**No. 21-198**

# In the Supreme Court of the United States

ANTHONY W. KNIGHTS, PETITIONER

*v.*

UNITED STATES OF AMERICA

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

**BRIEF FOR THE UNITED STATES IN OPPOSITION**

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## QUESTION PRESENTED

Whether the lower courts correctly determined, on the particular facts of this case, that petitioner was not seized for Fourth Amendment purposes when officers parked next to his car and approached on foot.

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## OPINIONS BELOW

The opinion of the court of appeals on rehearing (Pet. App. 1a-49a) is reported at 989 F.3d 1281. An earlier, vacated opinion (Pet. App. 50a-59a) is reported at 967 F.3d 1266. The opinion of the district court (Pet. App. 60a-69a) is not published in the Federal Supplement but is available at 2018 WL 4237695. The report and recommendation of the magistrate judge (Pet. App. 70a-94a) is not published in the Federal Supplement but is available at 2018 WL 5624207.

## JURISDICTION

The judgment of the court of appeals was entered on March 10, 2021. The petition for a writ of certiorari was filed on August 6, 2021. The jurisdiction of this Court is invoked under 28 U.S.C 1254(1).

**STATEMENT**

Following a bench trial in the United States District Court for the Middle District of Florida, petitioner was convicted of possessing a firearm after having been convicted of a felony, in violation of 18 U.S.C. 922(g)(1) and 924(a)(2). Judgment 1. The district court sentenced him to 33 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. 1a-49a.

1. On January 26, 2018, two uniformed police officers were driving in a marked police car on a routine patrol in Tampa, Florida. Pet. App. 3a, 71a. At around 1 a.m., the officers saw two men—later identified as petitioner and Hozell Keaton—leaning into the open front doors of an Oldsmobile car parked on the lawn of a house, parallel to the street. *Id.* at 71a-72a. As the officers drove past, they heard someone try and fail to start the car. *Id.* at 3a. The officers knew from experience that the area had a high crime rate and gang activity. *Ibid.* They suspected that petitioner and Keaton might be trying to steal the car and decided to take a closer look. *Ibid.*

The officers turned around and parked on the street next to the Oldsmobile, so that the police car was facing in the opposite direction. Pet. App. 3a. "[T]he trunk of the police car was nearly aligned with the trunk of the Oldsmobile." *Id.* at 3a-4a. One of the officers got out of the car and tried to talk to Keaton, who walked into the house without responding. *Id.* at 4a. By then, petitioner was sitting in the driver's seat of the Oldsmobile and had closed the door. *Ibid.* The other officer approached the Oldsmobile with a flashlight and knocked on the driver's window. *Ibid.* Petitioner opened the car door, and the officer "was overwhelmed with an odor of burnt

marijuana." *Ibid.* When the officer asked petitioner if he had any marijuana, petitioner stated, "I'll be honest with you. It's all gone." *Ibid.* Officers searched petitioner and the car and found marijuana, marijuana residue, a scale, a ski mask, a handgun, a rifle, and multiple ammunition cartridges. *Ibid.* Petitioner later admitted that he owned the handgun. *Ibid.*

2. A grand jury in the Middle District of Florida charged petitioner with one count of possessing a firearm and ammunition after having been convicted of a felony, in violation of 18 U.S.C. 922(g)(1) and 924(a)(2). Pet. App. 5a. Petitioner moved to suppress the gun, the ammunition, and his confession on the theory that they were the fruits of an illegal seizure that had occurred either when the officers parked next to the Oldsmobile or when one approached the car and knocked on the driver's window. *Ibid.*

Petitioner's suppression motion was referred to a magistrate judge, who recommended granting it. Pet. App. 70a-94a. The magistrate judge took the view that a seizure had occurred for Fourth Amendment purposes when the officers parked their car next to the Oldsmobile, based primarily on a prior circuit decision concluding that the police had seized the occupants of a car by parking closely next to it. See *id.* at 79a-80a (discussing *United States* v. *Beck*, 602 F.2d 726, 727-729 (5th Cir. 1979)). The magistrate judge also took the view that the officers lacked a reasonable suspicion to conduct an investigatory stop at that point in the encounter. *Id.* at 86a-91a.

