of all of 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). This Court has further held that a person's race is "not irrelevant" in assessing whether a reasonable person in her shoes would have felt free to end an encounter with the police. *United States v. Mendenhall*, 446 U.S. 544, 558 (1980). The government does not ask the Court to revisit or overrule *Mendenhall*.

The question presented is whether a person's race is "not irrelevant" in determining whether under all the circumstances an objectively reasonable person would have believed he was free to terminate an encounter with the police, as this Court held in *Mendenhall* and the District of Columbia Court of Appeals held below, or whether it is irrelevant, as the government contends here.

## PARTIES TO THE PROCEEDING AND RELATED PROCEEDINGS

The parties in the court of appeals are identified in the case caption. There are no related proceedings in D.C., state, or federal court, or in this Court.

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## INTRODUCTION

In *United States v. Mendenhall*, 446 U.S. 544, 557 (1980), the Court considered whether a request from Drug Enforcement Administration agents that a young Black woman accompany them from an airport concourse to a DEA office "converted the situation" from a consensual encounter "into an arrest requiring probable cause in order to be found lawful." In analyzing that question, the Court held that the woman's race was "not irrelevant" in determining whether a person in her situation "reasonably" would "have felt unusually threatened by the officers, who were white males." *Id.* at 558.

*Mendenhall* resolves the question presented here by holding that race can be a factor relevant among all the circumstances in determining whether a person was seized. And the *Mendenhall* rule is correct under Fourth Amendment and equal-protection principles. What's more, this case is a poor vehicle to reassess the role of race in the Fourth Amendment seizure analysis because the government doesn't acknowledge *Mendenhall*, much less ask the Court to overrule it, and because the District of Columbia Court of Appeals' (DCCA) decision expressly didn't turn on race. And the case doesn't otherwise warrant review because the Court can summarily reverse the next lower-court decision that fails to apply *Mendenhall*, and the government's vague policy concerns are meritless. The Court should deny review.

**1.** This case arises from the District of Columbia Metropolitan Police Department's suspicionless seizure of Respondent Donte J. Carter. In 2020, four officers in tactical gear with visible weapons and handcuffs approached Mr. Carter and a group of other

men from in front and behind while they were talking in broad daylight on a public sidewalk. Pet. App. 30a-32a. Officers asked the men if they had guns. But even though Mr. Carter twice showed the officers his waistband and denied having a gun, an officer ordered Mr. Carter to pull up his pants. Pet. App. 33a-35a. When Mr. Carter complied, another officer noticed an L-shaped bulge. The officers recovered a gun, and Mr. Carter was convicted of eight firearms-related offenses.

The DCCA held that Mr. Carter had been seized without reasonable suspicion when the officers ordered him to pull up his pants, meaning the gun should have been suppressed. This Court's precedents hold that "a seizure occurs if 'in view of all of 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). Applying that test, the DCCA held that Mr. Carter had been seized because "*any reasonable person* would be fearful of failing to cooperate [with the police] under these circumstances." Pet. App. 25a (emphasis added). Mr. Carter's race bolstered that conclusion because Black men are disproportionately subject to police violence in the District of Columbia and elsewhere, so a reasonable Black person in Mr. Carter's position "would be especially cautious … so as to avoid physical retaliation." *Id.*

**2.** That decision was correct, and it doesn't warrant this Court's review. The DCCA considered Mr. Carter's race as one non-dispositive factor in its seizure analysis of whether a reasonable person in Mr. Carter's circumstances would have felt free to end the encounter. *Mendenhall* held that race is "not irrelevant" in determining whether a person "reasonably"

would have felt free to terminate an encounter with police. 446 U.S. at 558. The government's contention that race is irrelevant contravenes *Mendenhall*.

Background Fourth Amendment principles confirm that conclusion. Courts must consider all the circumstances of a police encounter to determine whether a reasonable person would have felt free to end the encounter and walk away. *Brendlin*, 551 U.S. at 255. Race can play a valid role in that inquiry. If law enforcement in a particular area has a history of using disproportionate violence against a particular group, an objectively reasonable person in that group would be less willing disobey the police given the greater risk of harm. That conclusion honors the Court's instruction to consider how a "reasonable man[]" would "interpret[]" the police "conduct." *Michigan v. Chesternut*, 486 U.S. 567, 574 (1988).

The government's counterarguments don't address *Mendenhall*; distort the role race plays in the seizure analysis; and otherwise lack merit. In particular, the government's suggestion that *Mendenhall*'s rule violates the Fifth Amendment's equal-protection guarantee fails. The *Mendenhall* rule applies to all individuals, regardless of race, and it doesn't treat similarly situated individuals differently.

**3.** This case is a poor vehicle to consider the question presented. Because *Mendenhall* controls, the government would need to ask the Court to overrule it. But the government doesn't make that ask, and the petition doesn't fairly present it. Taking this case just to apply *Mendenhall* and affirm would not be a productive use of this Court's resources.

Moreover, the DCCA expressly held that "*any reasonable person*"—not just an objectively reasonable

Black man—"would be fearful of failing to cooperate under these circumstances." Pet. App. 25a (emphasis added). Thus, the DCCA would reach the same result even if the Court instructed it not to consider Mr. Carter's race. The Court shouldn't consider the government's novel argument where it couldn't make a difference anyway.

**4.** The question presented doesn't otherwise warrant review. *First*, the government misapprehends the split. Just a handful of courts have departed from *Mendenhall* despite the opinion's clear holding. The Court can clear up that confusion without expending scarce resources by summarily reversing the next lower-court decision failing to apply *Mendenhall*. Doing so would align with the Court's approach on other Fourth Amendment and constitutional issues. *See, e.g.*, *District of Columbia v. R.W.*, No. 25-248, 2026 WL 1052344, at *3 (U.S. Apr. 20, 2026) (per curiam). *Second*, the government's policy concern that considering race in the seizure analysis will hinder law enforcement is meritless. *Mendenhall* has been the law for nearly 50 years. During that time, many appellate courts have followed *Mendenhall* in considering race as part of the seizure analysis. Despite *Mendenhall*'s longevity, the government provides no evidence that the *Mendenhall* rule has hampered law enforcement.

The Court should deny the petition.

