No. 25A169

IN THE

Supreme Court of the United States

KRISTI NOEM, SECRETARY, DEPARTMENT OF HOMELAND SECURITY, ET AL., *APPLICANTS*,

v.

PEDRO VASQUEZ PERDOMO, ET AL.

On Application to Stay the Order Issued by the United States District Court for the Central District of California and Request for an Immediate Administrative Stay

BRIEF IN OPPOSITION TO APPLICATION

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INTRODUCTION

This case involves widespread, lawless immigration raids in the Central District of California. Based on a "mountain of evidence," App. 63a, the district court found that the government has engaged in a pattern of conducting stops without reasonable suspicion—relying solely on traits like race or ethnicity, speaking Spanish or accented English, where a person happens to be, and the type of work a person does. The resulting harms are immeasurable. Numerous U.S. citizens and others who are lawfully present in this country have been subjected to significant intrusions on their liberty. Many have been physically injured; at least two were taken to a holding facility. And all have had to endure the prospect of unavoidable future intrusions based on broad demographic factors like the color of their skin.

The government never refuted the facts plaintiffs presented below. Faced with a lopsided record, and relying on the bedrock Fourth Amendment principle that a deprivation of liberty may be justified only by *particularized* suspicion and not by broadly applicable group characteristics, the district court temporarily enjoined the government from stopping people based only on four factors, alone or in combination: race or ethnicity; speaking Spanish or accented English; presence in certain kinds of locations frequented by the public, like bus stops, car washes, and parking lots; and type of occupation.

The district court broke no new legal ground. The TRO does not prevent the government from enforcing the immigration laws, conducting consensual encounters, or relying on any or all of the four factors *along with other facts* to form reasonable suspicion. And the TRO is short-lived. Preliminary-injunction briefing is underway, and plaintiffs have filed a class-certification motion. The appeal from which this stay application arises will be moot long before it could ever reach this Court on the merits.

Yet the government asks this Court to bless a regime that could ensnare in an immigration dragnet the *millions* of people in the Central District who are U.S. citizens or otherwise legally entitled to be in this country and are Latino, speak Spanish, work in "agriculture, construction, food services, [or] transportation" (Br. 8), or go in the normal course to bus stops, car washes, retail parking lots, or swap meets. The government's extraordinary claim that it can get very close to justifying a seizure of any Latino person in the Central District because of the asserted number of Latino people there who are not legally present is anathema to the Constitution.

A stay is not warranted here. The government has not shown any irreparable harm, given its continued ability to enforce the law and the clarity of the TRO.

Nor has the government shown a likelihood of success on the merits. First, plaintiffs have standing to seek prospective relief, as they face an imminent and substantial risk of being stopped again by a roving government patrol based only on demographic profiling. The district court found that the stops followed an officially authorized pattern, which included returning to the same places more than once and stopping some people multiple times. And the stops are targeted at people *just like plaintiffs* (and the organizational plaintiffs' identified members)—leaving little doubt that they face a substantial, imminent risk of future harm.

Second, the government's attack on the TRO under the Fourth Amendment lacks merit. In applying the requirement of individualized suspicion, this Court has repeatedly ruled that certain specific factors, including race or ethnicity, cannot by themselves justify a stop or other seizure. And, more generally, the Court has made clear that reasonable suspicion cannot arise from facts that would describe broad swaths of the law-abiding population. The TRO simply applies those established principles to the government's unprecedented actions.

Finally, the TRO *applies* this Court's recent decision in *Trump* v. *CASA*, 145 S. Ct. 2540 (2025), rather than contradicting it. *CASA* recognizes that there are circumstances in which a court cannot afford adequate relief to the parties without providing an incidental benefit to nonparties. Here, the district court, carefully exercising its discretion, granted only the relief that it found necessary to ensure that plaintiffs who live and work in the Central District are not once again subject to Fourth Amendment violations. Such an injunction—limited to a single judicial district and based on findings about the unique facts of the case before it—is nothing like the nationwide injunctions at issue in *CASA*.

If it were up to the government, no court could enjoin roving federal raiders from carrying out an authorized pattern of egregious Fourth Amendment violations, even based on a single factor like ethnicity. In the government's view, no one would have standing to seek such an injunction, even if the patrols had previously seized a plaintiff and were likely to do so again; no court could craft an injunction that would hold the government to the standard of individualized suspicion, because that would limit officers' discretion too greatly; and no injunction could cover patrols within a particular geographical area, because nonparties to the suit might benefit from that restraint. That is not and cannot be the law. This Court has approved Fourth Amendment injunctions in the past in appropriate cases. And if such injunctions were unavailable, the public would have little recourse against broad-scale government abuses of law-enforcement authority. The temporary injunction here should not be disturbed.

STATEMENT

1. In late May 2025, the administration set a "goal of a minimum of 3,000" immigration-enforcement arrests "every day." App. 5a n.2. White House officials instructed ICE to stop relying primarily on targeted investigations and instead "just

go out there and arrest" unauthorized noncitizens by rounding up people in public spaces like "Home Depot" and "7-Eleven." D. Ct. Doc. 45, at 14 & n.27. Agents were directed to "push the envelope" and be "creativ[e]"—*i.e.*, "[i]f it involves handcuffs on wrists, it's probably worth pursuing." *Id.* at 23 & nn.51-53.

Shortly thereafter, officials arrived in the Central District of California to conduct what the President described as "the largest Mass Deportation Operation * * * in History." App. 7a. Armed federal agents launched an unprecedented series of roving patrols targeting public locations like parking lots and bus stops; seizing Latino individuals (often grabbing or surrounding their targets); and, in many instances, placing those individuals in handcuffs and transporting them to holding facilities. App. 8a-13a, 84a-88a, 98a-101a, 106a, 108a. Predictably, those raids, which occurred almost daily, sparked widespread fear in the Central District, App. 107a-108a, where nearly half of residents are Latino and more than half speak a language other than English, App. 5a, 46a.

On June 20, 2025, three plaintiffs arrested during the raids filed a habeas petition and complaint in federal district court against government defendants, including the Secretary of Homeland Security. App. 73a. On July 2, plaintiffs filed an amended class-action complaint, joining several individual and organizational plaintiffs to their Fourth Amendment claim and including additional claims. App. 74a.

Shortly thereafter, on July 3, plaintiffs filed an ex parte application for a temporary restraining order, asking the district court to prohibit the government from conducting immigration-enforcement stops in the Central District without first establishing reasonable suspicion. App. 5a. In support of their request, plaintiffs submitted 21 sworn affidavits from the named plaintiffs and others and cited a host of videos and news articles corroborating those accounts. App. 6a.

Rather than grant the application ex parte, the district court ordered full briefing and a hearing, on a briefing schedule that the government itself requested. See D. Ct. Doc. 51. On July 8, the government filed its opposition. In support, the government submitted only two declarations: one from an ICE official explaining ICE's training and general practices, and another from a CBP official generally describing CBP's operations in Los Angeles. See App. 6a.

2. Following a hearing, the district court granted a TRO. App. 62a-113a.

a. The district court first set out the facts underlying the TRO request. App. 64a-73a. Beginning in or around early June 2025, federal agents repeatedly conducted a new type of raid throughout the Central District, targeting certain low-wage workers (*e.g.*, car-wash workers, farm workers, day laborers, and street vendors) at certain kinds of public locations (*e.g.*, bus stops, parks, street corners, and parking lots), based at least in part on apparent ethnicity. App. 67a. Agents would approach suddenly and in large numbers, heavily armed and masked, without identifying themselves, and shout commands at individuals they encountered, including businesses' customers. App. 67a-68a. When individuals tried to avoid engaging, agents followed them, pushed them to the ground, handcuffed them, and took them away. *Ibid.* At least one individual with lawful status was stopped twice by roving patrols in just 10 days, and at least two were taken to a holding facility. D. Ct. Docs. 38-11, at 9-10, 81-2, at 4-5.

The named plaintiffs' experiences are illustrative. On June 12, armed agents confronted Jason Brian Gavidia, a Latino U.S. citizen born in East Los Angeles, on the sidewalk outside a tow yard where he was working on his car. App. 71a. As he turned back to the yard, a masked agent directed him to stop. *Ibid.* The agent approached and asked whether Gavidia was American; Gavidia responded that he was. *Ibid.* The agent then asked what hospital Gavidia was born in, and Gavidia replied that he did

not know. *Ibid.* After the agent repeated the question twice more, and Gavidia twice more said that he did not know, the agent and a colleague slammed Gavidia against a metal gate, put his hands behind his back, twisted his arm, and seized his phone. App. 72a. Fearing for his life, Gavidia offered to show the agents his ID. *Ibid.*; D. Ct. Doc. 45-9, at 7. The agents took the ID, and about 20 minutes later, returned Gavidia's phone and set him free. App. 72a. They never returned his ID. *Ibid*.