The district court declined to adopt the magistrate judge's recommendation and, after hearing argument, denied petitioner's suppression motion. Pet. App. 60a-69a. The court determined that the officers did not

seize petitioner when they parked their patrol car alongside the Oldsmobile and approached petitioner in the driver's seat, explaining that those actions constituted "a police-citizen encounter involving no detention and no coercion." *Id.* at 64a. The court observed that in this case, unlike in the circuit decision on which the magistrate judge had relied, the officers did not "park[] in" petitioner, who with "skilled driving" could have driven away in the Oldsmobile, if the engine could start. *Id.* at 68a. The court also found that petitioner could have "walked away"—as Keaton did. *Ibid.* The court further observed that, until the officers smelled marijuana, "there was no questioning, no display of weapons, no physical touching of [petitioner], no asking for ID, and no verbal exchange with [petitioner]." *Id.* at 69a. And the court determined that, after the officers smelled marijuana, they had probable cause to seize petitioner and to search his person and the car without a warrant. See *id.* at 65a-66a.

The case proceeded to a bench trial, at which petitioner stipulated to the relevant facts. Pet. App. 6a. The district court found him guilty and sentenced him to 33 months of imprisonment, to be followed by three years of supervised release. *Ibid.*; see Judgment 3.

3. The court of appeals affirmed, issuing a unanimous initial opinion (Pet. App. 50a-59a) and an amended opinion upon rehearing (*id.* at 1a-14a), with Judge Rosenbaum concurring in the judgment (*id.* at 15a-49a). In both decisions, the court of appeals agreed with the district court that no Fourth Amendment search or seizure had occurred until after the officers smelled marijuana (which justified the seizure). *Id.* at 2a, 51a.

a. In its initial decision, the court of appeals observed that, under this Court's precedents, police officers "are free to 'approach individuals on the street or other public places and put questions to them if they are willing to listen,'" and that the Fourth Amendment is "not implicated" in such "consensual encounters." Pet. App. 55a (quoting *United States* v. *Drayton*, 536 U.S. 194, 200 (2002)) (brackets omitted). The court further explained that the line between a consensual police encounter and a seizure is whether "a reasonable person would feel free to terminate the encounter." *Id.* at 56a (quoting *Drayton*, 536 U.S. at 201). And the court explained that to conduct that inquiry, it "must imagine how an objective, reasonable, and innocent person would feel, not how the particular suspect felt." *Ibid.* (citing *Drayton*, 536 U.S. at 202, and *Michigan* v. *Chesternut*, 486 U.S. 567, 574 (1988)).

Like the district court, the court of appeals found that a reasonable person in petitioner's circumstances "would have felt free to leave" when the police approached the Oldsmobile. Pet. App. 57a. The court observed that petitioner "was physically capable of walking away," as his companion Keaton did, or "could have driven away." *Ibid.* The court emphasized that the officers "did not activate the lightbar or siren on the patrol car" and did not "display their weapons, touch [petitioner], or even speak to him—let alone issue any commands or ask him for his identification and retain it" before approaching. *Ibid.* And, addressing petitioner's contention that "'young African-American men feel that they cannot walk away from police without risking arrest or bodily harm,'" the court stated that "the age and race of a suspect may be relevant factors," but that the "totality of the circumstances" established

that "this encounter was not coercive." *Id.* at 59a (citing *United States* v. *Mendenhall*, 446 U.S. 544, 558 (1980)).

b. Petitioner sought rehearing en banc, arguing that the court of appeals had held "that being a young Black man is a factor when considering the coerciveness of police encounters," but "not a factor that matters." C.A. Pet. for Reh'g 8. The court of appeals ordered the government to respond to the motion and to address "whether the race of a suspect may be a relevant factor in deciding whether a seizure has occurred under the Fourth Amendment." Pet. App. 95a. The panel then granted rehearing, vacated its initial opinion, and issued an amended panel opinion. *Id.* at 1a-14a.

In its amended opinion, the court of appeals stated that "the race of a suspect is never a factor" in the objective inquiry used to distinguish between consensual police-citizen encounters and Fourth Amendment seizures. Pet. App. 11a. The court observed that neither this Court nor any other court of appeals had "considered race in the threshold seizure inquiry." *Ibid.* In particular, the court explained that this Court's decision in *United States* v. *Mendenhall*, *supra*—on which the panel had relied in its initial opinion "for the proposition that race might be a relevant factor," Pet. App. 11a—had established only that race "is 'not irrelevant' to the *voluntariness* of a seizure," without addressing "the relevance of race to the existence of a seizure," *ibid.* (citation omitted).