## STATEMENT

**A.** On a fall afternoon in 2020, five officers of the D.C. Metropolitan Police Department's Gun Recovery Unit drove in two cars to the 100 block of Kennedy Street Northwest. Pet. App. 30a. There, they observed ten Black men conversing on a sidewalk in two

groups—three sitting and standing near some planters and another seven, including Mr. Carter, about fifteen feet away. Pet. App. 31a. Mr. Carter was standing in front of and then leaning against a parked car and facing the other men. *Id.*

Four officers emerged from their vehicles and approached the men. Pet. App. 31a-32a. The officers wore tactical vests with "POLICE" written on the back and were visibly carrying handcuffs, firearms, and other police equipment. Pet. App. 30a.

Officers DelBorrell and Keleman approached the group of seven men. Pet. App. 32a. While Officer Kelemen approached other individuals, Officer DelBorrell looped around the car Mr. Carter was leaning on to approach him from behind. *Id.* As Officer DelBorrell moved closer, Mr. Carter lifted his shirt to show his waistband and then lowered it. Pet. App. 33a. As Mr. Carter raised his shirt, the officer asked, "you not got nothing on you?" Mr. Carter said "[n]o" and lifted his shirt again. *Id.* Still unsatisfied, Officer DelBorrell asked, "Do you mind hiking your pants for me real quick?" Mr. Carter complied, raising his pants by holding them at the waistband. Pet. App. 34a. Mr. Carter also lifted his shirt a third time. *Id.*

When Mr. Carter hiked his pants and lifted his shirt again in response to Officer DelBorrell's questions, Officer Guzman saw an L-shaped bulge in Mr. Carter's pants. Pet. App. 34a-35a. He then ordered Mr. Carter to stand, frisked him, and recovered a firearm from between his pairs of compression shorts. Pet. App. 35a-36a. The officers arrested Mr. Carter and charged him with eight firearms-related crimes. Pet. App. 4a.

**B.** Before trial, Mr. Carter moved to suppress the firearm and a statement he made following the incident on ground that they resulted from an unlawful Fourth Amendment seizure. The District of Columbia Superior Court denied the motion. Pet. App. 46a. After a bench trial on stipulated facts, the court convicted Mr. Carter on all eight counts. Pet. App. 5a.

**C.** The DCCA vacated Mr. Carter's convictions, holding that officers had seized him without reasonable suspicion when Officer DelBorrell ordered him to hike up his pants. Pet. App. 26a. The court held that "any reasonable person would be fearful of failing to cooperate under these circumstances," Pet. App. 25a, which included multiple police officers wearing tactical gear and displaying weapons approaching Mr. Carter from in front and behind and repeatedly questioning him despite his showing his waistline. The Court further reasoned that Mr. Carter's race bolstered its conclusion given the long history of police violence against Black men in the District of Columbia and elsewhere. *Id.*

## REASONS FOR DENYING THE PETITION

The Court should deny the petition. The Court held in *Mendenhall* that race is "not irrelevant" to the Fourth Amendment seizure analysis, 446 U.S. at 558, and that holding aligns with basic Fourth Amendment principles and is correct. This case is also a poor vehicle. For one thing, the government doesn't ask the Court to overrule *Mendenhall*, making review pointless. For another, the DCCA's decision didn't turn on its consideration of Mr. Carter's race anyway. The way to deal with courts that have disregarded *Mendenhall* is to summarily reverse an appropriate decision.

Finally, nearly half a century of experience refutes the government's unmeritorious policy arguments.

**I.** The Court has already correctly resolved the question presented.

**A.** In *Mendenhall*, the Court considered whether DEA officers seized and arrested a young Black woman when they walked her in an airport from a concourse to a DEA office. 446 U.S. at 557. The Court explained that the woman's race was "not irrelevant" to that question. *Id.* at 558. That holding refutes the government's claim that race can't be relevant to the seizure analysis and resolves the question presented.

**B.** *Mendenhall* got it right. The Court's precedents emphasize that courts must consider all the circumstances of a police encounter to determine whether a reasonable person would have felt free to end the encounter and walk away. *See Brendlin*, 551 U.S. at 255. Race can play a valid role in that inquiry. The test considers how a "reasonable man[]" would "interpret[]" the police "conduct in question." *Chesternut*, 486 U.S. at 574. If the police have a history of using disproportionate violence against individuals with particular characteristics, an objectively reasonable person with those characteristics would be less willing disobey the police and risk harm.

**C.** The government's counterarguments lack merit. The government complains that considering race would inject a subjective question into the Fourth Amendment's objective inquiry. That's false. "Regardless of whether race and ethnicity are considered, the seizure analysis is *not* based on the subjective viewpoint of the alleged seized individual, with their unique 'life experience' or 'attitudes.'" *State v. Sum*, 511 P.3d 92, 103 (Wash. 2022). It is instead based on

how a reasonable person would react to particular police conduct. Race comes into play only if an objectively reasonable person would fear retaliation for ignoring the officers' commands because individuals with the same characteristics have experienced disproportionate violence from law enforcement. *See Mendenhall*, 446 U.S. at 558.

The government's suggestion that accounting for race would violate the Fifth Amendment's equal-protection guarantee lacks merit. The *Mendenhall* rule is the same regardless of race. It neither advantages particular racial groups nor treats similarly situated individuals differently. Instead, it merely recognizes that reasonable people who have good reason to "fe[el] unusually threatened by the officers," *Mendenhall*, 446 U.S. at 558, will typically feel less free to disregard their commands.

**II.** This case is a poor vehicle.

**A.** To start, *Mendenhall* controls, so the government would need to convince the Court to overrule it. But the government hasn't asked the Court to overrule *Mendenhall* or fairly presented that question, which involves *stare decisis* considerations the government hasn't bothered to address.

**B.** This case is also a poor vehicle because race wasn't outcome-determinative in Mr. Carter's case anyway. While the DCCA considered Mr. Carter's race as part of its analysis, it expressly held that "*any reasonable person*," not just a reasonable Black man, "would be fearful of failing to cooperate under these circumstances." Pet. App. 25a (emphasis added). So even if the Court tells the DCCA not to consider race, the DCCA would reach the same result.