On June 18, federal agents raided the car wash where Jorge Luis Hernandez Viramontes, another Latino U.S. citizen, had been working for 10 years. App. 71a. This was federal agents' third visit to the car wash in the weeks since the raids had begun, and the agents had detained his coworkers during previous encounters. See D. Ct. Doc. 45-4, at 5. Without identifying themselves, the agents asked Hernandez Viramontes whether he was a citizen. App. 71a. He said that he was. *Ibid.* The agents then asked for an ID, which he provided. *Ibid.* The agents then informed him that because he did not have his passport, he would have to go with them. *Ibid.* They put him in a vehicle and took him away, never informing him where he would be taken. *Ibid.* About 20 minutes later, agents brought him back and released him. *Ibid.*

Also on June 18, longtime Pasadena residents Pedro Vasquez Perdomo, Carlos Alexander Osorto, and Isaac Villegas Molina were at a Pasadena bus stop when four unmarked cars and a half dozen masked, plain-clothes agents converged on them. App. 70a. The agents did not identify themselves. App. 70a-71a. All three men were surrounded, questioned, handcuffed, and taken to a detention center. *Ibid.*

The organizational plaintiffs' members were subject to stops like those that the individual plaintiffs experienced. For instance, the United Farm Workers, a farm-worker union, has thousands of members in California, including a U.S. citizen whom agents seized while he and a colleague were walking on a public street. App. 64a-65a,

72a; D. Ct. Doc. 45-8, at 14. The Los Angeles Worker Center Network, an organization comprising labor organizations, has one member organization that represents car-wash workers, of whom dozens have been subjected to stops or arrests, and one such member submitted an affidavit describing how agents "grabbed" him at a car wash where he works while leaving his "lighter-skinned" coworkers alone. App. 64a, 72a; see D. Ct. Docs. 45-10, 45-13, at 7. And the Coalition for Humane Immigrant Rights, a California nonprofit with primarily low-wage, Latino members, has members (including U.S. citizens) who fear being seized and taken away based on their race and employment. App. 65a, 72a, 107a; see D. Ct. Doc. 38-9, at 6.

b. Applying the law to those facts, the district court first held that the individual plaintiffs had adequately alleged facts sufficient for standing. App. 95a-96a. The court observed that Gavidia, in particular, had suffered a concrete and particularized injury when he was violently seized, and that plaintiffs had established a "high likelihood of recurrent injury" given that "individuals have been subjected to multiple stops" and "a plethora of statements" suggested government approval and a pattern of government conduct in carrying out the aggressive, non-individualized raids. *Ibid.*

The district court then addressed each of the requirements for injunctive relief, starting with the determination that plaintiffs were likely to succeed on the merits of their Fourth Amendment claims. App. 97a-107a. The court described the "ample evidence" that seizures had occurred, including the named plaintiffs' mutually corroborating declarations. App. 98a-99a. And the court determined, again based on "ample evidence," that the seizures were not supported by individualized suspicion, but instead by broad-strokes demographic profiling based only on one or more of four factors: suspects' race or ethnicity, language or accent, presence at certain public locations, and type of work. App. 100a-102a. The court further found that the

government had failed to provide concrete details about any particular stop, and that the government's submissions *confirmed* that agents were not relying on particularized "intelligence or investigation." App.101a-102a & n.29. The court also found that plaintiffs' evidence established, for purposes of the TRO, an officially authorized "pattern of conduct." App. 106a n.33.

The district court next determined that plaintiffs would likely succeed in showing that sole reliance on the four factors would not give rise to reasonable suspicion. App. 103a-107a. The court observed that the government had cited no authority suggesting that a suspect's race or language could suffice for such suspicion. App.103a-104a. And the court reasoned that the "overlapping" factors of presence at a particular location and type of work likewise could not give rise to reasonable suspicion based solely on agents' assertions that noncitizens not legally present in the United States use and seek work at "certain types of businesses" like car washes. App. 104a. The government had provided no evidence as to how often "work crews" included undocumented individuals, and working in a "low wage occupation[]" is perfectly consistent with legal presence in this country. App. 104a-105a.

As to the remaining injunctive-relief factors, the district court found that plaintiffs would suffer irreparable harm absent a TRO; that the balance of hardships favored plaintiffs, as requiring compliance with the Fourth Amendment would not prevent enforcement of the law; and that the public interest supported restraining constitutional violations. App. 108a-109a. In addition, the court found that a district-wide injunction was necessary to "provide complete relief" *to the named plaintiffs*, as "it would be a fantasy to expect that law enforcement could and would inquire whether a given individual was among the named [plaintiffs] or the (putative) class before proceeding with a seizure" like those carried out by the roving patrols. App. 97a, 108a.

Accordingly, the district court issued a TRO tailored to those findings and limited to the district where plaintiffs reside, work, and travel. The court explained that the government may not "conduct[] detentive stops in this District unless the agent or officer has reasonable suspicion that the person to be stopped is within the United States in violation of U.S. immigration law." App. 111a. And the court specified that the government "may not rely solely on" the following four factors, "alone or in combination, to form reasonable suspicion" for stops, "except as permitted by law": (1) "[a]pparent race or ethnicity"; (2) "[s]peaking Spanish or speaking English with an accent"; (3) "[p]resence at a particular location (e.g. bus stop, car wash, tow yard, day laborer pick up site, agricultural site, etc.)"; or (4) "[t]he type of work one does." *Ibid.* The court did not bar the government from relying on any of those factors in combination with other facts establishing reasonable suspicion.

3. The court of appeals granted in part and denied in part the government's motion for a stay pending appeal. App. 1a-61a. The court first observed that the government had failed to meaningfully dispute in its stay application in that court that seizures requiring reasonable suspicion had occurred; that the seizures were based solely on the four enumerated factors; that the stops were part of an officially authorized pattern; and that sole reliance on the four factors, alone or in combination, does not create reasonable suspicion. App. 21a; see App. 101a.

The court of appeals then held that plaintiffs have standing to seek prospective injunctive relief. App. 23a-33a. In particular, the court held that there is a "realistic[] threat[]" that each named plaintiff would be stopped again, without reasonable suspicion, as part of the government's raids. App. 25a (quoting *Lyons*, 461 U.S. at 106). That was so both because the raids were part of an officially sanctioned pattern of relying solely on the four factors as sufficient for a stop and because the record showed

that the government would likely return to the same locations and detain individuals multiple times. App. 25a-27a. The court also distinguished *Lyons*, explaining that here, plaintiffs seek to enjoin initial seizures rather than subsequent conduct and plaintiffs cannot escape future injury by avoiding unlawful activity. App. 27a-29a.[1]

On the merits, the court of appeals agreed with the government that the proviso "except as permitted by law" rendered the TRO impermissibly vague and therefore stayed that provision. App. 38a, 61a. But the court otherwise rejected the government's argument that the TRO constitutes an "impermissible follow-the-law injunction," as the order as a whole specifies what the government is prohibited from doing. App. 39a-51a. The court explained that the TRO prohibits the government only from relying solely on the four factors (alone or in combination) in the context of particular enforcement activities in a particular place, without limiting how those factors may be used in connection with other facts. App. 41a. The court also explained that, in barring sole reliance on the four factors, the TRO requires the government to make reasonable-suspicion determinations based on the "totality of the circumstances" and particularized suspicion rather than on broad profiles that would sweep in huge numbers of U.S. citizens and other legally present persons. App. 42a-51a.[2]

The court of appeals further held that the district court did not err by entering a district-wide TRO. App. 51a-57a. The district court specifically found that alternative remedies would not provide the plaintiffs complete relief, and the court of

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[1] The court of appeals also determined that members of the organizational plaintiffs would have standing to sue in their own right. App. 29a-33a.

[2] Contrary to the government's claim (Br. 14), the Ninth Circuit did not "rule[] out" reliance on "knowledge obtained through an agent's experience." The court recognized that facts are inevitably "filtered through the lens" of "agents' training and experience" and noted that invocations of "experience" must be tied to "objective facts." App. 44a.

appeals agreed that an injunction barring the government from stopping only certain identified plaintiffs would be wholly ineffective, as agents who are stopping an unknown person based on ethnicity, language, location, and occupation—and doing so in an aggressive, threatening manner—cannot "discern in advance" whether that individual is covered by an injunction. App. 52a-54a. Alternatively, the court of appeals noted that the TRO might be justified under "the district court's authority to protect its jurisdiction to address the putative class members' claims." App. 56a n.15.