The court of appeals recognized that the "threshold seizure inquiry" must ask "whether a reasonable person would have believed he was not free to leave in the light of the totality of the circumstances," which is an "objective test." Pet. App. 12a. The court observed that a

"suspect's personal characteristics" bear on that objective test "only insofar as they have an 'objectively discernible relationship to a reasonable person's understanding of this freedom of action.'" *Ibid.* (quoting *J.D.B.* v. *North Carolina*, 564 U.S. 261, 275 (2011)). The court explained that in contrast to age, which it would take into account, see *id.* at 12a-13a, race generally does "not lend [itself] to objective conclusions," *id.* at 13a. "There is no uniform life experience for persons of color," the court observed, "and there are surely divergent attitudes toward law enforcement officers among members of the population." *Ibid.* (citation omitted). And the court expressed concern that, "even if [it] could devise an objective way to consider race" as part of the threshold inquiry, doing so would risk "running afoul" of constitutional equal-protection principles—for example, by varying the scope of the Fourth Amendment's protections by the race of the suspect involved. *Id.* at 14a.

Judge Rosenbaum filed an opinion concurring in the judgment. Pet. App. 15a-49a. She agreed that, under "current precedent," no seizure had occurred before smelling marijuana provided justification for it. *Id.* at 19a; see *id.* at 19a-23a. She also agreed that equal-protection principles "preclude[] courts from considering race as a relevant factor" in the objective, threshold inquiry for distinguishing a seizure from a consensual encounter. *Id.* at 15a; see *id.* at 27a-37a. She wrote separately to suggest that this Court "adopt a Fourth Amendment version of the *Miranda* rule for dividing consensual from non-consensual interactions," but acknowledged that this Court "has previously dismissed" similar proposals. *Id.* at 38a; see *id.* at 38a-49a.

**ARGUMENT**

Petitioner contends (Pet. 21-34) that the court of appeals was required to take his race into account when evaluating whether a reasonable person would have felt free to terminate the encounter in the circumstances of this case. That contention lacks merit. The decision below is correct and does not conflict with any decision of this Court. Petitioner further contends (Pet. 11-16) that federal and state courts have taken inconsistent approaches to the role of race in this context. But petitioner identifies no conflict of authority warranting this Court's review. The Court recently denied a petition for a writ of certiorari presenting the same issue, see *Easley* v. *United States*, 139 S. Ct. 1644 (2019) (No. 18-8650), and the same course is warranted here. To the extent petitioner seeks independent review of the question whether, irrespective of race, the police seized him before smelling marijuana, that highly fact-bound question also does not warrant further review. Accordingly, the petition for a writ of certiorari should be denied.

1. The court of appeals correctly determined that the police did not seize petitioner when they parked their car next to the Oldsmobile and one officer knocked on the driver's window. Pet. App. 9a; see *id.* at 4a.

a. The Fourth Amendment guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. Amend. IV. The "seizure" of a person "can take the form of 'physical force' or a 'show of authority'" by the police "that 'in some way restrains the liberty of the person.'" *Torres* v. *Madrid*, 141 S. Ct. 989, 995 (2021) (quoting *Terry* v. *Ohio*, 392 U.S. 1, 19 n.16 (1968)) (brackets omitted). In particular, this Court has made clear that an individual is seized within

the meaning of the Fourth Amendment only if a law enforcement officer applies physical force to restrain the individual—whether or not the restraint is "ultimately successful," see *id.* at 995 (quoting *California* v. *Hodari D.*, 499 U.S. 621, 626 (1991))—or if the officer invokes his authority to stop the individual and the individual submits to that show of authority, see *Hodari D.*, 499 U.S. at 626-627; *Brower* v. *County of Inyo*, 489 U.S. 593, 595-597 (1989). Thus, a "police officer may make a seizure by a show of authority and without the use of physical force, but there is no seizure without actual submission." *Brendlin* v. *California*, 551 U.S. 249, 254 (2007).