**III.** This case isn't certworthy for any other reason, either.

**A.** The government claims that the DCCA is the only court that allows consideration of race in the Fourth Amendment seizure analysis. In reality, many appellate courts have faithfully applied *Mendenhall* and concluded that race can be a relevant consideration. The handful of decisions the government identifies holding otherwise rest on basic misconceptions about what *Mendenhall* held. The best way to approach that confusion would be to summarily reverse an appropriate decision that fails to apply *Mendenhall*'s rule. Indeed, the Court frequently takes that approach when lower courts don't follow its precedents. *See, e.g.*, *R.W.*, 2026 WL 1052344, at *3.

**B.** The government's policy arguments for review are unpersuasive, too. The government claims that allowing consideration of race will hinder law enforcement. But lower courts have been considering race at least since *Mendenhall* was decided in 1980, and the government hasn't provided any evidence that the rule has harmed policing.

The government also claims that officers have no reliable way to determine a suspect's race or the police department's relationship with particular groups. That argument is hard to take seriously. It shortchanges the police, who understand their relationship with their communities and the role of race as well as anyone. It ignores this Court's precedents, which have long allowed officers to use race in forming reasonable suspicion to conduct a *Terry* stop. *See, e.g.*, *United States v. Brignoni-Ponce*, 422 U.S. 873, 886-87 (1975); *United States v. Martinez-Fuerte*, 428 U.S. 543, 563 (1976); *Noem v. Vazquez Perdomo*, 146

S. Ct. 1, 3 (2025) (Kavanaugh, J., concurring). If officers can determine race to stop individuals, they can determine it to avoid seizures. And doing so is hardly unworkable. Police can question in a non-threatening manner, *see INS v. Delgado*, 466 U.S. 210, 216 (1984), and inform the people they question that they're free to refuse their requests, *see Mendenhall*, 446 U.S. at 559. The evident notion that it would be easier to scare suspects into compliance just proves that the government is wrong on the merits.

## I. The question presented isn't certworthy because the Court already correctly resolved it in *Mendenhall*.

The DCCA correctly concluded that race can be a relevant consideration in determining whether a person has been seized. In *Mendenhall*, the Court expressly held that race is "not irrelevant" to the seizure analysis. 446 U.S. at 558. *Mendenhall*'s conclusion aligns with the Court's other Fourth Amendment decisions, which emphasize that courts must consider all circumstances that would bear on whether a reasonable person would feel free to ignore questions or instructions from the police. Reasonable people try to avoid bodily harm when they reasonably can. And throughout our Nation's history, virtually every ethnic group—from Irish- and Italian-Americans to Asians, Latinos, Blacks, and Native Americans, have, at particular times and places, faced elevated risks of violence from law enforcement. A reasonable person who appears to have characteristics of those subjected at a particular time and place to disproportionate law enforcement violence would be less likely to think he can terminate an encounter with the police without risking harm. The government's counterarguments don't address *Mendenhall*;

misapprehend both the role race plays in the objective reasonableness seizure analysis and equal-protection principles, and otherwise lack merit.

### A. *Mendenhall* held that race is "not irrelevant" in determining whether a person has been seized.

*Mendenhall* already resolved the question presented here when it held that race is "not irrelevant" in determining whether a person has been seized. 446 U.S. at 558.

**1. a.** In *Mendenhall*, two DEA agents approached a young Black woman, Sylvia Mendenhall, in the Detroit airport and asked to see her ticket and identification. *Id.* at 547-48. When the officers noticed that her ticket had a different name than her driver's license, they asked her to accompany them to an airport DEA office off the main concourse. *Id.* at 548. Once there, the agents conducted a strip search, which turned up two small packages of heroin. *Id.* at 549.

**b.** The district court denied Mendenhall's motion to suppress. Pet. App. 20a, *United States v. Mendenhall*, 446 U.S. 544 (1980) (No. 78-1821) (district court order). The court first concluded that the DEA agents validly stopped Mendenhall in the terminal under *Terry v. Ohio*, 392 U.S. 1 (1968). *Id.* at 13a-15a. The court next determined that Mendenhall "was not placed under arrest" when she agreed to walk to the DEA office. *Id.* at 16a & n.1. Finally, the court found that Mendenhall validly consented to the strip search once she arrived at the DEA office. *Id.* at 16a-17a.

**c.** In a summary order, the Sixth Circuit reversed based on its prior decision in *United States v. McCaleb*, 552 F.2d 717 (6th Cir. 1977), which concerned "indistinguishable" facts. *Id.* at 8a (panel

opinion); *see also United States v. Mendenhall*, 596 F.2d 706, 707 (6th Cir. 1979) (en banc; per curiam; reinstating panel opinion). *McCaleb*, in turn, held that (1) DEA agents lacked reasonable suspicion to conduct a *Terry* stop of three suspected drug couriers in an airport parking lot; (2) even if the agents had reasonable suspicion, they went beyond the permissible scope of a *Terry* stop and effectively arrested the defendants by asking them to come to the airport DEA office; and (3) once at the DEA office, the defendants didn't give valid consent to search their luggage. *See* 552 F.2d at 720-21.

**d.** This Court granted certiorari and reviewed the three issues decided in *McCaleb* as applied to *Mendenhall*'s facts.

*First*, Justice Stewart, joined by then-Justice Rehnquist, analyzed whether "the initial encounter between the DEA agents and [Mendenhall] on the concourse at the Detroit Airport … constitute[d] an unlawful seizure." *Mendenhall*, 446 U.S. at 551-57. Justice Stewart explained that "a person is 'seized'" for Fourth Amendment purposes "only when, by means of physical force or a show of authority, his freedom of movement is restrained." *Id.* at 553. Justice Stewart argued that when officers don't use physical force, a seizure occurs "only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *Id.* at 554. And he concluded that Mendenhall hadn't been seized because the officers' conduct wasn't sufficiently peremptory. *Id.* at 555. The Court later adopted Justice Stewart's seizure test. *See, e.g.*, *Delgado*, 466 U.S. at 215. But in *Mendenhall* itself, the other seven Members of the Court declined to address whether the initial encounter was a seizure

because the lower courts hadn't expressly analyzed that issue. *See* 446 U.S. at 560 (Powell, J., concurring); *id.* at 570 (White, J., dissenting).