Finally, the court of appeals ruled that the government would not be irreparably harmed by the TRO; that plaintiffs would be substantially harmed if the TRO were stayed; and that the government had not faced procedural unfairness. App. 57a-60a.

4. During litigation of the government's stay request, the case has proceeded in district court. Plaintiffs have moved for a preliminary injunction and class certification. D. Ct. Docs. 128, 140. Plaintiffs requested an expedited schedule and a prompt hearing on the preliminary-injunction motion; the government asked for a hearing on October 9. D. Ct. Doc. 104. The district court set the hearing for September 24, and it will hear both motions at that time. D. Ct. Doc. 108.

ARGUMENT

I. The Government Is Unlikely To Prevail On The Merits

A. Plaintiffs Have Standing Given The Substantial, Imminent Risk Of Further Seizures

Given the systematic nature of the government's raids, which have targeted locations multiple times and resulted in seizures of numerous U.S. citizens and individuals with lawful status, plaintiffs have Article III standing to seek prospective relief. "[A] person exposed to a risk of future harm may pursue forward-looking, injunctive relief to prevent the harm from occurring, at least so long as the risk of harm

is sufficiently imminent and substantial." *TransUnion* v. *Ramirez*, 594 U.S. 413, 435-436 (2021). This Court's cases do not require *certainty* of future harm; it is sufficient if "there is a 'substantial risk' that the harm will occur." *Susan B. Anthony List* v. *Driehaus*, 573 U.S. 149, 158 (2014) (quoting *Clapper* v. *Amnesty Int'l*, 568 U.S. 398, 416 (2013)); cf. *Holder* v. *Humanitarian Law Project*, 561 U.S. 1, 15 (2010) (permitting pre-enforcement challenges based on "credible threat" of enforcement). As both courts below concluded, plaintiffs have made that showing—particularly for purposes of obtaining relief at this early, pre-discovery stage—where the district court found that plaintiffs reasonably expect that they will be subjected to additional seizures based on widespread raids targeting people with their precise demographic profile. See *Lujan* v. *Defs. of Wildlife*, 504 U.S. 555, 561 (1992) (type of proof necessary for standing evolves over life of the case).

1. The evidence that plaintiffs face a substantial, imminent risk of unlawful stops is overwhelming. First, as the district court found, the stops were widespread and recurrent. "[O]ne individual, J.M.E., has been stopped by [the government] twice" in "just 10 days—first on June 9, and again on June 19." App. 10a. The government stopped other individual plaintiffs and identified members of the organizational plaintiffs in just the first month of the roving patrols. *Ibid.* And record evidence shows "that [the government] ha[s] sent teams to the same place repeatedly." *Ibid.* For instance, plaintiff Hernandez Viramontes's car wash has been raided multiple times. D. Ct. Doc. 45-4, at 5. On the day agents detained him, they raided the car wash twice, and the second set of agents seemed unaware of the first raid. *Id.* at 6. Three different agents questioned his Latino co-manager, another U.S. citizen. *Id*. at 5. The agents' practice was not to check whether someone had been previously detained, but to come "out of the vehicles and start[] grabbing" people. D. Ct. Doc. 45-5, at 5.

Second, the district court found that the stops conducted by the roving patrols were based *only* on one or more of the four factors, including race or ethnicity. App. 100a-102a. When a roving patrol raided a car wash where one of the organizational plaintiffs' members was working, for example, an armed agent "grabbed" him and asked for his "papers," despite not detaining two "light[er] skin[ned]" individuals at the same worksite. D. Ct. Doc. 45-10, at 5-6.

Third, the district court found a real, immediate threat that plaintiffs will be subjected to further seizures at the hands of the roving patrols that follow the same pattern as the prior seizures. *E.g.*, App. 95a-96a, 107a. That was based in part on the court's finding of a pattern of officially authorized unlawful behavior, which in turn was based on a "plethora of statements" by government officials that "suggest approval or authorization" of the roving patrols' unconstitutional tactics. App. 96a, 106a n.33.

The government does not try to suggest that any of those findings are clearly erroneous—nor could it, as it put no evidence into the record contradicting them. And those findings are more than sufficient to satisfy the requirements for standing. The raids have been frequent and widespread; they have targeted the very characteristics that plaintiffs possess and the very places that plaintiffs go, often more than once. See *Susan B. Anthony*, 573 U.S. at 164 (credible threat of future injury where enforcement is not "rare occurrence"). And the raids have followed an unconstitutional pattern that officials have vowed to continue. See, *e.g.*, COA Doc. 26.1, at 15 (Noem statement). That amounts to a substantial and imminent threat of future injury, both for the individual plaintiffs and for the organizational plaintiffs' many members.

2. The government tries to brush all that aside based on *City of Los Angeles* v. *Lyons*, 461 U.S. 95 (1983), but *Lyons* is no obstacle to standing here. The plaintiff in *Lyons* had been placed in an illegal chokehold during a traffic stop and sought an

injunction against any future use of chokeholds under similar circumstances. See *id.* at 97-99. The Court concluded that Lyons did not have standing to seek that injunction because he was not "realistically threatened" by a repeat chokehold. *Id.* at 109. Critically, Lyons had not alleged that the City had "ordered or authorized police officers" to use chokeholds "absent some resistance or other provocation by the arrestee or other subject." *Id.* at 106, 110. And there was no reason to think that Lyons would "illegally resist arrest or detention" in the future or that "officers would disobey their instructions" and attempt a chokehold "without any provocation." *Id.* at 106. Lyons lacked standing because he could not show that he "might be realistically threatened by police officers who acted within the strictures of the City's policy." *Ibid.*

Plaintiffs here have made precisely the showing that Lyons did not. Immigration agents who "act[] within the strictures" of the government's roving patrols in the Central District "realistically threaten[]" the plaintiffs on an everyday basis. 461 U.S. at 106. They target plaintiffs' race or ethnicity; the language plaintiffs speak; the locations plaintiffs frequent; and the jobs plaintiffs perform. *E.g.*, App. 100a-101a. Indeed, that is the point of the raids—to stop as many people as possible, based on generalized profiles rather than individualized suspicion, and ask questions later.

Moreover, unlike in *Lyons*, here plaintiffs are swept up in the government's policy based not on provoking it or through unlawful acts they might commit, but simply because of how they look, speak, and go about their daily lives. See *Dep't of Com.* v. *New York*, 588 U.S. 752, 768 (2019) (characterizing *Lyons* as concerning "speculation about future unlawful conduct"); *Honig* v. *Doe*, 484 U.S. 305, 320 (1988) (Court "unwilling to assume" that party "will repeat the type of *misconduct* that would once again place him or her at risk" (emphasis added)). There is nothing plaintiffs can do to avoid the government's seizures. See *Honig*, 484 U.S. at 320 (standing exists

where plaintiff cannot "conform his conduct" to avoid harm). The government ignores that clear distinction.

Nor is there any reason to think that the government's unlawful conduct will *stop* threatening plaintiffs absent the TRO. The government's stay motions in the Ninth Circuit and this Court make clear that the government intends to keep relying solely on the four factors the TRO describes; if it intended otherwise, it would not be fighting so hard for permission to continue the practice that the district court has temporarily restrained. See *Honig*, 484 U.S. at 322 ("if the [state government body's] past practice" was "at odds with state policy," a state official "would not now stand before us seeking to defend the right * * * to engage in such aberrant behavior"). Indeed, as if to erase any doubt, the government has flatly declared its intent: after the district court entered the TRO, Secretary Noem called the judge "an idiot" and proclaimed that "none of our operations are going to change." COA Doc. 26.1, at 15.

3. The government attempts to downplay the significance of its official, unlawful pattern of action (Br. 19-21)—but that effort falls flat.

Even before *Lyons*, this Court recognized that the existence of an officially sanctioned pattern or practice of unlawful behavior supports an inference that plaintiffs already burdened by that pattern or practice also will be injured by it going forward. See *Allee* v. *Medrano*, 416 U.S. 802, 812 (1974) (citing "pervasive pattern of intimidation" by "law enforcement authorities"); *Hague* v. *CIO*, 307 U.S. 496 (1939) (similar); *Rizzo* v. *Goode*, 423 U.S. 362, 375 (1976) (distinguishing cases concerning "'pervasive pattern of intimidation' flowing from a deliberate plan"). *Lyons* echoed that point, noting the absence of any allegation that the City had "ordered or authorized" officers to use chokeholds in a way targeting the plaintiff. *Id.* at 106.