The Court has recognized that "when an individual's submission to a show of governmental authority takes the form of passive acquiescence, there needs to be some test" for distinguishing between a consensual encounter with the police, which does not implicate the Fourth Amendment, and a Fourth Amendment seizure. *Brendlin*, 551 U.S. at 255. And the test that this Court has long employed is whether, "in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *Ibid.* (quoting *United States* v. *Mendenhall*, 446 U.S. 544, 554 (1980) (opinion of Stewart, J.)). If the person "'has no desire to leave' for reasons unrelated to the police presence," the inquiry becomes whether "'a reasonable person would feel free to decline the officers' requests or otherwise terminate the encounter.'" *Ibid.* (quoting *Florida* v. *Bostick*, 501 U.S. 429, 435-436 (1991)).

That inquiry is "objective" and is undertaken from the perspective of a "reasonable person," without regard to the individual's subjective mental state. *United States* v. *Drayton*, 536 U.S. 194, 202 (2002) (discussing

*Bostick*, 501 U.S. at 438); see *Michigan* v. *Chesternut*, 486 U.S. 567, 574 (1988) (explaining that the reasonable-person test "calls for consistent application from one police encounter to the next, regardless of the particular individual's response to the actions of the police," thus ensuring that "the scope of Fourth Amendment protection does not vary with the state of mind of the particular individual being approached"). Relevant circumstances include the location of the encounter, the number of officers, the officers' proximity to the individual, and the officers' conduct, including whether they displayed their weapons or made any threats or commands. See, *e.g.*, *Bostick*, 501 U.S. at 437; *Chesternut*, 486 U.S. at 574-576.

The court of appeals correctly applied those principles to the specific facts of this case in determining that the officers did not seize petitioner when they parked next to the Oldsmobile—while leaving petitioner space to drive or walk away—or when one approached and knocked on the driver's window while shining a flashlight. Pet. App. 4a, 7a-10a. The court observed that, before knocking on the driver's window, the officers "did not activate the lightbar or siren on the patrol car," did not "display their weapons," and did not "touch," "command[]," or "even speak to" petitioner. *Id.* at 9a. Nor was petitioner blocked in. *Id.* at 4a. The court also observed that Keaton—the second individual standing near the Oldsmobile—"[i]n fact * * * did leave," *id.* at 9a, despite one officer's effort to engage him.

b. Petitioner errs in contending (Pet. 22-34) that the court of appeals was required to account for race in evaluating the totality of the circumstances. This Court has never relied on race to determine that a Fourth Amendment seizure occurred. See Pet. App. 11a.

The threshold inquiry into the existence of a seizure has always been "an objective question." Pet. App. 12a; see *Hodari D.*, 499 U.S. at 628. Some personal characteristics, such as age, may be relevant if they have an "objectively discernible relationship to a reasonable person's understanding of his freedom of action." *J.D.B.* v. *North Carolina*, 564 U.S. 261, 275 (2011); see *id.* at 271-277 (holding that courts may take into consideration a suspect's youth in the objective inquiry into whether the suspect is in custody for *Miranda* purposes). But race is not such a characteristic. Petitioner does not identify any comparable "objectively discernible relationship," *id.* at 275, between race and whether a reasonable person would feel free to terminate an encounter with the police. To the contrary, as the court of appeals observed, "[t]here is no uniform life experience for persons of color, and there are surely divergent attitudes toward law enforcement officers among members of the population." Pet. App. 13a (quoting *United States* v. *Easley*, 911 F.3d 1074, 1082 (10th Cir. 2018), cert. denied, 139 S. Ct. 1644 (2019)). Courts would thus lack any "uniform way" to account for a suspect's race, unlike age, while still maintaining an "objective standard for Fourth Amendment seizures." *Easley*, 911 F.3d at 1082. And under petitioner's approach, the exact same objective conduct by the police might constitute a seizure for a black suspect but not for a non-black suspect (or vice versa). That result would be contrary to the objective inquiry this Court has prescribed—particularly in contexts where the police approach large groups of individuals that may include persons of various races, such as drug-interdiction efforts on a bus. See *Drayton*, 536 U.S. at 197-198; *Bostick*, 501 U.S. at 431-432.

