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.,

Respondents.

BRIEF OF FEDERATION FOR AMERICAN IMMIGRATION REFORM AS *AMICUS CURIAE* IN SUPPORT OF APPLICATION FOR STAY

CHRISTOPHER J. HAJEC
Counsel of Record
MATT A. CRAPO
DAVID L. JAROSLAV
FEDERATION FOR AMERICAN
IMMIGRATION REFORM (FAIR)
25 Massachusetts Ave., NW, Suite 330
Washington, DC 20001
chajec@irli.org
(202) 328-7004

Counsel for *Amicus Curiae*
Federation for American
Immigration Reform

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

CONSTITUTIONAL PROVISIONS

REGULATIONS

IDENTITY AND INTEREST OF *AMICUS CURIAE*

Amicus curiae Federation for American Immigration Reform (FAIR) is a nonprofit corporation and membership organization that was founded in 1979 and has its principal place of business in Washington, D.C. FAIR's mission is to inform the public about the effects of both unlawful and lawful immigration, and to defend American citizens, American workers, and the nation's environment by limiting overall immigration, enhancing border security, and ending illegal immigration. In short, FAIR seeks to protect all Americans against the substantial harms of mass migration by attaining strongly-enforced, patriotic immigration reform. To that end, FAIR has been involved in more 100 legal cases since 1980, either as a party or as *amicus curiae*, in which it has consistently defended American interests against illegal immigration into the United States.

The decision in this case will likely have a substantial impact on the tools available to the executive branch of the federal government in dealing efficiently, fairly, and safely with an illegal alien population estimated to exceed 18 million people in the United States. *Amicus* FAIR has direct and vital interests in defending the executive branch's authority to address the current illegal alien crisis.[1]

[1] No counsel for any party authored this brief in whole or in part and no

SUMMARY OF ARGUMENT

The Fourth Amendment to the Constitution of the United States requires merely that searches and seizures be "reasonable." This Court has long held that for temporary investigative "stops" or detentions, this requirement of reasonableness is met by "reasonable suspicion," a low standard significantly short of the probable cause standard required for an arrest. While purporting to apply this standard, however, the District Court imposed a vastly higher and more exacting standard.

Because the District Court failed properly to apply the Fourth Amendment's reasonable suspicion standard, this Court should stay the District Court's injunction.

ARGUMENT

The Fourth Amendment to the Constitution of the United States is straightforward: searches and seizures must be "reasonable." U.S. Const. amend IV. Petitioners have shown a strong likelihood of prevailing on the merits because reasonable suspicion under the Fourth Amendment requires far less than the requirements the District Court imposed.

The standard a court must look to in analyzing the reasonableness under the Fourth Amendment of a temporary investigative "stop" or detention has

---

person or entity, other than *amicus curiae*, its members, or its counsel, has contributed money that was intended to fund preparing or submitting the brief.

remained fundamentally the same since this Court's decision in *Terry v. Ohio*, 392 U.S. 1 (1968). In essence: "[I]n justifying the particular intrusion the police officer must be able to point to *specific and articulable facts* which, taken together with *rational inferences from those facts*, reasonably warrant that intrusion." *Id.* at 21. (emphasis added) The *Terry* Court stressed that the officer must have more than a hunch or exercise good faith; rather, "it is imperative that the facts be judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?" *Id.* at 21-22 (quoting *Carroll v. United States*, 267 U.S. 132, 162 (1925), and citing *Beck v. Ohio*, 379 U.S. 89, 96-97 (1964)).

Reasonable suspicion, therefore, is a clear standard, but it is a relatively low standard, less than the probable cause standard required for a formal arrest. And in applying this standard, courts must look to the "totality of the circumstances—the whole picture," *United States v. Cortez*, 449 U.S. 411, 417-18 (1981), while also accounting for officers' training and experience in drawing rational inferences from particular facts, that is, determining whether reasonable suspicion justifies a stop "not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement." *Id.* at 418.