This Court's decision in *Clapper* v. *Amnesty International*, 568 U.S. 398 (2013),

cited in Br. 20, is not to the contrary. In *Clapper*, there was no past enforcement action directed at or affecting the plaintiffs, which made a fear of future government action far more speculative than where, as here, past action exists (and future action is promised). See 658 U.S. at 411; *Susan B. Anthony*, 573 U.S. at 164 ("[m]ost obvious[]" reason why "threat of future enforcement" is "substantial" is "history of past enforcement"). In addition, *Clapper* involved a "highly attenuated chain of possibilities" that is absent here. 568 U.S. at 411. The plaintiffs there had "no actual knowledge of" the government's "targeting practices," and the "governmental policy" at issue did "not regulate, constrain, or compel any action" by the plaintiffs, only by their possible foreign associates. *Ibid.* Here, by contrast, the government has engaged in a pattern of activity that targets *people just like plaintiffs*—which is precisely why plaintiffs have been caught up in the government's dragnets and why they are likely to be caught up again in the future. That is not an attenuated chain of possibilities; it is the natural consequence of plaintiffs being out in public when the government's agents are seizing people with plaintiffs' exact demographic profile.

4. The government asserts (at 21-22) that plaintiffs' standing in this case is a matter of statistical probability, but that argument is misplaced.

As an initial matter, *any* claim of future injury is in some sense a matter of probability, as no injury that has not yet occurred is absolutely guaranteed to do so. But this Court's precedents require only "a 'substantial risk' that the harm will occur," *Susan B. Anthony*, 573 U.S. at 158 (quoting *Clapper*, 568 U.S. at 416 n.5), and as the courts below stated, plaintiffs have established just such a risk of substantial, imminent harm under the facts presented here, including the government's repeated raids at the same locations, the fact that at least one identified individual has already been stopped more than once in just ten days, and the government's reliance on broad

demographic profiling based on the very characteristics that plaintiffs themselves possess rather than individualized suspicion of any kind. App. 25a-27a. Notably, the government has not put in *any* evidence suggesting that any of its raids and the resulting stops have been supported by more than the four factors named in the TRO or will be in the future.

The government relies on *Summers* v. *Earth Island Institute*, 555 U.S. 488 (2009), for the notion that any probability analysis is suspect, but the government misreads that case. The probability analysis that *Summers* rejected was one that assumed that the fact that an organization has a large number of members, standing alone, means that at least one of those members was probably affected by a challenged policy. See *id.* at 497-498. But here plaintiffs' standing does not rest solely on the sheer number of people in the Central District or on the size of the organizational plaintiffs' membership. Rather, as to both the individual plaintiffs and the organizational plaintiffs' members, there is specific, concrete evidence in the record of identified individuals who have been harmed by the government's pattern of roving patrols and are likely to be harmed in the future given where they live and work, how they look, and what language they speak. *E.g.*, App. 95a-96a.

The government is equally wrong to contend that plaintiffs' standing arguments somehow contradict plaintiffs' merits arguments that the government is employing broad demographic profiles that cover millions of Central District residents. Plaintiffs' evidentiary showings about how they have been affected by the government's roving patrols are not diminished by the fact that the government is visiting widespread harm on the people who live in that district. It is both the breadth and the specific nature of the government's actions that give rise to what the district court found was "a high likelihood of recurrent injury." App. 96a; see *ibid.* ("[T]his Court affirmatively finds

that there is a real and immediate threat that the conduct complained of will continue."); App. 107a; *Friends of the Earth* v. *Laidlaw Env't*, 528 U.S. 167, 184 (2000) (noting "continuous and pervasive" nature of "illegal" conduct).

In truth, it is the government's position that is contradictory. On the merits, the government urges that plaintiffs' bare characteristics—their race, their language, the nature of their job, the locations they visit—make them a valid target for seizures. *E.g.*, Br. 28. But when it comes to standing, the government says that those same characteristics are too broad to suggest that plaintiffs will be targeted again. The government cannot have it both ways. It cannot deploy widespread dragnets against people who look like the plaintiffs, speak like the plaintiffs, and go where the plaintiffs go, but then deem it purely "speculative" that plaintiffs might be targeted again. If the government were correct, it could send out roving groups of agents every night to engage in raids all over any city, involving the most blatantly unconstitutional invasions of law-abiding individuals' privacy imaginable, and it would be impossible to enjoin that behavior because no plaintiff could *definitively* prove that he would be caught up in a future raid that would—like the ones before it—violate the Constitution.

B. The District Court Correctly Applied The Fourth Amendment

The government has no likelihood of succeeding on the merits of its argument that the TRO is inconsistent with the Fourth Amendment. Indeed, as the court of appeals observed, the government did not meaningfully argue below that the TRO prevents it from making stops that the Fourth Amendment would permit. App. 21a. And even now, in this Court, the government does not seriously argue that its conduct comports with the Fourth Amendment. Instead, the government—disregarding precedent squarely to the contrary—suggests that courts can *never* issue injunctions restraining officers from violating the Fourth Amendment. And when the government

finally turns to the TRO here, it flatly misconstrues the order, insisting that the TRO would bar hypothetical seizures that it does not prohibit. In reality, the district court properly tailored the TRO to the government's actual conduct: the systematic seizure of U.S. citizens and noncitizens alike based on nothing more than four factors that, alone or in combination with each other, do not give rise to reasonable suspicion.

1. The district court found, based on "ample" record evidence, that the government routinely conducted "roving patrols" and seized individuals in the Central District "based solely upon" four factors. App. 100a-101a. The first factor is the individual's apparent race or ethnicity. See App. 67a, 100a-101a, 106a. The second factor is whether the individual speaks Spanish or accented English. See App.106a. And the third and fourth factors are the individual's location and type of work, which the district court described as "overlapping" because government agents had targeted "[c]ar wash workers, farm and agricultural workers, street vendors, recycling center workers, tow yard workers, and packing house workers" at their places of work, or else simply targeted individuals occupying "public places such as streets and sidewalks, parking lots, or the publicly-accessible portions of businesses." App. 67a, 101a, 104a.

The government has offered no meaningful evidentiary response at any stage of these proceedings. Instead, the government submitted conclusory declarations that either ignored or confirmed the government's sole reliance on the enumerated factors. App. 101a-102a. Given plaintiffs' overwhelming evidence and the government's near-total failure to rebut it, the district court did not clearly err by entering a TRO tailored to its finding that the government had systematically seized individuals based solely on the four factors. See App. 112a; *Ornelas* v. *United States*, 517 U.S. 690, 699 (1996) (reviewing court should assess factual findings for clear error and "give due weight to inferences drawn from those facts by resident judges").

2. The government's primary objection is that the TRO "categorically bar[s] immigration officers" from "forming reasonable suspicion for an investigative stop based on the four enumerated factors." Br. 24-25. But that flatly misdescribes the TRO. As both courts below explained, the TRO does not forbid "reliance on [the four] factors along with other factors" or require that the government "ignore" the four factors. App. 40a, 107a. The government is not categorically barred from forming reasonable suspicion based on *any* piece of information. Rather, consistent with precedent, the government's reasonable-suspicion determination "must" rest on whether "the totality of the circumstances," assessed in an individualized manner, creates a "*particularized* and objective basis for suspecting legal wrongdoing." App. 39a, 42a (quoting *United States* v. *Arvizu*, 534 U.S. 266, 273 (2002)) (emphasis added).

The government also incorrectly suggests that the TRO is infirm because it relies on specified "factors," thus constraining a totally freewheeling totality-of-the-circumstances inquiry. Br. 25. The TRO describes a particular set of circumstances, in a particular district, that will not, without something more, give rise to reasonable suspicion. See App. 42a. This Court has routinely done the same. In *Kansas* v. *Glover*, 589 U.S. 376 (2020), for example, this Court reaffirmed its longstanding rule that an individual's "demographic profile" is insufficient to create reasonable suspicion. *Id.* at 385 n.1 (citing *United States* v. *Brignoni-Ponce*, 422 U.S. 873, 876 (1975)). Likewise, in *Florida* v. *J.L.*, 529 U.S. 266 (2000), the Court held that a tip alleging that an individual is carrying a gun is insufficient to create reasonable suspicion. See *id.* at 272. And in *Illinois* v. *Wardlow*, 528 U.S. 119 (2000), the Court reaffirmed that an individual's "presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion." *Id.* at 124 (citing *Brown* v. *Texas*, 443 U.S. 47 (1979)). Like those rulings, the TRO here gives immigration agents

"a defined set of rules" that "make[] it possible" to determine "beforehand" whether "an invasion of privacy is justified." *Ornelas*, 517 U.S. at 697-698.