The court of appeals stated that applying a "race-conscious reasonable-person test" would violate equal-protection principles. Pet. App. 14a; accord *id.* at 27a-37a (Rosenbaum, J., concurring). Petitioner contends (Pet. 32-34) that the permissible consideration of race in other Fourth Amendment contexts dispels any equal-protection concerns. But none of petitioner's putative counterexamples—such as the consideration of race when police seek to match an individual to the description of a suspect (see Pet. 33)—is analogous to attempting to view the circumstance of a seizure through different lenses depending on someone's race. This Court has thus allowed for consideration of race only in inquiries that turn on someone's subjective mindset, such as voluntary consent to a search or seizure. *Mendenhall*, 446 U.S. at 558; see Pet. App. 12a (explaining that the voluntariness inquiry has a "subjective" component); see also *Schneckloth* v. *Bustamonte*, 412 U.S. 218, 226 (1973) (explaining that the personal "characteristics of the accused," such as "lack of education," may be considered in evaluating voluntariness).

2. Petitioner claims (Pet. 11-16) that federal and state courts are divided on whether a suspect's race may be considered as part of the objective inquiry into whether a reasonable person would feel free to terminate an encounter with the police. Petitioner does not, however, identify any federal court of appeals or state court of last resort that has in fact incorporated race into that inquiry, and any disagreement in dicta would not warrant this Court's review. See Sup. Ct. R. 10(a) and (b).

As petitioner acknowledges (Pet. 11-12), two other federal courts of appeals have, like the Eleventh Circuit here, rejected the consideration of race in the reasonable-

person inquiry for determining whether a seizure has occurred. See *Easley*, 911 F.3d at 1081 (10th Cir.) ("[W]e reject [the defendant's] argument that we should consider subjective characteristics like race as part of our reasonable person analysis."); *Monroe* v. *City of Charlottesville*, 579 F.3d 380, 386-387 (4th Cir. 2009) ("To agree that [the suspect's] subjective belief that he was not free to terminate the encounter was objectively reasonable because relations between police and minorities are poor would result in a rule that all encounters between police and minorities are seizures. Such a rule should be rejected."), cert. denied, 559 U.S. 992 (2010).

Petitioner errs in arguing (Pet. 14) that the Seventh Circuit adopted a contrary approach in *United States* v. *Smith*, 794 F.3d 681 (2015). As the decision below recognized, the discussion of the issue in *Smith* was nonbinding "dicta." Pet. App. 12a; see *id.* at 11a (concluding that no other circuit court has "considered race in the threshold seizure inquiry"). In *Smith*, the Seventh Circuit determined that a seizure had occurred when two officers used their bikes to "obstruct[]" a pedestrian's "path forward" in a "dark alley," one of the officers dismounted and approached with "his hand on his gun," and that officer "aggressive[ly]" questioned the pedestrian about possessing weapons. 794 F.3d at 685. The court found that, "[g]iven these factors," the pedestrian "was seized for purposes of the Fourth Amendment." *Ibid.* Having made that finding, the court nonetheless addressed the defendant's "argument that the reasonable person test should take into account [his] race." *Id.* at 687. The court stated that race "is 'not irrelevant' to the question of whether a seizure occurred" but is "not dispositive either." *Id.* at 688. That language was not part of the court's holding; indeed, the

Seventh Circuit emphasized that it had found a seizure on the facts of that case "without taking into account [the defendant's] race." *Ibid.*

Petitioner's reliance (Pet. 13) on the Ninth Circuit's decision in *United States* v. *Washington*, 490 F.3d 765 (2007), is also misplaced. There, the Ninth Circuit concluded—without any consideration or even mention of race—that the defendant had *not* been seized when an officer parked his car nearby and approached the defendant's car on foot with a flashlight. See *id.* at 769-770. After the officer approached, the defendant consented to a search of his person, which the Ninth Circuit found to be voluntary. *Id.* at 771. But it then concluded that the officer had "exceeded the scope of [the defendant's] consent," *id.* at 774, thereby transforming the encounter into an investigatory stop for which the officer needed (and lacked) reasonable suspicion, see *id.* at 771-774. In so doing, the court stated that it had taken into account testimony from the suppression hearing about two then-recent "publicized shootings by white Portland police officers of African–Americans." *Id.* at 773; see *id.* at 768. The court did not suggest that it was determining whether a seizure occurred based on the defendant's race; instead, the court was primarily addressing the scope of voluntary consent—which, as explained above (see p. 12, *supra*), has a subjective component.