*Second*, and most relevant here, a majority of the Court addressed whether, even though "the initial encounter … did not constitute an unlawful seizure," "the agents' request that [Mendenhall] accompany them" to the airport DEA office nonetheless "converted the situation into an arrest requiring probable cause in order to be found lawful." *Id.* at 557. The Court concluded that "the totality of the evidence" showed that Mendenhall wasn't under arrest when the agents walked her to the DEA office. *Id.* at 558. In analyzing whether "the incident would reasonably have appeared coercive," the Court expressly considered the fact that Mendenhall "was 22 years old," "had not been graduated from high school," and that she was "a female *and a Negro*." *Id.* at 558 (emphasis added). The Court concluded that "these factors were not irrelevant" in determining whether a reasonable person in her shoes "may have felt unusually threatened by the officers, who were white males." *Id.* at 558. But the Court found Mendenhall's race, age, gender, and education level outweighed by the fact that the officers didn't use "threats" or "any show of force" to get her to walk to their office. *Id.* at 558. The Court thus held that "the search of [Mendenhall's] person was not preceded by an impermissible seizure of her person." *Id.*

*Third*, the Court considered whether Mendenhall had given adequate consent to the strip search when she arrived at the DEA office. *Id.* The Court concluded that Mendenhall had consented because she "was twice expressly told that she was free to decline to

consent to the search, and only thereafter explicitly consented to it." *Id.* at 558-59.

**2.** *Mendenhall* resolves the question presented. There's thus no warrant to consider it here.

In *Mendenhall*, the Court expressly held that Mendenhall's race was "not irrelevant" in determining whether the encounter with the DEA agents "would reasonably have appeared coercive," and thus whether Mendenhall was under "arrest" when she was transported to the airport DEA office. *Id.* at 558. As the Court has "repeatedly recognized, 'the arrest of a person is quintessentially a seizure.'" *Torres v. Madrid*, 592 U.S. 306, 312 (2021). The Court uses Justice Stewart's seizure test from *Mendenhall* to determine whether a person has submitted to a show of authority from police and is thus under arrest. *See California v. Hodari D.*, 499 U.S. 621, 627 (1991). And as the Court's precedents hold, the seizure inquiry is a continuous one requiring inquiry into all circumstances as they develop and requiring reasonable suspicion at all times to justify a seizure. *See, e.g.*, *Rodriguez v. United States*, 575 U.S. 348, 354-57 (2015). That's why, in *Mendenhall*, the Court went beyond "the initial encounter" to ask whether the events that followed "converted the situation into an arrest." 446 U.S. at 557. It's also why, in *Florida v. Royer*, 460 U.S. 491, 501 (1983), the Court held that police's "[a]sking for and examining Royer's ticket and driver's license" didn't constitute a seizure, but their subsequent interaction with him, including "ask[ing] him to accompany them to the police room," was. Put simply, *Mendenhall* makes clear that courts should consider both the suspect's and the officer's race in determining whether a person in the suspect's position would have felt free to end the encounter.

*Mendenhall*'s discussion of race was a holding, not mere dictum. "When this Court relies on a legal rule or principle to decide a case, that principle is a 'holding' of the Court." *Andrew v. White*, 604 U.S. 86, 93 (2025) (per curiam). The Court in *Mendenhall* relied on the principle that race is "not irrelevant" in considering Mendenhall's race as part of its seizure analysis. It simply decided, after considering "the totality of the evidence in th[e] case"—including Mendenhall's race—that her race wasn't sufficient to show that the DEA agents arrested her when they asked her to walk down the hall with them. *Mendenall*, 446 U.S. at 558.

In short, the Court has already resolved the question presented against the government. A person's race is "not irrelevant" in determining whether someone in their shoes would have felt free to leave when confronted by law enforcement. *Id.*

**B. The *Mendenhall* rule is correct.**

*Mendenhall*'s rule permitting courts to consider race as a non-dispositive factor in determining whether a person has been seized is correct and consistent with Fourth Amendment principles.

**1.** "[A] seizure occurs if 'in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.'" *Brendlin*, 551 U.S. at 255. "The test is necessarily imprecise, because it is designed to assess the coercive *effect* of police conduct, taken as a whole, rather than to focus on particular details of that conduct in isolation." *Chesternut*, 486 U.S. at 573 (emphasis added). And "what 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." *Id.*

Assessing whether the officers' conduct would have had a coercive effect on a reasonable person "requires consideration of some known unique characteristics of the suspect" that would predictably influence whether he felt free to terminate an encounter with the police. Wayne R. LaFave, 4 Search & Seizure § 9.4(a) (6th ed. Nov. 2025 update). For example, the Court also considers whether "a reasonable person [would] have felt he or she was … at liberty to terminate the [encounter with officers] and leave" in determining whether a suspect is in custody for *Miranda* purposes. *Thompson v. Keohane*, 516 U.S. 99, 112 (1995). In *J.D.B. v. North Carolina*, 564 U.S. 261, 271-72 (2011), the Court held that courts must take into account a suspect's age in determining whether they are in custody. The Court reasoned that a defendant's "age 'would have affected how a reasonable person' in the suspect's position 'would perceive his or her freedom to leave'" because "a reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go." *Id.*

**2.** Like age, race is a factor that may sometimes influence whether an objectively person would feel free to terminate an encounter with the police. "[I]t is no secret" that certain racial and ethnic groups have, at various points in the country's history, been "disproportionate victims" of police violence—whether that violence resulted from lawful policing or misconduct. *See Utah v. Strieff*, 579 U.S. 232, 254 (2016) (Sotomayor, J., dissenting). For example, in the late nineteenth and early twentieth centuries, urban police departments in major eastern cities often

brutalized white Italian and Irish immigrants. *See* Marilynn S. Johnson, *Street Justice: A History of Police Violence in New York City* 16-27 (2003). The same was true for Chinese and Japanese immigrants on the West Coast. *See* Eisha Jain, *Policing the Polity*, 131 Y.L.J. 1794, 1804 (2022). It has also been true at various times for persons of Latino descent. *See, e.g.*, Paul Chevigny, *Edge of the Knife: Police Violence in the Americas* 41-45 (1995) (detailing incidents of police brutality against Latinos in California). And throughout the country's history, Black and Native Americans have been disproportionate victims of police violence in various parts of the country. *See* Samuel Walker & Charles Katz, *The Police in America: An Introduction* 42-59 (6th ed. 2008); Carol S. Steiker, *Second Thoughts About First Principles*, 107 Harv. L. Rev. 820, 836-841 (1994); Jean Reith Schroedel & Roger J. Chin, *Whose Lives Matter: The Media's Failure to Cover Police Use of Lethal Force against Native Americans*, 10 Race & Just. 150, 155-57 (2020).