To be sure, as the government suggests, the reasonable-suspicion inquiry is "multi-faceted," *Ornelas*, 517 U.S. at 698, and factors independently susceptible to innocent explanation may, in combination, give rise to the necessary level of suspicion, see *Arvizu*, 534 U.S. at 274. But it is equally true that some facts about individuals, even in combination, are insufficient to create reasonable suspicion—and this Court has repeatedly said so. In *Reid* v. *Georgia*, 448 U.S. 438 (1980) (per curiam), for example, this Court held that law enforcement could not have reasonably suspected a man of criminal activity based on a combination of factors: he had traveled from a city known as a source of cocaine; "arrived in the early morning, when law enforcement activity is diminished"; and he and his companion carried only "shoulder bags" and were "trying to conceal the fact that they were traveling together." *Id.* at 440-441. Those circumstances, the Court explained, "describe a very large category of presumably innocent travelers, who would be subject to virtually random seizures were the Court to conclude that as little foundation as there was in this case could justify a seizure." *Id.* at 441. Similarly here, the district court reasoned that the four factors on which agents had relied were insufficient because they were "no more indicative of illegal presence in the country than of legal presence." App. 105a.

The upshot of the government's arguments would be that district courts can *never* enjoin continuing Fourth Amendment violations—which is an untenable result. In the court of appeals, the government argued strenuously that the TRO was invalid because it directed the government to comply with the Fourth Amendment "without adequately defining the prohibited actions." Gov't Mot. 12-14. But if an injunction can neither "restate[] the constitutional requirement of reasonable suspicion," *id.* at 14, nor

specify factors that are insufficient to generate reasonable suspicion, then an injunction requiring compliance with the Fourth Amendment is never permissible. That no-injunction approach cannot be reconciled with this Court's decisions. See *Terry* v. *Ohio*, 392 U.S. 1, 15 (1968) (endorsing "employment of other remedies than the exclusionary rule to curtail abuses"); *Allee*, 416 U.S. at 813 (affirming injunction barring police from stopping labor organizers without "adequate cause"). It also would risk grievous ongoing abuse by law enforcement, including on the basis of race. See *Allee*, 416 U.S. at 816 n.9 (citing *Lankford* v. *Gelston*, 364 F.2d 197 (1966) (en banc), where Fourth Circuit enjoined warrantless, nighttime searches in predominantly black neighborhood based only on anonymous, uncorroborated tips).

Ultimately, therefore, the government's objection boils down to this: the TRO is "discretion-limiting." Br. 26. But the Fourth Amendment of course limits government discretion—that is the whole point. See *Delaware* v. *Prouse*, 440 U.S. 648, 653-654 (1979) ("essential purpose" of Fourth Amendment is "to impose a standard of 'reasonableness' upon the exercise of discretion by government officials, including law enforcement agents," to "safeguard the privacy and security of individuals against arbitrary invasions"); *Brignoni-Ponce*, 422 U.S. at 882 (Fourth Amendment requires "more than the broad and unlimited discretion sought by the Government"). Presented with unrebutted evidence of a brazen pattern of unlawful seizures, the district court put a temporary halt to the government's unconstitutional practices, requiring only that the government consider the totality of the circumstances and adhere to the reasonable-suspicion requirement. Given the government's "persistent pattern" of "misconduct, injunctive relief is appropriate." *Allee*, 416 U.S. at 815.

3. The government fares no better with its second argument: that the TRO misapplies the Fourth Amendment in "evaluating the relevancy of the four factors."

Br. 26-30. The TRO provides only that the four factors, either alone or in combination with each other, are insufficient without more to create reasonable suspicion within the Central District. That is correct as a matter of law.

a. The Fourth Amendment's essential requirement is that "detaining officers" review the "totality of the circumstances" and arrive at a "particularized and objective basis for suspecting the particular person stopped of criminal activity." *United States* v. *Cortez*, 449 U.S. 411, 417-418 (1981). That is why, for example, a stop cannot be justified solely by an officer's conclusion that a suspect in a high-crime neighborhood "looked suspicious"; the officer has no basis for concluding that the suspect "himself was engaged in criminal conduct," as the suspect's activity was "no different from the activity of other pedestrians in [the same] neighborhood." *Brown*, 443 U.S. at 52. The district court properly applied that bedrock principle, finding that the government had systematically relied not on individualized information, but on broad, demographic profiles that cannot support reasonable suspicion. See App. 100a-107a.

In reaching that conclusion, the district court properly determined that the four factors on which the government had relied could not, without more, support reasonable suspicion. As even the government intermittently recognizes, see Br. 29-30, an individual's "Hispanic ethnicity" or ability to speak Spanish cannot alone create reasonable suspicion. This Court has squarely held that apparent "Mexican descent" alone cannot justify a stop, even near the border. *Brignoni-Ponce*, 422 U.S. at 886. After all, given the "[l]arge numbers of native-born and naturalized citizens" with such ancestry, a person's race or ethnicity is minimally probative of immigration status, and certainly cannot "justify stopping all Mexican-Americans to ask" if they are noncitizens. *Id.* at 886-887. The same reasoning applies to speaking Spanish—another characteristic that "applies to a sizable portion of individuals lawfully present in this

country." *United States* v. *Manzo-Jurado*, 457 F.3d 928, 937 (9th Cir. 2006); see *United States* v. *Galindo-Gonzales*, 142 F.3d 1217, 1223 (10th Cir. 1998). That is particularly so here, because—as the court of appeals observed—nearly half of the Central District's population identifies as Hispanic or Latino, and 37.7% of Los Angeles County speaks Spanish at home. App. 45a-46a.

Similarly, an individual's presence at a location frequented by both lawful and undocumented residents, or employment in a type of job held by both lawful and undocumented residents, does not independently create reasonable suspicion. As this Court has held, the bare fact that an individual is "in a neighborhood frequented by drug users" is insufficient to justify a stop, as such presence is "no different from the activity of other pedestrians in that neighborhood." *Brown*, 443 U.S. at 52. Likewise here, an individual's presence "near a carwash, in front of a Home Depot, or at a bus stop," App. 49a, does not meaningfully distinguish that individual from innumerable others. And even if a particular job type attracts a disproportionate share of people without lawful status, "a person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause." *Ybarra* v. *Illinois*, 444 U.S. 85, 91 (1979). Moreover, employment "common to both legal and illegal immigrants does little to arouse reasonable suspicion," *Manzo-Jurado*, 457 F.3d at 937-38, and here the government "provide[d] no evidence" that "any of the public places or types of businesses they are targeting are used exclusively, or even predominantly, by individuals illegally in this country," App. 47a.

For much the same reasons, the four factors do not create reasonable suspicion in combination. The factors are independently nonsuspicious, and together they amount to nothing more than a "broad profile" that countless people lawfully present in this country satisfy by doing nothing more than going about their day-to-day lives.

App. 48a; see *Reid*, 448 U.S. at 440-441 (rejecting reliance on suspect's "profile" divorced from his "particular conduct"). In a district with more than nine million Latino residents—and some neighborhoods with even greater proportions of Latino residents, see D. Ct. Doc. 45, at 14 n.28—the factors cover *millions* of people who are U.S. citizens or otherwise have lawful status, App. 5a.