As this Court elaborated in *Kansas v. Glover*, 589 U.S. 376, 380-81 (2020):

> "Although a mere 'hunch' does not create reasonable suspicion, the level of suspicion the standard requires is considerably less than proof of wrongdoing by a preponderance of the evidence, and obviously less than is necessary for probable cause." *Prado Navarette v. California*, 572 U. S. 393, 397, 134 S. Ct. 1683, 188 L. Ed. 2d 680 (2014) (quotation altered); *United States v. Sokolow*, 490 U. S. 1, 7, 109 S. Ct. 1581, 104 L. Ed. 2d 1 (1989).
>
> Because it is a "less demanding" standard, "reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause." *Alabama v. White*, 496 U. S. 325, 330, 110 S. Ct. 2412, 110 L. Ed. 2d 301 (1990). The standard "depends on the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Navarette*, *supra*, at 402, 134 S. Ct. 1683, 188 L. Ed. 2d 680 (quoting *Ornelas v. United States*, 517 U. S. 690, 695, 116 S. Ct. 1657, 134 L. Ed. 2d 911 (1996) (emphasis added; internal quotation marks omitted)). Courts "cannot reasonably demand scientific certainty . . . where none exists." *Illinois v. Wardlow*, 528 U. S. 119, 125, 120 S. Ct. 673, 145 L. Ed. 2d 570 (2000). Rather, they must permit officers to make "commonsense judgments and inferences about human behavior." *Ibid.*; *see also Navarette*, *supra*, at 403, 134 S. Ct. 1683, 188 L. Ed. 2d 680 (noting that an officer "'need not rule out the possibility of innocent conduct'").

Further, whether there is reasonable suspicion is not decided by a strict scrutiny analysis: whether an officer's suspicion and acts pursuant to that suspicion were reasonable "does not necessarily or invariably turn on the existence of alternative 'less intrusive' means." *Illinois v. Lafayette*, 462 U.S. 640, 647 (1983).

Finally, courts must consider the extent of a detainee's reasonable expectation of privacy in determining whether an officer had reasonable suspicion, needed reasonable suspicion, or could properly develop reasonable suspicion under the circumstances. For example, an officer generally need not have reasonable suspicion to enter areas of a business held open to the public, or to take a position immediately outside such areas, and could develop reasonable suspicion based on observations or other evidence subsequent to doing so. *See, e.g.*, *Florida v. White*, 526 U.S. 559 (1999); *INS v. Delgado*, 466 U.S. 210 (1984).

The District Court enjoined the government from relying on the following four factors, "alone or in combination, to form reasonable suspicion for a detentive stop":

- "Apparent race or ethnicity";
- "Speaking Spanish or speaking English with an accent";
- "Presence at a particular location (e.g. bus stop, car wash, tow yard, day laborer pick up site, agricultural site, etc.)"; and
- "The type of work one does."

App. at 111a. The Ninth Circuit declined to stay the injunction (for the most part) because the four factors "describe only a broad profile and do not demonstrate reasonable suspicion for any particular stop." *Id.* at 45a (internal quotation omitted). Regulations, however, rightly recognize that presence at

particular locations, such as locations at which illegal aliens are known to be picked up for work, alone are probative of unlawful presence and expressly permit ICE to question any person whom the officer believes to be an alien at various work sites without any particularized suspicion. *See*, e.g., 8 C.F.R. § 287.8(f) ("Nothing in this section prohibits an immigration officer from entering into any area of a business or other activity to which the general public has access or onto open fields that are not farms or other outdoor agricultural operations without a warrant, consent, *or any particularized suspicion* in order to question any person whom the officer believes to be an alien concerning his or her right to be or remain in the United States.") (emphasis added).

By enjoining the government from relying on four factors that obviously are probative of reasonable suspicion, especially to those with the specialized knowledge officers possess, the District Court flipped the reasonable suspicion standard on its head, making it a far higher and more exacting standard than probable cause and "demand[ing]" the very "scientific certainty," that this Court has expressly rejected. *Glover*, 589 U.S. at 380. Even those with a cursory knowledge of current conditions, let alone trained and experienced officers, would reasonably suspect that persons meeting the District Court's four factors were illegal aliens; the reasonable suspicion standard demands no more. Because the District Court's injunction imposes a standard beyond that

required by the Fourth Amendment, Petitioners are likely to succeed on the merits, and the injunction should be stayed.

CONCLUSION

For the foregoing reasons and those set forth by the government, the Court should grant the Application for Stay and stay the District Court's injunction.

Dated: August 12, 2025

Respectfully submitted,

CHRISTOPHER J. HAJEC
Counsel of Record
MATT A. CRAPO
DAVID L. JAROSLAV
FEDERATION FOR AMERICAN IMMIGRATION REFORM
25 Massachusetts Ave., NW, Suite 330
Washington, DC 20001
chajec@irli.org
(202) 328-7004

Counsel for *Amicus Curiae* Federation for American Immigration Reform