An objectively reasonable person would weigh the risk of being subject to violence—both through a legitimate arrest or misconduct—in determining whether to comply with an officer's request. All people desire to avoid harm whenever reasonably possible under the circumstances. Thus, a reasonable person who appears to share the characteristics of a racial group that has been subjected to a higher risk of police violence in a particular community would naturally consider that factor in determining whether it is safe to refuse an officer's command. For example, if the police have recently shot unarmed Black residents of a community who tried to terminate encounters with them and warned residents against refusing an officer's commands, a reasonable Black person would

think that it is very risky to try refuse police orders and leave. *See United States v. Washington*, 490 F.3d 765, 768-69 (9th Cir. 2007) (confronting that fact pattern). The person's race isn't a "decisive" factor in the seizure analysis, *Mendenhall*, 446 U.S. at 558, and it shouldn't be. But it can be part of "the setting in which the [police] conduct occurs" and thus would thus inform a "reasonable man's interpretation of the [police] conduct in question." *Chesternut*, 486 U.S. at 573-74.

### C. The government's counterarguments lack merit.

The government doesn't so much as acknowledge *Mendenhall*'s holding that race is "not irrelevant" in determining whether an arrest has occurred, 446 U.S. at 558, and thus makes no argument against its application here. Instead, the government makes two arguments that race should be artificially excluded from the seizure analysis. Neither has merit.

**1.** The government first argues (Pet. 14-17) that race shouldn't matter to the seizure analysis because the test is objective and doesn't turn on an individual suspect's life experiences or perceptions of law enforcement, and not all people within various ethnic groups have the same views about the police. That argument attacks a straw man.

"Regardless of whether race and ethnicity are considered, the seizure analysis is *not* based on the subjective viewpoint of the alleged seized individual, with their unique 'life experience' or 'attitudes.'" *Sum*, 511 P.3d at 103. Rather, the relevant question is always whether an objectively reasonable person would have felt free to leave under the circumstances. *Brendlin*, 551 U.S. at 255. That inquiry must account

for how reasonable people weigh risks, including any elevated risk in a particular community that law enforcement will use force to compel compliance from someone appearing to be a member of a particular race. Contrary to the government's position, reasonable people are aware of the circumstances they live in, of the role race can play, and how the police interact with people in their neighborhood.

**2.** The government makes a halfhearted effort (Pet. 15) to argue that accounting for racial dynamics as part of the seizure analysis would violate the Fifth Amendment's equal-protection guarantee. Not so.

*First*, the *Mendenhall* rule is colorblind. Accounting for race as part of the seizure analysis doesn't mean that some racial groups have greater protections against unreasonable seizures than others. It just means that when a particular group of people in a particular area face an elevated risk of police violence, courts should consider that fact in determining whether a reasonable person would feel free to disregard police requests under the circumstances. For example, if white Irish- or Italian-Americans still faced an outsized risk of police violence—as they did for much of the nineteenth and twentieth centuries, *supra* p. 10—that risk would be just as much a part of the seizure analysis as whether a young Black woman would have felt free to decline DEA agents' request to come their office in 1976.

*Second*, the *Mendenhall* rule doesn't treat similarly situated individuals differently—the core concern in an equal-protection analysis. *See City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985). Rather, it recognizes that sometimes, based on local conditions, individuals who appear to have

certain characteristics may face different risks when interacting with the police. By contrast, the government's proposed rule would dilute Fourth Amendment protections for communities that face a heightened risk of police violence by presuming that reasonable people in those groups would feel free to ignore the police when they objectively shouldn't. The police don't ignore race. The courts shouldn't either.

## II. This case is a poor vehicle to address the question presented.

The question presented isn't certworthy because the Court has already resolved it, but this case is a bad vehicle to address it regardless. To prevail, the government would need to persuade the Court to overrule *Mendenhall*. But the government didn't ask the Court to overrule *Mendenhall* in its petition. That makes this case a poor vehicle for reconsidering whether courts can consider a person's race in determining whether an objectively reasonable person in his shoes would have felt free to leave when confronted by law enforcement. The Court should await a case where the parties and lower court have discussed *Mendenhall*, and the government has preserved a challenge to it.

*Mendenhall* aside, this case is also a poor vehicle because the DCCA's analysis didn't hinge on race. Indeed, the DCCA expressly held that "*any* reasonable person would be fearful of failing to cooperate under these circumstances." Pet. App. 25a (emphasis added). Taking *this* case, to address a question the Court has already decided and that won't change the outcome, makes no sense.

### A. The government's failure to raise *Mendenhall* in its petition or the courts below makes this case a poor vehicle.

**1.** Because *Mendenhall* resolves the question presented, *see supra* pp. 11-15, the government can prevail only if it persuades the Court to overrule *Mendenhall*. But the government didn't ask the Court to overrule *Mendenhall* in its question presented.

That failure forfeits any challenge to *Mendenhall*. This Court's Rule 14.1(a) provides that "[o]nly the questions set out in the petition, or fairly included therein, will be considered by the Court." The Court strictly enforces Rule 14.1(a), and will "consider questions outside those presented in the petition for certiorari … 'only in the most exceptional cases' … where reasons of urgency or of economy suggest the need to address the unpresented question in the case under consideration." *Yee v. City of Escondido*, 503 U.S. 519, 535 (1992). Because the decision whether to overrule a precedent requires "a 'special justification'—over and above the belief 'that the precedent was wrongly decided,'" *Kimble v. Marvel Entertainment, LLC*, 576 U.S. 446, 456 (2015), the Court typically doesn't overrule its precedents unless a party expressly requests overruling in its cert petition. For example, in *Blessing v. Freestone*, 520 U.S. 329, 340 n.3 (1997), in determining whether Title IV-D of the Social Security Act created private rights enforceable by 42 U.S.C. § 1983, the Court declined to reconsider its precedents holding "that § 1983 provides a remedy for violations of federal statutes" because that issue was "not presented in the petition for certiorari."