That explains the damning record in this case, which reveals that the government's roving patrols have routinely stopped U.S. citizens—including some plaintiffs—without an individualized assessment of reasonable suspicion. See App. 64a; see also, *e.g.*, D. Ct. Docs. 45-4, 45-5, 45-9, 45-14. The four factors in combination do no more than "describe a very large category of presumably innocent [people], who would be subject to virtually random seizures were the Court to conclude that" the enumerated factors "could justify a seizure" without more. *Reid*, 448 U.S. at 441. The Fourth Amendment does not permit such "broad dragnets." *United States* v. *Alvarez*, 40 F.4th 339, 346 (5th Cir. 2022); see *ibid.* ("Without more, a description that applies to large numbers of people will not justify the seizure of a particular individual.").

b. The government's contrary position lacks merit. Again, the government insists that the TRO categorically bars any reliance on the four enumerated factors under any circumstances. See, *e.g.*, Br. 29. But again, that is simply incorrect. See p. 20, *supra*. Because the TRO does not prevent the government from relying on those factors, or treating them as relevant, the TRO is fully consistent with the idea that the enumerated factors might contribute to "support[ing]" reasonable suspicion "in appropriate circumstances." Br. 26-27.[3]

[3] Still, some of the government's examples are far removed from the Fourth Amendment's reasonableness touchstone. See *Glover*, 589 U.S. at 385. The government

Strikingly, the government never *once* acknowledges the bedrock Fourth Amendment requirement that reasonable suspicion be particularized and individualized. Instead, the government offers a chilling alternative: citing its own non-record estimate that "illegal aliens comprise about 10 percent of the entire Central District population," the government asserts that the "high prevalence of illegal aliens *should* enable agents to stop a relatively broad range of individuals." Br. 9, 28. Stated differently, because the government believes that there are many people residing in the Central District unlawfully, the government also believes that otherwise neutral factors may give rise to reasonable suspicion. That theory, which the government calls "common sense," Br. 27, is pure question begging, assuming the conclusion that "[a] large segment of the relevant population is engaged in violating the law." Br. 28.

Such a theory, if endorsed, would promote blatant racial profiling given the government's (similarly uncited) supposition that "most illegal aliens in the Central District hail from Mexico and Central America." Br. 27. And it would justify an extraordinarily expansive dragnet, placing millions of law-abiding people at imminent risk of detention by federal agents. That kind of regime—anathema to constitutional tradition—is precisely what the government has installed in the Central District.

Yet as to its specific conduct in that district, the government has almost nothing to say. The government never tried to justify the seizures in the record below, much less produced the kind of evidence it hypothesizes in this Court. And it betrays no concern at all that, as a result of the newly instituted raids, U.S. citizens caught in the

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surely does not believe (at 27) that blanket racial characterizations of "criminal organizations" meaningfully contribute to the reasonable-suspicion analysis, any more than blanket racial characterizations of those who commit particular types of offenses would, see Race of Sentenced Individuals F.Y. 2024, https://ida.ussc.gov/analytics/saw.dll?Dashboard.

government's dragnet now carry their passports with them at all times, hoping to avoid arrest and transfer to places unknown. See, *e.g.*, D. Ct. Doc. 45-21, at 5-6.

Instead, the government brings this Court only hypotheticals. In doing so, however, it offers no clear theory as to how the four factors in the TRO would be sufficient to justify reasonable suspicion *absent* some additional information. Br. 27. For example, the government suggests that agents might have reasonable suspicion if they encountered "someone who speaks only Spanish and works as a day laborer at a worksite that has been cited 30 times for hiring illegal aliens as day laborers." Br. 3. But that hypothetical is beside the point here, because it includes information beyond the scope of the TRO—namely, information specific to the history of the particular employer with whom the individual in question has closely associated himself, as distinct from the "type of work" that individual does, App. 111a, in conjunction with information about whether a particular location may be used *primarily* for illegal activity.

Other government hypotheticals seek to justify reliance on factors that, under this Court's own precedents, do not themselves give rise to reasonable suspicion—and therefore are rightly covered by the TRO. For instance, agents may not conduct stops in sole reliance on the fact that they previously encountered "illegal aliens seeking construction jobs congregat[ing] in a particular parking lot" and some people in the parking lot when agents arrive are "non-English-speaking," Br. 27—at least absent additional information that the same location is not commonly used by people lawfully present in this country. Cf. pp. 20, 23, *supra* (discussing decisions stating that mere

presence in even a high-crime area is not enough to give rise to reasonable suspicion).[4] It is perfectly possible that large numbers of U.S. citizens and people who are legally authorized to be in this country not only speak Spanish but also are present in such a parking lot in the course of their normal business—parking a car, entering a nearby store, or seeking work as a day laborer. See, *e.g.*, D. Ct. Doc. 45, at 12 n.10.

The critical difference between those two hypotheticals is that, in the first one, the government presupposes information giving rise to a "particularized" suspicion "that the particular individual being stopped is engaged in wrongdoing." *Cortez*, 449 U.S. at 418. The additional information beyond the enumerated factors ensures that the seized individual can meaningfully be distinguished from "other [individuals] in that neighborhood." *Brown*, 443 U.S. at 52. And that kind of particularity is essential to the TRO. Indeed, it is why the district court specified in the TRO the kinds of locations that would not independently justify reasonable suspicion: "bus stop, car wash, tow yard, day laborer pick up site, agricultural site, etc." App. 111a. Those locations, by their nature, receive a "large volume of legitimate traffic as well," *Brignoni-Ponce*, 422 U.S. at 882, such that a person's mere presence does not distinguish him from those lawfully present in the country.

If the Court were to conclude that the TRO is imprecise in some respect (which it is not), the Court could of course clarify its proper scope, as the court of appeals did below. But in the face of all the unrebutted evidence that plaintiffs submitted to the district court, there is no justification for discarding a TRO that is the only thing

[4] Contrary to the government's suggestion (at 26, 28), the Second Circuit has not held that gathering in a park to offer oneself for day labor suffices to create reasonable suspicion. See *Maldonado* v. *Holder*, 763 F.3d 155, 161 n.3 (2d Cir. 2014) (addressing only whether agents' conduct amounted to an "egregious violation of constitutional rights" so as to require suppression in a civil deportation proceeding).

standing between the government and the lawless conduct at issue here.

C. The TRO Is Necessary To Afford Plaintiffs Complete Relief

The government's assertion (at 30) that the TRO "flouts" this Court's recent decision in *CASA* is mystifying. The district court found, in the exercise of its discretion, that an injunction covering the Central District was necessary to afford complete relief *to the plaintiffs in this case*, App. 96a-97a—and, affording due regard to the district court's factual findings, the court of appeals agreed, App. 53a-54a. That finding is based on the specific facts presented here, where the government's roving patrols are making aggressive, frightening stops without reasonable suspicion across the district and doing so before any opportunity exists to identify the individuals being stopped. And that finding is an *application* of *CASA*, which expressly holds that it is acceptable for an injunction that goes no further than needed to "protect[]" the "suing plaintiff[s]" to have the incidental, "practical effect of benefiting nonparties." 145 S. Ct. at 2557. The government therefore has not come close to establishing a likelihood that it would succeed in challenging the scope of the TRO.

1. *CASA* disapproved a type of injunction that is not at issue in this case: a "universal injunction" that "prohibit[s] enforcement of a law or policy against *anyone*." 145 S. Ct. at 2548. The Court held that federal courts' equitable power extends only to grants of relief to the parties to the case, as "the universal injunction lacks a historical pedigree," "circumvent[s]" the requirements of Rule 23 for class actions, and goes beyond what is necessary for "relief between the parties." *Id.* at 2554, 2556-2557.

The Court also made clear, in a part of the opinion that the government omits to mention, that an injunction affording complete relief to the parties sometimes "advantag[es] nonparties" in an "incidental[]" fashion. 145 S. Ct. at 2557. In the "archetypal case," the Court explained, a plaintiff sues a neighbor blasting loud music

and the only "feasible" relief for the plaintiff is an order that the music be turned down or off, thus "necessarily benefit[ting]" any "surrounding neighbors too." *Ibid.*; see *id.* at 2557 n.12 (noting that "[t]here may be other injuries for which it is all but impossible for courts to craft relief that is complete *and* benefits only the named plaintiffs").

The injunction in this case benefits nonparties only incidentally in the course of providing the plaintiffs with the relief necessary to stop their injury—thereby comporting fully with this Court's decision. The district court found that, "to provide complete relief" to the plaintiffs under the specific and unusual facts presented here, the court had to issue an injunction that covered roving patrols "throughout the [Central] District." App. 97a; see *id.* at 96a (reciting principle that benefits to nonparties are permissible only when they result from an injunction that is as broad as "*necessary to give*" the parties "*the relief to which they are entitled*"); *id.* at 91a n.21 (noting "the Supreme Court's recent holding" in *CASA*). The court explained that "given how the enforcement actions" were conducted here, based on broad profiles rather than particularized information and in a fast and aggressive manner, *id.* at 67a-68a, 70a-72a, 98a-99a, 106a, it was impossible for immigration agents to "inquire whether a given individual was" among the plaintiffs "before stopping that individual," *ibid.*—even though the constitutional harm occurs at the moment of the stop, see App. 54. The court also found that stops by the roving patrols "have occurred on an ongoing basis throughout the District" at a variety of different locations, including public places, *id.* at 99a; see Br. 9 (government noting that "ICE's Enforcement and Removal Operations (ERO) field office for Los Angeles" has "jurisdiction" that "is coextensive with the Central District of California"), indicating that any narrower geographic limitation would expose plaintiffs, who reside and travel throughout the district, to stops by those patrols without reasonable suspicion, see, *e.g.*, D. Ct. Doc. 45-8, at 6.