Similarly, in *Dozier* v. *United States*, 220 A.3d 933 (D.C. 2019) (discussed at Pet. 13-14), the court was addressing whether a defendant had voluntarily consented to a pat-down search during an encounter that the court assumed "began in a consensual manner," *id.* at 941; see *id.* at 941-946. And given the totality of the circumstances there, the court's discussion of race in

deeming the defendant's "fear of harm" to be "particularly justified," *id.* at 944, was "unnecessary" to the outcome, *id.* at 949 (McLeese, J., concurring in the judgment) (stating that the issue of suspect's race had not been "raised in the trial court" or "brief[ed]" on appeal, and questioning the majority's treatment of it).

Finally, petitioner cites (Pet. 15-16) two decisions in which state supreme courts incorrectly perceived a conflict of authority in the federal courts of appeals but did not themselves adopt a race-based approach to the reasonable-person test. See *Commonwealth* v. *Evelyn*, 152 N.E.3d 108, 120-121 (Mass. 2020); *State* v. *Spears*, 839 S.E.2d 450, 460-461 (S.C.), cert. denied, 141 S. Ct. 859 (2020).

3. In any event, this case would be an unsuitable vehicle in which to address petitioner's request to take account of race in the reasonable-person test because resolving that issue in his favor would make no difference to the outcome. As the panel's unanimous original opinion recognized, under the totality of the circumstances, a reasonable person—of any race—would have felt free to terminate this encounter with the police. See Pet. App. 58a-59a. The officers did nothing more than park next to the car in which petitioner was sitting and knock on the driver's window. Keaton, who is himself black, did in fact leave the scene, walking from the passenger side of the Oldsmobile to a nearby house despite an officer's effort to engage him in conversation. *Id.* at 9a; see D. Ct. Doc. 28, at 2-3 (May 31, 2018). And because nothing in the amended opinion signals a retreat from that determination, even a decision from this Court adding race as a required component of the objective seizure inquiry would not change the result. Moreover, even if a seizure had occurred, the government argued

below that the police had the requisite reasonable suspicion for an investigatory stop. Although the magistrate judge recommended otherwise, see Pet. App. 86a-91a, the district court and court of appeals had no occasion to address that separate basis for denying petitioner's motion to suppress.

To the extent that petitioner separately seeks this Court's review of the question whether he was seized "regardless of the role of race" (Pet. 34; see Pet. i), that highly fact-bound question does not warrant further review. Apart from his view that the lower courts were required to consider his race, petitioner does not allege any legal error in the decision below and instead merely takes issue with how the court of appeals applied settled law to the specific facts of this case. See Pet. 34-35. "A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Sup. Ct. R. 10; see, *e.g.*, *United States* v. *Johnston*, 268 U.S. 220, 227 (1925) (explaining that the Court ordinarily does not "grant * * * certiorari to review evidence and discuss specific facts"). And under what the Court "ha[s] called the 'two-court rule,' the policy has been applied with particular rigor" where, as here, the "district court and court of appeals are in agreement as to what conclusion the record requires." *Kyles* v. *Whitley*, 514 U.S. 419, 456-457 (1995) (Scalia, J., dissenting); see *Graver Tank & Mfg. Co.* v. *Linde Air Prods. Co.*, 336 U.S. 271, 275 (1949).

Nor finally does petitioner demonstrate any need for further "guidance" (Pet. 36) in this area or in this case. Petitioner states (*ibid.*) that Judge Rosenbaum "asked for this Court's review" in her opinion concurring in the judgment, but that opinion does not provide any sound

basis for granting certiorari. In her concurrence, Judge Rosenbaum urged the Court to require a *Miranda*-like warning before officers may "engage in consensual interactions" with citizens without implicating the Fourth Amendment, Pet. App. 37a, but she acknowledged that the Court has declined similar past proposals, see *id.* at 38a (citing *Drayton*, 536 U.S. at 201-203). And petitioner does not, in any event, endorse her proposal. No further review is warranted.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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NOVEMBER 2021