Here, the government didn't ask the Court to overrule *Mendenhall* in its question presented or

anywhere else in its petition. Indeed, the petition *doesn't even acknowledge Mendenhall*'s ruling on the relevance of race to the seizure analysis. Whether *Mendenhall* deserves *stare decisis* effect isn't fairly included in the question presented. *See id.* And there is no urgency to reconsider *Mendenhall*. The government's failure to preserve any challenge to the Court's critical, on-point precedent dictating the outcome of this case makes clear that the Court should simply deny review. If the government wants the Court to reconsider *Mendenhall*, it should litigate the issue in the lower courts and properly present it to this Court.

**2.** The government may argue, like a handful of lower courts, *see infra* pp. 29-31, that *Mendenhall* isn't controlling because its discussion of race related to whether the defendant consented to the strip search, not whether she was seized in the first place. That reading is incorrect, as the opinion makes clear. In the part of the opinion discussing race, this Court was reviewing the district court's conclusion that Mendenhall "had not been placed under arrest or otherwise detained when she was asked to accompany the agents to the DEA office," and the Sixth Circuit's contrary holding that asking Mendenhall "to accompany the agents to a private room for further questioning constituted an arrest requiring probable cause." *Mendenhall*, 446 U.S. at 549-50, 558; *supra* pp. 11-15. That's a question about whether Mendenhall was seized prior to arriving at the DEA office, not whether she consented to the search once she got there. Indeed, the Court only analyzed Mendenhall's consent to the search *after* it determined that the strip search "was not preceded by an impermissible seizure of her person," such that "her apparent consent to the

subsequent search was infected by an unlawful detention." *Id.* at 558.

### B. This case doesn't squarely implicate the question presented because the DCCA's decision did not turn on race.

This case is also a poor vehicle because the DCCA's ruling didn't turn on its consideration of race. In determining whether Mr. Carter would have felt free to refuse the officers' instructions to hike up his pants, the DCCA considered an exhaustive set of circumstances, including that:

- "[T]wo police vehicles simultaneously approached Mr. Carter and others in his group." Pet. App. 10a.
- "Four officers then exited the vehicles and converged on the group, suggesting that the men were not simply free to continue conversing amongst themselves as they were previously." *Id.*
- An officer "also approached Mr. Carter from behind, which … would make any objective and reasonable person feel uneasy and intimidated, especially when faced with an openly visible firearm within close proximity." *Id.*
- Another officer "immediately asked Mr. Carter whether he possessed a firearm," an action that "suggested to Mr. Carter that he, alongside other members of the group, had been singled out as being suspected of criminal activity," and would have made an "objective and reasonable person in his shoes … fe[el] apprehensive in refusing to respond to the officer's question." *Id.*

- "[D]espite Mr. Carter both denying carrying a firearm and raising his shirt not once but twice to reveal his waistband," an officer "continued to probe him by asking him to 'hik[e] [his] pants up.'" Pet. App. 11a.
- Mr. Carter was not "alone" or "outnumbered" by the police. Pet. App. 11a-12a.
- "[T]he officers … did not restrict Mr. Carter's movement." Pet. App. 12a.

While the court also considered the fact that Mr. Carter is Black and that Black men have historically faced an elevated risk of police violence and misconduct in the District of Columbia and elsewhere, it made clear that race wasn't central or even necessary to its analysis. While "a Black man would be especially cautious here so as to avoid potential physical retaliation," the court explained "*any reasonable person* would be fearful of failing to cooperate under these circumstances." Pet. App. 25a (emphasis added).

Because the DCCA found that "any reasonable person"—and not just a reasonable Black man—would not believe he was free to end the encounter, this case is a poor vehicle to assess the question presented. Even if the Court overruled *Mendenhall* and held that race is irrelevant in the seizure analysis, the DCCA would reach the same result on remand given all the other evidence that officers seized Mr. Carter. That is ample reason not to intervene here.

## III. The question presented doesn't warrant the Court's review for any other reason.

None of the government's other arguments provides a reason to grant review, either.

The government claims (Pet. 18-19) that the lower courts have split 4–1 over whether race is a valid consideration in the Fourth Amendment seizure analysis, with the DCCA as the lone outlier. That's wrong. Many courts have followed *Mendenhall* and concluded that race can be a relevant, though not dispositive, factor. Although a handful of decisions have departed from *Mendenhall*, each rests on a fundamental error about what *Mendenhall* held. The most efficient way for the Court to address those decisions is to deny review here and summarily reverse an appropriate future decision that fails to apply *Mendenhall*.

The government also argues (Pet. 20-21) that the Court should intervene because applying the *Mendenhall* rule will hinder law enforcement. But the Court decided *Mendenhall* in 1980, and lower courts have been considering race as part of the seizure analysis for decades. Yet the government has been unable to supply any evidence that considering race as part of the seizure analysis has hindered law enforcement.

Still more, the government's argument gives officers too little credit. Officers know the communities they police. They are well-positioned to know whether relations with particular groups are strained and anticipate how individuals will react to their efforts. And when officers approach an individual, they can easily avoid triggering a seizure by asking questions rather than giving peremptory orders, and by informing suspects that they are free to leave (if indeed they are).

### A. Plenary review to address basic misunderstandings about *Mendenhall* is unwarranted.

The government claims (Pet. 18-19) that the lower courts have split 4–1, with the Fourth, Tenth,

and Eleventh Circuits, as well as the Iowa Supreme Court, holding that race cannot be considered in the seizure analysis, and the DCCA alone reaching the opposite conclusion. That argument is incorrect. In reality, many appellate courts have followed *Mendenhall* and considered race as part of the objective reasonableness seizure analysis. The handful of courts that have departed from *Mendenhall* have done so based on a basic and easily correctible misreading of the Court's decision. The most efficient approach is thus to summarily reverse a decision that fails to apply *Mendenhall*, not to grant review here on the question *Mendenhall* already resolved.

**1. The DCCA, the Seventh and Ninth Circuits, and the high courts of New Hampshire and Washington have all recognized that race can be a valid factor in the seizure analysis.**

Contrary to the government's claims, appellate courts around the country have consistently applied *Mendenhall*'s teachings and considered a suspect's race in determining whether a reasonable person in the suspect's shoes would have felt free to terminate the encounter with the police.