In short, in the district court's equitable judgment, the TRO was necessary to protect *the parties* given the severity, frequency, scope, and nature of the government's conduct. See *Winter* v. *NRDC*, 555 U.S. 7, 24 (2008) (injunction is exercise of "sound discretion"); *Ashcroft* v. *ACLU*, 542 U.S. 656, 664 (2004) ("abuse of discretion" review).

2. The government's attacks on that reasoning, and on the court of appeals' refusal to displace the district court's discretionary determination, lack any merit. Although the government suggests that it is just seeking to enforce existing law, in reality the government seeks to change the law dramatically by reading *CASA* to forbid something that it expressly approves.

First, contrary to the government's argument (at 32), the court of appeals did not apply the wrong "legal standards." The Ninth Circuit correctly examined the district court's factual findings for clear error and found none, and it correctly applied the abuse-of-discretion standard to the TRO and found no abuse. App. 52a; see *ibid.* (TRO "relied on factual determinations about the effects that potential remedies would have and whether various remedies would be sufficient to completely rectify the alleged harms"). In doing so, the court of appeals did not—as the government claims—ignore the basic rule that an injunction must fit the wrong and not be more burdensome than needed. See *Salazar* v. *Buono*, 559 U.S. 700, 718 (2010); *Califano* v. *Yamasaki*, 442 U.S. 682, 702 (1979). To the contrary, the court explained at length that the injunction here is "necessary" for complete relief for the plaintiffs, which means that the burden it imposes is necessary as well. App. 54a, 56a.

Second, there was no error (*contra* Br. 32-33) in the district court's determination that government agents conducting roving patrols could not simply "inquire whether a given individual was" a plaintiff in this case "before proceeding with a seizure." App. 97a. The government does not engage with the court's factual findings

on that point, which are amply supported by a record showing that the roving patrols here engaged in particularly aggressive and unusual conduct that resulted in stops, based on broad profiles, before the government agents even spoke to or questioned the person being stopped. See App. 67a-68a, 70a-72a, 98a-99a, 106a; see also, *e.g.*, D. Ct. Doc. 45-5, at 5 (agents pour "out of the vehicles and start[] grabbing" people). In that setting, even assuming officers knew whom they were targeting, by the time an officer could check a list of plaintiffs, the stop would *already have occurred* and the constitutional injury would already have been inflicted. App. 54a-55a; see, *e.g.*, *Easyriders* v. *Hannigan*, 92 F.3d 1486, 1502 (9th Cir. 1996) (involving analogous facts), cited in App. 54a, 97a; *Reps. Comm.* v. *Rokita*, 2025 WL 2218472, at *8 (7th Cir. 2025).

Those unchallenged factual findings make this case quite different from the cases the government cites on "party-limited injunctions." Br. 32. Each of those cases arose in a context in which advance consultation of a list of parties allowed the government to avoid inflicting any constitutional injury on those parties—for instance, where the injury was immigration enforcement at places of worship, and DHS could consult a list of the places of worship involved in the case before taking action and thus avoid those specific places. See *Phila. Yearly Meeting of Religious Soc'y of Friends* v. *DHS*, 767 F. Supp. 3d 293, 336 (D. Md. 2025); see also *Kentucky* v. *Biden*, 57 F.4th 545, 557 (6th Cir. 2023). But those cases do demonstrate one thing: the government is wrong that accepting this injunction would somehow open the floodgates to injunctions that benefit nonparties, because the facts here are rare ones, and relief that provides a fully appropriate remedy does not often confer any such incidental benefit.

Third, the government's argument (at 33) that the district court could not grant relief to the organizational plaintiffs' members is both wrong and beside the point. It is wrong because the government confuses issues of standing and relief. The

organizational plaintiffs identified specific members who were harmed by the government's actions and face an imminent threat of future harm, see App. 14a-18a, 30a-31a—thus satisfying the standing requirement discussed in *Summers*. But no decision of this Court holds that, once standing exists, only specifically identified members of an organizational plaintiff can qualify for protection under a TRO or preliminary injunction. Indeed, this Court's decisions have reflected the opposite approach. See, *e.g.*, *TVA* v. *Hill*, 437 U.S. 153, 193-195 (1978); see also App. 55a-56a (noting First Amendment issues regarding mandated membership disclosure). In any event, because the district court found that the injunction was necessary to provide relief to the *named plaintiffs*, App. 97a, the scope of the injunction would remain the same even if the organization's members were (incorrectly) removed from the analysis.

Finally, the government's rhetoric (*e.g.*, at 33) about the courts exercising "general oversight over the Executive Branch" should be accorded no weight here. The district court exercised, on a temporary and emergency basis, exactly as much oversight over the Executive Branch as was necessary based on its factual findings to prevent grievous constitutional violations based on unprecedented government conduct—and no more. It did not issue a nationwide injunction; it did not simply hand out relief to nonparties; it did not depart from the rule set forth in *CASA*. Rather, it used its traditional equitable powers and performed precisely the role that courts are required to play in our system of checks and balances. If the government thinks that it can make a record showing that a narrower injunction is sufficient to provide party relief here (as it had every opportunity to do below), the government will have *another* chance in the ongoing preliminary-injunction proceedings.

3. Because the government's arguments lack merit, the Court need not go further to conclude that the government has not shown a likelihood of prevailing on its

scope-of-the-injunction arguments. But, as the court of appeals suggested without deciding (App. 56a-57a n.15), there is another, independent reason why the injunction's scope is proper. The plaintiffs in this case are representatives of a putative class covering all persons subject to immigration-enforcement stops in the Central District without reasonable suspicion, and a class-certification motion is currently pending in the district court. D. Ct. Doc. 140; see *CASA*, 145 S. Ct. at 2555-2556 (discussing class certification). Even prior to a grant of class certification, the district court has the power to "protect its jurisdiction to address the putative class members' claims" through issuance of a TRO. App. 56a-57a n.15 (citing *AARP* v. *Trump*, 145 S. Ct. 1364, 1369 (2025) (per curiam)). And here, those putative class members include a large number of people, found in every corner of the Central District. The TRO is therefore an appropriate means of ensuring that the court ultimately can afford the putative class members relief, if the court certifies a class and rules for plaintiffs on the merits.

II. This Court Is Not Likely To Grant Certiorari

This Court would not likely grant certiorari here. The government's appeal involves only a geographically limited TRO—a temporary, emergency injunction that will be in place only until preliminary-injunction proceedings are complete—that is based on a highly fact-intensive inquiry, not the answer to some purely legal question. The district-court proceedings are moving forward rapidly, and the court will soon rule on pending motions for a preliminary injunction and class certification that could well alter or moot many arguments the government has raised.

First, the preliminary-injunction proceedings are well underway, notwithstanding the government's efforts at delay, see, *e.g.*, D. Ct. Doc. 104, and those proceedings will conclude long before this Court could rule on a petition for a writ of certiorari and complete a merits-stage consideration of the TRO. See *NRDC* v. *Sw.*

Marine, 242 F.3d 1163, 1166 (9th Cir. 2001). The preliminary-injunction hearing is scheduled for September 24, 2025, under two months from now. See, *e.g.*, D. Ct. Docs. 104, 108, 128-8, 128-11. Any preliminary injunction that the district court enters will be based on a different record than the one here and may differ from the TRO.

Second, plaintiffs have filed a well-supported motion in the district court for certification of a district-wide class, D. Ct. Doc. 140, and the court is likely to decide that motion soon. If a class is certified, then the government's arguments about plaintiffs' standing and about the scope of the TRO will be mooted or, at minimum, dramatically limited. A certified class of every affected person in the Central District would drain any force from the argument that no party to this case has a sufficiently substantial and imminent risk of being subjected to an unconstitutional stop, based purely on race, ethnicity, language, occupation, or type of location, at the hands of a roving patrol. Further, injunctive relief properly runs to the members of a certified class—and here, those members would include a large number of people throughout the district, thus erasing any argument that a district-wide injunction is a form of the "universal" injunction this Court has disapproved. See *CASA*, 145 S. Ct. at 2555-2556.

The fact that the life of a TRO is so fleeting is exactly why, as a general matter, courts deem TROs non-appealable. See, *e.g.*, *Carson* v. *Am. Brands*, 450 U.S. 79, 84 (1981). But even assuming appealability, this Court is unlikely to spend its resources considering the merits of an intensely fact-driven TRO that will wink out like a soap bubble in the next month or so, at which time the factual record will look different than it looks today and the district court may well have made key additional rulings.