**a.** Start with the Ninth Circuit. In *United States v. Moreno*, 742 F.2d 532, 533-34 (9th Cir. 1984), DEA and Los Angeles Police Department officers approached a Colombian national at the Los Angeles International Airport, took his bag, and asked him to accompany them to a small office elsewhere in the airport. Once there, they interrogated him in English and Spanish and obtained consent to search his bag, which contained cocaine. *Id.* The Ninth Circuit held that the search was invalid because the suspect had

been under arrest by the time he consented to the search. *Id.* at 536. Applying *Mendenhall*, the court held "that the characteristics of the defendant," like race, were "'not irrelevant' in determining whether a seizure has occurred for purposes of the fourth amendment." *Id.* The court noted that the suspect's "lack of familiarity with police procedures in this country, his alienage" as a Colombian national, "and his limited ability to speak and understand the English language" would have "contributed significantly to the quantum of coercion" a reasonable person in his shoes would have felt "at the DEA office." *Id.*

The Ninth Circuit reached a similar result in *Washington*, 490 F.3d at 767. There, white officers approached a Black man sitting in the driver's seat of his parked car late at night in Portland; ordered him to step out of his car; searched him; and then obtained his consent to search his car, where they found an unlawful firearm. *Id.* at 767-69. When the incident occurred, white police officers in Portland had recently shot two unarmed Black residents during traffic stops—one where a woman attempted to terminate the encounter with the police and leave, and another where a man was trying to unbuckle his seatbelt. *Id.* at 768-69 & n.1. After those incidents, the Portland Police Bureau had distributed pamphlets advising the public to comply with police requests and directions during traffic stop. *Id.* In determining that the suspect in *Washington* was under arrest when he gave consent to search his car, the Ninth Circuit took into account "the publicized shootings by white Portland police officers of African-Americans" as one reason "that a reasonable person would not have felt free to disregard [the officers'] instructions, end the encounter … and leave the scene." *Id.* at 773-74.

**b.** Other federal and state decisions have consistently recognized that *Mendenhall* contemplates consideration of race in the Fourth Amendment seizure analysis, even if race wasn't critical to the outcome in those cases. For example, in *United States v. Smith*, 794 F.3d 681, 688 (7th Cir. 2015), the Seventh Circuit "echo[ed] the sentiments of the Court in *Mendenhall*" in concluding that a suspect's "race is 'not irrelevant' to the question of whether a seizure occurred." In *State v. Jones*, 235 A.3d 119, 126 (N.H. 2020), similarly, the New Hampshire Supreme Court emphasized that under *Mendenhall*, "race is an appropriate circumstance to consider in conducting the totality of the circumstances seizure analysis." And in *Sum*, the Washington Supreme Court, interpreting the state constitution, recognized that *Mendenhall* had "held that objective demographic factors, such as a defendant's race and age, are relevant considerations" in the seizure analysis. 511 P.3d at 102.

The government's claim that the D.C. Court of Appeals is alone in taking race into account as part of the seizure analysis is simply wrong. For decades, courts around the country have faithfully applied *Mendenhall* in concluding that race is a relevant consideration in the seizure analysis.

**2. The Fourth Circuit addressed a different question, and the Tenth and Eleventh Circuits and the Iowa Supreme Court have misunderstood *Mendenhall*'s holding.**

The government claims (Pet. 18-19) that the Fourth, Tenth, and Eleventh Circuits, plus the Iowa Supreme Court, have held that race is never relevant to whether a reasonable person in the defendant's

shoes would have felt free to terminate an encounter with the police. But the Fourth Circuit evaluated a different question, so isn't part of any disagreement. And the other three decisions rest on a basic misapprehension of what the Court held in *Mendenhall*.

**a.** Start with the Fourth Circuit. *Monroe v. City of Charlottesville*, 579 F.3d 380 (4th Cir. 2009), didn't address the question presented. The defendant argued that he was unreasonably seized by police when a uniformed officer visited the defendant in his home and coerced him into giving a DNA sample. *Id.* at 386. He argued that "his beliefs" regarding race relations between police and minority communities were "shared by a sufficient proportion of the population," making his belief "objectively reasonable." *Id.* He contended that "he was not free to terminate the encounter … because relations between police and minorities are poor," among other reasons. *Id.* at 386-87. The Fourth Circuit rejected the notion that the defendant's "subjective beliefs" were relevant to the Fourth Amendment's objective seizure analysis. *Id.* But the court did not cite (much less consider) *Mendenhall*, which held that race isn't irrelevant to the *objective* reasonable person inquiry. And the court didn't otherwise address whether a defendant's race could ever be relevant to whether a reasonable person in his shoes would have felt free to terminate an encounter with the police. *Monroe* thus doesn't conflict with the DCCA's decision here.

**b.** The other decisions the government cites all rely on a basic mischaracterization of *Mendenhall*'s analysis and holding.

***i.*** In *United States v. Easley*, 911 F.3d 1074, 1077-79 (10th Cir. 2018), a Black woman argued that

she was unlawfully seized when DEA agents boarded a Greyhound bus, questioned her, and then asked her to step off the bus for a second round of questioning before they eventually found drugs in a suitcase that was tagged with her telephone number. The Tenth Circuit held that it couldn't consider the woman's race in determining whether a reasonable person in her shoes would have felt free to leave. *Id.* at 1081. The court reasoned that "*Mendenhall*'s discussion of race … was in the context of assessing voluntariness, not seizure." *Id.* That conclusion was clearly wrong, because *Mendenhall*'s discussion of race was part of its seizure analysis, as discussed above (at 22-23).

***ii.*** The Eleventh Circuit made a similar mistake in *United States v. Knights*, 989 F.3d 1281, 1288 (11th Cir. 2021). There, the court considered whether police seized a Black man when they approached and questioned him while he was sitting in the driver's seat in a parked car. *United States v. Knights*, 967 F.3d 1266, 1268 (11th Cir. 2020). Citing *Mendenhall*, the Eleventh Circuit initially held that the man's race was a relevant factor in the seizure analysis, but that "the totality of the circumstances establish[ed] that th[e] encounter was not coercive." *Id.* at 1272. The panel subsequently vacated its initial decision, however, and joined *Easley* in holding that courts cannot consider a person's race in determining whether a reasonable person in his shoes would have felt free to leave. *See Knights*, 989 F.3d at 1288. The Eleventh Circuit reasoned that *Mendenhall*'s discussion of race concerned "the *voluntariness* of a seizure" and not "the relevance of race to the existence of a seizure." *Id.*

The Eleventh Circuit's conclusion contradicts *Mendenhall* just as clearly as the Tenth Circuit's. As Justice Stewart explained in *Mendenhall*, "a person is

'seized' … when, by means of physical force or a show of authority, his freedom of movement is restrained." *Mendenhall*, 446 U.S. at 553 (opinion of Stewart, J.); *Hodari D.*, 499 U.S. at 627 (noting that the Court has adopted Justice Stewart's formulation). In other words, a seizure is, by definition, involuntary. There is no analytical distinction between "the voluntariness of a seizure" and the "existence of a seizure." So the Eleventh Circuit's attempt to evade *Mendenhall* doesn't just ignore what *Mendenhall* says; it also makes no sense on its own terms.