Even beyond that problem, this Court's traditional certiorari criteria are not met here. As explained above, the decisions below are fully in line with this Court's decisions on standing, reasonable suspicion, and the proper scope of an injunction.

Further, the government has not tried to identify any split among the circuits on any pertinent issue, and none exists.[5]

This Court should recognize this case for what it is: an unexceptional application of existing law to an exceptional set of circumstances. In Los Angeles and environs, the federal government is conducting widespread, aggressive immigration-related raids in public places using broad race- and ethnicity-based profiles, thereby severely intruding on the liberty of U.S. citizens and other individuals who are legally present and simply going about their daily business at Home Depots, bus stops, and car washes, and causing many of those individuals to stay inside, miss work, or alter their daily routines. Based on the evidentiary presentation to date, the lower courts have correctly identified that unprecedented conduct as a flagrant departure from the traditions of the Fourth Amendment warranting temporary injunctive relief, and there is no basis for displacing that conclusion.

III. The Government Has Not Established Any Irreparable Harm

The TRO issued on July 11 and has been in place for more than a month, yet the government has not identified or offered evidence of any irreparable harm inflicted by the TRO—or, indeed, any concrete harm at all. Nothing in the TRO prevents the government from enforcing the immigration laws in the Central District, including through consensual interactions, targeted enforcement, and warranted investigations, App. 63a, and the government has made quite clear that it is continuing to do so. By its terms, the TRO applies only to prevent the federal government's roving patrols from

[5] See, *e.g.*, *In re Navy Chaplaincy*, 697 F.3d at 1176-1177 (discussing *Lyons* and relying on existence of past policy in finding standing); *United States* v. *Freeman*, 914 F.3d 337, 347 (5th Cir. 2019) (no reasonable suspicion arising from facts that would describe large swaths of law-abiding populace); *Rokita*, 2025 WL 2218472, at *8 (post-*CASA*, recognizing that injunction may need to incidentally benefit nonparties).

violating the Fourth Amendment—and being temporarily restrained from violating the Constitution does not cognizably harm the government. Such a restraint does, however, prevent *enormous* harm to plaintiffs and the public. The courts below therefore correctly concluded that the government has not satisfied the irreparable-harm prong of the stay test and that the balance of harms sharply favors the plaintiffs.

1. The government's claim of irreparable harm is belied by its slow pace in seeking to displace the TRO. The government did not request expedition of the Ninth Circuit's stay proceedings and waited nearly a week between that court's stay denial and the stay request in this Court. The government sought an extension of time to file its merits brief in the TRO appeal in the Ninth Circuit. And the government asked the district court to set the preliminary-injunction hearing far in the future, even though the court's decision as to such an injunction will necessarily displace the TRO. COA Doc. 5; COA Doc. 52; D. Ct. Doc. 104. If the TRO truly threatened irreparable harm, one would have expected the government to act with greater dispatch.

The government's slow pace is doubtless explained by the fact that the TRO does not halt enforcement of immigration law in the Central District. All that the TRO does is enjoin the government from the unusual mode of enforcement that it has recently pursued—one that uses broad demographic profiles, rather than individualized suspicion, to decide when to invade the liberty interests of the district's residents. So long as the government is not relying only on the four factors the TRO lists and there are facts giving rise to reasonable suspicion of an immigration violation, the government remains free to stop individuals as part of an investigation. And the government has publicly declared, in the wake of the TRO, that its immigration-related activities in the Central District continue apace. D. Ct. No. 136-1, at 7 (stating that

under TRO, ICE will "conduct investigatory stops" and "detain" and "deport" people).[6]

2. Given that the TRO impedes immigration enforcement only to the extent that the enforcement is unconstitutional, it is not surprising that the government cannot identify any harm, irreparable or otherwise, arising from the TRO.[7]

The government asserts that if the TRO remains in place then immigration-enforcement efforts will be chilled because of the prospect that the government might be held in contempt. The lower courts rejected that assertion, and for good reason. The TRO is clear: the government can continue using any or all of the four listed factors *in conjunction with other facts* that give rise to individualized, reasonable suspicion. App. 39a, 107a. The government has comported itself that way in the past, so surely the government knows how to comport itself that way again now. And so long as the government is not violating the Fourth Amendment on a going-forward basis (as it claims it is not), then the TRO does not meaningfully constrain the government at all, and contempt would never be an issue. Accepting the government's contrary argument would prove far too much, as it would suggest that *any* Fourth Amendment injunction chills the government too greatly or oversteps the courts' assigned role.

The government tries to manufacture some uncertainty by pretending that the TRO says things that it does not say. First, the government asserts (at 37-38) that the Ninth Circuit somehow placed law-enforcement experience—which the TRO does not mention—out of bounds in assessing whether reasonable suspicion exists. But the

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[6] See also, *e.g.*, https://www.foxnews.com/video/6376703731112 (Border Patrol defendant stating *after* government stay filing here that "in Los Angeles right now" we "have agents out on the streets" making "apprehensions"); https://x.com/USAttyEssayli/status/1953117322333348006 (Aug. 6 statement by acting U.S. Attorney).

[7] The government tries (at 35) to invoke alleged harms from undocumented people's mere presence—but any such harms do not arise from the TRO.

court of appeals did no such thing. It correctly explained that facts are inevitably "filtered through the lens of the agents' training and experience," and noted only that invocations of agents' "experience" must be tied to "objective facts." App. 44a, 47a. Again, that is consistent with existing law. And nothing about the government's actions here is justified by experience tied to objective facts; instead, those actions are the result of sweeping demographic profiles of the kind that this Court long ago disapproved in the Fourth Amendment context. See *Brignoni-Ponce*, 422 U.S. at 876.

Second, the government suggests (at 38) that the district court has all but decided that the government must provide monitoring data and take other allegedly onerous affirmative actions. That is a red herring. The TRO does not require any of those actions, and plaintiffs' pending preliminary-injunction motion does not ask the court to require those actions going forward. D. Ct. Doc. 127. In any event, the government can hardly claim irreparable harm now based on a "preview" of what it thinks might happen in the future. Br. 38. The government can challenge and seek to stay a preliminary injunction if and when one issues, and certainly not before.

In the end, the government falls back to saying "trust us"—for instance, pointing to a government regulation that echoes the Fourth Amendment's requirements. Br. 36. But "trust us" has never been an acceptable government position in this Court. Cf. *United States* v. *Stevens*, 559 U.S. 460, 480 (2010) ("The First Amendment protects against the Government; it does not leave us at the mercy of *noblesse oblige*. We would not uphold an unconstitutional statute merely because the Government promised to use it responsibly."). And it is still less acceptable here, where the evidence of constitutional violations is overwhelming and unrefuted, and the lower courts have made factual findings that the government's say-so cannot displace.

3. The government also entirely neglects to mention the extremely serious and

irreparable harm to plaintiffs and the public that the TRO is averting. That extraordinary harm is well documented in the record. The government's roving patrols have deprived numerous people in the district of their liberty, including U.S. citizens and people who have a legal right to be present in the United States—and have done so in a particularly violent way, while treating people of different races and ethnicities in a highly disparate manner. See, *e.g.*, App. 67a, 71a-72a. In some cases, the unconstitutional stops in which those patrols have engaged have led to lengthy seizures, or have inflicted serious physical injuries on the individuals being stopped, or both. And the patrols have cast a pall over the district, where millions meet the government's broad demographic profile and therefore reasonably fear that they may be caught up in the government's dragnet, and perhaps spirited away from their families on a long-term basis, any time they venture outside their own homes. The government's infliction of that kind of harm is exactly what the Fourth Amendment is designed to prevent, and it marks a sharp break with this Nation's traditions.

Contrary to the government's suggestion, case-by-case adjudication of whether the roving patrols' stops comport with the Constitution is not a feasible alternative. Such adjudication does not *prevent* the harm of an unconstitutional stop based exclusively on one or more of the four factors. See *Corr. Servs.* v. *Malesko*, 534 U.S. 61, 74 (2001). And the government will inevitably make errors in the course of those stops that could result in the arrest and confinement of U.S. citizens. The district court's tailored TRO is the only way to prevent the government from persisting in its unconstitutional raids while the preliminary-injunction motion is pending, and this Court should not disturb the status quo with a stay.

CONCLUSION

The request for a stay should be denied.

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Respectfully submitted,

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