***iii.*** Finally, in *State v. Cyrus*, 997 N.W.2d 671, 681 (Iowa 2023), the Iowa Supreme Court held that courts cannot consider "the age or race of the suspect in determining whether the officer's conduct constituted a *seizure*." Like the Tenth Circuit, the court held that it could ignore *Mendenhall* because *Mendenhall*'s discussion of race "addressed a consent search, not a seizure." *Id.* That conclusion, as explained, is wrong. *Supra* pp. 11-15, 22-23.

**3. The Court can resolve any confusion in the lower courts by summarily reversing a future decision that fails to apply *Mendenhall*.**

Because the Court has already resolved the question presented in *Mendenhall* and the government hasn't asked the Court to overrule that decision, the Court shouldn't waste its scarce decisional resources on this case. The Court can clear up any confusion about *Mendenhall* by summarily reversing the next time a court erroneously refuses to consider race in the seizure analysis and the failure might make a difference. Indeed, this Court hasn't hesitated to summarily reverse lower courts when they contravene

its Fourth Amendment precedents, *see, e.g.*, *R.W.*, 2026 WL 1052344; *Lombardo v. City of St. Louis*, 594 U.S. 464 (2021) (per curiam); *Lanier v. South Carolina*, 474 U.S. 25 (1985) (per curiam), or other constitutional rulings, *see, e.g.*, *Andrew*, 604 U.S. at 96; *Bosse v. Oklahoma*, 580 U.S. 1 (2016) (per curiam). That is the most efficient way to address the handful of lower courts that have refused to apply *Mendenhall*, rather than giving this issue full merits briefing and argument just to apply *Mendenhall* and affirm.

### B. The government's policy arguments lack merit.

Unable to muster a persuasive reason for the Court's intervention, the government resorts to vague claims that the DCCA's rule (really, this Court's nearly 50-year-old rule) will hinder policework. None of the government's policy arguments is persuasive.

**1.** The government first claims (Pet. 20-21) that allowing courts to consider a defendant's race in determining whether a reasonable person in his shoes would have felt free to leave would somehow "hinder" law enforcement. But it doesn't explain how—a telling omission given that *Mendenhall* has been on the books since 1980. In those 46 years, courts around the country have considered race as one non-dispositive factor in the Fourth Amendment seizure analysis. *See supra* pp. 26-28. That includes the Ninth Circuit, with its massive population and numerous police departments. Despite nearly a half century of experience, the government cites no real-world evidence that the *Mendenhall* rule has caused any disruption to law enforcement.

**2.** The government also argues (Pet. 20-21) that race shouldn't be relevant to the seizure analysis because officers lack workable means of determining a suspect's race or how individuals of particular races might view interactions with the police. Neither contention has merit.

**a.** The argument that officers can't determine a person's race makes no sense. As the government concedes (Pet. 17), this Court's Fourth Amendment precedents allow officers to consider race in developing reasonable suspicion to conduct an investigatory stop. *See, e.g.*, *Brignoni-Ponce*, 422 U.S. at 886-87; *Martinez-Fuerte*, 428 U.S. at 563; *see also Vazquez Perdomo*, 146 S. Ct. at 3 (Kavanaugh, J., concurring). Conspicuously, the government doesn't claim that *Brignoni-Ponce* or *Martinez-Fuerte* was wrongly decided or that the power those cases conferred on officers is useless or unworkable. If officers can tell a person's race well enough to use it as a justification to stop a member of the public, there's no good reason why they can't use those same powers of observation to assess whether they're seizing a person and to avoid crossing the line from "somewhat intimidating" to "'so intimidating' that [a person] could reasonably have believed that he was not free to disregard the police presence and go about his business." *Chesternut*, 486 U.S. at 575-76.

The government's framing is wrong at a fundamental conceptual level. As the Court has explained, the seizure inquiry "is necessarily imprecise, because it is designed to assess the coercive effect of police conduct, taken as a whole, rather than to focus on particular details of that conduct in isolation." *Id.* at 573. That means race is just one factor among many, and that officers need ask only whether "the

reasonable man's interpretation," *id.* at 574, would include being perceived as being a member of a particular racial group that has suffered disproportionate violence at the hands of law enforcement.

**b.** The government's contention (Pet. 15-16) that officers can't tell how members of particular communities might react to them likewise gives officers too little credit. Law enforcement officers know the communities they police. They are well-positioned to know whether relations with particular groups are strained. And officers are expected to understand Americans' constitutional rights. Officers' conduct is judged by objective standards, and the Court's Fourth Amendment holdings and the exclusionary rule have encouraged "police training programs that make officers aware of the limits imposed by the fourth amendment and emphasize the need to operate within those limits." *United States v. Leon*, 468 U.S. 897, 920 n.20 (1984). Officers are capable of respecting those limits, including avoiding triggering a seizure by questioning in a non-threatening manner, *see Delgado*, 466 U.S. at 216, and by informing the people they question that they're free to refuse their requests and leave, *see Mendenhall*, 446 U.S. at 559.

## CONCLUSION

The Court should deny the petition.

Respectfully submitted.

Shay Dvoretzky
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
1440 New York Ave. NW
Washington, DC 20005

Brian D. Shefferman
SHEFFERMAN LAW
10325 Kensington Pkwy., #2
Kensington, MD 20895

Sherry M. Tanious
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
One Manhattan West
New York, NY 10001

Parker Rider-Longmaid
*Counsel of Record*
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
500 Boylston St.
Boston, MA 02116
617-573-4807
priderlo@skadden.com

Raza Rasheed
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
2000 Ave. of the Stars, Ste. 200N
Los Angeles, CA 90067

*Counsel for Respondent*

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